

## Overview of Tax Litigation in Turkey (2013)

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### 1. Overview

#### 1.1 Significant Subjects of Tax Litigation

In Turkey, the scope of tax litigation between taxpayers and the government is outlined in a series of detailed laws and regulations. When conflicts between these parties arise at trial, taxpayers may be subject to administrative fines and, in rare cases, imprisonment. Disputes that are exclusively tax-related fall within the jurisdiction of Turkey's specialized tax courts. On the other hand, tax disputes involving Penal Code offenses with possible imprisonment are heard by criminal courts with general jurisdiction.

#### 1.2 Identification of Legislative Framework

The principal legislation regulating the area of tax jurisdiction is as follows:

- Code of Administrative Procedure No. 2577 (Code No. 2577);
- A code on the Establishment and Duties of District Administrative Courts Administrative Courts and Tax Courts No. 2576;
- A code on the Council of State No. 2575;
- A code on the Collection Procedure of Assets No. 6183 (Code No. 6183) - This regulates the collection procedure of public receivables involving tax claims;
- Tax Procedure Code No. 213 (Code No. 213) - This outlines the cases which are punishable by imprisonment.

##### 1.2.1 Civil Code Context

Turkey is a civil law country with a legal system that has been largely adopted from modern European countries such as Germany, Switzerland and France. Specific pieces of legislation allow for regulations to determine the content of the different areas of law.<sup>1</sup>

Under Turkish law, the Tax Administration is an administrative body that functions as the creditor party in all civil tax disputes. It is responsible for initiating legal action against the taxpayer and is subject to the same judicial controls as other administrative bodies during its operation. When a taxpayer wishes to dispute an assessment or legal action that is made against them, they may seek legal recourse against the Tax Administration through the tax courts.

##### 1.2.2 Tax Evasion and Other Criminal Tax Offenses

Administrative sanctions in the form of monetary fines are applicable to taxpayers who fail to adhere to their specific tax obligations.<sup>2</sup> The tax courts have jurisdiction over the administrative fines. If criminal charges are involved, Turkey's criminal courts will exercise jurisdiction as courts of first instance with a general jurisdiction to hear the

criminal matters in dispute.

## 2. The Pre-Court Process

### 2.1 Civil Code: Assessments, Reassessments and Administrative Determinations

In theory, Turkey operates according to a self-assessment system whereby individual taxpayers are responsible for declaring their taxable income. Taxpayers must determine whether a specific type of income is taxable and, if it is, when they must declare it to the Tax Administration. A detailed book and document system has been established to assist taxpayers and ensure that declarations are accurate.

Throughout the taxation process, taxpayers are in contact with the Revenue Administration (GIB). The GIB serves as Turkey's competent tax authority and is responsible for every step of the tax process. This includes the levying and collection of tax in addition to representing the government during tax disputes. The GIB will also audit taxpayers to determine whether they are meeting their tax obligations and paying the correct amounts. During audits, the GIB may impose an administrative fine on taxpayers who fail to execute their tax obligations or act contrary to the system envisaged by Code 213. If the GIB determines that a taxpayer has under-declared and failed to pay the full amount, it will apply a penalty assessment. Before the Tax Administration can fine a taxpayer or collect tax, however, it must first conduct an audit and report the results to the audited party.

Because tax assessments and fines are one-sided operations initiated by the Tax Administration, the taxpayer must be notified in order for them to be effective. Where a taxpayer receives notice and considers the operation to be unlawful, they have the option of filing for a non-compulsory administrative solution or filing a lawsuit. Administrative solutions may consist of the following:

- *Settlement*: Pursuant to the applicable legislation, the Tax Administration and the taxpayer may choose to settle on the amount of tax and/or penalty. The parties often reach this decision after reciprocal discussion and bargaining has taken place. It is important to keep in mind, however, that taxpayers who choose to settle are subsequently prevented from filing a lawsuit.
- *Reduction of penalties*: Where the taxpayer agrees to pay an administrative penalty instead of disputing it, the fine may be reduced by two-thirds in the first occurrence and one-third in the second occurrence. This reduction is only available for penalties.

