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Administrative Court of Serbia bars Tax Authority from collecting Solidarity Tax after statutory limit

In several rulings issued since September of 2015, Administrative Court of the Republic of Serbia has determined unlawful practice of Serbian Tax Authority in regard to determination and collection of "Solidarity Tax" pursuant to the Law on Deduction of Net Earnings of Persons in Public Sector ("Official Gazette of the Republic of Serbia No. 108/2013) (hereinafter: the Law on "Solidarity Tax").

The "Solidarity Tax" comprised a deduction from net earnings and other forms of compensation of public sector employees in the Republic of Serbia. It was determined on the basis of, and collected from earnings of public sector employees that had been earned and disbursed starting from 1 January 2014, until 1 November 2014.

The Law on "Solidarity Tax" has been the subject of numerous controversies among experts; therefore in 2014 an initiative for its constitutional review was submitted to the Constitutional Court of the Republic of Serbia. The Law ceased to be applicable on 1 November 2014, except in respect of income earned until 1 November 2014 that has not been paid out after that date.

Calculation and collection of "Solidarity Tax" is regulated by Article 4 of the Law on "Solidarity Tax", which envisages:

- In Paragraph 1, the duty of the payer of the earnings to calculate, withhold and execute payment of "Solidarity Tax" for each employee in public sector on the day when net earnings are paid to such an employee;
- In Paragraph 2, the duty of the Tax Authority to control, at the end of calendar quarter and at the latest by the 15th day of the first month of the subsequent calendar quarter, whether net earnings of employees in public sector for the previous calendar quarter have been reduced in accordance with the Law;

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- In paragraphs 3 and 4, the duty of the Tax Authority to properly determine the amount of “Solidarity Tax” for the preceding calendar quarter if net earnings of a public sector employee have not been reduced in accordance with the Law, and its obligation to order the natural person by virtue of a decision to pay the missing balance within 30 days from the day of receipt of such decision;
- In Paragraph 5, a term of 30 days, starting from the end of the calendar quarter, is imposed upon the Tax Authority for enacting the decision ordering payment of the missing balance of “Solidarity Tax” determined in accordance with para. 4 of the same Article in respect of the income realized in the course of the pertinent calendar quarter.

Even though the Law on “Solidarity Tax” clearly prescribes the time limit for enacting the decision on calculation and collection of “Solidarity Tax”, in practice the Tax Authority has not honored the deadline and a great number of decisions on levying of the “Solidarity Tax” for the earnings from the first quarter were not issued until the fourth quarter of 2014, and even before the beginning of 2015. Since these decisions were final, only an administrative dispute before the Administrative Court of the Republic of Serbia could have been initiated against such decisions.

In the rulings that ensued, the Administrative Court has taken the stance that the terms prescribed by Article 4 of the Law on “Solidarity Tax” are preclusive and that the Tax Authority could not have issued the disputed decisions on “Solidarity Tax” after such terms expired. The disputed decisions were therefore annulled on the grounds of breach of administrative procedure rules.

Significance of Administrative Court’s stance on preclusive statutory terms in administrative proceedings for the Serbian legal system

- The subject decisions of the Administrative Court of the Republic of Serbia highlight the obligation not only of the Tax Authority, but also of other administrative public authorities to act within prescribed terms. In fact, the Court has taken the stance requiring that whenever there is a deadline set precisely by the Law for an administrative public authority to issue an administrative decision *ex officio*, then such authority can issue the decision only within the prescribed term, since the term is deemed to be preclusive.
- The stance adopted by the Administrative Court is particularly important for ensuring that actions of administrative bodies be undertaken within reasonable course of time, as well as for ensuring the legal security of the parties - especially having in mind that decisions issued by administrative bodies are issued *ex officio* and most often are not in favour of parties, as in the concrete case which entailed retroactive levying of tax.
- The rulings point to the importance of introduction of preclusive terms within which administrative bodies should act, when such terms are necessary for increasing efficiency of administrative bodies and for securing the rights and interests of parties in administrative procedure.
- The rulings also show awareness of the higher levels of judiciary in Serbia of the importance of time limits in administrative proceedings for promotion and strengthening of principles and practices of good administration in Serbia.

“... whenever there is a deadline set precisely by the Law for an administrative public authority to issue an administrative decision ex officio, then such authority can issue the decision only within the prescribed term, since the term is deemed to be preclusive...”

Ask a question

We shall gladly respond to any questions you may have

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