



INTERNATIONAL ASSOCIATION  
OF YOUNG LAWYERS

## **General Communication with Tax Authorities in friendly or unfriendly ways**

**Tax Commission – of course...!**

**Prague, 2014 – Working Session 9**

### **National Report of Turkey**

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## **1. Introduction**

Tax authorities – surely each one of us had the pleasure to deal with one: as taxpayer at least with the tax authority of the country you are resident of, as a lawyer helping others in tax matters you might have had the chance to deal with the tax authorities of other countries as well. If the latter is the case you might have seen some differences in the behaviour of the different tax authorities. You might have realized that the tax authorities in some or even the majority of the countries do treat the taxpayers not as their customers or clients but rather as subordinates. In such cases the communications tends to be rather hierarchical and often results in administrative proceedings against the tax authorities with more or less success.

Other countries have realized that treating the taxpayer in ways like we know from the tale of Robin Hood and the Sheriff of Nottingham only results in the tax payers trying to circumvent their tax obligations. Some countries, thus, have not only reduced the taxes in their countries. They also made their tax authorities treat the taxpayers as their clients e.g. in offering the taxpayers the possibilities for tax rulings and trying to take a more tailored approach towards their taxpayers .

These – sometimes very significant – differences are what we are focusing on in this year's tax report: We want to show that there are big distinctions in the behaviour of and the dealing with the tax authorities in different countries both in the stage of an advance agreement on a tax position as well as in an objection or litigation phase. For this reason AIJA members from several countries around the globe were so kind to volunteer as national reporters for this report which is crucial for such a comparative topic.

The General Reporters would like to thank you all in advance for your contributions and are already very interested in the results of this year's annual congress session of the AIJA Tax Commission.

## 2. Questionnaire

*Note:* General assumption is discussions with the tax authorities regarding (corporate) income tax or indirect taxes. If a difference would apply in the treatment between either of these, please indicate in your report. Also, if there are different levels of tax authorities for different taxes or issues, please mark that in your report.

### 2.1 Communication general

How does the General Communication with the Tax Authorities take place?

- a. Is a direct contact in between the tax payer and the Tax Authorities possible/common/advisable?

Taxpayers may have direct communication with the Tax Authorities. However, with the exception of the tax office's manager, officers are not so aware of the legislation. Tax inspectors can be the contact person only if there is an ongoing inspection being conducted against the taxpayer.

- b. If not, does the communication only take place via tax counsels?

Taxpayers may have direct communication with the Tax Authorities. It is possible to communicate via tax counsels. Some tax counsels are former tax inspectors and have contacts with the current officers in the tax authority. In practice, this means that such counsels can accelerate the transactions/procedures, or arrange meetings more easily.

- c. How can the communication regarding special matters be described?

In case of a special matter, the Tax Authority communicates with the taxpayer by way of a written notification. The Tax Authority's opinion can be sought through tax rulings, instead of meetings.

- d. Does it take place only in a written form or are meetings possible?

There can be reconciliation meetings between the taxpayer and the Tax Authorities. Regardless of whether the parties settle on terms or not, these meetings are bound to a written minute where the details of settlement are indicated. Furthermore, there may be written rulings between the Revenue Administration and the taxpayers.

- e. Can the behaviour of the Tax Authorities in your country be described as all dominant, cooperative, customer-oriented or otherwise?

The behaviour of the Turkish Tax Authorities can be described as dominant and aggressive. But it is also possible to go through settlement procedure with the Tax Authority. In practice, a portion of the assessed penalties are generally deleted during the settlement process.

## 2.2 Agreements between tax payers and tax authority

- a. Is there the possibility of a tax ruling and, if so, which costs can be expected?

According to Article 413 of the Tax Procedures Code (“**TPC**”), taxpayers can request a tax ruling about ambiguous provisions or issues causing hesitation from Tax Office Directorates in the provinces, if there is no Tax Office Directorates in a given province, the tax payer must apply to the tax offices for ruling requests. The request is free of charge.

- b. What is the average time frame to get a tax ruling done?

According to the Public Service Standards of Tax Office Directorates, tax rulings for individual taxpayers must be made within 45 days and tax rulings for Professional Organizations must be made within three months.

- c. Are these consultations binding and, if so, which possible remedies do exist?

No, rulings are not binding for the tax inspector or the taxpayer.

