

The Application of Invitation to Explanation in Turkish Tax System: Scope, Aims, and Assessments

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Abstract

In this article, definition, aims, conditions and scope of invitation to explanation bringing as a new application and as an administrative solution way of tax disputes to Turkish tax legislation by reorganizing within the scope of 370th abrogated article of Turkish Tax Procedural Act have been explained; predetermination and conditions, explanation assessment commission and assessment of explanation included in this application have been revealed roughly and they have been assessed by considering different perspectives.

Keywords: Tax Procedural Act; Invitation to Explanation; Voluntary Compliance to Tax.

1. Introduction

The application of invitation to explanation is included in the Turkish Tax System by reorganizing the 370th abrogated article of tax procedural act¹. The scope and shape of an invitation to explanation, the quality of predetermination, the authorities assessing the explanation and realizing the invitation to explanation, the persons invited, information and documents used in explanation and other procedures and principles are determined with 482 items numbered Tax Procedural Act General Communiqué.

The invitation to explanation is to demand an explanation from taxpayers for the predeterminations related to the implications indicating tax loss. While listening taxpayers have an importance in terms of taxpayers' right before making a transaction about taxpayers, the subjects affecting the tax system negatively are drawn attention.

In this study, firstly, aims, conditions, and scope of application of invitation to explanation have been explained and predetermination and its conditions included in this application, explanation assessment commission and assessment of explanation are revealed in general terms. After that, this application will be assessed in terms of organization place, coordinations and authorities of commissions, reconciliation, discount in punishment and resorting to the jurisdiction, equality and legality principles and lastly voluntary compliance to tax. And it should be said that we give the information about the invitation to an explanation by using the Turkish Tax System and Acts.

2. Definition, Aims and Conditions of Invitation to Explanation

The invitation to explanation is to demand from taxpayers for the predeterminations related to implications indicating tax loss. According to 370th article of Tax Procedural Act, invitation to explanation means giving information from taxpayers about predeterminations related to implications indicating tax loss before starting tax auditing or dispatching valuation commission and as a result of this, if it is seen that there is no tax loss not exposing tax auditing or not dispatching to valuation commission; and within 15 days after explanation under the condition of completing the deficiencies and paying overdue taxes with a default interest, applying tax loss as the rate of 20 %. As seen, an invitation to explanation prevents taxpayers from dispatching to valuation commission or tax auditing and if there is tax loss it protects taxpayers from heavier punishments by applying deductible punishment under obvious conditions.

It is determined in 482 item numbered Tax procedural Act General Communiqué that with invitation to explanation, decreasing discrepancy between tax administration and taxpayers, directing time of tax administration to more effective and productive areas, more contribution by taxpayers to determine the real nature of events and by this way, increasing voluntary compliance to tax is aimed.

¹ 6728 numbered act related to making change in some acts for the aim of investment environment has been published in 9th of August 2016 dated and 29796 numbered official gazette.

The determination of the real nature of events with the invitation to explanation provides increasing in efficiency and productivity in terms of tax administrations and increasing voluntary compliance to tax in terms of taxpayers. However, taxation costs resulted from the application can reveal because as a result of examination and auditing, if tax loss is determined, taxpayers are exposed to penalized assessment; transactions realized by tax administrations to provide trueness of tax can extend the time and this increases tax compliance costs.

The following conditions should be met to benefit invitation to explanation:

- Tax auditing about taxpayers should not be started or taxpayers should not be dispatched to valuation commission,
- Predeterminations should be done by authorized entities related to implications of tax loss,
- There should not be notified until the determination date,
- In the predeterminations done for the possibility of using deceptive document in terms of its inclusion or using fake document, the amount of deceptive document in terms of its inclusion or fake document cannot exceed 70.000 Turkish Liras (TL) for every document and it cannot exceed 5 % of goods and services taxpayers purchases in the related year.

3. The Scope of Invitation to Explanation

According to 370/4. article of tax procedural act, the authority to determine the scope of invitation to explanation belongs to Turkey Republic Ministry of Treasury and Turkey Republic Ministry of Finance and within this frame, the subjects on which the application of invitation to explanation is applied and the persons who are invited to explanation have been determined by ministry with 482 items numbered tax procedural act general communiqué. the subjects on which the application of invitation to explanation is applied and the persons who are invited to explanation are ranked in a broad sense in tax procedural act general communiqué.

