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The International Journal of Multidisciplinary Thought (IJMT) was founded in 2005 as a double-blind refereed journal. Its first issue was published one year later in hard-copy format. Each issue was driven by a call for papers focusing on a particular topic. In 2008, the journal adopted a strategy to reach out beyond American academia to a truly global audience. Its editorial board welcomes submissions from universities around the world. IJMT recognizes the best research articles and accepts less than 20% of the manuscripts it receives for publication in its journal.

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TURKEY CASE IN AUTOMATISATION OF INCREASE OF TAXES AND AMOUNTS RELATED TO TAXATION AGAINST INFLATION: REVALUATION RATE

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Legislation concerning taxation is made in article 73 of Turkish Constitution. Basic principles relating to taxation are set forth in said article. A new institute has been established in order to prevent the erosion of taxes and amounts related to taxation. Accordingly subject-matter increases have been indexed to revaluation rate.

Keywords: Tax, Tax law, Revaluation rate, Legality principle of taxes, Turkey, Inflation.

I. The Authority of the Council of Ministers Related to Taxation

The provision concerning taxation is set forth in article 73 of Turkish Constitution. Basic principles about taxation are included in said article. In that context, legality principle of taxes is legislated. "Taxes, dues, fees and similar charges shall be enacted, amended and repealed by the law". By this provision, it has been stressed that the basic authority on taxation appertains to national assembly.

However, legality principle of taxes is not implemented very strictly today. In historical development process, legality principle of taxes was accepted in order to protect the freedoms against power holders and governments which have possessed political strength and has not been responsible against the parliaments. This principle was enforced strictly to prevent arbitrary taxing. The separation principle of powers has been eased in favor of executive power nowadays¹. Gradual increase in the role of state in economy has caused important alterations in balance between legislative and executive, in favor of executive. While legislative organ is responsible against electorate which are tax-payers at the same time executive organ is politically responsible against legislative organ. In this regard, executive organ represents tax-payers even indirectly, in principle. The fact that the executive organ come into existence from legislative organ gives the former a characteristics of representing the taxpayers. As a result of this, legality principle of taxes is not implemented strictly and even in a limited way, certain authorities are granted to tax administration.

The provision granting the authority about taxation to Council of Ministers is set at the 4th (the last) paragraph article 73 of Turkish Constitution which legislates the taxation: "Council of Ministers may be empowered to make amendments within the lower and upper limits prescribed by the law on provisions of exemptions, exceptions, reductions and rates related to taxes, duties, fees and similar charges".

Council of Ministers exercises the authority and is granted in the framework of above mentioned provision to make regulations on taxation. Owing to this granted authority, increases in taxes and amounts

¹ ÇAĞAN Nami, Vergilendirme Yetkisi, Kazancı Hukuk Yayınları, İstanbul 1982, p. 108-109; TAN Turgut, "Ekonomik Hukuk ve Ekonomik Kamu Hukuku", Amme İdaresi Dergisi, Volume 5, No. 1, March 1972, p. 29.

related to taxation are implemented. And the erosion of relevant amounts against inflation is prevented by this granted discretionary power.

Council of Ministers is granted with authority by Article 73/4 of Constitution. This authority can only be exercised by Council of Ministers. The Council of Minister may neither delegate this authority to another organ nor may this authority be granted to another organ even by law². Usage of this authority by an organ other than Council of Ministers would be unconstitutional.

This authority can only be given by law and only by exercised within the lower and upper limits predefined by law. There must be a tax of which all components regulated by law and Council of Ministers must be granted with the authority of making amendments by predefining the lower and upper limits in terms of specified components³.

According to legality principle of taxes, basic components concerning a tax are certainly be regulated in laws. Tax subject, taxable event (event giving rise to taxation), taxpayer, tax base, tax rate (tax tariff) comprise the basic components of taxation and by all means, they must be regulated by law⁴. Otherwise arbitrary treatments can take place.