- d. Once a tax ruling between all the parties concerned has been achieved, can one rely on it?

Yes. Tax inspectors may write a report against the opinion in the ruling, but the ruling will save the taxpayer from penalties and interests. Only the party of the tax ruling can rely on a report.

The Tax Authority (Revenue Administration) publishes tax rulings on its website regarding almost every provision in the tax legislation, in order to inform tax payers. However, these sample tax rulings cannot guarantee to eliminate a challenge by the tax inspector. The inspector can question the conditions of each case and if there is a variance in the case, then he may challenge it.

- e. What is the exact legal status of a tax ruling?

According to Article 413 of TPC, taxpayers may ask for explanations from the Presidency of Revenue Administration. Tax rulings are the explanations of the Presidency of Revenue Administration. Tax rulings are not considered to be legal precedents because only the requesting taxpayer may rely on such ruling.

- f. Is it common in order to get a tax ruling that the tax payer has to give up certain rights or explicitly agree to e.g. information exchange?

Tax rulings do not bind taxpayers. Therefore, such obligations are not common.

- g. Is a tax ruling a public document or will it be treated confidentially by the tax authority? Does the taxpayer have an obligation to keep it confidential?

Taxpayers have no obligation to keep the tax ruling confidential. Most tax rulings can be found in the public online database of the Presidency of Revenue Administration (anonymously).

### **2.3 Remedies against decisions of the Tax Authorities**

- a. Is it common that one has to litigate if a decision has been made by the Tax Authorities and which remedies do exist?

For individuals, it is not common in Turkey to litigate the decisions of Tax Authorities. However, depending on the amount of assessed taxes and penalties, entities commonly initiate litigation for the annulment of decisions and assessments by tax inspectors.

Legal remedies, which taxpayers may resort to concerning the taxes and penalties assessed against them, are regulated under the TPC. Taxpayers may resort to the following remedies against tax and penalty assessments;

- Application for correction of tax faults
- Settlement of conflicts by way of an administrative arrangement, which is named “Reconciliation”,
- Direct application to the “Tax Courts”, or
- Application to the Tax Courts if no reconciliation is reached after a reconciliation meeting.

- b. Is there the possibility of addressing a court or is this an administrative procedure?

The TPC regulates the legal remedies which taxpayers may resort to concerning taxes and penalties assessed against them, either through administrative or court means. Taxpayers may resort to the following remedies against tax and penalty assessments;

- Application for correction of tax faults (administrative),
- Settlement of conflicts by way of an administrative arrangement, which is named “Reconciliation” (administrative means),
- Direct application to “Tax Courts”, or
- Application to Tax Courts if no reconciliation is reached after a reconciliation meeting (first administrative then courts).

- c. Which costs are to be expected in such a case?

Initiation of tax litigation will cost approximately TRY 150, which is a fixed fee.

- d. Is it compulsory to have a lawyer in case of any remedy?

No, representation by a lawyer is not compulsory. The taxpayer may defend himself without a lawyer.

- e. What timeframe can be expected in case of a remedy/litigation?

Depending on the complexity of the case, the number of parties involved, the amount at stake, the court's caseload, and whether the case is resolved in a district court or Council of State, the decision of the first instance court takes maximum one year. However, finalization of the case may vary between three to five years.

- f. Is it possible to postpone the payment of the tax debt as assessed by the tax authority until the end of a pending litigation with the tax authority? Will the tax authorities require guarantees for the postponement (Bank guarantees, mortgages etc.)?

If litigation is initiated, there is no obligation to pay the disputed tax and penalty. The payment will be suspended until the Tax Court's decision. If the Tax Court's decision is negative, payment must be made within thirty days after the second tax/penalty notice prepared by the tax administration is notified to the taxpayer. In this case, default interest of 1.40 % per month will be calculated over the original tax. This default interest will be calculated for the period between the due date of the related tax and the notification date of the court decision.

- g. Is it possible that the tax authorities submit a report to the public prosecutor to investigate on possible criminal tax offences and under what circumstances?

If tax evasion is determined as a result of a tax inspection, Tax Inspectors, Assistant Inspectors and other personnel who are authorized to inspect, are obliged to announce the tax evasion to the public prosecutor with the opinions of the Report Evaluation Commission.

