

## Anatomy of Taxpayers' Rights: Case Study of Turkey

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**Abstract:** Today it is observed that upon globalization, social structure has changed and that human rights have stood out. Regarding taxpayers' rights which are considered within the scope of human rights, informative brochures on what these legal rights are have been prepared and consultancy units have been established in many countries for a long period of time. While a literature search about the concept of taxpayers' rights and the practices in various countries are outlined, the current views of the European Court of Human Rights on this matter are also discussed in the study. It is observed that more recent legal regulations have been made in Turkey than in other countries which are under examination regarding the rights of taxpayers during taxation. Although, it is intended to form a legal ground for this matter with the regulations made within this framework, it is also observed that there are several problems and shortcomings in practice. While the issue of taxpayers' rights in Turkey is comprehensively addressed in the study, the settlement of existing problems is discussed.

**Key words:** Taxpayer, rights, human rights, tax law, government, settlement

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### INTRODUCTION

There are many factors of the full collection of taxes which are the most important financing sources of the state. One of these factors is taxpayer's knowledge and use of his/her legal rights. It is observed that upon an increase in the number of taxpayers who know and use their legal rights, cooperation is achieved between the tax administration and the taxpayer, consciousness of paying tax further develops, resistance to tax is broken and therefore, voluntary compliance with tax is ensured.

The problem of tax compliance is as old as taxes themselves. The economics of tax compliance can be approached from many perspectives: it can be viewed as a problem of public finance, law enforcement, organizational design, labor supply or ethics or a combination of all of these (Andreoni *et al.*, 1998).

In a tax system based largely on voluntary compliance, the taxpayer's standards of tax ethics are extremely important. Attitudes about fiscal and tax policies, tax audits and the audit experience, proper bases of tax burden allocation, the equity and efficiency of tax administration and the shortcomings of the federal income tax are also significant (Dahl and Yarbrough, 1978). Despite the long history of taxpayer revolts and resistance to tax laws, tax compliance has only recently emerged as a topic receiving more than passing scholarly attention (Klepper and Nagin, 1989).

Taxpayers' rights are based fundamentally on Magna Carta of 1215. The residents of the Anglo-Saxon geography acquired these rights by giving their life and blood. Therefore, taxpayers' rights followed a process

which was developed starting from Magna Carta and peaked with the French Revolution in 1789 and then with the Convention on Human Rights.

Taxpayers have many liabilities against the state. Besides these liabilities, they also have rights that are brought about by being human beings, beyond being taxpayers. Therefore because an understanding that the state regards taxpayers as a source of income inflicts damage to the enlargement of tax basis, it should be acted in a taxpayer-oriented way and the voluntary compliance of taxpayers to tax should be ensured in order to increase tax income.

Taxpayers have several general rights and specific rights before the payment of their tax debts and during and after audits. There are no specific provisions that are gathered under such a heading in tax laws with respect to taxpayers' rights. However, some general provisions serve the protection of taxpayers rights. It is seen that some specific rights of taxpayers are generally not included in tax laws, either and are intended to be promoted by means of the brochures prepared by tax administrations.

When the Tax Procedure Law in Turkey is examined, it is observed that although provisions entitled the duties of taxpayers are included in the law, there are no regulations in main titles with respect to taxpayers' rights and that several rights regarding the general case are dispersedly present in different sections of the law. Nevertheless, the taxpayers who are responsible to pay taxes have several general and specific rights during the payment and auditing of taxes and after the audit. It is a known fact that many taxpayers do not know and are

unable to use their rights concerned because tax laws in Turkey have a complex structure and they are amended very frequently. On the other hand, it is seen that recently, it has been intended to form the legal framework of some specific rights that are required.

In Turkey, the Presidency of Revenue Administration took the first step to this end by issuing the declaration of taxpayer rights as of February 2006. With this declaration, the administration unilaterally promised taxpayers about issues such as meeting the demands of taxpayers for service before all else, providing correct information and keeping the information learned about them secret.

### **RESEARCH AND METHODOLOGY**

As the understanding that taxes are only incomes taken compulsorily by the state has been given up today and as a taxpayer-oriented taxation understanding has settled, the phenomenon of taxpayers' rights has appeared on the agenda. However, it is observed that the legal regulations on this subject are well-organized and adequate in some countries such as the USA and England because they have had this understanding for a long period of time while in Turkey, the legal regulations have not been adequate yet and these rights are present dispersedly in laws. This study is based on the method of systematic data collection and analysis that covers a period of around 2 years. In the study, the resources written by researchers in various countries and in Turkey about what taxpayers' rights were and how they were applied were reviewed and the information based on the obtained theoretical findings were gathered. First of all, general information was provided on taxpayers' rights and existing special practices on this subject in various countries and in Turkey were examined in detail. In this way, the method of comparative analysis was used about taxpayers' rights. In social sciences, quantitative and qualitative approaches are used as the research method. The quantitative approach is also called empirical approach or numerical approach. The quantitative approach occurred with the adaptation of research methods and data collection techniques, used by natural sciences, to social sciences in the early 20th century, when social sciences began to be shaped. Depending on the insufficiency of quantitative approach to explain some social phenomena, the qualitative research approach developed and became widespread rapidly in the last quarter of the 20th century. Considering that some quantitative research to be made on what taxpayers' rights were and what the differences and similarities of application among countries were would be inadequate to make research on such a phenomenon, the method of scanning the tax laws and the method of collecting the

comments of various researchers on this subject and comparing the resulting differences in application were mostly used in the study. In the study, the collected data were mostly obtained from the tax procedure laws of the countries and from the previous studies on this subject. The limitation of this method is that this subject is not suitable for quantitative research techniques for the aim of the study is to investigate whether there are shortcomings in the existing legal regulations particularly in Turkey and to put forward the required case through benefiting from the existing practices in other countries.