Within this frame, related taxpayers can be invited to explanation in the subjects of the analysis of Ba-Bs notification forms, the comparison between sale information of credit card and Value Added Tax (VAT) declarations, the comparison annual declarations and tax declaration and premium and service declarations, not declaring self-employment income and VAT, exceeding discount on annual declarations over legal rates, not making stoppage over distributed profits, knocking losses of previous periods off illegally, not showing participation gain in the accounts, the application of premises and participation shares sale gain, hidden capital, interests which should be calculated for the receivables from partners, closing right of partners or partners shares out, under-declaring purchase/sale amount of realty, closing gains from appreciation from closing realties out, declaring real property income, using fake document or deceptive documents in terms of its inclusion.

4. Predeterminations and Conditions in Invitation to Explanation

According to 370/2 article of tax procedural act, if the explanation is made in 15 days from the announcement date of invitation to explanation letter, the followings are realized:

- As a result of the explanation made by taxpayers, if tax administration understands that there is no tax loss, taxpayers are not exposed to tax audit or they are not dispatched to valuation commission,
- Tax-loss punishment is fined 20 % over tax loss if tax declaration which is never given is given, if tax declaration which is given as wrong or lack is completed or corrected and if overdue taxes are paid at the rate of default interest determined in 51st article of Act on the Procedure for the Collection of Public Receivables for every month and fraction paid is late. This situation cannot hinder a tax audit or additional assessment if necessary.

Deductible punishment application as said above is possible in the event predetermination is realized by authorized entities concerning that there is tax loss. So, what predetermination is and what its conditions are ought to be examined.

According to 482 item numbered tax procedural act general communique, predetermination is a determination realized by commission in that tax loss can be revealed and that taxpayer can be invited as a result of sending information, findings or data obtained directly or indirectly by the entities which are authorized to collect information from taxpayers or other natural persons and legal persons and which are authorized to make tax audit within the scope of authority tax acts give to explanation assessment commission.

Predetermination should be realized by authorized entities. Authorized entity means the commission (Explanation Assessment Commission) established within the frame of Revenue Administration (RA) or Turkish Tax Inspection Board (TTIB) which finally decides to the subject of explanation by assessing the explanation and which make an invitation to explanation.

The conditions of predetermination are as follows:

- Tax audit should not be started,
- Taxpayers should not be dispatched to valuation commission,
- It should not be notified.

5. Explanation Assessment Commission

In the 370/4th article of tax procedural act, the Ministry of Finance is authorized to determine the entity making an invitation to explanation and based on this authority, a sufficient number of explanations assessment commission is formed within the frame of RA and TTIB.

Explanation Assessment Commission established within the body of RA work dependent on the directorate of tax administration and district treasuries based on their related areas. It is possible to establish more than one committee within the body of the directorate of tax administration.

Explanation Assessment Commission formed in group presidencies seen as suitable by TTIB makes up of three tax inspectors- one of them is determined as chairman of the commission. In addition, a sufficient substitute member is selected for these commissions. It is possible to establish more than one committee within the frame of TTIB and group presidencies.

Explanation Assessment Commission does the following things:

- From the perspective of information, findings or data sent to it, it makes predetermination concerning whether there is tax loss or not,
- It sends to taxpayers about whom are made predetermination explanation invitation letter including necessary explanations
- It ends the explanations by assessing them.

6. Assessment of Explanation

According to 482 items numbered tax procedural act general communique, taxpayers' explanation invitation letter is sent need to make an explanation to commission within 15 days from the sending date to benefit from provisions about the invitation to explanation. The explanation made by the taxpayer within the time has to be ended by assessing not later than 10 days. With this transaction, the tax administration aims at deciding a decision fast.

If the explanation is right, tax-loss punishment is fined at the rate of 20 % over the loss under the following conditions:

- Giving tax declarations which are never given within 15 days from the date explanation is made,
- Completing or correcting tax declaration which is prepared as missing or wrong,
- Paying taxes overdue with its explanation rise for every month and fraction payment is late (Explanation rise is a rise applied in the rate determined in 51st article of Act on the Procedure for the Collection of Public receivables).

