

An assessment on the condition of payment of taxes accrued on the tax returns submitted in the last two years and the year in which the reduction is calculated within the context of tax reduction for compliant taxpayers

I. Introduction

In our tax law, so as to ensure effective tax collection, penalties are already in place, however no rewards were provided for compliant taxpayers previously. This attitude has been changed through the re-arrangement of repetitive Article 121 within the Income Tax Law no.193 (GVK) and the introduction of a 5 percent reduction to the taxpayers meeting certain conditions related to tax duties.

II. Reduction for compliant taxpayers in general and scope

The framework for tax reduction implementation in terms of tax types, taxpayers and amounts are indicated within the 1st paragraph of the re-arranged Article 121 of GVK. Tax reduction was limited with income tax and corporate tax. Taxpayers that are entitled to benefit from the aforementioned tax reduction implementation are the income taxpayers and corporate taxpayers. However, for taxpayers, coverage is limited on a variety of issues such as income types and the sector in which they operate. So that only income taxpayers can benefit from the tax reductions due to their commercial, agricultural and professional activities. In that case, it is concluded that the taxpayers obtaining other income elements mentioned in the GVK are excluded from the scope of tax reduction. In terms of corporate taxpayers, no distinction has been made on earnings and revenue types, but corporate taxpayers dealing with activities in the financial and banking sectors, insurance and reinsurance companies, pension companies and pension mutual funds are excluded from the scope of tax reduction.

Consequently, tax reductions are limited in terms of amount within the repetitive Article 121 of the GVK. The concerning upper limit is updated according to the revaluation rate and applied as 1.200.000 Turkish Liras for the year 2019

III. Terms of tax reduction to compliant taxpayers

The conditions sought for benefitting from the opportunity of tax reduction are listed in three sub-items within the 2nd paragraph of the repetitive Article 121 of GVK. In order to enable taxpayers to benefit from the tax reduction, they should be meeting the conditions indicated below;

- Tax returns for the year in which the reduction will be calculated and the previous two years should be filed on time,
- Taxes accrued on the concerning tax returns should be paid on time as well,
- There should not be any ex officio, additional or administrative assessment on the taxpayer regarding the taxes subject to declaration concerning the year in which the tax return belongs and the previous two years;
- Any tax debt exceeding TL 1,000 including tax penalties on the submission date of the concerning tax return should not exist.

The repetitive Article 121 of GVK has the potential to cause various problems in practice in terms of the legislative technique and the unclear terms used. In the rest of the study, the requirement of paying taxes accrued on the tax returns submitted in the last two years and the year in which the reduction is calculated, which is observed to cause frequent problems in practice, will be emphasized.

IV. Condition of paying taxes accrued on the tax returns submitted in the last two years and the year in which the reduction is calculated

So as to ensure that the subject matter is fully understood, the scope should be determined in terms of time and tax types for the wording of “tax returns for the year in which the reduction shall be calculated and the last two years before that year “.

➤ Scope in terms of period

The scope in terms of period is clear enough to require no interpretation. The aforementioned provision refers to a period covering the year in which the reduction will be calculated and the previous two years.

For instance; 2018, the year that the tax return belongs to and subject to reduction and the two previous years of 2017 and 2016 will be taken into consideration when checking whether the taxpayer submitting tax return for 2018 fulfills the concerning requirement or not.

➤ Scope in terms of taxes

In the 5th paragraph of the repetitive Article 121 within the GVK, it's indicated as a rule that the terms of ‘tax returns and tax’ should be understood as the tax returns to be submitted to the Treasury and Finance Ministry and the taxes accrued on these returns. Taxes that are accrued through declaration are essentially taxes on which the declaration-based assessment procedure applies.

In practice, one of the problems encountered regarding the scope of this condition in terms of taxes is fixed stamp taxes arising from tax returns and not paid by taxpayers. The tax administration gives guidance by defending that stamp tax is a tax subject to declaration and fixed stamp taxes arising from tax returns accrued on these returns; the taxpayer's benefitting from tax reduction is prevented if they did not pay the fixed stamp tax arising from tax return on the grounds that they did not meet this condition. Where as, the approach of the tax administration extends the scope of the aforementioned clause in terms of tax types beyond that envisaged in the law. As detected above, the scope of the concerning requirement in terms of taxes refer to the taxes on which the assessment procedure based on declaration is applicable. Although the assessment procedure based on declaration is accepted in stamp tax implementation, stamp taxes arising from tax returns are not assessed and accrue on any declaration.

It is not possible to fully determine the opinion of the judiciary on this subject, which can be considered quite up-to-date, an evaluation can be made in the light of the decision of Aydin Tax Court and the decision of Ankara 4th Tax Court to suspend the execution:

- Both courts have ruled that the lack of payment of the stamp tax arising from the tax return does not violate the concerning condition.
- Both courts find the Administration's relevant implementation contrary to the purpose of the regulation.

VI. Conclusion

In this article, we tried to remove uncertainties about condition of paying taxes accrued on the tax returns submitted in the last two years and the year in which the reduction is calculated in terms of period and tax type.

It's detected that the scope of the concerning condition in terms of tax types is limited with only the taxes that are subject to declaration. This result can be confirmed from the judicial decisions regarding the tax administration implementation based on the argument that the stamp tax arising from the tax return is included in the scope.

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