### 2.1.1 Resolving Disputes Before Court

Tax litigation disputes can only involve amounts and administrative penalties that have been directly assessed by the Tax Administration. As a general rule, however, taxpayers do not have the right to file a lawsuit against an assessment unless they have made a declaration without prejudice. In this case, they will reserve their right to file a lawsuit within 30 days after receiving notification of the tax or penalty. Notwithstanding this general limitation period, the time frame for filing lawsuits against operations executed during the collection of tax claims<sup>3</sup> is seven days.

Disputes involving customs duties are subject to a separate procedure. Under Customs Code No. 4458 (Code No. 4458), customs duties are collected by the Customs Administration as opposed to the GIB. Article 2424 contains a special regulation for the Customs Administration's auditing operations whereby taxpayers have 15 days to dispute customs duties, penalties and administrative decisions after receiving notification.<sup>5</sup> If the taxpayer's petition is rejected, it is still possible to dispute the refusal with the local judicial authorities. This is done using a mandatory procedure which must be completed before the taxpayer can apply for additional judicial remedies. Only after the taxpayer has exhausted this procedure can they file a lawsuit disputing the Custom Administration's finding.

Once legal action has been commenced the assessment process will suspend the execution of the operation in dispute. There are no pre-requisites for this suspension<sup>6</sup> unless the taxpayer's lawsuit is granted without prejudice to their legal rights. Here, the taxpayer must request a suspension from the court and the court must grant the request. When a lawsuit is brought against the operations of the assessment process,<sup>7</sup> execution is not automatically stopped but must be requested from the court.

## 2.1.2 The Criminal Context - Elements of the Offense (Laying of the Charge)

With the exception of administrative fines, tax evasion is the only situation where the taxpayer may be subject to a penalty involving imprisonment. This is designed to punish what the Tax Authorities deem to be gross breaches against the taxation order by the taxpayer.<sup>8</sup> Tax evasion is defined as:

- (i) cheating in the calculation and accounting of books and recordings;
- (ii) recording calculations and operations in other recording environments besides the required books in order to decrease the tax assessment;
- (iii) altering, concealing or demolishing books, recordings and documents;
- (iv) using/drafting a document with false or deceptive content.

## 2.1.3 Early Resolution (Plea Bargain)

Notwithstanding the harsh penalties for tax evasion, Code No. 213 outlines a 'remorse and correction' exemption for taxpayers who voluntarily notify the Tax Administration about their unlawful actions. Here, administrative fines and penalties<sup>9</sup> can be avoided entirely so long as the taxpayer:

- (i) notifies the Tax Administration of their unlawful action before an audit is conducted or any other notification is made to the taxpayer;
- (ii) finalizes or corrects the incorrect declaration within 15 days of the notification date; and
- (iii) pays the full amount of unpaid tax plus interest within the above mentioned 15-day time frame.

It should be noted that the 'remorse and correction' exemption for amending declarations does not apply to property tax<sup>10</sup> or customs duties.<sup>11</sup>

## 3. The Trial Process: From Commencement to Judgment

### 3.1 The Role of the Trier of Fact (Judge)

In Turkey, tax courts are the competent judicial authorities for civil tax disputes. Tax courts operate as a committee consisting of at least one judge. Under Article 7 of Code No. 2576, however, disputes under TRY 25,000.00<sup>12</sup> are heard by a single tax court judge.

Lawsuits are commenced after the moving party (taxpayer) submits a petition to the tax court located in the same area where the local Tax Administration made its decision. The submission must contain the subject matter, the parties' identities and addresses,<sup>13</sup> and their proxies where applicable. Additional criteria are outlined in Article 3 of Code No. 2577:

- (i) the notification date of the operation being disputed by the taxpayer;
- (ii) the amount of tax in dispute and the penalty; and
- (iii) the type or term of the tax in dispute and the penalty.

#### 3.1.1 Commencing Proceedings in the Common Law and/or Civil Court Systems

Once proceedings have been commenced, the court will determine whether there are any deficiencies in the taxpayer's petition. Assuming the petition was submitted correctly, the court will proceed to decide the case on the

merits using the party's arguments and defenses. This includes: whether the information listed in Section 3.1 was included in the taxpayer's petition, the court's jurisdictional rights to decide the matter, the taxpayer's capacity to sue and whether the lawsuit was initiated within the limitation period.