Authority to make amendments in four basic taxation components specified in Article 73/4 of Constitution, namely tax exemptions, tax exceptions, reductions and rates can be granted to Council of Ministers. Legislative organ keeps the exclusive authority in terms of regulating the all basic components other than the ones specified in abovementioned article. Yet, Legislative Organ is authorized to enact or repeal the components specified in said article. Therefore, in case the Council of Ministers is granted with the authority to impose and lift the specified basic components or fully regulate the basic components other than ones specified or, make such regulations despite there is no such authorization shall be unconstitutional.

The scope of the matters and the lower and upper limits about the discretionary authority which is granted to Council of Ministers must be explicitly predefined by law. Constitutional Court always observes this case in decisions it takes: "There is no doubt that the Constitution maker orders that the financial liabilities shall be imposed by law while it gives the directive that the principles must be set forth in laws to prevent arbitrary and discretionary treatments. In case the law makers allows for a financial liability such as tax, due, charge or like to be collected only by manifesting the object of such a financial liability, it is not enough for that liability to be accepted as imposed by law. Financial liabilities have various aspects like; liable, base, rates, assessment, accrual, collection methods, penalties, lapse of time. These aspects can lead to implementations which effect social and economic status and even basic rights of people. That's why they are to be regulated by laws. There is an open remark (in constitution) on manifestation of lower and upper limits, norm and principles, exemptions and exceptions of financial liabilities by law"⁵. Stipulation of authorization which is granted to Council of Ministers on such specific and tight conditions is intended to provide the security of people.

² GÜNEŞ Gülsen, Verginin Yasallığı İlkesi, Alfa Basım Yayım Dağıtım, İstanbul 1998, p. 159; ARIKAN Zeynep, "Türk Vergi Düzenine Anayasal Yaklaşım", Dokuz Eylül Üniversitesi İktisadi İdari Bilimler Fakültesi Dergisi, Volume 11, No. 1, 1996, p. 23; KÜTÜKÇÜ Abdullah, "Bakanlar Kurulunun Vergi Yasalarında Anayasa 73/4'e Göre Sahip Olduğu Yetkiler", Vergi Dünyası, No. 207, Kasım (November) 1998, p. 130; GÜNDÜZ N. Kemal, "Verginin Anayasal Çerçevesi", Vergi Sorunları, No. 78, Mart (March) 1995, p. 110.

³ For more information about authority which granted to Council of Ministers by the Constitution see also: ÜSTÜN Ümit Süleyman, Türk Vergi Hukukunda İdarenin Takdir Yetkisi (Discretionary Authority of Tax Administration in Turkish Tax Law) Ankara 2007, p. 61, 196 et al.

⁴ See: GÜNEŞ, p. 122-127; ÇAĞAN, p. 127.

⁵ "If a financial liability is not specified inadequately by all those aspects, it may lead to arbitrary treatments negatively affecting the social and economic powers and even basic rights of people. Because of this reason, the basic components of liabilities to be levied on people must be specified in laws clearly and within definite limits". Constitutional Court (CC), dated 3.2.1977 and Doc. 1976/54, D. 1977/8, Anayasa Mahkemesi Kararlar Dergisi (AMKD), No. 15, p. 141; Also see.: CC., dated 26.3.1974 and Doc. 1973/32, D. 1974/11, AMKD, No. 12, p. 124-125; CC. dated 26.6.1996 and Doc. 1996/5, D. 1996/26, AMKD, No. 37, Volume. 1, p. 38; CC. Dated 27.1.1981 and Doc. 1980/27, D. 1981/9, AMKD, No. 19, p. 28-29

Council of Ministers is entitled to make amendments on various fixed limits and amounts on Tax Laws. According to an opinion in doctrine, since the authority granted to Council of Ministers by Constitution is only related to exemptions, exceptions, reductions and rates, the provisions of tax laws which enable Council of Ministers to make amendments on fixed limits and amounts, exceed the limits drawn by constitution⁶.

