

Statute of limitation application in terms of resource utilization support fund

Introduction

Resource Utilization Support Fund ("RUSF"), which can be characterized as a tax alike financial obligation arising due to financial transactions, has been generated according to Cabinet Decree on RUSF ("CD") dated 12.05.1988 and numbered 88/12944 and entered into force through being published on Official Gazette dated 07.06.1988 and numbered 19835.

A legal gap arises in terms of RUSF implementations since the decree, attached to CD, constituting legal basis for RUSF, has been subject to amendments many times and such gap significantly impacts issues regarding statute of limitation.

A. Resource utilization support fund in general terms

The subject of RUSF is credit transactions in the most general terms. In more concrete terms, the subject of RUSF consists of loans extended by banks and financial institutions in Turkey and abroad, and (future-forward) import transactions, the payment of which is evaluated as credit. Therefore, the base of RUSF consists of interest amount, transaction amount or exchange rate difference. It can be said that RUSF is a tax-like financial obligation levied on financial transactions, in addition to BITT, as a financial burden mainly on financial transactions and on a transaction basis.

B. Statute of limitation in resource utilization support fund applications

As it is known, there are two types of statute of limitations in tax law: the statute of limitations for assessment and statute of limitations for collection. The first of these, the statute of limitations, which expresses the time limit for the assessment of tax, is five years starting from the calendar year following the generation of the tax claim, pursuant to Article 114 of the Tax Procedure Law No. 213 ("TPL"). The collection statute of limitation, regulated in the Law No. 6183 on Collection Procedure of Public Receivables ("LCPPR"), refers to the collection period of the tax that has reached the payment due date.

1. Statute of limitation for assessment in terms of RUSF

In general, there is no clear regulation on statute of limitation for assessment in the framework of legislation constituting basis of RUSF levied on credit transactions and statute of limitation for assessment issue has an uncertainty. In addition, according to Cabinet Decree numbered 2014/6852, to be applied in terms of surcharge in forward import, published on Official Gazette dated 16.10.2014 and numbered 29147, it is stipulated that provisions of Customs Law shall be applicable on surcharges which are never paid or the full of amount is not paid related to imported commodity and surcharges which are inadvertently or overpaid for imported commodity as of 23.10.2014. In this scope, it is understood that statute of limitation provisions of Customs Law shall be applied for transactions to be made by customs administrations regarding RUSF and RUSF deductions shall be collected according to procedures included in Customs Law instead of provisions of TPL and statute of limitation, which was previously five years for forward

import, is applied as three years in terms of RUSF deductions according to second paragraph of article 197 of Customs Law numbered 4458.¹

Adjudgments established regarding the case are not adequate to mention a precedent in terms of quality and quantity. In addition, it is concluded according to decision of 7th Department of State Council² regarding appeal request towards reversal of decision of first instance court adjudged the cancellation of the transaction regarding tacit rejection of appeals with respect to RUSF accrual made since the payment type of commodity imported through declaration of release for free circulation registered on behalf of claimant because it is notified upon the expiration of 3 years of statute of limitation that RUSF is subject to five year statute of limitation mentioned under article 114 of TPL as well as other funds.

2. Collection statute of limitation in terms of RUSF

On the other hand, there is no gap such as the gap in assessment statute of limitation in terms of collection statute of limitation in terms of RUSF. Yet, there is not dispute regarding the implementation of provisions of Law numbered 6183 on Collection Procedures of Public Receivables (“LCPPR”) during collection process since RUSF is a public receivable³. In this context, it is required to take into account 5 years statute of limitation foreseen under article 102 regulating collection of collection statute of limitation of the above Law according to article 1 of LCPPR in terms of collection statute of limitation with respect to RUSF which is a public receivable.

Conclusion

Legal gap continues in terms of assessment statute of limitation in RUSF in scope of our legislation and a consensus has not been reached yet in this framework. In fact, certain authors and General Directorate of Customs claim that three years of statute of limitation, regulated under customs legislation of Cabinet Decree numbered 2014/6852, shall be applied. In return, it is possible to mention that TPL provisions shall be applicable regarding the case in the light of above adjudgment of 7th Department of State Council. On the other hand, there is no hesitation regarding the implementation of 5 years statute of limitation foreseen under LCPPR in terms of collection statute of limitation with respect to RUSF application.

¹ AKDOĞAN, Hasan, Penalties and Amended Statute of Limitation for RUSF Deductions, Dünya Gazetesi, 22.01.2015.

² Decision, dated 26.02.2016 and numbered E.2012/7741 and K.2016/1970, of 7th Department of State Council.

³ Cevdet Bozkurt, “Statute of Limitation Problem in Resource Utilization Support Fund (RUSF) Collected in Import”, Mali Çözüm, No: 100, (July-August 2010), p. 127-138.).

As a consequence, existence of different opinions regarding assessment statute of limitation application in terms of RUSF set forth the requirement to make a legal regulation in order to ensure legal certainty and eliminate the legal gap regarding the case as a necessity of rule of law principle.

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