

POST-TAX SETTLEMENT INSTITUTION WITHIN THE SCOPE OF TURKISH TAX LAW

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Abstract

Since taxation is an economic administrative practice, various disputes may arise between taxpayers and tax administrations as a result of tax practices. The resolution of these disputes sometimes causes time loss and uncertainty both from the point of view of the taxpayer and from the point of view of the tax administration. Exclusively, if the tax dispute is brought to the judicial process by at least one of the parties, it is inevitable that a number of costs will arise for the parties. Therefore, various administrative (peaceful) solutions have been developed in the Turkish tax legislation in order to avoid wasting time both from the point of view of the taxpayer and from the point of view of the administration and to eliminate ambiguity as soon as possible. The reconciliation institution, which is one of the alternative settlements in question, is also an institutional arrangement that is preferred by taxpayers permanently. This institution, which is carried out depending on the mutual dialogue and bargaining behaviour of the parties, is divided into two as reconciliation before and after the assessment. Both types of reconciliation may result in the mutual agreement of the parties and the elimination of the problem in the taxation process, which is in dispute with the partial elimination of tax debts and / or penalties. In this study, two types of reconciliation institution are also defined, but the post-tax reconciliation institution constitutes the main subject of the study. In the study, the nature, provisions and consequences of the settlement institution after the assessment, which is the reconciliation method mostly used by the parties in practice, are discussed. In the study, document analysis, which is a qualitative data analysis technique, is used.

Keywords: Turkish Tax Procedure Law, Reconciliation, conciliation after assessment

Introduction

A tax is a public receivable that the state or public legal entities that have the authority to tax collect in a forced manner based on the laws based on the economic, social, political and financial forces of people based on their sovereign power (Tosuner and Arikan, 2016:45).

The parties to taxation are the tax payer and the tax debtor. Here, while the tax creditor is the state, the tax debtor is the taxpayer. The types of taxpayers who are in the position of these tax debtors are defined in the relevant Tax Procedural Law. These taxpayers can resort to administrative (peaceful) remedies if a tax dispute arises.

Tax dispute refers to the disputes that arise due to various differences of ideas between the tax administration and the taxpayer. These disputes may arise as a result of various behaviours that the taxpayer does willingly or unwillingly. The fact that laws and regulations are changed too often also causes taxpayers to misinterpret and apply some practices while fulfilling their duties.

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In such cases, disputes may arise between the taxpayer and the tax administration. There are two alternative ways to resolve these disputes, which arise in different ways. The first of these is administrative (peaceful) solutions, the other is the way of litigation. One of these two settlements, the peaceful solution, has come to the fore in terms of bringing the solution to a result in a less costly and short time. Peaceful solutions to tax disputes are discounts on penalties, error correction and reconciliation. Although it is the most preferred reconciliation institution among these settlements, other solutions are also applied (Durmuş, 2018: 53-55).

Reconciliation institution, which is one of the administrative (peaceful) solution methods, started to be applied in the Turkish tax system in 1963 with the Tax Procedure Law No. 213. With the adoption of another type of compromise called pre-tax reconciliation on 01.01.1986, the reconciliation institution was divided into two. It is seen that before this distinction, it was only known as the concept of reconciliation, and in fact it was reconciliation after the assessment, but it was not applied with this designation. However, with the acceptance of this type of pre-tax reconciliation, the concept of post-tax reconciliation has begun to be used. This concept was first used in the “Reconciliation Regulation” (Küçükaya, 2020: 254).

In this research, document analysis, which is a qualitative data analysis technique, is used. Document analysis is a qualitative research method used to meticulously and systematically analyse the content of written documents (Wach, 2013). Document analysis is a systematic method used to examine and evaluate all documents, both printed and electronic materials.

Reconciliation

Reconciliation is one of the ways to resolve disputes at the administrative stage. The solution at the administrative stage is to resolve disputes arising in case of non-application of the rules contained in the law, non-fulfilment of obligations and incomplete fulfilment through a magistrate without going to court (Arslaner, 2015: 276). In other words, compromise in disputes between the taxpayer and the tax administration tax law before the evacuation of the courts referred to among themselves to achieve a mutual agreement, the dispute is not resolved regarding the amount of tax and penalty (Yılmaz, 2009: 322).

There are two sides to the compromise. On one side there is a settlement commission, and on the other - a taxpayer or a criminal interlocutor. The reconciliation commission is the party authorised to make reconciliation in terms of administration. Here, while the taxpayer is the party to the incident that gave rise to the tax, the criminal interlocutor is the person who was fined by the administration for committing one of the tax misdemeanours (Yavaşlar, 2008: 319-320)

During the reconciliation, the tax administration waives part of the tax and penalty (Arslan, 2016: 342). But while the tax administration collects tax revenue faster in this way, the taxpayer gets rid of the burden on him from a tax point of view as soon as possible. From another point of view, it ensures that the taxpayer and the creditor, who are obliged, get rid of the burden of litigation, and at the same time, the burden on the judiciary is lightened (Akdogan, 2019: 186).

