

## Background

### The origin of “tax exemption”

One of the most characteristic components of the classic “foral” (“chartered regime”) system is the fact that taxes are handled differently in each of the foral territories which all maintain, nevertheless, a separation from the system in force in non-foral territories.

We will focus on the system in force in the “Señorío de Bizkaia” (“Seignory of Biscay”), whose tax scheme was quite different from that applied in the territories of the Crown of Castile, especially when compared with the territories of Araba and Gipuzkoa: John I himself, Seignior of Biscay from 1371 and King of Castile from 1379, declared that Biscay should not pay for any loans, duties, or any other taxes “because it never did” — naturally with the exclusion of the income owed to its Seignior in his condition as such. In Chapter IV of the Old Foral Structure Law of 1452, the exact contents of the Biscay “pedido” or “donation” is detailed; that is, the amounts that had to be paid to the Seignior.

Subsequently, in Law IV of Title I of the New Foral Structure Law of Biscay (1526), the taxes to be paid by the people of Biscay to their Seignior were listed, establishing the following: “é otro pedido, ni Tributo, ni Alcavala, ni Moneda, ni Martiniega, ni Derechos de Puerto seco, ni Servicios, nunca lo tuvieron: Antes todos los dichos Vizcaynos, Hijos-Dalgo de Vizcaya, y Encartaciones, y Durangueses, siempre lo fueron, é son libres, y essentos, quitos é franqueados de todo Pedido, Servicio, Moneda, é Alcavala, é de otra qualquiera imposicion que sea, ó ser pueda, assi, estando en Vizcaya, y Encartaciones, é Durango, como fuera de ella” (“...they never had any other type of donation, or tax, or duty, or service fee: all those from Biscay, Encartaciones, and Durango have always been free and exempt from taxes, donations, and other frees of a fiscal nature whether they are in Biscay, Encartaciones, and Durango or not”). This is the legal precept on which the origin of the so-called “tax exemption” is based.

It was clear that the Seignior could demand the payment of any other tax not included in the New Fuero, however, some other taxes were also paid, for instance, in order to fund institutions as the Juntas Generales. Each village paid the corresponding taxes collecting the due amount from the neighbours as to pay for the needed expenses, i.e. the maintenance of roads or the organization of supplies in case of emergency.

Moreover, there was the ecclesiastical tax or diezmo, which was collected by either the clergy itself or by the outstanding laymen in Church. Nobility also collected their own taxes for the use of their properties, i.e. mills or bridges. Even the “Consulate of Bilbao”, association of traders established in 1511, collected its own tax: the rights for damages.

Besides the abovementioned, in Bizkaia, on demand of the Seignior, a gift or voluntary payment, which became compulsory in many cases, used to be paid in order to finance part of the great expenses of the Spanish Monarchy during the 15th, 16th and 17th centuries.

## **The First Common Tax for Biscay**

The Segniory of Bizkaia, in order to obtain enough income for its expenses, divided proportionally the payment of the total amount among the neighbours of each village, who were taken into the census by each home or fireplace, this is the reason why the system was called fogueraciones (related to fireplaces). This system was finally blessed by the Agreement of 1630, in which it was prohibited to set taxes, imposing surcharges on the prices of “food, drink, and other necessities.” When the King unilaterally decided to increase his revenue implementing the so-called estancos, the social revolts or matxinadas used to rise up. A remarkable example of these revolts is the big riot, called matxinada de la sal, which took place in Bilbao in 1631, when the King tried to implement, “estancar”, a tax on salt.

However and in spite of the strong opposition, in March 1640 the need of revenue forced to implement the first common duty or Arbitrio in Bizkaia, which was 8 farthings maravedies per each quintal of iron. As how to collect this duty for the Segniory, the system applied was the one laid down in the New Fuero which allowed the villages to collect it. It required a sufficient majority of two thirds in Juntas Generales and a request to the Crown of the final approval. Once these requirements were met, the duty was implemented in the Segniory.

From 1640 onwards, it is known that there were specific economic management positions in Biscay: the Treasurer of the Seignory and the General Accountant of the Seignory. The King’s representant in Bizkaia, the Corregidor, also had an important role in the tax administration because he was the one to authorise the proportional quotas and the payments.

## **Tolls and taxes. From the “fogueraciones” to the “cajas” system**

This simple initial scheme was getting more and more complex, particularly during the 18th century, due not only to the increase of new gifts for the Crown but to the increase of the army expenses which were competence of the Deputations. In addition, from the middle of the 18th century, the Deputations started carrying out a new activity consisting of constructing roads. The first road constructed by the Deputation, along with the Consulate and Bilbao City Council was the junction, via Orduña, between Bilbao and Pancorbo, where the intersection with the main road

to Madrid was. It was opened in 1771. The works required a great funding effort and, even though the Deputation had to pay only the third part of the expenses, new income had to be obtained in order to finance them. The solution was to collect a toll road whenever wagons, carts or horses passed by.

