

Council of State Tax Litigation Chambers Board ruled that Retirement Incentive Payment that has been made under the Title of Notice Compensation cannot be considered as Wage Income

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The Council of State Assembly of Tax Courts ruled that due to the increase in the minimum notification periods stipulated in article 17 of Employment Law numbered 4857, which is within the scope of the mutual rescission agreement signed before 27 March 2018, the portion of the paid amount corresponding to the increased period is not in the form of notice compensation and wage income.

In the application subject to the decision, different decisions have been ruled by Regional Administrative Courts whether there should be a tax cuts due to the fact that the notice compensation paid by increasing the minimum notification periods is in the nature of wage income upon the termination of the employment agreements pursuant to the mutual rescission agreements signed between the employee and employer before 27 March 2018 stipulated in article 17 of Employment Law numbered 4857. Thereupon, an application was made by Gaziantep Regional Administrative Court Board of Presidents, defending that the aforementioned compensation was not in the nature of wage income.

The Council of State Assembly of Tax Courts stated that special agreements do not bind the tax administration and that it is not possible to change the taxable event by private law action or disposition, except for exceptions and special regulations, referring to the article 8/3 of Tax Procedure Law numbered 213. In concrete cases, which are the subject of the decisions, it has been stated that the employment agreements were terminated by increasing the minimum notification period of the labor agreements in order to reduce the personnel who could not benefit from the workforce sufficiently and by paying notice compensation, and the main purpose of this was to encourage retirement. It has been decided that the additional payments are among the payments listed in the article 89 of Income Tax Law numbered 193. Within the scope of the explanations of The Council of State Assembly of Tax Courts, it has been decided that the portion of the amount paid by increasing the minimum notification period, corresponding to the increased period, is not in the nature of notice compensation and wage income.

The full text of the Council of State's decision numbered 2021/6 E. and 2021/8 K., published in Official Gazette dated 5 February 2022 and numbered 31741, available at this [link](#). (Only available in Turkish)

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