It is considered that there is lot of reasons for granting discretionary authority to the administration. Inflation is one of the most important reasons for granted entitlement to administration on making amendments on taxation. Exemptions, exceptions, reductions, some limits, tax brackets and other fixed amounts are eroded and real amounts decreases in inflationary periods. Inflation compels of making revisions of fixed limits and existing rates set forth in tax laws⁷. Both the erosion of amounts by inflation and rapid changes in economy necessitate rapid regulations particularly on tax rates and amounts. Administration is granted with discretionary authority by Constitution to increase the amounts eroded by inflation.

Council of Ministers needs discretionary authority mostly on rates and fixed amounts. Discretionary authority granted to Council of Ministers, in essence, includes amendments on fixed amounts and limits. A discretionary authority which does not include the amendments on fixed limits and amounts shall be incomplete and not be able to realize the expected benefit in taxation law⁸.

Since the amendment on fixed amounts and limits involves the same consequences with amendments on rates, they can be evaluated within the same scope. It shall be a mistake not to regard them as interrelated matters. Entitlement of the Council of Ministers on fixed amounts and limits by tax laws shall not create any unconstitutionality. The important thing is that the lower and upper limits, within which the fixed amounts and limits can be amended, must be clearly defined in tax laws which grant such an authority.

Amendments can be made on taxation by means of budget in various countries. For example in England, budget has an important place in taxation and important amendments can be made on certain tax laws by means of budget⁹. Annually increasing the amounts eroded by inflation may yield beneficial results. However, an amendment must be made in Constitution in order to implement the annual increase in the fixed taxes and amounts by means of budget in Turkey. Under the current legislation in Constitution, it is not possible to make such a regulation in Turkey¹⁰. Besides, those views approach the subject only in terms of inflation. Yet, discretionary authority can be granted to administration for a wide range of reasons. It can be considered to make amendments by means of budget to eliminate the effects of inflation. However, such a regulation is not necessary anymore after the administration is granted authority about taxation by Constitution. Council of Minister shall take necessary measures and make necessary regulations by exercising this authority. Revaluation institute provide adequate opportunity on this subject.

II. Revaluation Rate and Implementation of Increases According to this Rate

One of the foremost reasons for granting the tax administration with discretionary authority is the prevention of negative effects of inflation. However, Council of Ministers' irregular exercise of its

⁶ ÖZDEN T. Murat, "Gelir Vergisi Kanunu'nun Mükerrer 123. Maddesinin Yürütme Organına Tanıdığı Yetkilerin Vergilendirme Yetkisi Açısından Değerlendirilmesi", Gazi Üniversitesi İktisadi İdari Bilimler Fakültesi Dergisi, Volume. 6, year 1990, No. 1, p. 285.

⁷ ÜSTÜN, s. 65; KARAMAN Gülser, "Vergi Kanunlarında Bakanlar Kuruluna Tanınan Yetkiler", Maliye Dergisi, No. 66, Kasım – Aralık (November – December) 1983, p. 3.

⁸ ÜSTÜN, s. 203.

⁹ For example in England, some annual taxes are managed and arranged by budget permissions and methods. Those taxes are re-promulgated by budget law every year. Amendments are made to tax rates by budget laws, for implementing on necessary events in relevant budget year. Also see: ALDER John, Constitutional and Administrative Law, London 1994, p. 177; ÇAĞAN, p. 79.

¹⁰ For more information, please also see ÜSTÜN, s. 206.

authority granted by Article 73/4 of Constitution makes it difficult to prevent negative effects of inflation by discretionary authority. And these negative effects continue when the discretionary authority is not used. Before the practice of increase by revaluation rate, the amounts about taxes could not be updated when the Council of Ministers did not use its authority or amounts could not be updated after discretionary authority of Council of Ministers is used up to the highest limit in law. Shift to an indexation scheme was suggested in doctrine which automatically enables the updating of the figures in laws in parallel with inflation¹¹. Those suggestions have been put into practice with acceptance of increasing fixed amounts at revaluation rate which means an automatic increase or indexation.

