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Turkey’s Council of State Rules on Results of Failure to Submit the Commercial Books and Documents during Tax Inspection, with Respect to Lawsuits Filed against VAT Assessment

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In order to resolve the conflicting judgments, Turkish Council of State's General Assembly on Unification of Judgments recently decided on assessments and penalties within the scope of lawsuits filed by taxpayers against ex-officio VAT assessment in cases where books and documents are not presented in tax inspection.

The Council of State made the following decisions regarding the failure to submit books and documents due to force majeure:

- Taxpayers cannot be expected to fulfill their obligation to submit the books and documents.
- Taxpayers do not have any obligation to prove that deductible taxes are separately indicated on purchase documents.
- Therefore, tax administration's ex-officio VAT assessment due to failure to submit books and documents is against the law.

Furthermore, the Council of State stated that there is no absolute form requirement to prove the presence of a force majeure event. It underlined that force majeure could be proven with a certificate obtained from commercial courts or legally credible documents obtained from the relevant official authority, according to the nature of the case.

With respect to the lawsuits filed by taxpayers against ex-officio VAT assessment due to failure of presenting books and documents without any force majeure event, the Council of State has decided that if taxpayers assert that they can submit relevant books and documents related to the taxation period to the court, the ex-officio VAT assessment should be reviewed after the following steps:

- These books and documents should be requested from the applicant,
- The records should be examined,
- Tax administration's opinion and determinations should also be reviewed.

Please see this link to read the full text of the decision numbered 2013/3 E. and 2019/1 K. published in the Official Gazette numbered 30842 on 25 July 2019.

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