### **LITERATURE REVIEW ABOUT TAXPAYERS' RIGHTS**

As in other spheres of life where obligations are conditioned by certain rights, tax payment as a public duty is conditioned by the rights of taxpayers. In that way, not only economics relations are defined but also the position of taxpayers in the legal system, in other words, their fiscal and legal position. The necessity of regulation of rights of taxpayers is not only conditioned by the required comparability of the tax system with the systems of countries with market economies but also by the fact that successful functioning of a tax system implies necessary agreement and sense of fairness on the part of taxpayers with respect to the settlement of their tax obligations (Goranovic, 2005).

As a word, a right is defined as justice; the thing that justice and law entail or allocate for someone, gain; compliance with the reality in a case or claim, truth a right is the advantages that are preserved by the legal order in force in a country and that are granted to individuals. The state, holding the position of a tax creditor is superior to the taxpayer owing to the public power it owns.

The superiority concerned which used to be absolute in earlier periods has been limited depending on the adoption of ways of democratic government and separation of powers (Soygut, 2006). Therefore, while the duties of taxpayers used to be more outstanding, the duties of taxpayers have started to be mentioned with their legal rights. Within this framework, the rights concerning taxation under the name of taxpayers' rights have begun to be legally secured in many countries for a long period of time. From the concept of taxpayers' rights, the advantages granted to taxpayers by tax laws are understood. However, the laws in force bring some obligations to taxpayers besides some rights. The understanding that the tax administration can view all

actions and procedures concerning taxation from the perspective of taxpayers underlies taxpayers' rights (Donmez, 2004).

In the process of developments in the understanding of state of law and globalization of economy, many states conceived of the advantage of collecting tax within the framework of the fundamental principle of voluntary compliance together with taxpayers and developed the understanding of respecting taxpayers' rights instead of facing the opposition of taxpayers.

The commencement of taxpayers' rights is maintained from the laying of legal rules of taxation to the stages of auditing and taking legal action. It is possible to divide taxpayers' rights into two as the general rights collectively emphasized in general laws and the specific rights included dispersedly in the laws on the application of tax in particular.

In the 21st century, when concepts of transparency, customer orientedness, dialogue and quality have stood out in public administration, some legal and administrative regulations arranging the structure of the administration, taxpayers' rights and relationships between administration and taxpayers with a new perspective have been made in many countries for the effectiveness of the tax administration (Ay, 2006). For instance, in the USA, the Internal Revenue Service Restructuring and Reform Act was adopted by the Congress on July 22, 1998. According to this law, the duty of the administration is to offer quality service beyond collecting tax. The Revenue Administration of France concentrated on reforms of simplicity, transparency, adaptation and structuring of new technologies, dialogue and experiences. In England, an online system of filing and submitting returns via internet was launched as of 1999-2000 period (TOBB, 2001).

The taxpayers' right is defined as the rights which authorize taxpayers to make a positive or negative demand and which provide legal protection when violated (Donmez, 2004).

#### **REGULATIONS CONCERNING TAXPAYERS' RIGHTS IN SOME COUNTRIES**

Development in the world about the protection of taxpayers and taxpayers' rights is stated to have undergone three stages, namely, protection of taxpayers, expansion of tax base and establishment of taxpayers' rights. The first stage is the protection of taxpayers as an extension of general constitutional protection. The second stage is the process of expansion of tax base in the process from World War II to the 1970s. In this

process, taxpayer-administration relations intensified and as a result, the framework of legal protection was filled with legislation, administrative procedures and judicial decisions. At the third stage with the tax reforms in 1980-1990 period, the protection of taxpayers was carried to a broader ground. A transition was made from the concept of protection of taxpayers with state content to the concept of taxpayer rights with taxpayer content and declarations of taxpayer rights were issued.

In the Modern World, development took place from state-oriented protection of taxpayers to taxpayer-oriented taxpayers' rights.

#### **TAXPAYERS' RIGHTS IN U.S. TAX SYSTEM**

The U.S. Internal Revenue Service (IRS) began restructuring as of 1998 and adopted the understanding of efficient and qualified working instead of collecting the maximum revenue with minimum cost. In the declaration of taxpayer rights issued within this framework, legal regulations were made for the securing of taxpayers' rights, for professional, proper and courteous treatment for their opportunity to use representatives for payment of only the correct amount of tax, for conciliation, for asking the appeals office to review the case and for reduction of penalties and late surcharges (<http://www.irs.gov>).

Issues such as the obligation that taxpayers be informed by the administration about their rights, keeping the information provided by taxpayers secret, paying attention to tax confidentiality, possibility of applying to the department of objection and conciliation in the event of any failure to make an agreement with the administration on the amount of tax and the possibility of taking legal action were conditioned. Furthermore, the taxpayer advocate service was established to help the settlement of possible problems between taxpayers and revenue administration and to ensure IRS's taxpayer-oriented activities and develop policies in favor of taxpayers. Before the occurrence of tax controversy, the taxpayer advocate helps taxpayers in the settlement of the problem and it is intended to solve the problem before controversy occurs (Publication 1, <http://www.irs.gov>). Another application made within the framework of taxpayers' rights is the establishment of a system to obtain information with a toll-free telephone number that taxpayers can call in order to be informed about taxation. Termed TFTS, the objective of the Toll-Free Telephone System (TFTS) of the Internal Revenue Service (IRS) is to enable citizens to receive tax-information assistance by placing a call, either locally or long distance for a charge

no greater than that for a local call. An empirical analysis has found a very strong reciprocal relationship between IRS enforcement and taxpayer compliance decisions. This relationship is important in understanding whether or not the IRS is responsive to the political system (Mete, 2002).