Two types of applications can be made to the settlement institution. The types of reconciliation are divided into two; pre-tax and post-tax. In practice, it is seen that more compromise is reached after the assessment. Their general provisions, while identical, differ in both types of reconciliation, in particular, in terms of the time and scope of applying for reconciliation.

Conciliation before assessment

Reconciliation before tax assessment is the application of the tax administration for reconciliation before the deduction of the tax and penalty to be deducted as a result of the tax examination. In case of evasion or tax loss, there is no way to reach a compromise for the tax loss penalty that will arise. In case of general and special irregularities, reconciliation can be reached before the assessment (Arslaner, 2015: 282). In order for the parties to take the path of reconciliation before the assessment, the taxpayer must be undergoing a tax inspection. In other words, the application for reconciliation before the assessment may be possible during the tax examination initiated by the taxpayer. After the tax inspection is completed, it is not possible for the parties to reach a pre-tax settlement. From the moment the tax inspection begins (with the preparation of the start of the inspection minutes), the taxpayer can forward the reconciliation request to the tax inspection officer before the assessment. On the other hand, the tax examiner may also offer a compromise to the taxpayer before the assessment.

If a compromise is reached before the assessment, the judicial path cannot be taken. In case reconciliation cannot be achieved or reconciliation cannot be achieved as a result of reconciliation negotiations before the tax, reconciliation cannot be applied after the tax (Altay, 2021: 291).

Conciliation after assessment

Reconciliation after taxation is the way of reconciliation regarding the taxes levied ex officio, replenishment and administration and the penalties imposed in relation to them. In other words, it is not possible to reach a post-tax settlement for a tax assessment based on the taxpayer's own declaration. As with the reconciliation before the tax, reconciliation cannot be reached if the smuggling is involved here (Arslan, 2015: 284). According to the relevant articles of the Reconciliation Regulation, a taxpayer who has applied for reconciliation before the levy cannot apply for reconciliation after the levy if he cannot reconcile. After the settlement has been reached, these signed settlement minutes are final and no complaint can be filed with any authority about it and no lawsuit can be filed. Circumstances where reconciliation can be made after assessment

- a) In the situation where articles 116, 117, 118 of the tax procedure code and all kinds of material errors,
- b) Claiming the occurrence of a wrong situation in the form specified in an article 368 of the VUK in the assessment from the point of view of the taxpayer and the criminal addressee
- c) Claiming that the resulting tax loss occurred due to the taxpayer's inability to fully understand the provisions of the law,
- d) Stating that there is a dissidence between the judiciary and the administration on some controversial issues (Arslan, 2016: 350).

In the case of one or more of the conditions mentioned above, the relevant taxpayer may request reconciliation after the assessment.

Process of application and times

☐ Settlement demand and its process

In order to request a reconciliation, the tax must first be released by the relevant tax authority, the fine must be cut and the relevant obligee must be notified (Tekin and Avşar, 2019: 513). Following this, the reconciliation request must be made within 30 days from the date on which the tax and penalty notification is notified to the relevant taxpayer. If no reconciliation request is made within this period, the right to reconciliation request expires.

According to the article 7 of the settlement ordinance the request for reconciliation can be made personally by the taxpayer or by a proxy authorised by a power of attorney. For minors and restricted persons, this application is made through legal representatives. The application must be made in writing to the authorised reconciliation commission. The petition for the settlement request is submitted to the tax office to which the taxpayer is attached or to the secretariat of the authorised commissions. If the taxpayer wishes, he can also send this petition by registered mail.

☐ Evaluating the settlement demand and meeting

According to the article 10 of the settlement ordinance, the conciliation commission first evaluates whether the request has been made in an obvious way and time and whether the request is within the authority of the commission. If the evaluation result is not appropriate in terms of time and procedure and is outside the authority of the commission, the request is rejected. However, if the evaluation result is appropriate in terms of duration and procedure, the taxpayer must personally participate in the interviews, the date, place and time of the interview shall be notified to the taxpayer fifteen days in writing through the secretariat of the commission. If the taxpayer requests, an interview can be made without waiting for a fifteen-day period. Finally, the invitation for reconciliation is communicated to the taxpayer in accordance with the provisions of the Tax Procedure Code.

If the taxpayer is present on the obvious day, time and place, the settlement negotiation begins. If the taxpayer wishes, he/she may have with him/her a Certified Public Accountant and a professional member within the scope of the Financial Consultancy and Chartered Financial Consultancy Law No 3568. The people who are with the taxpayer may make an opinion during the meeting, but they cannot sign the reconciliation minutes. As a result of the reconciliation negotiations, three different results may come out. These results are the achievement of reconciliation, the fact that reconciliation is necessary and reconciliation cannot be achieved (Küçükaya, 2020: 256).

