

Assessment on VAT in exchange rate differences with respect to the basic principles of taxation

The debate on whether exchange rate differences are subject to VAT or not is one of the main issues discussed for a long time and which the Revenue Administration and Judiciary were not able to agree upon for years. The flaring debate due to last year's exchange rate fluctuations and the Decision of the Council of State Tax Litigation Chambers (VDDK) dated 13.12.2017 seems to have ended largely with the Law no.7161 published on 18.01.2019.

In article 24 of the VAT Law, elements included in the tax assessment are indicated under sub-clauses and it's ensured in sub-clause (c) that various income such as late interest, price difference, exchange difference, interest, bonus and every sort of benefits, service and values delivered with similar titles are included in the tax assessment. With the introduction of the wording "exchange rate difference" in the article through the Law no.7161 published on 18.01.2019, the arrangement that relied on communiques until now and forming the origin of the debate has been placed on legal basis.

It was expected that the matter of VAT in exchange rate differences would be solved over the past one year, until a new legal arrangement has been made by the Judiciary. Under these circumstances, the 4th Chamber of the Council of State has not yet made a decision in this respect. Finally, with the publication of Law no.7161, the requirement for a decision disappeared and the matter has been resolved by an amendment in line with the argument of the Administration. Although the forward-looking discussion on the VAT issue regarding exchange rate differences is terminated, it is clear that the uncertainty over the previous period needs to be analysed in terms of the basic principles of taxation.

The matter of VAT regarding exchange rate differences that was lacking an obvious legal arrangement prior to the Law no.7161 was pushing the taxpayers into hesitation in terms of the principles of legality, specificity and predictability of taxation which are the basic principles of taxation.

Within that context, explanations brought on the provisions concerning the Article 24 of VAT Law through commentary based on communique had been criticised due to its contradiction with the principle of legality of tax about the determination of basic principles in taxation through laws. By the amendment made with the Law no.7161, the communique arrangement has been placed on a legal basis and the criticism from that direction has been prevented.

On the other side, it can be said that the principle of legal safety was seriously damaged for the period particularly the last one year until the date that the legal arrangement was provided.

Namely; even if we leave the background about this aside, when there is a VDDK Decision clearly expressing that VAT should not be calculated over exchange differences and any contradictory legal arrangement is not available, in other words, when there is a communique regulation that is in force but should not be, how would the taxpayers be expected to behave?

When the detail of the ruling concerning the relevant article of the Law no.7161 is examined, another significant point at this stage is that the exchange rate differences were always subject to VAT and the legal amendment's purpose was just to clear the doubts. Within that context, we are of the opinion that the Administration's resolving the matter and legalizing the situation through this arrangement is an appropriate step. However, we can say that there may be a retrospective effect of the amendment; taxpayers and the Administration may come across again at least in practice.

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