

Evaluation of additional motor vehicle tax decision of Constitutional Court: Is preamble applicable in terms of additional tax?

After the Constitutional Court decided to reject the annulment request regarding the cancellation of the additional motor vehicle tax put into effect by Law No. 7456, there were discussions about whether the said decision would also set a precedent for the additional tax regulation in the 27th paragraph of Article 10 of Law No. 7440 or not.

In the said decision, the Constitutional Court evaluated the criteria of legality, legitimate purpose and proportionality within the framework of Article 13 of the Constitution, which regulates the restriction of fundamental rights and freedoms and concluded that the legality criterion was met on the grounds that the regulation was made by law and was specific, accessible and predictable. However, it is stated that the elimination of losses due to extraordinary circumstances after a disaster such as an earthquake will constitute a legitimate purpose for the introduction of an additional tax, and for the proportionality criterion, it is stated that the tax in question is suitable and necessary to meet the urgent public financing need caused by the earthquake, is one-time and that the burden is on motor vehicles. It has also been evaluated that it does not present an imbalance in terms of the value of the vehicles. Similarly, in the above decision, it was concluded that there was no contradiction in terms of the principle of generality, since it is a tax that spreads to the whole society and in terms of the principle of taxation according to financial power as well since motor vehicles are taxed as an element of wealth.

Since the contradiction to Constitution claims discussed in terms of additional tax changes the taxational outcome of 2022 accounting period, which is a closed taxation period, and this situation actually causes a retroactivity, we are of the opinion that the principle to tax based on financial power has been violated and also taxation of only 2% of corporate taxpayers violates generality and equality principles and finally the interference with taxpayers' property rights does not alone make the regulation lawful even if it meets the condition of legality and therefore such interference shall not be accepted as measured.

In this context, in our study, the justification of the Constitutional Court's decision regarding the additional motor vehicle tax and various allegations regarding the unconstitutionality of the additional tax are discussed and compared separately. For example, although it was seen that the Constitutional Court did not enter into a discussion regarding retroactivity in the additional motor vehicle tax decision, it is thought that this discussion was inevitable due to the subsequent change of the tax burden for the closed taxation period in terms of additional tax. In terms of the principle of taxation according to financial power, while motor vehicles, which are an element of wealth, are taxed in the additional motor vehicle tax, the exemptions and discounts used as the subject of the additional tax do not correspond to a taxable economic element (earnings, wealth, expenditure). Likewise, according to the Constitutional Court, while the additional motor vehicle is a tax spread throughout society, only 2% of corporate taxpayers were subject to the additional tax, thus creating a result that violates the principle of generality. In terms of proportionality, the Constitutional Court commented that the burden posed by the additional motor vehicle tax does not constitute a serious burden compared to the value of the motor vehicle, on the other hand, it is quite possible to encounter disproportionate burdens in terms of additional taxes, as financial power is not complied.

As a result, in our study, it is evaluated that if the unconstitutionality of these two taxes, which are different in various aspects, is evaluated, different results should be reached and that the Constitutional Court's decision on additional motor vehicle tax shall not set a precedent in terms of additional taxes.

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