In a declaration on taxpayers' rights published in the state of Texas in the USA, it is stated that taxation in property taxes has to be distributed equally between individuals and institutions. In a declaration on taxpayers' rights published in the state of Arizona, no interest or penalty is demanded provided that a tax debt occurs as a result of the rulings demanded from the tax office.

This declaration also includes some remarks with respect to tax audits. For instance, the IRS would also be required to conduct audits at a time and place reasonable to both the taxpayer and the IRS (Meland, 1988).

In Turkey, however in the event that taxpayers are misled with written explanations provided by the administration, taxpayers cannot be fined but a default interest is demanded in accordance with Article 369 of the Tax Procedure Law. The rates of default interest are generally applied above the inflation rate, thereby causing taxpayers to be unjustly treated.

Problem solving authorities at local level are the advocates of taxpayers' rights in many states of the USA. They help the clarification of an unclear point about taxation. In other words, problem solving authorities function as an ombudsman and defend taxpayers' rights (<http://phoenix.gov>). Moreover, with the TABOR (Taxpayer's Bill of Rights) restrictions, it was intended to protect taxpayers' rights with various practices in the country. With the Taxpayer's Bill of Rights (TABOR), restrictions have been imposed with respect to the growth of state budget. With this purpose for instance, the TABOR of Colorado restricted the percentage size of the state budget according to the inflation rate and the population growth rate. Therefore, if the inflation rate is 3% and the population grows up to 3%, the maximum size of state budget will be 6%. In addition, if the tax revenues which are collected as a result of a tax application brought by the state in Colorado, leads to a surplus of budget, the surplus of revenues have to be returned to the taxpayer (The Buzz Blog <http://www.buzzbrockway.com>; Hobbs, 2010 <http://www.billhobbs.com>). As it is observed, state expenditures in Colorado can grow at the rates of population size and inflation.

Restriction of expenditures in this way leads to less requirement of tax revenues, prevents the collection of

unnecessary taxes and is able to prevent the injury of taxpayers' rights through returning the surplus of revenues to the taxpayer.

## **TAXPAYERS' RIGHTS IN BRITISH TAX SYSTEM**

In 1999, the British Revenue Administration declared a text entitled Charter for Taxpayers which it had prepared by obtaining the views of taxpayers and employees. It was determined that with this text, they aimed to provide their taxpayers with an efficient, productive and fair service and the standards of the service to be offered to taxpayers, the issues for which they could obtain assistance and support of the administration and how they could put their wishes and complaints into operation were clearly established (Muter and Kayalidere, 2003).

In order to settle the understanding of a taxpayer-oriented government, the British Revenue Administration develops principles such as understanding taxpayers and solving their problems. Within this framework, the institution of tax ombudsman has been developed for the settlement of tax controversies, the project of rewriting tax laws has been launched and it has been intended to form a more efficient revenue administration through the encouragement of the use of new technology.

## **TAXPAYERS' RIGHTS IN AUSTRALIA**

The legal rights of taxpayers are stated in 13 articles in the published declaration of taxpayer rights. Accordingly, the tax administration will work in a customer-oriented way, the taxpayers will be treated in an honest, professional, objective and fair manner and the standards of the services to be offered to taxpayers as well as the aids to be provided and the responsibilities have been conditioned.

In addition, it is also stated that information and advice on tax can be provided when desired that professional employees will help in the settlement of tax problems and that tax confidentiality will be considered.

## **TAXPAYERS' RIGHTS IN JAPAN**

Japan is a country which attaches importance to the issue of taxpayers' rights. Both social and administrative structures and the structure of the tax system caused the issue to be brought to the agenda and to be noted.

The excessive domination of tax authorities in the tax system led to the incorrect and unlimited use of discretion and to the domination of an unfair and nontransparent

procedure. Thus, the ensurance and protection of taxpayers' rights by a fair and transparent administration that is administered from the perspective of taxpayers rather than authorities have long been an ongoing movement in the country. This movement has been supported by not only academics and *zeirishi* (certified tax accountants or lawyers) but also taxpayer unions and consumer groups. So far, *zeirishi* and taxpayer unions have presented many examples in order to ensure the rights of taxpayers. For instance, bills were prepared about the operation of taxation process in the most modern way or about permission to access the information hidden by tax authorities. However, government and tax authorities did not respond positively to these suggestions (Ishimura, 1997).

The aging population and the falling birth rate in Japan caused the tax system to divert from its purpose and caused taxpayers' rights to gain a different dimension. Important reforms were undertaken so as to create a fair, simple, unbiased and transparent tax system both with a view to regulating the system and protecting taxpayers' rights. Performed in the 2000s, these reforms provided an important opportunity to attach more importance to taxpayers in the tax system. With the objective of creating a tax system attaching priority to taxpayers, the National Forum for Structural Tax Reform (NFSTR) was formed on March 1, 2002. The main purpose of the NFSTR was to establish taxpayers' rights. In this forum, it was accepted without any discussions that the taxpayers be regarded as customers by tax authorities in the USA and in Europe as much as in the Republic of Korea. The taxpayers of these countries were secured with the Taxpayer Bill of Rights or the Declaration of Taxpayer Rights. Although the OECD has indicated the importance of establishment of a Taxpayer Service for countries, there has been no such service in Japan yet.

