



The parties must abide by the fiscal terms as specified in the agreements, regardless of who the taxable person is

Judgment of the Supreme Court, First Civil Chamber, of 19 January 2015

The Ministry of Defence sold several houses to the military men who occupied them. In the purchase agreements both parties agreed that all applicable taxes resulting from the change of ownership of the houses, would be borne by the buyers. The deeds specified that the sale was exempted from the value added tax (VAT) and, therefore, in accordance with tax regulations, each party proceeded to pay the Spanish Tax on Property Transfers.

After consulting with the tax authorities, it was concluded that the tax which should have been applied was the VAT instead of the Tax on Property Transfers. Therefore, the seller asked the buyers to pay the VAT in virtue of the agreement which established that the latter were bound to cover all taxes. For such purpose, the seller sent the buyers the relevant invoices, including VAT. The buyers challenged the passing on of the VAT and the courts ruled in their favour, considering that the seller had one year to pass the payment of the VAT on the buyers and such period was long exceeded.

The seller decided to file a civil claim requesting the buyers to reimburse the VAT that he had initially paid, in virtue of their agreement, reaching the Supreme Court who finally ruled in favour of the seller.

Binding power of the agreements

The Supreme Court considered that, although under VAT regulations the period to pass the payment of the VAT on had expired, that was not an obstacle for the seller to pass on the payment of a tax borne by the seller himself and that, in accordance with the agreement, it had to be satisfied by the buyer. In particular, the Supreme Court stated the agreements are binding between the parties, and that they cannot be exempted from their undertaken obligations just because it was initially assumed that the purchase agreement was subject to the payment of the Tax on Property Transfers and it was only afterwards when it was determined that the applicable tax was VAT.

Regardless of which ends up to be the tax applicable, the fact is that the buyers explicitly and unconditionally undertook the obligation to bear the taxes resulting from the purchase of the houses. In short, the Supreme Court makes the provisions from the agreement prevail over any administrative incidence.

In the light of this ruling, it would always be convenient to pay particular attention when specifying in the agreements the obligations assumed by each party, even if they might seem auxiliary obligations, as for instance in this case who must cover the taxes.