- h. Is it possible to include a clause in an agreement to automatically amend this agreement in accordance with the outcome of a discussion or litigation with the tax authority (e.g. if an "at arms length payment" is not accepted as such by the tax authority or if interests are held to be dividends or a loan is seen to be a gift)?

Yes it is possible to add a clause before the outcome of a discussion or litigation with the Tax Authority. However, Turkey has a GAAR that relies on the "substance over form" principle. This principle allows the tax authorities to disregard the form of a transaction when it is obvious that the

taxpayer is attempting to avoid tax. The principle was introduced and became effective in the context of tax legislation via an amendment to the TPC. Therefore, the Tax Authority may criticize the agreement, regardless of the parties including an amended clause in the amendment.

## 2.4 Sanctions

- a. What is the statute of limitations for tax related matters?

Taxes shall not be levied if they are not assessed and notified to the taxpayer within five years from the beginning of the year following the calendar year in which the tax debt arose.

- b. What is the typical sanction/amount of fines in your jurisdiction? Is there a different fine level for direct or indirect taxes?

The TPC lists tax penalties and sanctions that will be applied to tax payers as outlined below. At the end of a tax audit, any type of tax assessment may be accrued with such tax penalties. The fine levels do not differ for direct or indirect taxes.

For tax loss penalty;

- One fold of the lost tax will be imposed.

For irregularity penalty;

- For corporations, administrative fines are imposed as TRY 110,00 for first degree irregularity, and TRY 60,00 for second degree irregularity.

For tax fraud;

- Three times the tax loss penalty,
- A term of imprisonment from eighteen (18) months to three (3) years.

In case of repeat offenses, the penalties for tax loss and irregularity will be applied as mentioned above, with increases of 50% and 25% respectively.

- c. Is it possible for a taxpayer to prevent tax penalties to be imposed should he/she be able to prove her good faith or reasonable interpretation of the law?

To avoid criminal or administrative sanctions, a voluntary disclosure (also called declaration with penitence) is recommended. The voluntary disclosure is a permanent procedure and applicable for all taxpayers and all taxes which are based on declaration (except real estate and motor vehicle taxes). The impact of an effective voluntary disclosure is full exemption from tax loss penalty and other tax penalties related to tax loss. Instead of the delay interest, penitence interest (1.40%) could be assessed for the delay.

- d. Is it possible to regularize your tax situation with reduced or no fines/sanctions?

Settlement procedures can be an alternative to reduce the tax loss penalty. However, it is not possible to eliminate all tax exposure through settlement procedures unless there is an obvious mistake made by the inspector during tax assessment.

- e. May tax advisors/tax lawyers be held responsible by the tax authority for their advice to taxpayers?

Tax advisors/ lawyers may not be held liable for their advice to taxpayers.

However, within the scope of their services, certified public accountants and sworn fiscal advisors have joint and several responsibilities with the taxpayers.

## 2.5 Tax information exchange

- a. Does a tax information exchange on the EU level or OECD level happen and how does it take place?

There are two tax information exchange agreements in force, with the Governments of Bermuda and Jersey. These agreements stipulate a full exchange of information in legal and criminal tax issues. They are regarded as a significant step in the prevention of tax loss and evasion, as well as the struggle against harmful tax competition.

Furthermore, the Double Taxation treaties which are formed as OECD model have been executed with several countries. These double taxation treaties also include an exchange information clause as below:

*“The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.*”



*In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on a Contracting State the obligation:*

*(a) to carry out administrative measures at variance with the law and the administrative practice of that or of the other Contracting State;*

*(b) to supply information which is not obtainable under the law or in the normal course of the administration of that or of the other Contracting State;*

*(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).”*

- b. Does your country enter into tax treaties that oblige to exchange information spontaneously, automatically and/or upon request?

All treaties regulate exchange of information between the public and judicial authorities of the contracting states upon request of the relevant authority as stipulated above.

- c. Is the tax payer notified in case information is exchanged with foreign tax authorities?

There are no notifications made to the taxpayer if an exchange of information occurs with a foreign tax authority.

- d. Can the tax payer object against an exchange of information?

The tax payer cannot object to the exchange. However, the country party to the agreement may object to the exchange of information due to public order or other reasons as stipulated in the exchange of information clauses. However, it should be noted that the Code on Protection of Personal Data (“**Draft Code**”) which is drafted in line with the EU Directives is not yet enacted in Turkey.