In addition, the NFSTR also targeted to establish a tax system representing the right to document and register the tax incomes of each taxpayer. In fact, Japan is a country which implements the system of assessment through a return in the taxation of income. Nevertheless, the number of taxpayers who declare their income by submitting returns themselves is not high, for the vast majority of taxpayers have been deprived of the right to document and declare their tax incomes. The taxes of these taxpayers are deducted from their source and the rights and liabilities of this deduction are arranged by the employer at the end of the year. On the other hand, another drawback of this system is that the personal information of the deduction which has been taxed by

means of stoppage at the source has to be displayed by their employers. For instance, the disclosure of the incomes of spouses and of whether there is any disabled person in their family means the injury of the right of privacy in terms of the taxpayer. In addition to the NFSTR's studies on the determination and protection of taxpayers' rights, research is made on the subject, symposia are held, proposals are developed regarding the tax legislation and activities of dissemination of information and lobbying are conducted.

### **TAXPAYERS' RIGHTS IN MONTENEGRO**

In regard to taxpayers' rights, three basic essentials-determination of rights, protection of rights and supervision of administrative units are valid. In Montenegro, the legal taxation process embraces all these rights and is implemented with the activities of competent authorities (<http://www.nispa.sk>).

Although, the powers of the tax authorities and the recognized rights of taxpayers are conditioned by the main character and method of functioning of the tax system in individual countries, there are some fundamental, common rights for all taxpayers (Goranovic, 2005; <http://www.nispa.sk/news/papers/wg5/Goranovic.rtf>).

**Right to information:** This right is about the functions of the tax system, the place and time of payment of taxes by taxpayers and the determination of what tax duties are. The tax administration is liable to enable taxpayers to be aware of their rights and to provide suitable technical assistance in the taxation process. This right is performed by the provision of information guides, oral and telephone statements and convenient information and remarks. In Montenegro, in accordance with the Law on Public Revenues, a taxpayer is entitled to review the data and records about him that are kept by the Public Revenues Administration to demand the correction of incomplete and incorrect information and to demand a copy of the audited records.

**Right of consistent application of legal provisions:** The law provisions should be stable so that taxpayers do not have to pay more tax than the amount conditioned by law. This is the most natural right of the taxpayer and the aids provided by tax authorities through practices, such as tax reliefs and tax rebates in order to reduce taxpayers' burden are of great importance for the establishment of this right. Taxpayers considerably like the advantages of relief

provided within the framework of this practice and the rights of relief concerned are administered by laws such as the Law on Public Revenues, the Real Estate Tax Law, the Income Tax Law and the Corporation Tax Law.

**Rights to security of taxpayers:** Against legal amendments and inappropriate interpretations of laws, taxpayers' rights are secured by the Constitution.

**Right to fair and equal position of taxpayers:** This right means the treatment of each taxpayer under equal conditions. In the realization of this right, the tax laws and practices of Montenegro greatly vary in comparison to developed country economies. The tax penal system and laws in the country have been regulated to protect the rights of taxpayers who fulfill their tax duties.

**Right of appeal:** Those taxpayers whose rights have been injured are able to seek their legal rights by appealing to tax authorities at two levels with the first level being the tax administration and the second level being the tax jurisdiction.

**Right of data confidentiality and privacy:** The rights of privacy and confidentiality for a taxpayer protect taxpayers from the misuse of power by the tax administration. This expresses the intention of preventing the use of some information which is important to a taxpayer for other purposes rather than for taxation. In most countries, these taxes might be used with the purpose of data in the event that certain warranties are provided.

#### **TAXPAYERS' RIGHTS IN OTHER COUNTRIES AND IN THE OECD REPORT**

In the German Tax System, the rights of taxpayers during tax audits are included in the Tax Procedure Law and several rights that are not present in the Turkish Tax System have been created as follows. Before the audit, the taxpayer is informed about the audit and if the taxpayer has rightful reasons, he is entitled to postpone the audit. In addition, the rightful reasons for the audit have to be explained to the taxpayer (Gokbel, 2000).

In France, the issue of establishing a representative for taxpayers and a management unit for large enterprises at the tax offices has been regulated by law. The elements of the reform process in tax administration are listed as simplicity, transparency, use of new technologies, dialogue and experience and the ensurance of transparency in public accounts is stated to be of great importance.

In 1990, 15 out of 22 OECD countries had legal provisions for pre-judicial settlements between the tax administration and indicted taxpayers (OECD, 1990). The details of the settlement procedure vary considerably in that some make disclosures feasible only before audits are initiated, whereas others require a formal appeal to be lodged before any settlement can be negotiated. A particular type of settlement is the general amnesty which differs from standard settlements as it is offered on a mass basis to taxpayers (Franzoni, 2000). The Working Group of the OECD's Committee on Fiscal Affairs issued a document about the rights and duties of taxpayers (OECD, 1990). Accordingly, the following basic taxpayers' rights are mentioned:

- The right to be informed, assisted and heard
- The right of appeal
- The right to pay no more than the correct amount of tax
- The right to certainty
- The right to privacy
- The right to confidentiality and secrecy

While the OECD has endorsed a clear statement of taxpayers' rights and accompanying protection will be positive in terms of improving taxpayers' collective levels of compliance and providing a mechanism for limiting even more powerful tax administration, it has not yet set forth an international statement of taxpayers' collective rights. There needs to be a separate statement of taxpayers' right in addition to statements of basic human rights, especially insofar as they relate to international tax cooperation (Baker and Groenhagen, 2001; Zagaris, 2001).

#### **VIEWS OF THE EUROPEAN COURT OF HUMAN RIGHTS ON TAXPAYERS' RIGHTS**

Human rights have demonstrated an ever increasing importance amongst the various limitations to taxing powers of the sovereign States. Human rights should be intended as a sort of bill of fundamental rights and freedoms attributed to the taxpayer both during the procedure of the tax reassessment and during the tax application (Greggi, 2009).