Commissions of conciliation

According to the article 5 of the settlement ordinance, the ministry has been authorised to determine which taxes, fees and paintings levied by the administration, ex officio and replenishment, will be reconciled. The Ministry determines the taxes, fees and pictures that the reconciliation commission can agree on through general notifications..

The types of the reconciliation commission, the way in which it will be formed and who its

members will consist of are specified in Article 6 of the Reconciliation Regulation, which is included in the title “The Formation of Reconciliation Commissions” (Erdem, 2013: 405).

These commissions are discussed in detail in the relevant articles of the Pre-Tax Settlement Regulation and it is also indicated who may take part in the specified commissions. These commissions represent the tax office to which the relevant taxpayer is connected during the reconciliation process. In these commissions, which consist of three people, one of the members serves as the chairman of the commission (Hocaoğlu, 2015: 495).

☐ Tax Office commission of conciliation

The settlement commission of the tax office is formed in another office of the director of the tax office. In addition to the president, this commission may include deputy directors of tax administration, chiefs and revenue experts. An affiliated tax office, on the other hand, is formed from the chief and revenue specialists in the other part of the property. If there is no deputy director or chief of the tax office in the relevant Tax Office Directorate, the people serving in their place take part in the commission. In the absence of a chief in their property, a revenue specialist or one of the officers may become a member.

☐ Financial Office Commission of Conciliation

At the points where there is no tax office, a ledger settlement commission is established. This commission is composed of the director of the tax office and the director of revenue under the chairmanship of the head of the financial department or his deputy.

☐ Directorate of tax administration commission of conciliation

It is a commission formed under the chairmanship of the head of the tax office or the group director. In this commission, there are group directors to be elected by the president, lawyers to serve as coordinators and tax office directors.

☐ Coordination and Reconciliation Commission of Tax Offices

It was established for the purpose of examining reconciliation requests that fall below the limits of authority of the Central reconciliation commission in cases where the powers of the presidential and book-keeping reconciliation commissions have been exceeded. This commission consists of the head of the revenue administration, group heads, legal advisers or directors, headed by the Vice-President of the Revenue Administration or one of the Heads of the Revenue Administration Departments or Legal Counsel elected by the Head of the initial Revenue Administration.

If deemed necessary, a Coordination and Reconciliation Commission of more than one Tax Office may be established. Where these commissions to be established will be established, what their powers are, who will take part in the commission and who will carry out the secretariat services are determined by the Revenue Administration.

☐ Inner Conciliation Commission

The central reconciliation commission has been established to reconcile public revenues such as taxes, paintings and fees that exceed the limits of authority of the above-mentioned commissions. This commission is formed under the chairmanship of the head of the revenue administration. This commission, which also includes the president, includes a deputy head of revenue administration and a head of revenue management department.

The reconciliation commissions consist of five separate commissions as mentioned above. These commissions meet with all members and mostly make decisions. In the absence of the chairman of the commission or one of its members, someone may serve on the commission by proxy.

The limits of the powers of the post-tax settlement commissions are specified in the relevant General Notifications of the Tax Procedure Law numbered 352, 356, 360 and 372.

Consequences of the conciliation

Within the time limit, the taxpayer who has submitted his petition and the reconciliation commission will meet on the obvious day and time and deconstruct the reconciliation. At the end of the interview, there is a legal result such as reconciliation or inability to reach a compromise. If the taxpayer does not participate in the reconciliation negotiation on the obvious day and time, reconciliation cannot be achieved at this juncture in time. (Arslaner, 2015: 288) Jul.

After the reconciliation meeting, the reconciliation minutes are prepared by the commission. The scope of this report is limited to the application of the taxpayer or the penalty addressee. In other words, it is only a record of the tax or penalty that he applied for. In the minutes, the identity, address and title information of the taxpayer, the request for reconciliation, the subject of reconciliation, the amount related to the tax and penalty agreed as a result of reconciliation, or the offer made by the commission in case of failure to reach reconciliation are included. No matter what result emerges regarding the reconciliation after the assessment, this minutes should be edited (Shin, 2019: 314-315).

☐ To be ensured Reconciliation

If the taxpayer participates in the reconciliation meeting on the specified day, time and place and accepts the commission's proposal as a result of the meeting, reconciliation will be achieved. If a compromise is reached, the dispute between the taxpayer and the tax office ends. As a result of the reconciliation meeting, partial reconciliation cannot be made. The taxpayer does not have the right to file a lawsuit regarding the agreed issue (Durmus, 2015: 216). Because, as a result of the negotiation, the condition of reaching a compromise is finalised with the minutes to be prepared by the commission and the necessary actions to be taken by the relevant tax authorities are carried out (Arslaner, 2015: 289). This certainty situation eliminates the taxpayer's right to sue.