Unlike ordinary matters before Turkey's civil courts, tax disputes involving an error of court procedure are not automatically dismissed. Instead, the taxpayer or their proxy are notified of their error and given the opportunity to resubmit their petition. If the taxpayer fails to resolve the deficiency within 30 days of receiving notification, however, the case is automatically dismissed.

### 3.1.2 The Government Response

Assuming the taxpayer submits their petition correctly, the Tax Administration is given notice and has 30 days to submit a reply. The taxpayer must receive notice of the initial reply and may submit a reply within 30 days. The Tax Administration must receive notification of the taxpayer's reply and has the option of submitting a second reply within 30 days. Only after the taxpayer has received notification of the Tax Administration's second reply is the file finalized and the exchange of petitions closed.

Trials are exceptionally rare in Turkish tax disputes. Nevertheless, Article 17 of Code No. 2577 provides for a compulsory hearing at the request of a party for disputes exceeding TRY 25,000.00.<sup>14</sup> It is at this hearing that the court may decide that it is necessary to hear evidence from the tax personnel who conducted the tax examination in dispute.

### 3.1.3 The Burden of Proof

Under Turkish law, every party that wishes to prove an allegation has the burden of proving it using the appropriate quantum of proof. This general rule applies equally to tax and non-tax disputes.

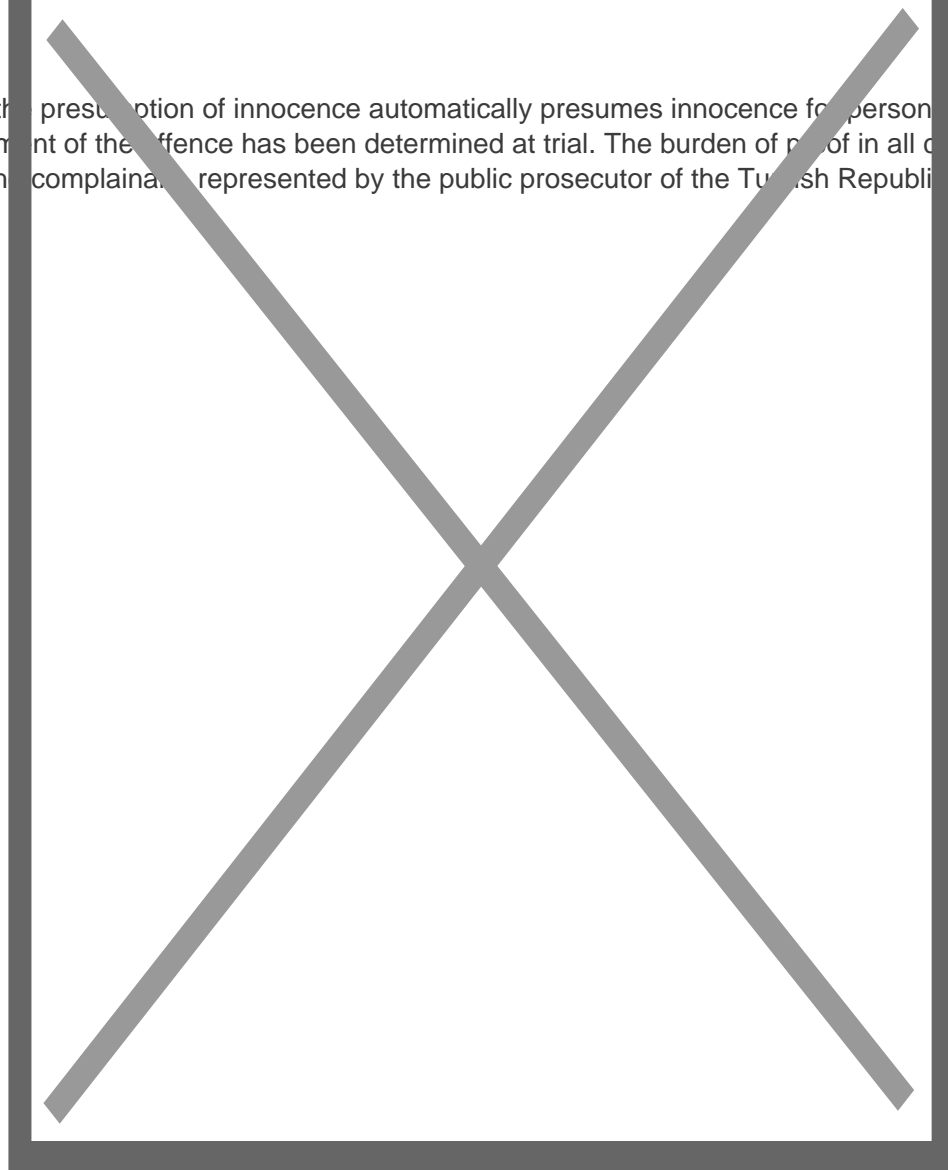
#### (i) Civil Code

Notwithstanding the general rule, the burden of proof can be affected by certain presumptions under Turkish law. One presumption concerns the obligation to comply with book and document orders under Code No. 213. Here, taxpayers are required to document tax matters using their record books according to generally accepted accounting practices. So long as the taxpayer complies, the Tax Authorities will automatically deem the information contained within record books to be accurate and complete. At this stage, the burden rests with the Tax Administration to disprove this presumption.

Another important obligation results from the overriding economical approach in Turkish law. Here, the underlying tax matters are presumed to have occurred according to the financial, commercial and technical precedents available. These norms are based on developments in litigation and the ordinary course of Turkish citizens' lives. Because this presumption typically favors the Tax Administration, a taxpayer wishing to refute these norms has the burden of doing so.

#### (ii) Criminal Case

Under Turkish law, the presumption of innocence automatically presumes innocence for persons charged with a crime until each element of the offence has been determined at trial. The burden of proof in all criminal matters will therefore rest with the complainant represented by the public prosecutor of the Turkish Republic's Public