There is a provision related to determination of revaluation rate in the Article 298/B of Tax Procedure Law (TPL): "Revaluation rate is the average rate of increase in general producer price index of Turkish Statistical Institute in October (included) of the year in which the revaluation shall be, compared to the same period of previous year. This rate is announced by Finance Ministry in the Official Gazette."

Revaluation is one of the regulations of Turkish taxation system, directed to reducing the inflationary effects¹². In tax systems which have progressive tariffs, erosion of amounts and taxes occurs as a result of high inflation and sometimes tax tables become meaningless and effects to the detriment of taxpayers¹³. Fixed amounts set in tax laws eroded as a result of inflation and such erosions affect tax revenues negatively. Provisions are set forth in tax laws directed to increase of fixed taxes and amounts in proportion of revaluation rate in order to eliminate this negativity. Also, besides revaluation rate, Council of Ministers is granted with discretionary authorities on some fixed taxes and amounts.

It is argued in an opinion in doctrine that it is unspeakable that the authority granted by an administrative act is given by law and its lower and upper limits are determined on the grounds that revaluation rate is announced by Finance Ministry¹⁴. However, Constitutional Court specified the necessity of announcement of revaluation rate in Official Gazette and there is no uncertainty that may lead to arbitrary and discretionary treatments in the case¹⁵.

Although Constitutional Court did not find indexation of fixed taxes and amounts of revaluation rate unconstitutional, there is still opinion against this remark¹⁶. First of all, determination of revaluation rate is very important, so this issue must be examined. It is understood from the sentence of the Article 298/B of Tax Procedure Law that Finance Ministry does not have any discretionary authority on this rate.

¹¹ ÖZDEN, p. 287; KÜTÜKÇÜ Abdullah, "Gelir Vergisi Yasasının Mükerrer 123. Maddesi İle Bakanlar Kuruluna Tanınan Yetkiler ve Sonuçları", Vergi Sorunları, No. 105, Haziran (June) 1997, p. 135.

¹² ORTAÇ F. Rifat, Gelir Vergisinin Üniter Yapısı, Ankara 2000, p. 129.

¹³ ARIKAN Zeynep, Demokratik Gelişim Sürecinde Vergilendirme Yetkisinin Kullanımı ve Sınırları (Türkiye Analizi), Yayınlanmamış Doktora Tezi, İzmir 1994, p. 168; KELECİOĞLU M. Aykut, "Vergi Kanunları İle Bakanlar Kurulu'na Tanınan Yetkilerin Vergilemede Kanunilik ve Belirlilik İlkeleri Çerçevesinde İrdelenmesi", Yaklaşım, No. 105, Eylül (September) 2001, p. 165; ÜSTÜN, s. 97, 203.

¹⁴ YALTI Billur, "1923'ten 2003'e "Kazandıklarımız": "Cumhuriyet Hukuku" "Kazanamadıklarımız": "Hukukun Cumhuriyeti" Vergi Hukukunda Geldiğimiz Yere Yakın Tarihten Bakmak: Panoramik Bir Çalışma", Cumhuriyetin Kuruluşundan Bugüne Türk Hukukunun Seksen Yıllık Gelişimi, Sempozyum, 30-31 Ekim (October) 2003, p. 105; Also see: Güven DİNÇER's reason for voting against, CC. Dated 14.5.1997 and Doc. 1996/75, D. 1997/50, http://www.anayasa.gov.tr/index.php?l=manage_karar&ref=show&action=karar&id=1344&content=

¹⁵ "Amounts determined at first paragraph of article matter of objection indicate the lower limit of minimum tax. Those amounts which assessed fixedly shall be increased by multiplying with revaluation rate and calculated amounts can be increased up to ten fold by Council of Ministers pursuing to second sentence of second paragraph. The amount to be determined by this way shall form the upper limit of minimum tax. Revaluation rates, ..., are calculated on scientific data and published as mentioned above.... Since it is necessary to announce revaluation rate by Official Gazette annually, an uncertainty which can lead to arbitrary and discretionary treatments is unspeakable... Thus, the authority granted to Council of Ministers falls within the limits envisaged in the last paragraph of Article 73". CC. dated 14.5.1997, Doc. 1996/75, D. 1997/50.

