

# ***Real Estate Tax Valuation - Decisions Of The Appraisal Commission***

**(For 2018-2019-2020-2021)**

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## ***Abstract***

The minimum square meters of land unit values to be used as the basis for real estate tax to be paid between 2018 and 2021 are determined by decisions from the appraisal commission. If the unit values determined by decisions from the appraisal commission are considered to be out of proportion and excessive, such decisions may be challenged in the court. Our bulletin explains by whom and until when a lawsuit may be filed against the decisions of the appraisal commission and assessment-accrual proceedings.

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The decisions of the appraisal commission are very important administrative references in the collection of property tax, which is one of the most important tax revenue streams of local governments. As per the Tax Procedure Law, the minimum square meters of land unit values must be determined by the appraisal commission every four years. Unit values are important for determining real estate tax amounts. Therefore, the minimum square meters of land unit values will be determined in 2017 to determine the real estate taxes to be imposed for buildings and land in 2018, 2019, 2020 and 2021.

Pursuant to annulment decision Nos. E.2011/38 and K.2012/89 of the Constitutional Court, which were promulgated in the Official Gazette dated 13 October 2012, real estate tax payers are entitled to file lawsuits challenging the decisions of the appraisal commission and the accrual of real estate tax. However, the term of litigation is not specified.

The recent decisions of the Council of State on the relevant matter clarified the term of litigation for bringing a lawsuit, and in our opinion letter we discussed the taxpayer's right to file a lawsuit challenging the decisions of the appraisal commission (general proceeding) and the execution process (assessment/accrual).

## **I. Who may File a Lawsuit Challenging the Decisions of the Appraisal Commission?**

As per Repeated Article 49 of Tax Procedure Law No. 213, the decisions of the appraisal commission concerning the unit value of the land subject to real estate tax will be provided in writing to:

- the chambers of commerce in city and district centres,
- the chamber of agriculture,
- relevant neighbourhood or village mukhtars,
- municipalities.
- those pertaining to lands will be provided to chambers of commerce and agriculture in city centres against signature.
- In cities with metropolitan municipality, decisions of the appraisal commission will be provided to the central commission consisting of head of provincial treasury or the proxy officer, head of land registry office to be appointed by the governor and one member from chamber of commerce, chamber of certified public accountants and chamber of artisan and craftsman under the presidency of the governor or an officer appointed by him/her.

As per Real Estate Tax Law Internal Circular Serial No. 2017/1, minimum square meters of land unit valuations must be completed and communicated to the **relevant parties** by the end of the working day on **30 June 2017**.

If the increase in minimum value determined by the appraisal commission is considered to be “disproportionate and excessive”, a lawsuit can be brought to challenge this decision.

- **The Relevant Parties Stated in Repeated Article 49 of the Tax Procedure Law May File a Lawsuit.** “Relevant parties” included in repeated Article 49 of the Tax Procedure Law and receiving the decision upon receipt of a signature may file a lawsuit.
- **Real Estate Taxpayers May File A Lawsuit.** Pursuant to Constitutional Court decision Nos. E.2011/38 and K.2012/89, real estate tax payers may also file lawsuits challenging decisions of the appraisal commission.

## II. **What is the Term within Which a Lawsuit May be Filed Challenging Decisions of the Appraisal Commission?**

Lawsuits challenging decisions of the appraisal commission must be filed within 30 days after the decision is communicated.

- **The Period Within Which the Affected Parties Stated in Repeated Article 49 of the Tax Procedure Law Must File Any Lawsuit:** As per Real Estate Tax Law Internal Circular Serial No. 2017/1, the minimum square meters of land unit valuation must be completed and the **relevant parties** notified by 30 June 2017 at latest. In this case, the relevant parties stated in repeated Article 49 of the Tax Procedure Law must file any lawsuits within 30 days after they are notified of a decision.
- **The Term Within Which Real Estate Taxpayers Must File Any Lawsuits:** The term within which real estate tax payers must file any lawsuits is not stated in the Real Estate Tax Law or any other legal regulations. The 30 June 2017 date stated above is not binding for real estate tax payers.

Recent jurisprudence from the 9th Chamber of the Council of State provides guidance on the term within which litigation must be filed. The Council of State evaluated when a real estate tax payer may file a lawsuit, based on Article 29 and Repeated Article 49 of the Real Estate Tax Law. Accordingly, the real estate tax base is the tax value defined as per Article 29 of the Real Estate Tax Law, it is calculated by the relevant municipalities every four years, and the land unit values used when calculating the tax amount are determined by the decision of the appraisal commission. Municipalities have the real estate taxes accrued based on land square meter unit values determined and **finalised** every four years as per the Real Estate Tax Law. The last sub-article of repeated Article 49 of the Tax Procedure Law stipulates that the finalised unit value will be declared between the start of the accrual year and the end of May. The Council of State interpreted the term “finalised” as either no lawsuit has been filed challenging the decision of the appraisal commission by the end of the term or a lawsuit has been filed and the decision has been finalised.