Prosecution Office.

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## 3.2 The Criminal Process - How it Begins

Under Turkish law, criminal courts are automatically granted first instance jurisdiction where a taxpayer has been accused of an offense punishable by imprisonment. In this case, the Tax Administration is required to submit its options to the Public Prosecution Office before the public prosecutor can commence a criminal action against the taxpayer. Even where the public prosecutor becomes aware that tax evasion has been committed, they cannot commence an investigation independently. Instead, they must first notify the Tax Administration and inquire into whether there is any basis for an investigation.

## 4. Documentary Evidence

## 4.1 Pre-Trial Exchange of Documentary Evidence

Another important consequence of Turkey's economical approach principle has been the application of circumstantial evidence to tax litigation. That said, the following are important exceptions to the circumstantial evidence principle:

- Document Orders: Under Code No. 213, a significant part of the taxation process must be documented. Such matters can only be proven through documentary evidence.
- Oaths: Oaths are inadmissible as evidence in tax litigation within the scope of Article 3 of the Code No. 213. That said, oaths are admissible in civil litigation.
- Witnesses: Witness evidence is admissible under certain circumstances, as examined in section 5 (see below).

### 4.1.1 Examinations for Discovery Before Trial

There is no reciprocal examination of evidence prior to trial. Likewise, the parties are prohibited from asking each other to explain the evidence presented. The Tax Administration also prohibits the taxpayer from examining their transaction file until trial.

## 4.2 Criminal Context: Disclosure

The defendant has the right to receive and review all of the evidence that the parties have submitted in support of their case. That said, the defendant is prevented from accessing other parties' personal information that has been used to prove their claim.

### 4.2.1 Special Considerations

Turkish law has incorporated the principle against self-incrimination and right to remain silent. As such, no person can be forced to present detrimental evidence. Nevertheless, Article 369 of Code No. 231 provides for the crime of 'concealing' notebooks and documents. In practice, failing to submit notebooks and documents to the authorized officers during an examination can constitute concealing. As a result, there are circumstances where a taxpayer may be forced to submit notebooks and documents that are incriminating. Article 369 has been intensely criticized as violating a party's right to remain silent.

