

Turkish Constitutional Court: Tax Authority's Approach to Calculating Time for Undeclared Buildings and Land Does Not Breach Constitution

19 Apr 2018

The Turkish Constitutional Court recently ruled that a provision which allows tax authorities to claim unpaid tax and tax fines for undeclared buildings and land within five years of becoming aware of these undeclared properties does not violate the constitution. The provision's reference to the tax authority's awareness is an exception to the normal approach to calculating the period's starting point.

In general, taxes should be imposed or accrued within five years, calculated from the beginning of the year after which the taxable event occurred (Article 114 of Tax Procedure Law). However, Article 40 of Real Estate Tax Law introduces a different start point for calculating the time period: When the tax authorities become aware of the undeclared real estate.

Thus, Article 40 allows tax authorities to retrospectively claim all unpaid tax and tax fines for undeclared buildings and land within five years of becoming aware of these undeclared properties.

In the case at hand, the Ankara Regional Administrative Court ruled that Article 40 breached the state of law principle (Article 2 of the Constitution). Accordingly, it applied to the Constitutional Court, requesting that Article 40 be struck out.

The Constitutional Court ruled that Article 40 does not violate Article 2 of Constitution, on the basis that:

- The calculation mechanism for real estate forces taxpayers to declare their properties and aims to collect taxes properly. Thus, it aims to encourage and support the state's ability to collect more tax.
- Taxpayers facing the threat of having to retrospectively pay taxes is a consequence of the taxpayers' intention or negligence in terms of not declaring the properties.

Please see this [link](#) for the full text of the Constitutional Court decision dated 1 November 2017 and numbered 2016/43 E., 2017/146 K. which was published in Official Gazette number 30276 on 20 December 2017 (only available in Turkish).

Related Practices

- [Real Estate and Construction](#)

Related Attorneys

- [BURAK BAYDAR](#)

