

Turkish Constitutional Court: The Entry into Force of a Regulation Affecting the Corporate Tax Base Before the Taxable Event, is not Unconstitutional

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Turkish Constitutional Court, on the basis of the 1st Tax Court of Kocaeli's application, has decided that statement "...to be applied to transactions after 2 August 2013" in paragraph 1/(d) of article 76 of the Law on the Amendments in Certain Laws for the Purpose of Improvement of Investment Environment numbered 6728 ("**Law number 6728**") is not unconstitutional.

The provision subject to the application pertains to the exemption of the sales return is from corporate tax as a result of sale-leaseback transactions carried out under the Leasing, Factoring and Financing Companies Law numbered 6361 ("**Law number 6361**"). The exception that was set out under Law number 5520 was revoked with the Law number 6728 and re-regulated.

The scope of the new exemption arrangement made by Law number 6728 is wider than the repealed provision, in terms of the institutions that carry out the transactions. In addition, the provision of depreciation shares of the immovable properties subject to purchase, lease and repurchase transactions is eliminated. According to the new regulation, the depreciation shares of the immovables in question cannot be recorded as an expense and will be deducted from the sales gain monitored in the special fund account.

The new regulation entered into force for implementation as of 2 August 2013, when the revoked provision was first put into effect.

Kocaeli 1st Tax Court's application stated that:

- The entry into force of the provision to apply retroactively to the transactions made after 2 August 2013, will increase the tax payments.
- The situation is contrary to the principle of legal security and that the rule is contrary to article 2 of the Turkish Constitution.

The Turkish Constitutional Court, on the other hand, put forward the principle that the application of a new rule to the legal situation, relations, and events, which had begun but has not yet been concluded, cannot be regarded as the retroactivity of law.

The Turkish Constitutional Court reviewing the statement that reads "...to be applied to transactions after 2 August 2013" ruled that:

- The depreciation implementation does not have any effect on the accounting periods for 2013, 2014, and 2015
- Since the accounting period of 2016 is still ongoing, it is not possible to assess commercial gain, and therefore the taxable event has not occurred yet
- A change to be made to affect the corporate tax on the date that taxable event has not occurred cannot be considered as retroactivity of law.

In the light of these assessments, the Turkish Constitutional Court decided that the regulation does not violate

- The principle of legal security
- Article 2 of the Constitution.

Please see this [link](#) for the full text of the decision of the Turkish Constitutional Court's decision, dated 13 February 2019, numbered 2018/103 E. 2019/4 K, published in the Official Gazette dated 14 March 2019 and numbered 30714 (only available in Turkish).

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