In line with the decisions of the 9th Chamber of the Council of State, real estate tax payers may file lawsuits challenging the decision of the relevant appraisal commission before the minimum square meters of land unit values determined

by the appraisal commission are **finalised** (this must be before 31 December 2017) and within 30 days after an application to the administration (it can be the relevant municipality mukhtar) is responded to or the taxpayer is notified in any way.

Accordingly, we recommend taxpayers sign for the written decision of the appraisal commission received from the municipality or the mukhtar and file a lawsuit in tax court within 30 days after they are notified of the decision if the minimum unit value is increased disproportionately and excessively.

### III. What is the Legal Result of Filing a Lawsuit Challenging the Decision of the Appraisal Commission?

When an annulment action is filed challenging the decision of the appraisal commission, the decision prevails until a court rules to annul the decision.

After a decision of the appraisal commission is annulled, real estate tax accrual is corrected based on the new value determined by the court.

The annulment of a decision will affect all taxpayers on the affected street/avenue. In other words, all the taxpayers on the affected street whose interests have been damaged may benefit from the results of the annulment decision. Real Estate Tax Law Internal Circular Serial No. 2017/1 has been prepared to prevent confusion in execution, stipulating that actions will proceed if the court had decided to annul the decision of the appraisal commission.

### IV. Can Taxpayers File Lawsuit Against Assessment and Accrual Proceeding?

Above we stated that taxpayers must file lawsuits challenging decisions of the appraisal commission before they are finalised.

After a lawsuit is filed challenging a decision of the appraisal commission, the decision prevails until the court rules to annul the decision. Based upon the above, real estate tax will accrue on the minimum unit value, which was determined in 2017, and will determine the real estate tax base for 2018, 2019, 2020 and 2021.

We consider that, after filing a lawsuit challenging the decision of the appraisal commission, taxpayers may file a lawsuit challenging the accrued taxes up until the time the court determines a new minimum unit value.

Concerning the assessment and accrual of tax as per the Real Estate Tax Law,

- for the accrual of 2018 real estate tax: Tax will be assessed and accrued in January and February of the budget year following the year when the appraisal is made every four years, and **the taxpayer will be notified of the accrual in writing.**
- For the accrual of real estate tax for 2019, 2020 and 2021: The tax calculated for the future will be deemed to be accrued in the relevant year starting from the beginning of that budget year.

Payment term of the accrued taxes are arranged as follows:

- the first instalment will be paid at the end of May of the year when the tax is accrued,
- the second instalment will be paid at the end of November.

After filing a lawsuit challenging the decision of the appraisal commission, taxpayers may also file a lawsuit challenging accrual and payment proceedings as stated below.

**a) Filing Lawsuits Against 2018 Accrual Proceedings**

As per Article 7/4 of the Administrative Law, real estate tax will be assessed/accrued in January or February 2018 based on the minimum current value determined by the decision of the appraisal commission in 2017.

For accrual and payment proceedings,

- any lawsuit must be filed within 30 days after the taxpayer is notified in writing.
- If the taxpayer is not notified in writing, a lawsuit may be filed challenging the accrual proceeding and demanding the return of the taxes paid during the first instalment period, along with interest, within 30 days after the tax is paid, since the taxpayer would know the assessment and accrual amounts as of the date when the tax is paid.
- As to the 2nd instalment payment, the taxpayer may file a lawsuit demanding the return of the tax and interest within 30 days after the tax is paid.

**b) What is the Term Within Which Lawsuits Challenging Tax Accruals in Future Years (2019-2020-2021) Must be Filed?**

Real Estate Tax Law stipulates that tax assessments for future years are deemed to begin accruing as of the beginning of the relevant budget year.

Accordingly, for accrual and payment proceedings concerning 2019, 2020 and 2021:

- Lawsuits for these years may be filed within 30 days after the accrual (by January 31 at latest) as the real estate tax is deemed to accrue on 01 January.
- Taxpayers may file a lawsuit demanding the return of the tax and interest paid in the first instalment period within 30 days after the tax is paid.
- Taxpayers may file a lawsuit demanding the return of the tax and interest paid in the second instalment period within 30 days after the tax is paid.

**V. Can Taxpayers Only File Lawsuits Challenging Accrual Proceedings?**

If the taxpayers do not file a lawsuit challenging the decision of the appraisal commission and only file a lawsuit challenging the accrual proceeding we believe that, first, the court will review the results of lawsuits (if any) filed by other taxpayers and only assess the lawsuit filed against the accrual proceeding.

If there are no lawsuits filed by other taxpayers challenging decisions of the appraisal commission, courts may hand down adverse decisions for lawsuits filed against accrual proceeding only, on the grounds that the minimum unit value has been finalised.

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