## 5. Witness Evidence

### 5.1 Civil Code: Trial Considerations

Statements by witnesses are admissible as evidence in Turkish tax litigation. In order to be admissible there must be some relevance between the statement and the act raising the tax. Explicit references demonstrate an economic connection between the witness and the act raising the tax whereas statements with an incidental connection will not be admissible.

#### 5.1.1 Witness Preparation

Generally, it is uncommon for witness testimony to be used during trial. As a general rule, the only 'witnesses' in tax litigation are the plaintiff taxpayer's certified public accountant and the tax audit personnel who conducted the examination.

At trial, the parties are prevented from questioning witnesses. The judge is responsible for asking questions, but may consider question requests from the parties.

## 5.2 Criminal Context - Hearsay Evidence

Under Article 217 of the Criminal Procedure Code No. 5271, the judge can only rely on evidence presented before him or her at trial. Evidence is assessed using judicial discretion and offenses can be proven using any type of lawfully obtained evidence. The principle of circumstantial evidence applies during criminal procedures and requires the judge to assess the evidentiary weight on a case-by-case basis.

## 6. Expert Evidence

### 6.1 Civil Code - the Expert Report

Expert opinions are rare in tax litigation, although the court has the discretion to refer to one. If the parties wish to use an expert opinion, they must submit it before the judgment is made.

#### 6.1.1 Expert Evidence at Trial

There is no procedure in Turkish law for hearing expert opinions during trial.

### 6.2 Criminal Context - the Expert

Unlike tax litigation, nearly every criminal trial makes use of expert evidence. Judges will refer to opinions in expert reports to determine whether the material elements of the offense have been met. Expert opinion evidence is also used for technical matters beyond the competency of lay persons.

The presiding judge is responsible for selecting experts for criminal matters. They are assisted by expert committees consisting of three elected individuals<sup>15</sup> who prepare the judge a tripartite report.

Parties have the right to respond to expert reports, following which the court may decide to obtain another report from the same expert or refer to an alternative expert committee. Where expert reports conflict with each other, the judge may request a third report to form the basis of their decision.

## 7. Argument

### 7.1 Civil Code: Closing the Case

Because written proceedings are heavily emphasized in Turkish tax litigation, cases are finalized only after the parties have exchanged petitions.<sup>16</sup>

Following this exchange, the plaintiff taxpayer must inform the defendant Tax Administration of their petition. The defendant must then submit their pleading within 30 days of receiving the notification. The taxpayer has 30 days from the date of notification to respond to this pleading. The defendant administration must also receive notification of the taxpayer's second petition. Following this, the administration has 30 days from the date of notification to submit its second petition. Lastly, either party may request the court to conduct a trial which will result in a final judgment.

It should be noted that precise deadlines are given for the proceedings listed above for reasons of expediency. The parties are nevertheless able to file other declarations besides those mentioned above until the final decision is rendered.

### 7.2 Criminal Context - Closing the Case



The goal of every Turkish criminal proceeding is to determine the truth. The court is therefore allowed to conduct any research or examination that it deems necessary. These actions are not subject to any time constraints. The court can also hold as many trials as it sees fit. Similarly, the court may conclude a proceeding whenever it is satisfied that all of the necessary information and documents have been obtained.

## 8. The Decision

### 8.1 Civil Code Context

After the parties have concluded their submissions, the court must provide a decision within 15 days. Decisions must include a summary of the parties' allegations, their defenses and the legal reasons justifying the court's decision. After the ruling has been made each party receives a copy of the court's decision.

### 8.2 Criminal context

There are several additional requirements for criminal decisions. These include a list of the suspect's criminal actions, a definition of the crimes, the defense's arguments, the court's analysis of the evidence and the final judicial decision.

## 9. Costs

### 9.1 Civil Code

Tax litigation falls under the administrative jurisdiction. The primary goal of Turkey's Tax Authorities is therefore preventing the government<sup>17</sup> from violating individuals' rights. For this reason, individuals must be able to freely assert their rights and take actions to defend them. Irrespective of the amount in dispute, the taxpayer pays a fixed fee as opposed to a relative amount when commencing a legal action. In 2013, legal fees were 124.00 TL.<sup>18</sup> This amount is refunded to the taxpayer if they succeed in the litigation.

