

Supreme Court Sentence (Contentious-administrative Court room 3) of 20 October 2014

The Supreme Court has rejected a cassation appeal brought by the general State Administration in which the object of discussion brought forth the notion of “tax transcendence” for the effects of determining whether, within a tax inspection procedure, “real estate surveys” enable the Administration to require information.

In rejecting the appeal, the court expressing the following points in its decision:

First of all, the Court indicated that there is data with “direct” tax transcendence, such as the balances of the accounts in financial institutions, but that there is other data of no tax importance in itself, but whose transcendence is “indirect” and not obvious, so that in order to require information of this second category of data, the Inspection Body must reasonably justify its tax importance, the simple listing and mentioning of the rules enabling them to claim them not being sufficient.

Furthermore, the Court explains that the power of the Administration to require “tax transcendence” information cannot be considered a discretionary power, but that it is an essentially regulated power that leaves the Administration little margin, though always under jurisdictional control.

In the specific case analysed in the sentence, the motivation given by the Administration in the requirement is limited to mentioning legal precepts and to describing the data required in relation to real estate surveys performed by the company for several years, without giving further details.

As the Court says, the data concerning real estate surveys are not “directly” relevant for tax purposes in themselves and must be distinguished from those concerning operations in banks or savings banks, which are considered transcendental from the tax viewpoint. The Court also says that the required data cannot be considered of “tax transcendence” either because they are required by the tax Administration, or rejects the idea given in the Administration’s approach that any financial data are of tax transcendence in themselves.

It is striking that the Court stops to recognise that its criterion in a previous sentence on 18 October 2012 was different, as it declared a requirement of information sent to a real estate survey company identical to that which concerns us now as conform to law. However, what the Court clarifies is that although it is true that the information on real estate surveys may be of tax transcendence, it is not necessarily true that it may be in itself.

In conclusion, it is necessary to distinguish between the data which are of “direct” tax transcendence, such as information on bank accounts required of a financial institution and which enable the Administration to call for such data within a general supply obligation, without giving further reasons, and data with an “indirect” effect such as real estate surveys generally not specifically required by the Administration, which lie outside the framework of the regulations in so far as the system of individualised requirements of information cannot be indiscriminate and non-selective.