Whether the explanation can be found sufficient or not dependent on the explanation taxpayer can make concerning tax loss.

If the explanation is found as sufficient, a tax audit or dispatching the valuation commission cannot be realized. That's why, it can be stated that invitation to explanation decreases the burden for both parties (taxpayers and tax administration) in that invitation to explanation protects tax administration to collect and assessment findings related to offense or fault and in that it saves taxpayers from exposing to such kind of transactions (Bayraklı and Hatipoğlu, 2018: 578).

If the explanation is found as insufficient, this situation is informed to the taxpayer. Upon this, the taxpayer pays tax loss punishment as 20 % over tax loss before ending 15 days from the beginning of the date issued by the administration under the following conditions:

- Giving tax declarations never given,
- Completing or correcting tax declaration missing or fault,
- Paying overdue taxes with explanation rise.

Nevertheless, if the necessary transactions are not realized by the taxpayer, the taxpayer is exposed to a tax audit or dispatched to the valuation commission.

7. Assessments on the Application of Invitation to Explanation

If the persons who are invited to make an explanation do not make any explanation, this cannot be counted as offense and fault.

7.1. In terms of the Place of Notion and Regulation

413th article of tax procedural act has a title as “Demand of Taxpayers for Explanation” and in the 1st paragraph of this article, the provision “*Taxpayers... can desire explanation*” are placed. At this place, the notion of explanation is used in the meaning of written explanations taxpayers want from tax administration for the subjects taxpayers hesitate and for the subjects unclear in terms of their tax situations and tax applications. Because “Explanation” included in the 413th article of tax procedural act and “Invitation to Explanation” included in the 370th article of tax procedural act can cause sophistication, it is more suitable for new regulation to put into effect.

The application of invitation to explanation reorganized divergently to codification technique with 6728 numbered act in abrogated 370th article of tax procedural act in 01.01.1981 as a result of 2365 numbered act and this situation means that an abrogated article resuscitates and hence it needs to organize as an article of 370/A².

On the other hand, 370th article has organized in 4th book of tax procedural act titled as “Punishment Provisions” of 3rd section titled as “Fine, Payment and Annulment of Tax Punishment” of 2nd part titles as “Paying Punishments and Annulment” and this situation becomes the debate of whether the application of invitation to explanation abolishes the punishment or not as polemic. In other words, legislator thinks that invitation to explanation is an application abolishing the punishment. However, punishments are not abolished completely because the punishments are reduced by approximately 20 % by means of this application (Bozdoğan and Çataloluk, 2018: 51). Within this scope, it can be stated that this application is a fault in terms of its regulated area and regulation ought to be done by the legislator.

² Bumin Doğrusöz, İzaha Davet”, <https://www.dunya.com/kose-yazisi/izaha-davet/29101>, Access Date: 30.01.2019.

7.2. In Terms of Authorities and Coordination of Explanation Assessment Commissions

When looked at the explanations in 482 items numbered tax procedural act general communique, a sufficient number of Explanation Assessment Commissions are formed within the body of RA and TTIB based on the authorities given to the Ministry of Finance.

Therefore, there can be more than one explanation demand for the same subject dependent on coming information from different channels to assessment commissions. For instance, after information demand by invitation to explanation commission formed within the body of RA as a result of controls realized by bank credit registrations, explanation is demanded for the same subject also as a result of risk analysis realized by TTIB and this situation can cause repeating explanation by taxpayers for the same subject and it causes costs to increase in terms of taxpayers and tax administrations (Gökkaya, 2017: 34). In terms of the indicated problem, the term related to predeterminations realized by explanation assessment commissions and the transactions as a result of the assessment with the subject information should be placed in the case of taxpayer transiently over data processing systems (Gökkaya, 2017: 34).

In the assessment realized by explanation assessment commission, the limit and concreteness indicating that there is tax loss should be determined clearly (Fahran, 2017: 103; Gökkaya, 2017: 34). In addition, due to the reasons like that the decisions about whether the explanation is enough or not are out of mathematics and concrete data and like that it makes difficult to decide objectively in the areas, not including precision, the application of invitation to explanation suffers in providing efficiency (Buyrukoğlu and Toparlak, 2018: 65).