There are special rules for costs in tax collection disputes. Where the tax debt is paid late, the government imposes a compulsory payment and notifies the taxpayer of a payment order. The taxpayer then has the option of filing a lawsuit against this action. If the taxpayer's lawsuit against the payment order is rejected they must pay the tax administration 10 percent of the total amount in dispute.<sup>19</sup> This payment is considered to 'arise because of being wrong' and is considered to be separate from the litigation costs. That said, it is likely that this amount will arise as a result of litigation; for this reason, it has been criticized for restricting taxpayers' right to access legal remedies.

### 9.2 Criminal context

There are no costs for taxpayers in the criminal context even though the process is conducted on behalf of the Government ex officio. In the criminal setting all costs are covered by the court.

## 10. Appeals

### 10.1 Civil Code - the Right to Appeal

There are specific tax litigation procedures that can be applied against judicial decisions. Some of these applications must be made to the specific court that rendered the decision in question whereas others should be made to higher authorities.



## (i) Explanation

Where court decisions lack specificity or include conflicting provisions, the parties may request that the court clarifies the decision or resolves the conflict. <sup>20</sup> This request for clarification or resolution must be made before the decision is executed.

## (ii) Rectifying the Mistakes

The parties may request that the court rectifies mistakes that have been made during the proceedings. These include the parties' first and last names, their titles, material mistakes regarding their allegations and mistaken verdict calculations.<sup>21</sup> Since there is no explicit regulation specifying the deadline for these requests there is a general consensus that requests to rectify mistakes at any time.<sup>22</sup>

## (iii) Objection

The parties have 30 days to appeal a tax court ruling. As of 2013, objections are only possible where the amount in dispute does not exceed 25,000.00 TL. Objections should be made to the District Administrative Court located in the same area as the tax court in question.<sup>23</sup>

The District Administrative Court has the discretion to examine the case and provide a new decision. The court may conduct an investigation and issue its new ruling based on the facts of the case or the parties' accusations against each other. In some cases, however, it would be inappropriate for the court to render a new decision. Examples include where the court accepts objections against a procedural decision<sup>24</sup> or where the judge lacks jurisdiction to decide the case. In these instances, the matter should be sent back to the tax court for a new decision.

## (iv) Appeal

Decisions by a committee of judges can be appealed to Turkey's Council of State. This must occur within 30 days of receiving notification of the decision. Basic matters regarding the appeal process are explained below in 10.1.1.<sup>25</sup> Final decisions by a single judge cannot be appealed, however.

## (v) Appeal for the Sake of Law

Under certain circumstances, it is possible for the Chief Prosecutor of the Council of State to appeal a decision on a point of law.<sup>26</sup> These include where a tax litigation authority, acting in the capacity as a court of first instance, finalizes its decision without appeal and its decision conflicts with existing law.

Decisions by the court of first instance are reversed if the appeal is granted. However, reversing decisions does not remove the legal consequences of the court's finalized decision. In this way, appeals aim to prevent precedents from conflicting with the law.

## (vi) Restitution of Trial (New Trial)

'Restitution of trial' is an extraordinary appeal procedure under Turkish law. The process involves overturning the final ruling due to the invalidity of the material grounds that were relied on and rehearing the case.<sup>27</sup> This appeal procedure can only be applied in circumstances outlined in the Code. This includes where it is decided that the document, which was relied on for the decision, is counterfeit or if the court relied on a previous decision that was subsequently reversed.

An application for 'restitution of trial' should be made to the court that gave the decision. This must occur within 60 days of the date the grounds enumerated in the Code arise.

## (vii) Revision of Decision

'Revision of decision' is a procedure that can be adopted against decisions by the State of Council on appeal and decisions by the district administrative courts on objections. The moving party has 15 days to initiate the procedure after receiving notification of the decision.<sup>28</sup> This appeal should be made to the authority that gave the decision and can also only be applied in circumstances outlined in the Code. In practice, this procedure is available for all decisions given by the Council of State on appeal and decisions of the district administrative courts given on objections.

