

Mutual rescission contracts and tax-related matters

Mutual rescission agreements are not explicitly regulated in the Labour Law no. 4857. This opportunity is accepted within the context of freedom of contract both in judicial decisions and in the doctrinal disciplines. The principle of freedom of contract that is based on the Constitution gives the parties the power to form a contract, determine its content and terminate the contract. In this regard, the employment contract, whether fixed-term or indefinite-term, can also be terminated upon the agreement of the employee and the employer. This agreement on the termination of the employment contract is called a mutual rescission.

As it can be understood, it is possible for the employee and employers to agree and terminate the employment contract as a way other than termination by contract method, in other words mutual rescission as a reflection of the freedom of contract in law. Mutual rescission does not stand as a termination, while it appears as a method that is approached with suspicion since it is probable that the workers' rights are damaged. Therefore, termination of the employment contract by mutual rescission is not valid since it threatens the job safety due to the lack of provisions regarding the protection of the worker sufficiently and the relevant situation is considered as the unilateral termination of the employment contract by the employer. In this respect, in order to be considered as a mutual rescission, the contract formed should be of a quality that does not harm the safety of the job and must contain provisions that provide reasonable benefits to the worker.

Due to the principle of providing reasonable benefits to the worker as a legal condition, the inclusion of some amounts in the contract brings various tax issues. Although it is accepted that the relevant amounts will be evaluated as wages, the exemption of the portion up to the ceiling of the severance pay from income tax has been accepted through the latest regulations. On the other hand, the sections exceeding the severance pay ceiling amount will be subject to income tax.

The issue of the assessment of indemnities arising from mutual rescission contract in terms of income tax which has been subject of litigation many times and different court decisions and rulings previously has been concluded with the Law no. 7103, Law no. 7162 and the relevant communiques. Pursuant to the regulations introduced, the payments received as a result of the mutual rescission contracts were included into the scope of income tax exemption and it was decided to refund the deductions made before 27/03/2018.

On the other hand, since the mutual rescissions do not stand in the category of contracts exempted from stamp tax and because it is a new contract due to its nature, it is understood that they should be subject to a stamp tax of 9.48 per thousand.

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