¹⁶ CC. Dated 14.5.1997 and Doc. 1996/75, D. 1997/50, AMKD, No. 32, Volume. 1, p. 102; Also see.: YALTI, p. 105.

Finance Ministry only announces the rates determined by Turkey Statistical Institute (TSI). TSI determines those rates based on objective data and has no intervention on those rates¹⁷.

If Council of Ministers is authorized to increase the fixed amounts only in the ratio of revaluation rate, it can be called bounded authorization. Council of Ministers has to make relevant increase in the ration of revaluation rate in such a case. However, if an authority is granted an authority in addition to revaluation rate, discretionary authority can be mentioned. In this case, by taking revaluation rate as a basis, Council of Ministers can make amendments within the upper and lower limits specified in law¹⁸.

However, amendments in laws regarding revaluation rate are made through General Communiqué by Finance Ministry instead of Council of Ministers' decision. Finance Ministry is not a competent authority in this subject. All amendments in tax law by applying revaluation rate are to be made by the Council of Ministers. Any application contrary to this leads to a clear breach of legality principle of taxes¹⁹. Because increase in amounts even by revaluation rate cause change in tax laws in result. According to the Article 73/4, the authority of making limited amendments in tax laws belong exclusively to Council of Ministers and no other organ can exercise this authority.

III. Conclusion

It is a compulsory that the discretionary authority of administration about taxation is limited and it is stipulated on certain conditions according to legality principle of taxes. In historical development process, it would be extremely unfavorable to re-grant the administration with the authority which was granted to parliaments because of arbitrary treatment of administrations in such a way leading to broad discretionary authority and would have characteristics contrary to essence of taxation law.

Indexation of increase in fixed taxes, fixed amounts and limits to revaluation rate is of great importance in terms of limitation discretionary authority. The regulations directed to limitation of administration's discretionary authority is also consistent with legality principles of taxes. The disadvantages of negligence of taxation administration to exercise this authority are prevented by this means. However, the more positive are the regulations directed to limitation of discretionary authority of taxation administration, the more important it is not to eliminate discretionary authority completely. Because in taxation law, administration is granted with discretionary authority on purpose to keep pace with possible sudden shifts in economy. For that reason, Council of Ministers must be granted with discretionary authority on fixed amounts set in tax laws and additional to revaluation rate. For example, Council of Ministers can be granted with authority to increase or decrease the fixed amounts up and down to 50% of increase in revaluation rate. Thus, it shall provide the opportunity to take necessary measures against possible future changes in economy. Limiting the authority of Council of Ministers in this way instead of binding it is much more suitable to essence and purpose of discretionary authority of administration²⁰.

Fundamentally, revaluation rate means the determination of increase in fixed rates and amounts according to increase in inflation in previous period. However, it is not a correct approach to utilize the previous period's data in arranging the tax revenues. A regulation must be made for increase in fixed amounts just as estimation of next period and arrangement of income and expense in preparation of budget. Estimated inflation rate can be taken as a basis of revaluation rate²¹. Increasing the fixed amounts in the rate of expected inflation, either enables the realization of increase in state revenues more consistent with developments in economy or yield positive results in terms of considering the financial powers of taxpayers.

¹⁷ ÜSTÜN, s. 241.

¹⁸ ÜSTÜN, s. 208-209, 242.

¹⁹ ÜSTÜN, s. 242.

²⁰ ÜSTÜN, s. 97, 240.

²¹ ÜSTÜN, s. 242.

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