

Assessment on the reduction of lump sum ratio through the Law no.7061 in terms of legal safety principle and property right

The expenses, that will be considered in determining the net amount of the revenues from immovable capital defined in the clause 1 of the article 70 of the Income Tax Law as the income obtained by rental of the written property and rights by their owners, possessors, owners of easement and usufructuary rights or tenants constitute revenues from immovable capital, are determined with two different methods, which are “Real Expense Method” and “Lump Sum Expense Method”. Taxpayers are free to choose any of these two methods. According to the article 74 of the Law, when taxpayers (except for those leasing their rights) desire, they may reduce 25% of their revenues as Lump Sum Expense to be in return for the expenses mentioned as 11 articles.

The Lump Sum Expense rate used in the declaration of rental income mentioned in the third clause of the article 74 of the Income Tax Law was reduced to 15% from 25% with the article 14 of the Law 7061 released in the Official Gazette dated December 5, 2017. Based on the subsection (ç) clause 1 of the article 123 of the same law where execution provisions are regulated, this rate shall be applied to the revenues acquired starting January 1th, 2017.

In the article 74 of Income Tax Law it is stated that “Those who accept taxation on the basis of lump expense shall not be entitled to give up this procedure of taxation before the lapse of two years.” Based on this article, it has become clear that taxpayers who provided real property income declarations according to the Lump Sum Expense Method for the year 2016 for the first time cannot choose to use the Real Expense Method for the following year. This new regulation increases the tax liability of taxpayers since it is effective on the decisions made by the taxpayer in the past.

This situation contradicts with the Legal Safety Principle, which is a common value protected in the basic rights. Legal Safety requires that the rules of law are general and their practices are foreseeable; and are organized in a clear and certain manner. The legal safety principle is closely related with the “Supremacy of the Law” principle mentioned in the Foreword of the European Convention of Human Rights in the European Court of Human Rights. The convention prevents incorrect interventions on basic rights and freedoms as well as providing protection against legal regulations that might cause the violation of basic rights and freedoms. Because of the feature of the convention system, the decisions of the European Court of Human Rights mentioned in the Legal Safety Principle are important in that they enable us to see the effects of this principle.

Both the Constitutional Court and the European Court of Human Rights are of the opinion that the precautions on the taxation are an intervention on the Property Right. The decision of the Constitutional Court on the Ford Engine Company dated 13.12.2017 and the decision of the European Court of Human Rights on Serkov-Ukraine Case dated 07.10.2011, which is one of the similar decisions in the same field, are examples of this situation.

As a conclusion, we may claim that individuals will face unforeseen financial burdens because of their financial decision in the past with this legal regulation. Such a legal change, which may affect the executive rights of individuals on their properties in an unforeseen manner and in a direct manner, will harm the trust of individuals in the state. For this reason, it is important that individuals foresee the interventions made through taxation and adapt their decision in accordance.

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