### 10.1.1 Basic Procedure to Appeal

The appeal authority will not re-examine the material facts of the case, factual disputes or evidentiary disputes. Instead, it examines whether the decision was given in accordance with the judgment procedure and the legislation was appropriately applied. If the appeal authority detects an illegality, it reverses the decision and sends the file back to the court of first instance rather than rehearing the case itself. It may also be possible to reference matters that have occurred after the decision where they may affect the final decision.

The appeal petition must be provided to every opposing party. The opposing party may then submit a response within 30 days of receiving notification. The opposing party can also submit a new appeal with their response even if they have not appealed within the required time frame.

Section 2.1.1 mentioned that the commencement of a legal action suspends the execution of the operation in dispute. If the legal action filed by the taxpayer is rejected in the appeal process, however, then the Tax Administration can execute the operation again. This means the Tax Administration can perform activities against the sued operations where the legal action against those is rejected. Therefore, a suspension of execution should be requested with the objection against the decisions given by a sole judge.

There are several options available to the relevant trial chamber of the Council of State conducting the examination. These include:

- (i) approving the decision upon rejecting the appeal;
- (ii) approving the decision upon rectifying the material mistakes in the decision (if there are any); or
- (iii) reversing the decision in whole or in part.

When a decision is reversed the file is sent back to the tax court that made the decision. In that case, the court of first instance gives a new decision and may:

- (i) abide by the reversal decision from the Council of State; or
- (ii) insist against the reversal decision from the Council of State;

The parties can also appeal the tax court's decisions of insistence. Here, the examination is conducted by the General Assembly of Tax Courts. If the General Assembly of Tax Courts considers the tax court's decision of insistence to be appropriate it will approve the decision. It is mandatory to abide by the decisions of the General Assembly of Tax Courts.

## 10.2 Criminal Context - the Right to Appeal

Taxpayers can also appeal criminal decisions within seven days after the ruling is announced. If the suspect is absent for the decision the deadline will commence after they have received notice. The appeal is conducted by the criminal departments of the Court of Appeals.

## 10.2.1 Basic Procedure to Appeal

The Court of Appeal may reverse a decision where it feels that the appeal is appropriate. The court may decide to dismiss the case or acquit the accused without conducting another investigation depending on the merits of the case. This is done in lieu of reversing the previous decision.

If the decision is reversed the court of first instance will rectify any deficiencies and provide a new decision. The parties' comments about the reversal are also taken into consideration. The court of first instance also has the option of insisting upon its decision. If one of the parties appeals a decision of first instance, the General Criminal Assembly of Court of Appeals will conduct an examination. Decisions by the General Criminal Assembly are final.

## 11. Hot Areas of Interest

### 11.1 Transfer Pricing

Along with Corporate Tax Law No. 5520 which entered into force in 2006, a parallel regulation to international standards was developed on transfer pricing.

Accordingly, if corporations buy or sell products or services to related persons at costs or prices that are not set in accordance with the arm's length principle, the profit will be considered to be distributed in a concealed manner.

Under the Income and Corporate Tax Laws, concealed profit is the amount that is transferred to the corporate headquarters instead of being distributed as profit. These amounts are typically distributed by way of transfer pricing. The following acts are interpreted as the sale or purchase of products or services regardless of the circumstances: purchase, sale, manufacturing and construction operations, lending and leasing operations, borrowing and lending money and operations requiring payments such as bonuses or wages.

Related persons are defined as partners of the corporations, real persons or corporations. The latter include corporations related to other corporations, partners and real persons. Also included are corporations that are directly or indirectly dependent on another corporation for supervision or capital. Related persons also include partners' spouses, lineal kinship of the partners and their spouses and people related through collateral kinship lines.<sup>29</sup> Compliance with the arm's length principle requires the parties to ensure that the cost of goods and services between related and non-related parties remains the same.

