

In the recent Supreme Court Sentences of 14 December 2015, the Supreme Court has allowed two appeals made to it, namely, Appeal 614/2015 and Appeal 607/2015, filed respectively by the distribution groups, El Corte Inglés and Hipercor. These appeals relate to the findings of the Catalonia High Court which rejected the claims of both companies.

Specifically, the Supreme Court has allowed the claims of the appellants and ordered interim relief with respect to the payment of the tax on Shopping Centres by three El Corte Inglés and Hipercor de Cataluña shopping centres, upon the depositing of a guarantee for the amounts in question by the appellants with a view to avoiding possible loss to the Tax Office (Article 737 of the *Rules of the Supreme Court*).

The following shopping centres are affected by the precautionary measure:

- El Corte Inglés located in Sabadell (Barcelona) for paid tax amounting to €680,671.
- El Corte Inglés located in Avenida Diagonal in Barcelona for a paid amount of €1 million.
- El Hipercor located in Cornellá de Llobregat (Barcelona) for a paid amount of €1.48 million.

The Supreme Court granted interim relief on the grounds that their claims meet the relevant requirements, specifically highlighting the *fumus bonis iuris* (or “sufficient legal grounds”) of the appeal. This occurs when the petitioner for interim relief proves the concurrence of a risk situation until such time as a decision is handed down, thus the effectiveness of a future guilty sentence could be reasonably jeopardised.

Accordingly, the Supreme Court held that was sufficient legal grounds pursuant to the communications received by the Kingdom of Spain in 2014 from the European Commission and the EU Directorate-General for Taxation and Customs Union, which noted that the tax on Shopping Centres could be “incompatible with European regulations”.

Lastly, the Supreme Court failed to enter in-depth into the issue, emphasising that the decision on interim relief “is not the appropriate place to decide definitively on the legality of the administrative action in dispute”. Moreover, it stated that “the doctrine in question (“sufficient legal grounds”) allowed may provisionally allow the entitlement, within the limited scope that affects cases of this nature and without pre-judging that which will be stated in the final decision, for merely precautionary protection purposes”.

To conclude, beyond the particulars of this case, the sentences in question represent a turning point in the battle being fought between several Spanish regions and the European Commission as regards this tax, given that it opens the door to the same decision being applied to the Canary Islands and Aragon, the other two regions that contain a similar provision in their tax systems.