7.3. In terms of Reconciliation, Reduction in Punishment and Resorting to the Jurisdiction

Limited by the determination of invitation subject, in the 370/1st article of tax procedural act, it is stated that taxpayers cannot benefit remorse provisions in the 371st article of tax procedural act. On the other hand, because of the invitation to explain whether the way of reconciliation against of punishment and tax calculated in return for given declarations is applied or not, whether the reduction in punishment is benefitted or not and whether it is applied to jurisdiction or not can be debated.

Because tax loss punishment is fined at the rate of 20 % over the loss under the conditions included in the act in the invitation to explanation, there is a similarity between the application of invitation to explanation and the application of reduction in punishment. However, while it can be given up to apply to jurisdiction in the application of reduction in punishment, there is no such an application in the invitation to explanation. According to the 1st article of tax procedural act, reconciliation can be applied in terms of taxes calculated by complementary tax assessment, ex officio tax calculation and by the administration and in terms of tax loss punishments. Hence, within the frame of the 370th article of tax procedural act, because complementary tax assessment, ex officio tax calculation, and administrative tax assessment cannot be discussed, the way of reconciliation cannot be applied in punishments and taxes calculated by the taxpayer's declaration. However, it is stated in the 370th article of tax procedural act that taxpayers can be

applied to the way of reconciliation after calculation on rescript of notifications related to tax loss punishment fined at the rate of 20 %.

While taxpayers cannot apply to the jurisdiction against the basis they declare, it is possible to apply to the jurisdiction in terms of the declarations given with mental reservation. If taxpayer thinks that explanation is enough, the declaration is suitable to law and there is no tax loss, there are no obstacles for taxpayer to give declaration with mental reservation, to correct or to complete if there is deficiency and to pay the taxes with an explanation rise (Başaran Yavaşlar, 2017: 7). On the other hand, as explained above, for the rescript of notifications related to tax loss punishment fined at the rate of 20 %, taxpayers can apply to the way of reconciliation after calculation. That's why, it can be applied to the jurisdiction against of calculation or collection on the declaration with mental reservation and tax loss punishment fined as reduced or collection of punishment (Başaran Yavaşlar, 2017: 7).

7.4. In Terms of Equality and Legality

Based on the authority given to the Ministry of Finance in 370/4th of tax procedural act, the subjects for which invitation to explanation application is used and who is invited to explanation is determined by 482 items numbered tax procedural act general communiqué.

The subjects the application of invitation to explanation is used and the persons who are invited to explanation should be determined based on whether the explanation is really necessary or not. For this reason, taxpayers not within this scope are possible to assert the claim of the contrariety of the principle of equality. In addition, the possibility of subjective assessment can increase the fort the following reasons:

- No measurements related to explanation assessment and for this reason the possibility of revealing subjective conclusion,
- Hence, beclouding to watch vertical-horizontal equality,
- And there is no difficulty for auditing members to transfer findings and documents to valuation commission.

From the statement “*implications indicating that there is tax loss*” including in the application of invitation to explanation, it can be stated that this provision includes just tax loss; it excludes general and special irregularities and hence, it causes it is not reached to the whole taxpayers who cause tax punishment and because this event causes discrimination among taxpayers, the principle of legality can be damaged (Buyrukoğlu and Toparlak, 2018: 65).

The provision of “.... *Taxpayers can be invited to explanation*” is included in the 370/1st article of tax procedural act and the authority determining the taxpayers who are invited is given to ministry in 370/4th article of tax procedural act. That's why, the ministry can be invited the taxpayers it wants and it is impossible to an invitation to explanation right in terms of taxpayers (Başaran Yavaşlar, 2017: 10).

The application of invitation to explanation ought to be assessed in terms of the principle of legality. In this application, tax-loss punishment is fined at the rate of 20 % over the tax loss under the condition that it is

paid with the explanation rise at the same time. However, it is decided with a rescript in which situations an explanation is demanded from taxpayers and thus, taxpayers pay tax lossless. In other words, even it is directly, who pays less tax loss punishment is decided by tax administration (Rençber, 2018: 146).

Nevertheless, it is impossible for tax administration to make regulatory transaction (a regulation in the area of fault) through general communiqué and thus, in which situations explanation is demanded from taxpayers should be regulated by act; taxpayer should deserve to reduction as is in the reduction application in punishments and tax administration should not have discretionary power in this (Rençber, 2018: 147).