In such a way that duties were gradually consolidated as the main system of financing the Institutions of the Seigniorship. In 1804, the collection of the *fogueraciones* stopped as they were no longer a good financing source and new and higher duties, *arbitrios*, together with the toll roads were the only revenue of the treasury of the Seigniorship

As duties were increasing the boxes system practice was being developed, this is to say, each duty was collected to the sufficient amount as to defray a particular expense. Since then, one can distinguish the General Box, the War “*Exercito*” or Army Box, founded in 1793, first to save the volunteer gifts made by individuals and then several compulsory duties, for instance the 6 per cent duty on income from trade activities and on income from property, which provided enough funds to guarantee the money borrowed from individuals; the Tobacco Box, from 1794, which contained the revenue for the duty on Tobacco; the Road Box which contained the duty on Wine and the Gift Box which contained the duties on sugar, on cinnamon, on cocoa and on cod. Thus, as taxes gradually expanded, so did the “*cajas*” or “*boxes*”.

It was in 1802 when all these revenues were centralized in the Treasury of the Seigniorship, although the Boxes were functioning till the beginning of 19th century. In fact, the more duties they implemented the more Boxes they opened. The collection system was carried out either by public employees of the Seigniorship either by the rental of their rents. The Tobacco Box was the only one whose duty was collected directly by a public employee of the Deputation: the *Consultor*.

## **First attempts to standardize and expand the tax system**

This specific situation of the Seigniorship of Bizkaia, together with the so-called sister provinces of Alava and Gipuzkoa, began to suffer from difficulties during the 18th century.

Since the Bourbon King Philip V took the Spanish throne, the Nueva Planta Decrees abolished the ancient *fueros* of almost all the areas that were formerly part of the Crown of Aragon and, therefore, the Basque territories were at that moment in an exceptional situation. In spite of the attempts to establish the customs uniformity, laid down in 1718 and annulled in 1720, which provoked a new *matxinada*, or of the attempts of the royal authority to intervene more directly in the operation of the foral institutions, it can be stated that during the major part of

the 19th century the regime in the three Basque provinces continued without much difficulty.

From 1794 to 1801 there was a big expansion of the tax system of the Seignior: the implementation of new direct and indirect taxes and the creation of three new Boxes: War, Tobacco and Gift. The expenses were not only higher but there was also a bigger diversity. The services to the King or Gifts gave way to investments on coast defence, cannons, munitions, employees for the Deputations, which in the 18th century were about 40 persons, and new jobs were increased by virtue of the upraising tax reform.

The social and economic crisis, which took place at the end of the century, caused a higher lever of unsafety and poverty to the extent that expenses on social welfare and on public order were increased and the "Flying Squad", origin of the Foral Police Forces, Miqueletes and Miñones, was founded.

The beginning of serious problems dated from the end of the Convention War (1793-1895), during which the troops sent by the General Deputations didn't make a good performance. The participation of the troops and other issues concerning the war were an extraordinary economic effort for the Treasury of the Seignior. This effort was increased by the subsequent wars: the Independence War (1808-1812), the troubled implementation of the constitutional regime during the Liberal three-year period (1820-1823) and with more intensity during the First Carlist War.

## **The Carlist Wars and the Foral Abolition**

Serious difficulties arose when the absolutist monarchy was successfully taken over in 1833 by the constitutional monarchy in the person of Isabel II. At that time, when the Spanish nation-state was under a construction process surrounded by problems, the coexistence between a constitutional regime, based on the principle of equality before the law, and the Fuero and the specificity it involved was of great difficulty.

The first Carlist War (1833-1839) was a dynastic war during which the Fuero was an element of mobilization. The war ended with the Bergara Convention signed by the carlist General Maroto and the liberal General Espartero, who committed himself to find a solution to the foral issue for the government. The result was the Law of October 25th 1839 and the political and juridical principles of the Basque foral system in effect became constitutional in the Spanish framework, stating a future hearing of the Deputations in order to reform their regime according to the general interest of the nation.

Once the Foral Deputations were reestablished, taxation was their main particularity. In 1841, several features of the foral tradition were definitely abolished

after a failed uprising against Espartero, which the Basque Deputations supported. As a consequence inland customs were moved to the seaside. This particular system was based on inland custom posts mainly located in cities bordering the plateau of Castile (Balmaseda, Vitoria, Orduña), instead of custom posts located in harbours or borders with foreign countries, in such a way that imported goods into the Basque Country did not pay import duties until they were carried into Castile. These inland customs, known as the Ebro belt, were in operation with ups and downs during the Modern Era; however, the definitive integration of the Basque Country in the national market took place by Decree in October 1841.

Another institution which was abolished was the veto of the Basque Representative Assemblies or *pase foral*, which implied all decisions made by the King or the government, had to be endorsed by the foral authorities and were only observed if they were not violating the *Fueros*. The particularities concerning the constitution of City Councils were also abrogated as the obligation to organize municipalities according to the general law was imposed. The judicial competences of the local and foral entities were transferred to the First Instance Courts or Hearing Courts, *Audiencias*. The liberal state and its administrative organization of municipalities and courts was not in line with the traditional foral systems.

However, the Foral Deputations, the General Assemblies, the gifts and the peculiar Tax on Tobacco kept being in force, once they were restored after Espartero's defeat. For instance, in 1845 the Spanish State Treasury was deeply reformed, the so-called *Mon and Santillan reform*, establishing the basic pillars for the tax system up to 1977, but in Bizkaia it had a limited impact as most taxes implemented by the reform were not collected. In fact, the only income the State was obtaining came from gifts, customs levies, duties on mortgages and personal bonds.