

English Translation

The position of the restitution to work cases with regard to tax legislation and social security practices

Security in business means to restrict employer's dissolution power to secure employee's job and satisfy the continuity of business relations. In other words, security in business is the obligation of an employer to show valid reason to dissolution of employment contract. Employer has the obligation of showing the clear and valid reason for the dissolution of employment contract since these reasons have binding effect from the employer's perspective.

Unless the employer points out a valid reason or if the reason that is pointed out is ruled out by the court or a special referee as invalid and the annulment is decided as null; the employer must re-employ the employee within a month. It is stated in the Labour Law that following by the court's decision, the employer has to pay a maximum of four months born fee and other rights (salary for the idle months) to the employee for his unemployed period who has started to work in this period.

Nonetheless, the law grants the employer with the right to choose between employing the employee and dissolving the contract by paying a fixed indemnity. In case that the employer does not provide employment to the employee demanding restitution to work within the legal period of time, s/he is obliged to pay an indemnity (work security amend) that is at least 4 times and at most 8 times of monthly salary.

On the other hand, the point that there is an agreement on the restitution to work cases from the perspective of taxation; since the employment income regarding the idle time should be evaluated in line with the Article 61 of Income Tax Law; the payments made to employee should be subject to income tax and stamp tax. However, since the indemnities are paid by the employers with the decision of the court and also meant to guard the employee without depending on any kind of service execution; we are of the opinion that these job security indemnity payments should not be evaluated as employment income but as deductible expense according to the Article 40/3 of Income Tax Law. Therefore, it would be recommendable to apply for a ruling from Tax Authority before putting the job security indemnities in practice.

The evaluations that are to be made in terms of the social security legislation regarding the restitution to work cases differ according to the circumstances that the employee to be resituated to work is re-employed by the employer or the employee does not make a claim to be re-employed:

- If employee does not apply to the employer to start for work or does not start working even employer's appropriate offer in the case of applying work in this period of time, employer does not have the obligation of giving social security premium document and premium payment because employee cannot claim security compensation with fees and other rights about at most four months of unemployment.

- Although the employee applies to the employer to start working and after a month of application is not being started working by the employer, security compensation which includes at least four, at most eight times of monthly salary shall not be considered as premium, because employee is no longer holds a feature and the purpose of support is to impose a civil penalty on the employer for not letting the employee to start working.
- With the provision of employee's claim for being resituated to work; if the employee is started to work or although employee wants, he is not being started to work, compensation that the employee will have which includes at most four times of monthly salary and other rights, will be considered as premium above work accident, occupational disease, unemployment insurance and all other insurance lines. On the other side, in the case of employer's appropriate invitation, unless employee starts to work within a month that is stated in the Law, annulment will take effect which makes employer not being obligated of giving social security premium document and premium payment.

“Public office” in stamp duty application

I. Introduction

Stamp duty is a kind of tax levied on documents or papers issued in legal affairs. The documents within the scope of stamp duty are the papers enumerated in the Table (1) of the Stamp Duty Code, signed and that may be presented in order to prove or determine an issue.

Since the Stamp Duty Code has a general framework, some difficulties may be encountered in the practice; in this respect, the material events should be analyzed carefully.

The concept of “public office” is regulated under Article 8 of the Stamp Duty Code, and the Code prescribes certain implications with respect to the status of being a public office.

In this article, “public offices” have been discussed in terms of the stamp duty application, in order to determine their scope and due to the significance of the implications set under the Code. After initially reviewing the relevant article of the Stamp Duty Code and determining the scope of public offices, the article discusses the implications in terms of stamp duty, which have been prescribed for institutions in the nature of “public office”.

II. Public office

According to Article 8 of the Stamp Duty Code, public offices cover administrations with general and special budget, special provincial administrations, municipalities and villages.

Administrations with general and special budget are regulated under the Public Financial Management and the Control Code No.5018, and in the tables No.(I) and (II), institutions that are in the nature of public administration with general budget and institutions in the nature of administrations with special budget are separately specified.

Special provincial administrations, municipalities and villages which are stated to be in the nature of public office in the Article 8 of the Stamp Duty Code in addition to the administrations with general and special budget, are local administrations regulated under the Article 127 of the Turkish Constitution.

Pursuant to the second paragraph of the Article, economic enterprises with a separate legal entity though affiliated to public offices are not deemed as public office. For instance, economic enterprises having a separate legal entity and affiliated to municipalities will not be considered as public office within the framework of this provision.

Furthermore, we would also like to note that institutions such as Capital Markets Board, Energy Market Regulatory Authority, Competition Authority, which are specified under the title “Regulatory and Supervisory Authorities” in the table No.(III) attached to the Code No.5018, are not considered as public offices, as the article does not include regulatory and supervisory authorities within the scope of “public office”.

The implications prescribed under the Stamp Duty Code with respect to public offices are as follows:

- If papers issued in foreign countries, foreign consulates and embassies in Turkey are submitted to public offices in Turkey, the paper shall be subject to stamp duty in Turkey.
- Those signing the papers are liable for the stamp duty. However, the stamp duty over the papers pertaining to transactions conducted between public offices and individuals should be paid by these individuals,
- In the assessments to be realized for papers subject to stamp duty and issued by public offices, the stamp duty over which is not collected at all or collected deficiently, the original tax and the fine shall be required from the public office. For the original tax, public offices have the right of recourse to the taxpayer,
- Officers in public offices shall control the payment of duties over papers that are subject to stamp duty and submitted to themselves; if there are any papers the duty over which is not paid or paid deficiently, the officers shall determine this with a record and will submit this record to the tax office.

III. Conclusion

As stamp duty is a kind of tax levied over papers, it has a quite broad field of application. In this respect, there are difficulties in practice in terms of interpretation within the framework of the concrete case and the control of whether the payment is made, in cases where there are ambiguities in the Code.

In this article, the concept of “public office” which is frequently encountered in the application and significant in terms of the stamp duty application has been discussed. In the Stamp Duty Code, there are two important implications prescribed for the concept of public office from the standpoint of taxpayers; if papers issued abroad are submitted to public offices in Turkey, these papers shall be subject to stamp duty in Turkey, and the stamp duty over the papers issued between public offices



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and individuals should be paid by the individuals. In terms of the control of the payment of the tax, public offices are subject to certain liabilities under Article 24 and 26 of the Code.

Though the Code specifies the institutions which will be considered as “public office” in terms of stamp duty, whether an institution is a public office may not be easily determined in practice. As specified above, the status of “public office” for which significant implications are prescribed both in terms of taxpayers and public offices, is the legal case creating the mentioned implications and therefore the concrete cases should be carefully analyzed.