Corporations must determine the costs that will be applied to related persons by adopting one of the methods mentioned below:

- (a) Comparable price method: The price is determined through comparing a taxpayer's price of sale with the market price in transactions for comparable products or services between real persons or legal entities with no prior relationship.
- (b) Cost rise method: The price is calculated using the arm's length principle by increasing the cost of the relevant product or service by a reasonable gross margin.
- (c) Once again sale price method: The price is calculated using the arm's length principle by deducting a reasonable gross margin from the price applied to real persons or legal entities that do not engage in the resale of related products or services.
- (d) If a price cannot be reached using the methods above, the taxpayer can apply their own method based on the nature of the transaction.

The taxpayer can also propose and negotiate alternative methods with the Ministry of Finance. These methods are strictly limited by the time frame set out in a contract between the taxpayer and Ministry and cannot exceed three years.

## 11.2 Director's Liability

There are two separate laws that provide for director's liability under Turkish law: Code No.213 Article 10 and Code No. 6183 repeated Article 35.

It is important to note that these laws apply to all legal representatives, not simply directors. The scope of Code No.213 is limited to tax dues whereas Code No.6183 covers public debt and tax.

Article 10 of Code No.213 sets out that a legal representative is capable of satisfying a taxpayer's obligations, assuming they have one. A legal representative that fails to perform their legal obligations may be partially liable for a portion of the taxpayer's debt. This applies if the taxpayer's obligations cannot be satisfied in whole or in part from their assets. This same principle applies where the taxpayer's legal representative is present in Turkey, but the taxpayer is not. As mentioned above, the regulations of Code No.213 provide for fault-based liability for taxpayers' legal representatives.

On the other hand, Code No.6183 provides a much more direct regulation of liability. Here, the taxpayer's public debts are obtained directly from the legal representative's personal assets. This includes taxes that cannot be obtained or have proved to be unobtainable. Additionally, this applies to legal representatives in Turkey, foreign persons or corporate taxpayers.

In some cases, there may be different public representatives in charge when the public debt was created and when it became due. In these circumstances the representatives will be jointly liable for the payment.

There is constant debate regarding which regulation the Tax Administration should apply for tax debts involving legal representatives. One regulation provides for fault-based liability whereas the other adopts a more direct liability approach. The Tax Administration attempted to introduce direct liability with Code No.6183 instead of Code No.213 and achieved a legal basis for this in 2008. As such, legal representatives' liability under Code No.213 will not remove the liability regulated in Code No.6183. There continues to be ongoing debate about how to clarify how the regulation in Code No.213 Article 10 will work with the realities of tax practice.

[1] See Section 1.2 for the legislation that lays out the tax jurisdiction.

[2] Under certain circumstances, this may include imprisonment. For more information about these sanctions, see Section 2.1.2.

[3] These operations are typically within the scope of Code No. 6183.

[4] Code No. 4458.

[5] The only way for a taxpayer to initiate a dispute is to send a petition to the Administration of Customs.

[6] This includes requests, operations, or court decisions.

[7] This must be within the scope of Code No. 6183.

[8] Code No. 231, Article 369.

[9] This includes imprisonment.

[10] This is because of the regulation in this area.

[11] This is because customs duties are not subject to Code No. 213.

[12] This is the amount as of 2013.

[13] In this case, the plaintiff is the taxpayer and the defendant is the local Tax Administration.

[14] This is the amount as of 2013.

[15] Elected committee members typically have a background in tax law or criminal law. Public accountants can also sit on expert committees.

[16] The table in section 3.1.4 provides further information on this process.

[17] It is important to keep in mind that the public authority rests with the Turkish Government.  
[18] This included 28.00 TL for the application and proxy fees and 96.00 TL for the postage cost.  
[19] Code No. 6183, Article, 58.  
[20] Code No. 2577, Article 29.  
[21] Code No. 2577, Article 30.  
[22] This includes after the execution of the decision.  
[23] Code No. 2577, Article 45.  
[24] See Section 3.1.1.  
[25] Code No. 2577, Article 46.  
[26] Code No. 2577, Article 51.  
[27] Code No. 2577, Article 53.  
[28] Code No. 2577, Article 54.  
[29] This includes third degree and affinity by marriage.

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