☐ Not to be ensured Reconciliation

If the taxpayer participates in the reconciliation meeting but does not accept the commission's proposal as a result of the meeting, reconciliation cannot be achieved. The failure to reach a compromise shows that the dispute has not disappeared, that is, it still exists. As a result of the meeting, the taxpayer and the commission state that no compromise has been reached on the relevant minutes and the minutes are mutually signed. A copy of the signed minutes is delivered to the taxpayer by the commission. The Commission's offer is valid until the end of the litigation period. In other words, this situation means that; if the taxpayer wishes, he can accept the proposal of the commission regarding the relevant dispute until the end of the litigation period. If the taxpayer notifies the tax office of the petition that he has accepted within the period of filing a lawsuit after the reconciliation meeting, the reconciliation is deemed to have taken place on the day of notification. As stated, the taxpayer can also go to the litigation path related to the dispute within the period of filing a lawsuit. The taxpayer may also be given the necessary discretion and additional litigation time (Durmus, 2015 October 218).

☐ Not to be achieved Reconciliation

At the end of the reconciliation negotiation, reconciliation cannot be reached and as a result, reconciliation cannot be achieved if the taxpayer does not want to sign the relevant minutes or if he wants to sign the passion with the registration. The basic difference between the failure to reach a compromise and the inability to achieve it is that the taxpayer refrains from signing the

minutes (Durmus, 2015:218).

If the taxpayer does not participate in the reconciliation within the specified time, it also arises as a result of the inability to achieve reconciliation. The Commission indicates in the minutes to be prepared why reconciliation could not be achieved in these situations. If this result arises, the Commission regulates three copies of the minutes and one of these minutes remain with the commission and the other two minutes are sent to the relevant tax office. The relevant tax office also notifies one of these minutes to the taxpayer. In case the reconciliation cannot be achieved, the taxpayer has the right to accept the commission's proposal during the filing period, while the taxpayer has no right to want to participate in the reconciliation negotiation afterwards if it cannot be achieved (Durmus, 2015:218).

After the reconciliation negotiations, the taxpayer cannot request reconciliation again for the same tax and penalty. However, the taxpayer may request reconciliation for another tax and penalty that has been notified to him (Durmuş, 2015: 218).

Periods of payment

According to the article 15 of the settlement regulation, the tax amount and penalty determined as a result of the settlement must be paid within the legal payment periods if the settlement minutes have been notified before the payment time, or within one month following the notification of the settlement minutes if the payment time has partially or completely elapsed.

Conclusion

As a result of the increasing and changing resources of tax law in terms of tax practices, it is up to par for taxpayers to arise disputes while fulfilling their duties. The significance here is that this dispute is resolved rather than the emergence of a dispute. At this point, administrative (peaceful) solutions are important for the administration and the taxpayer.

The institution of reconciliation, which is one of the ways of administrative (peaceful) solution, is addressed in this study. In our study, firstly, it was stated that there are two separate ways of reconciliation institution, and in this study, the second of these ways, the post-tax reconciliation institution, was examined. With this institution, time and economic savings are provided both to the relevant tax office and to the taxpayer.

Together with the settlement institution after the assessment, the taxpayer was granted the right to explain both his own situation and, as a result, to accept the amount of taxes and penalties proposed to him by the commission. Thanks to this right, the taxpayer has the right to get rid of the dispute that has arisen as soon as possible and becomes advantageous in terms of eliminating the situation that has occurred as a result of his mistake as soon as possible. Thanks to the granting of such a right to the taxpayer, the taxpayer's trust in the tax administration increases and the tax also ensures voluntary compliance.

As a result of the reconciliation negotiations, it is revealed that reconciliation occurs,, reconciliation cannot be achieved and situations arise that cannot be achieved. The situation that will arise as a result of these negotiations is determined by the attitude of the taxpayer. If the

taxpayer accepts the commission's proposal as a result of the reconciliation meeting, reconciliation will be achieved, while reconciliation cannot be achieved if he does not accept the proposal. From another point of view, if the taxpayer does not participate in the reconciliation or does not sign the minutes even though he participates, or wants to sign the passion with a record, it arises as a result of not being obtain.

As a result of applying to this institution, if reconciliation cannot be achieved, the taxpayer can go to the litigation path again. It is understood that this situation does not put an obstacle in front of the taxpayer in terms of seeking his rights, and it is aimed to ensure tax compliance between this institution, the administration and the taxpayer.

Due to the reasons stated in our opinion, thanks to this application, many disputes are eliminated, and at the same time, it appears as an administrative (peaceful) solution that is often preferred from the point of view of the administration and the taxpayer.

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