The decisions by the European Convention on Human Rights and the European Court of Human Rights state that taxpayers' rights have to be considered fundamentally as human rights (<http://www.fontaneau.com>). In the current legal system of the western countries there is a significant number of Treaties and Agreements aimed at the protection of Human Rights. Most of them are implemented for specific individuals (women, children

and etc.) or minorities, while others are intended to be used against specific threats: only a very limited part of them includes rights of the third generation (social rights) and a narrower number deals with taxation (Gerggi, 2009).

Article 6 of the European Court of Human Rights is entitled the right to a fair trial. Accordingly, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The rights guaranteed by the Human Rights Convention will likely be asserted by taxpayers seeking to avoid the coverage of the Tax Convention. Article 6 of the Human Rights Convention guarantees a fair hearing, a guarantee that in some ways limits administrative and judicial measures to fight economic crime. Although the Court has yet to construe the general meaning of Article 6, it has applied the fair hearing guarantee to at least one economic case (Zagaris, 2001).

Especially in the cases with respect to increasing of the amount of tax, it has been decided to implement Article 6 depending on the following points:

- The fact that the law which determines penalties is applied to all citizens as taxpayers
- The fact that the tax increase aims to punish in order to prevent the recommitting of the crime but not to eliminate the resulting loss
- The fact that it is implemented as a general provision both with deterrent and penal purposes
- The fact that the increased amount is sufficiently high

However, Article 6 of the Convention includes the provision that it does not apply to the cases, the real purpose of which is to eliminate the financial loss of tax authorities rather than to prevent the recommitting of a crime and which are completely about the redetermination of tax amount or about default interest (European Court of Human Rights).

Article 6 may apply to proceedings arising out of taxation matters if the proceedings involve the determination of civil rights and obligations or the determination of any criminal charge. The inclusion of substantial, tax-gearred penalties within the scope of criminal charges means that many proceedings concerning additional tax liabilities will involve the determination of a criminal charge (Baker, 2000).

According to Paragraph 1 of Article 7 of the European Convention on Human Rights, No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national

or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. This principle is one of the general principles of the criminal law and has taken place as the principle of legality of taxes in the tax law. The penalties implemented in the tax law are classified into two as legal and administrative tax penalties (Kizilot *et al.*, 2006). Although, there are hesitations about whether to consider penalties such as tax loss and irregularity penalties within the scope of this study while it is clear that the issue of imposing and implementing legal penalties is subject to the principle of legality (Soygut, 2006), the administrative tax offenses and penalties have to be imposed with law and implemented provided that tax, duty, charges and similar fiscal liabilities are required to be imposed with law (Oz, 2004).

Article 1 of the 4th Additional protocol of the European Convention on Human Rights indicates the provision that no one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation. Nevertheless, within the framework of Article 359 of the Tax Procedure Law in Turkey, taxpayers may be confronted with prison sentence in the event that tax loss is caused due to tax evasion. As it is observed with state's desire to secure the collection of public receivables using the public power it holds, a more different practice than the special legal relations is performed.

## **RESEARCH METHOD IN TURKEY**

In this study, taxpayers' rights in Turkey will be classified into rights existing before, during and after tax audits and they will be described. Although there are provisions entitled duties of tax within the tax procedure law in Turkey, there is no section entitled taxpayers rights. When the legal provisions included in various sections of the law are read one by one, it is observed that taxpayers' rights are indeed present, although not clearly. Within this framework, it will be intended to determine taxpayers' rights with the method of individually scanning the provisions of tax procedure law. With the method of literature review on this matter, it will be intended to display the views that have been previously suggested and discussed.

## **TAXPAYERS' RIGHTS IN TURKEY**

Article 73 of the Constitution underlies the power of taxation in Turkey. According to this study, everyone is liable to pay tax according to his financial power in order

to meet public expenses. It is again conditioned by this article that tax, duty, charges and similar liabilities be imposed, amended and lifted by law. So, the principle of legality of taxes has been conditioned. While the constitutional provision concerned outlines the tax rights and liabilities between the state and taxpayers that are the parties of the taxation relationship, it on the one hand, restricts the taxation power of the state but on the other hand, targets to secure taxpayers' rights.

Even though there are some published brochures on what the legal rights of taxpayers are in Turkey like in other countries, it is observed that taxpayers do not prefer to claim rights directly themselves due to the complexity of the tax system. The complexities of the tax laws which leave even the better educated taxpayer confused and bewildered have added insult to injury (Dahl and Yarbrough, 1978). Thus, this deficit is intended to be covered by fiscal consultants such as public accountants, financial advisors, certified financial advisors and lawyers and therefore, brings additional fiscal onus on taxpayers.

Within the framework of Law on the Duties of Presidency of Income Administration No. 5345 that was published in the Official Gazette No. 25929 and dated 07.09.2005 in regard to the protection of taxpayers' rights, the expression taxpayers rights' was first used particularly in its first and fourth articles and the duties of Presidency of Income Administration such as the consideration of taxpayers' rights and the protection of taxpayers' rights were mentioned. The unit of taxpayer services was established within the framework of Article 8 of the law concerned.

The Group Directorate of Taxpayer Services was established and it is planned to serve large taxpayers by establishing separate services within the tax administration. Article 10 of the recent regulation includes the duties of the Department of Taxpayer Services. These duties are as follows:

- To perform activities that are required to promote consciousness of tax
- To inform taxpayers about their rights and duties arising from the tax legislation
- To take the necessary measures to conduct services for taxpayers and any communication rapidly and efficiently
- To ensure the protection of taxpayers' rights and to prepare the necessary background to this end
- To consider taxpayers' complaints and to take the necessary measures to this end
- To measure and evaluate taxpayer satisfaction

- To take the necessary measures to ensure the fair implementation of the tax legislation
- To perform other duties to be assigned by the Presidency

What the present rights of taxpayers are and whether they can have an advisor or a consultant during an audit have not been clearly stated with the recent regulation.

