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COMPARISON OF OLD AND NEW PREVENTION OF DOUBLE TAXATION AGREEMENT BETWEEN TURKEY AND GERMANY

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Abstract

Double taxation agreements, the most important instrument of international tax law, two or more countries use eliminating double taxation in the narrow sense, can be concluded in any matter related such as preventing tax evasion, encouraging foreign capital, and providing information exchange in the broad sense. Countries make concessions on their power of taxation through double taxation agreements and they prevent more than one taxation of person and institutions.

The first international tax agreements was made in 1843 in order to collect tax easily between France and Belgium. Preventing the double taxation agreements started after World War II and more than two thousand double taxation agreements have signed until today. Turkey also approximately made double taxation agreements.

Germany terminated unilateraly the double taxation agreement which is signed on 16.04.1985 and applied from on 01.01.1990 between the Republic of Turkey and the Federal Republic of Germany. The main reason for Germany's to abolish the old agreement, emigrated Turkish citizen are not be taxed who work and retired in Germany. According to the old agreement between two countries, taxation authority of pensioners belong to the resident country. However, according to the Turkish legislation, all pensions paid by social security institutions in foreign countries are exempt from income tax. The agreement, which terminated for a variety of reasons, mainly for this reason, was signed on 19.09.2011 and started to enter into force as of 01.01.2011. In this study, the old and new agreements on prevention of double taxation betweenTurkeyand Germany are comparatively examined.

Keywords: Tax, Taxation Authority, Double Taxation, Termination, Turkey, Germany.

JEL Code: H20, H24, H71

1. Introduction

Signed on 16.04.1985 between Turkey and Germany, and is being implemented "Income and Wealth Avoidance of Double Taxation Agreement with Respect to Taxes" due to need for renewed negotiations were initiated and Germany was uniterally terminated on 21.07.2019. According to the statement made by Germany, this termination process will be implemented as of 01.01.2011, and in the 2009 and 2010 taxation period will be applied in the old accretionary provisions and finally the new agreement will be completedby 2011 until the latest 01.01.2011 and will not be born of any kind of victimization. However, no new agreement has been introduced despite the date of 01.01.2011. With a delay of nine months, "Agreement Between the Republic of Turkey and the Federal Republic of Germany for the Avoidance of Doıble Taxation and of Tax Evasion" were signed between the two states on 19.09.2011 in Berlin. (Tuncer, 2012a: 9).

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According to the 1982 Turkish Constitution, an international agreement must be submitted to the Grand National Assembly of Turkey and approved to enter into force. After the agreement was signed, it was immediately submitted to the Grand National Assembly of Turkey and was published in the Official Gazette dated 27.12.2011 and numbered 28155. Finally, the legal formality was completed by the decision of the Council of Ministers on 16.01.2012.

2. Double Taxation Agreements

Double taxation agreement, are tax agreements that allocate taxation powers of states to prevent taxation of taxpayers more than once through multiple taxes, income, wealth, or any tax agreed upon (Başak, 2007:265). It falls with in the scope of these agreements and enters into the subjects of wealth taxes; commercial gains, gains from real estate assets, interest in come, international transportation revenues, revenues from self-employment, salary in come, artist and sports income, realestate rights, capital value increase earnings, income of company board members, pensions, teacher and students' income and earnings (Uzbek, 2015: 25).

The main aim of avoiding double taxation agreements is to eliminate the existing or existing double taxation situation and to prevent the taxation of the same income, income or wealth by dividing the taxation powers of states (Sönmezocak, 2018). In addition to the prevention of double taxation by these agreements, it will be ensured that the taxation by international transfer pricing or other conditions will be prevented by means of the benefits such as the fact that the contracting states make the concepts of taxation uniformand increase the exchange of information between the administrations (Yitzhak,, 1972: 122).

The Republic of Turkey has not signed any multilateral agreement aimed at preventing double taxation. The first bilateral agrrement was signed on 24.09.1973 with the Republic of Austria and the agreeement to prevent double taxation signed until today is 89. (Sönmezocak, 2018).

