[FR] Base for tax on advertising broadcast by TV channels found unconstitutional

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In a decision delivered on 30 March 2017, the Constitutional Council pronounced on the constitutionality of the tax on advertising broadcast by television channels, instituted by Article 302 bis KG of the General Tax Code, in its version subsequent to the Act of 15 November 2013. The tax, payable by all television service editors established in France, is calculated according to the ex-VAT amount of the sums paid by advertisers to the editors of television services “or to the advertising networks” for broadcasting their advertising spots.

In the case at issue, a prior question on constitutionality had been raised on the occasion of a claim brought by the company EDI-TV for the repayment of the tax on advertising broadcast by the television channels due for the year 2015. The applicant company claimed that the provisions of Article 302 bis KG of the General Tax Code ignored the principle of equality before charges levied by the state, on the grounds that the tax to which they subjected television service editors was based in part on sums of money received by third parties, namely the “advertising networks”. The tax was therefore being established without taking into account the taxpaying abilities of its taxpayers.

The Constitutional Council noted that the contested provisions include, in the basis for the tax due from the editors of television services, the amounts paid by advertisers to advertising networks. They consequently resulted in subjecting a taxpayer to taxation using a base that included income not at that taxpayer’s disposal. The Council found that by laying down the principle of the subjection, of television service editors to payment of a tax calculated on the basis of sums not at their disposal, in all cases and regardless of circumstances, the legislator had ignored the requirements resulting from Article 13 of the 1789 Declaration. Consequently, the phrase “or advertising networks” included in the first sentence of paragraph II of Article 302 bis KG of the General Tax Code was declared contrary to the Constitution. As there was no reason to postpone the effects of the declaration of unconstitutionality, the declaration was to take effect as soon as it was published. Notwithstanding, the declaration may not be invoked in respect of taxation not contested prior to that date.

Conseil Constitutionnel, 30 mars 2017, Edi-TV

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http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-620-qpc/decision-n-2016-620-qpc-du-30-mars-2017.148865.html

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