Recently some researchers indicate that the tax legislation should be applied to taxpayers justly, equally and in such a way that will not injure their personal rights that the general and regulatory procedures concerning the rights and duties of taxpayers should be put into force after being published in the Official Gazette, that the requirement that taxpayers should have the rights to learn and check information about themselves should be conditioned and that an additional article about taxpayers' rights should be added to Article 8 of the Tax Procedure Law (TPL).

When the tax legislation is scanned, it is seen that while there are many provisions characterized as tax duties about the liabilities required to be fulfilled by taxpayers, there are no well-organized sections about the rights of taxpayers and that there are various provisions in some laws such as the tax procedure law and administrative jurisdiction law.

The rights of taxpayers before, during and after an audit have been evaluated as follows in our still existing legislation.

#### **TAXPAYERS' RIGHTS BEFORE A TAX AUDIT**

**Case of force majeure:** Unless taxpayers and those who are responsible for tax fulfill their tax duties, they are confronted with penal sanctions. However, taxpayers and those who are responsible for tax cannot be held responsible for failing to fulfill their duties on time due to events which they cannot know or prevent beforehand. These events have been stated in Article 13 of the TPL. For instance, in the case of taxpayers, who fail to fulfill their tax duties for reasons such as severe accidents, serious diseases, being under arrest, disasters like fire, earthquake and water flood and for reasons such as compulsory and involuntary absence, the durations of tax do not run until such cases of force majeure disappear. The running of durations stops in favor of the taxpayer.

The concept of Force Majeure is a common concept of various fields of law. The use of a right which could not be used within its period due to force majeure or an unexpected situation is one of the general principles of law. Therefore, the periods concerning duties of tax halt



due to force majeure and go on running after this cause disappears (Ozbalci, 1988; Karakoc, 2004). As it is shown in the case of events that take place involuntarily and independent of taxpayers, taxpayers are not confronted with any penal applications due to their failure to fulfill their duties on time.

**Case of hard condition:** According to Article 17 of the TPL, some taxpayers, who are undergoing a hard condition can use the right of additional time in order for the Ministry of Finance to ensure the fulfillment of the duties on the condition that it does not exceed one fold of the legal duration.

Hard condition is a milder form of force majeure. That is to say, even if the disease of an accountant is not regarded as force majeure because this person is not the person addressed and not the responsible person against the tax office, it is considered as a hard condition and entitles taxpayers the right to be granted additional time (Tuncer, 2003). However, the real problem here is that it has not been clearly stated in law which cases will be considered as hard conditions. There are some sample practices that might be regarded as hard condition, i.e., granting of additional time in the event that large enterprises fail to meet their costs within the normal duration of 15 days and the granting of additional time for the submission of a declaration in the event that the properties left due to death are high in number and scattered (Ozbalci, 1988).

**Repentance and correction:** According to the provision regulated with Article 371 of the TPL within the framework of some conditions, no penalty for tax loss is deducted from the taxpayers who themselves inform the related authorities about the actions requiring the penalty of tax loss. In the event of occurrence of some conditions such as the fact that no audits have been launched before the taxpayer and that there has been no notice about the person concerned, the taxpayers that only pay the real tax and the default interest get rid of the penalty for tax loss. Nevertheless, those taxpayers who have petitioned the tax administration in order to benefit from repentance should submit a tax return within 15 days and pay the tax and repentance increase within the same period. In this way, the punishment of tax loss is not applied and the general irregularity punishments are applied (Kizilot *et al.*, 2006; Ozbalci, 1988). As it is understood, it is a provision that provides an opportunity for bona fide taxpayers to get rid of heavy tax punishments.

The provisions of Repentance and Correction enable those taxpayers who themselves admit their unlawful acts, requiring the crime of tax loss in the case of taxes based on a return to the authorities concerned, to get rid of

penal sanctions. However, in order to make use of these provisions, they have to fulfill the conditions stated in the law.

### TAXPAYERS' RIGHTS DURING A TAX AUDIT

A detailed investigation of the taxpayer by the tax administration in order to soundly determine and collect its tax claim is called a tax audit.

There are several rights of taxpayers during a tax audit. They are the rights included in the tax procedure law as well as the rights derived from the regulations included in the constitution and other laws.

The rights of taxpayers during a tax audit are included in the Constitution and in various laws. Some of these regulations aim to secure the basic rights of citizens and yield outcomes in terms of taxpayers' rights as well. Since their other rights have been sprinkled in various laws, it has been possible with a limited number of academic studies to reveal them and to state them systematically (Kizilot *et al.*, 2006; Donmez, 2004; Gokbel, 2000).

**Rights included in the tax procedure law:** When the provisions between Articles 134 and 141 of the Tax Procedure Law are examined, it is observed that the below-mentioned rights are granted to the taxpayer, about whom the audit is performed. These rights can be summarized as follows:

- The right to see the identity card of the auditing employee
- The right to request the performance of the audit in one's own business site
- The right to request the performance of the audit at the office
- The right to learn the subject of the audit
- The right to request to have the audit in the business site not performed out of working hours
- The right to request that the audit not prevent the activity of the business site
- The right to demand a document showing the realization of the audit when it is over
- The right to obtain a copy of the minutes
- The right to sign the minutes with reservation
- The right to request the calculation of the correct amount of tax
- The right to not sign the minutes
- The right to request adherence to tax confidentiality

Because the taxpayer-oriented approach is gradually becoming widespread in the understanding of taxation, it has been initiated to make regulations to declare and

announce taxpayers' rights in many countries. When the ways of declaration of taxpayers' rights and of their announcement to the public opinion are considered, it is observed that different methods varying by the democratic traditions, cultures and administrative understandings of countries have been adopted (Kizilot *et al.*, 2006). In Turkey, the declaration of taxpayer rights was created and it was initiated to provide information, depending on this understanding.