3. Comparison of Agreement Between Turkey And Germany

When the old and new agreements between the two countries are compared, many changes are observed. First, in terms of the persons involved; In accordance with Article 1 of the former Convention, the Convention applies to persons who are residents of one or both of the Contracting States. The term "person" refers to any natural person or any company. According to the first article of the new agreement, the term "person" has been expanded. According to the said article, the person comprises a natural person, a company and any other body of persons. As can be seen, the concept of the person in the new agreement was wider and included other institutions and organizations outside the real persons or institutions. Considering the change in taxes on taxes, wealth taxes were included in the agreement, but wealth tax was deducted from the new agreement. The reason for this is that since Germany lifted the fortune exhibition in 1996 and the commercial wealth tax in 1988, wealth tax was not required in the new agreement. In addition, the term "taxes covered" is used in the old agreement, but the term "taxes covered" is used in the new agreement. In the new agreement, only the income tax is a matter of agreement and the scope of these taxes will be determined as follows (Öner, 2016:41):

- Taxes on gains on transfer of securities or real estate,

- Taxes on salaries or wages paid by undertakings,

- Taxes applied to capital value increases and

- All taxes on total income or income.

As you can see, what ever the way; Corporation Tax and Income Tax in relation to Turkey, and Germany in terms of the Income Tax, Corporation Tax and Trade Tax and tax, which are covered by the new agreement. Again, according to the old agreement, if any of the Contracting States shall add to the existing taxes or replace them with another tax after the date of signing of the Agreement, the other States hall be notified. Contrary to the old agreement, important and substantial amendments to the agreement must be communicated to the other Contracting State (Öner, 2016: 44).

Lastly, the comparison of the fourth article of the person or institution determining the point of attachment, the term financial residence was replaced by the resident. Thus, instead of connecting to a legal institution in the old agreement, the point of personal attachment in the new agreement will be sought. The concept of the resident has various functions and is important in such cases (Öner, 2016: 45):

- Determines the application area of the agreement,

- Solves the problem of double taxation resulting from a double-occupationand

- Resolves the problem of double taxation as a result of taxation in the resident state and the source or taxation in the state.

The following Table 1 Changes in the old and new double taxation avoidance agreement between Turkey and Germany have shown as material. In addition to the changes in the scope of persons or taxes, a number of amendments have occurred.

Table 1. Comparison of Old (1985) and New (2011) Prevention of Double Taxation Agreement Between Republic of Turkey and Federal Republic of Germany

Old Agreement (1985)		**New Agreement (2011)**	
Article Number	**Title**	**Article Number**	**Title**
1	Persons	1	Persons covered
2	Taxes	2	Taxes covered
3	Genral definbitions	3	Genral definbitions
4	Financial residance	4	Resident
5	Workplace	5	Permanent establishment
6	Income from immovable property	6	Income from immovable property
7	Business profits	7	Business profits
8	Shipping, land and air transport	8	Shipping and transport
9	Assoc.d enterprises	9	Assoc.d enterprises
10	Dividend	10	Dividend
11	Interest	11	Interest
12	Royalties	12	Royalties
13	Capital gains	13	Capital gains
14	Independent personal services	14	Independent personal services
15	Dependent personal services	15	Dependent personal services
16	Payments to managers	16	Directors’ fees
17	Artistes and sportsmen	17	Artistes and sportsmen
18	Pensions	18	Pensions
19	Government service	19	Government service
20	Teachers and students	20	Teachers and students
21	Other income	21	Other income
22	Wealth	22	Elimination of double taxation
23	Elimination of double taxation in resident country	23	Non-discrimination
24	Non-discrimination	24	Mutual agreement procedure
25	Mutual agreement procedure	25	Exchange of information
26	Exchange of information	26	Assistance in the collection of taxes
27	Members of diplomatic missions and consular posts	27	Procedural rules for taxation at source
28	Berlin state	28	Members of diplomatic missions and consular posts
29	Entry into force	29	Protpcol
30	Termination	30	Entry into force
		31	Termination

Source: Tuncer, 2012:12.

4. Conclusion

The Federal Republic of Germany and the Republic of Turkey eliminating financial barriers to improve bilateral economic relation sand the desire to streng then their cooperation in tax matters, have a deal again.

The title of the old agreement “Republic of Turkey with the Federal Republic of Germany Between Income and Prevention of Double Taxation Agreement on Excises Wealth On Me” is the new deal title, “Agreement Between the Republic of Turkey and the Federal Republic of Germany for the Avoidance of Doıble Taxation and of Tax Evasion”, the countries not only avoided avoiding double taxation, but also the need to serve to prevent tax evasion.

Since the two countries are members of the OECD, the new agreement has been signed with the OECD Model. However, the intensification of the relations between the two countries has caused many differences in terms of form and content.Therefore, the new agreement, which was envisaged to be completed without entering 2011, could be signed in September with a delay of nine months. When the clauses of the agreement are examined one by one, it is seen that the concepts mentioned in some articles are not fully in Turkish tax legislation.

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