**Rights arising from other laws:** Although, the rights stated under this heading are not included openly in tax laws, they are rights which are included in the constitution and in general law rules and which should be granted legally to taxpayers:

- The right to deliver the books and documents with debit
- The right to be treated equally and in such a way that will protect competition and, in this context, the right to demand collective audits
- The right to demand an audit and a full audit
- The right to conduct the audit by means of a representative
- The right to have an advisor and/or a lawyer
- The right to remain silent and not be forced to show evidence against
- The right of defense
- The right to receive information at every phase of the audit
- The right to request the completion of the audit within a reasonable time, the right to be treated with respect and courtesy to one's personality
- The right to not be considered guilty until the final conviction
- The right to a fair trial

#### **TAXPAYERS' RIGHTS AFTER A TAX AUDIT**

Various provisions of the TPL No. 213 grant rights to taxpayers for the settlement of tax controversies at the administrative stage. There are also some rights that are granted to taxpayers after the tax audit is completed. These rights are mostly about the protection of taxpayers from penal sanctions regarding tax through agreement with the tax administration without taxpayers' application to the court.

**Correction of tax errors:** Articles 116-126 of the TPL regulate tax errors. The tax errors have been clearly conditioned by law as calculation errors and taxation errors. It should be ensured that tax errors be corrected at every stage of and after an audit (Sin, 2005).

There is no doubt that various controversies might occur between taxpayers and the administration due to errors arising from procedures with respect to taxation (Kizilot, 2003). Tax errors refer to the unjust demand or acceptance of a higher or lower amount of tax due to errors in tax calculations and in taxation (TPL, Art. 116). As it is shown, it is possible to classify these errors into calculation errors, base errors, errors in the amount of tax, repeated taxation, error by taxpayer himself, error about tax and error in the exemption period. What is important is the correct calculation of the amount of tax to be received from the taxpayer and the receipt of it from the correct taxpayer.

**Conciliation:** The institution of conciliation which provides the way of getting rid of some of the taxes and penalties released depending on additional and ex officio assessment is considered as an agreement between the taxpayer and the administration. Conciliation may be either before or after assessment.

Conciliation refers to the agreement of taxpayers and the administration as a result of mutual negotiation and bargain over the levied taxes and punishments. In conciliation, not only tax debt but also tax punishment end as much as the reconciled amount. However, provided that tax loss is caused due to actions of the crime of evasion, it is impossible to eliminate this punishment through conciliation (TPL, Additional art. 1). As it is understood from this, conciliation provides taxpayers with an opportunity to get rid of the original tax and tax debt and provides an opportunity for the solution of tax controversy with the administration without applying to the court. In this way, the cost to arise due to application to the court and unnecessary losses of labor and time are prevented.

**Discount in penalty:** In accordance with Article 376 of the TPL, in the event of the notification of the tax office about the payment of the debt within 30 days in the case of taxes that are assessed additionally, ex officio or administratively and in the case of irregularity and special irregularity penalties, half of the penalty of tax loss is discounted at the first time, 1/3 of those imposed during the following times is discounted and 1/3 of irregularity or special irregularity penalties is discounted.

Taxpayers are not allowed to benefit simultaneously from the opportunities of conciliation and discount in penalty. The obliged people can compare conciliation and discount in penalty and make their preference in line with their own interests (Pehlivan, 2008; Sin, 2005).

**Tax confidentiality:** According to this provision which is regulated in Article 5 of the TPL, the disclosure of information about taxpayers by those who have participated in the procedures concerning tax is prohibited. Nevertheless, finalized taxes and penalties and the amounts of those taxes and penalties which are outstanding although they are overdue can be declared by the Ministry of Finance. Within the framework of the same provision, it is stated that those who have been found, by a tax audit report, to have issued or used counterfeit documents and documents that are misleading because of their contents will be notified to the professional chambers. However, tax audit reports are administrative procedures and those who have duties have the right to discuss before the judicial body.

**Right to file a suit:** In the event that tax assessment is detected to be erroneous, those taxpayers who file a suit are unable to demand any default interest for the tax they previously paid. When it is considered that the settlement of tax cases takes time, unjust treatment of the taxpayer occurs.

The right to file a suit is a method to be applied in the event that the mutual negotiations between the taxpayer and the administration yield no conclusions, that all above-mentioned ways of getting rid of taxes and punishments have been used up and that the taxpayer believes he is right. Some cases should take place in order for the right to file a suit to arise in terms of taxpayers and people addressed for punishment, i.e. (Kizilot, 2003) the levying of an additional tax, the fining of a punishment and its notification to the person addressed, rejection of the application for the correction of the tax error and failure to have any conciliation. Nevertheless, application to the court generally requires spending more labor, money and time and it is beneficial for taxpayers to solve their problems at administrative stage as much as possible. Otherwise, the proof of one's being right might cause additional costs for reasons like court costs and because trial takes time in comparison to an administrative solution.

## RESULTS AND DISCUSSION

As a result of a comparison of the taxpayers' rights supported with legal regulations in various countries of the world with the understanding of existing taxpayers' rights in Turkey, several findings were obtained. These findings might be listed as follows:

In the USA, when, as a result of letter rulings demanded by taxpayers in doubtful cases, the tax office

states that tax debt will not arise, no interests or punishments can be demanded if it later appears that tax have to be taken (<http://www.irs.gov>). Nevertheless, in a similar case in Turkey, a delay interest is demanded from the taxpayer (TPL, Art. 369).

In addition, problem solving authorities (ombudsman in England) work to solve tax problems in many states in the USA and in England whereas no such ombudsman institution has been developed in Turkey. In Colorado, the USA, the budget expenses grow at the rates of population size and inflation rate and the need to increase tax incomes is less (<http://www.billhobbs.com>) while in Turkey, tax income might mostly be needed to cover budget deficits and taxpayers might be confronted with heavier tax burdens, for no such limitation of expenditure is applied.

In Japan, the declaration of taxpayer rights was issued, considering that taxpayers are required to be regarded as customers upon the legal regulations on taxpayer-oriented taxation brought in 2002. Nevertheless, it might be concluded here that tax privacy was not adequately considered because the personal information (such as incomes of spouses and physical disability status of children) of taxpayers taxed especially through stoppage ([http://www.tax-eye.jp/pages/index\\_english.html](http://www.tax-eye.jp/pages/index_english.html)) was provided, whereas in Turkey, more precise provisions about not to disclose the information about the personal status of taxpayers have been included in legal regulations under the heading tax privacy (TPL, Art. 5).

While in legal regulations applied regarding taxpayers' rights, it is stated that law provisions have to be stable in order for taxpayers not to pay more tax than the amount conditioned by law in Montenegro (<http://www.nispa.sk/news/papers/wg5/Goranovic.rtf>), the authorization of the Council of Ministers to increase or decrease tax rates without the enactment of any tax laws in Turkey drives taxpayers to uncertainty about the amount of tax they will pay (Constitution, Art. 73).

In Germany, taxpayers are notified beforehand that they will be audited while tax audits are initiated without any prior notifications to taxpayers in Turkey (Gokbel, 2000). It is understood that the taxpayers rights generally regulated in the OECD reports are also included in the Turkish Tax System (OECD, 1990).

Within the framework of Article 1 of the 4th Additional protocol of the European Convention on Human Rights, it has been conditioned that no one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation, whereas in Turkey, in accordance with Article 359 of the TPL, the issue of

application of a prison sentence to taxpayers, who have evaded tax, indicates the state's performance of taxation using the public authority and the presence of a different relationship from special legal relationships.

In Turkey, the new regulation brought in 2005 lists the duties of the established unit of taxpayer services. Although, the term taxpayers rights is used, the rights are not listed in detail. For instance, the issue of whether they can have any advisors or consultants during the audit is not mentioned. Therefore, no clear applications can be carried out to this end.

The case of halting of periods concerning the fulfillment of a tax debt due to the presence of force majeure in Turkey is also observed in some countries under examination. However, application of the granting of additional time in the event of a hard condition in Turkey was not clearly encountered in the other countries under examination.

In Turkey, the rights granted to taxpayers during a tax audit mentioned in the Tax Procedure Law were revealed as a result of the individual examination of provisions on tax audit between Article 134 and Article 141 and in the event that they are included in another section entitled taxpayers' rights, taxpayers will be able to be informed more clearly.

The correction of tax errors is a provision that is included in the existing declarations of taxpayer rights in the countries under examination, while it is included between Article 116 and Article 126 in the TPL in Turkey and it has been inferred that there is a right to demand the correction of errors.

In the countries under examination, conciliation is used to enable the solution of tax controversies without application to the court. This method is also applied in Turkey. However, it can be discussed that no clear legal regulations have been made on how much of the original tax and its punishments will be deleted in the countries under examination and in Turkey.

No clear information could be accessed with respect to what kind of an application is present in the countries under examination. In Turkey, however, taxpayers cannot demand the payment of a delay interest by the state while taking back those extra taxes which the state has erroneously collected. Nevertheless, it might be evaluated that in a state of law, it has to be behaved in compliance with justice also in cases between people and the state and if a delay interest is taken from citizens for those taxes which are paid late to the state, the state's payment of a delay interest to the taxpayer for those extra taxes it has erroneously collected might be considered as an appropriate application.

## CONCLUSION

Some countries protect taxpayers in the constitution through general and even provisions specific to tax, in legislation governing the tax administration and/or in a taxpayers' charter. The mechanisms for protecting taxpayers include the courts, an ombudsman or a specific taxpayer advocate or adjudicator. Taxpayers have rights and freedoms arising from citizenship, obligation and human rights, besides their rights arising from laws. All these rights and freedoms should primarily be respected by the administration and the promotional and training activities on the establishment of these rights and freedoms that the administration provides for its own employees, the taxpayers and professional members should be enhanced.

The fiscal system established by the state should be built on respecting the universal rights of taxpayers primarily depending on the fact that taxpayers are human beings within the economy and this structure should always be preserved.

Every taxpayer should be entitled to learn the existing information about himself at the tax office, to check them and if available, to request the correction of erroneous information.

Even though various regulations have recently been made and information has been provided regarding taxpayers' rights and their implementations in Turkey, the activities on this matter have just started in comparison to many countries. Thus, despite the efforts to create a legal ground, it is difficult to say that taxpayers' rights are fully implemented and used by taxpayers in practice. In order to implement the rights concerned, the incomplete legal regulations have to be completed without delay, a provision entitled taxpayers rights has to be included in the tax procedure laws and all the rights have to be itemized under this provision. Actions should be performed to announce the detailed information likely to be required in practice through regulations and notifications to be issued in addition to legal regulations and, in this way, to provide a unity of implementation in terms of tax implementers.

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