In the 370/4th article of tax procedural act, the Ministry of Finance is authorized to determine procedures and principles related to application and information and documents used in the explanation, taxpayers invited, entities inviting and assessing the explanation, the scope, and shape of an invitation to explanation and quality of predetermination.

That the authority told above is given to the Ministry of Finance is contrary to the principle of legality and transferring legislative prerogative ban (Başaran Yavaşlar, 2017: 10). Invitation to explanation is associated with property right in the situations of auditing taxpayer, dispatching to valuation commission with the right of privacy and personal data protection, additional calculation and/or reduced/discounts punishment fine and every subject related to fundamental rights and freedoms should be regulated by legislator and authority for his subjects cannot be given to the executive organ (Başaran Yavaşlar, 2017: 10).

7.5. In Terms of Tax Compliance

With the application of invitation to explanation, it is aimed at decreasing the burden of tax administration and protecting taxpayers by forming a premise dam against of tax punishments taxpayers meet (Gülten, 2016: 91) and by this way it is tried to increase voluntary compliance to tax by taxpayers.

Thus, before tax auditing and dispatching to valuation commission, the regulation realized provides taxpayers to explain their risky situations to tax administration and to correct their deficiencies with reduced punishment if necessary and it is seen that it has affirmative effects in terms of tax compliance (Erdem, 2017: 150).

Invitation of taxpayers to explanation is an important application providing tax compliance in terms of destroying uncertainties of tax audit disturbing taxpayers (Sağır, 2017: 96). Before a negative transaction is realized about taxpayer, listening by tax administration and providing an opportunity of explanation are necessities of good governance and state of law respectful for taxpayers' right and these are affirmative in terms of realizing procedural economy, increasing cooperation with taxpayer/voluntary compliance and by this way effective use of public sources (Başaran Yavaşlar, 2017: 13). However, with this application, even if increasing voluntary compliance to tax is aimed and tax administration tries to negotiate with the taxpayers who do not have tax consciousness it creates a negativity in terms of taxpayers who pay their taxes regularly or timely because it is possible to decrease the punishment to zero as a result of the applications of reconciliation commission after calculation according to 482 item numbered tax procedural

act general communiqué (Buyrukoğlu and Toparlak, 2018: 64). Then, there can be seen tax evasion of taxpayers whose faith in tax administration decrease.

It is seen that unwillingness of taxpayers to audit is right when considered that tax audit time is one year in complete audit, six months in limited audit and in obvious conditions this time can extend; and thus, the application of invitation to explanation has an importance in terms of voluntary compliance to tax because it provides the opportunity of saving to taxpayers required responsibilities of auditing period of taxpayers (Sağır, 2017: 96).

8. Conclusion

Invitation to explanation is to demand an explanation from taxpayers by authorized entities related to predeterminations realized by the authorized entities concerning the implications that there is tax loss.

With the application of invitation to explanation, it is aimed at decreasing the discrepancy between tax administration and taxpayers, directing time of tax administration to more effective and productive areas, the contribution of taxpayers to the determination of real nature of situations and thereby increasing voluntary compliance to tax.

When examined the application in terms of aims, scope, conditions and the place in legislation, it can be criticized whether it provides the desired results or not in terms of regulating with a different name, regulating as a new article in the act, coordination, and authorities of invitation to explanation commissions, the principles of legality and equality in taxation, and tax compliance.

Namely, the Notion of explanation in the 413th article of tax procedural act and the Notion of invitation to the explanation in the 370th article of tax procedural act can cause complexity. That's why applying invitation to explanation with a different name can eradicate this complexity and regulate with a different article becomes suitable to codification technique. Determining authorities and duties of explanation assessment commissions clearly prevents more than one demand for the same subject.

On the other hand, in the application of invitation to explanation, because giving the authorities determining procedures and principles concerning information, documents and application used in the explanation, entity assessing the explanation and making invitation to Ministry of Finance can cause discrepancy among taxpayers, this is seen as contrary to the principles of legality and equality.

In addition, within the frame of predeterminations, the invitation of taxpayers for explanation can be a benefit in terms of that taxpayers explain their situations to tax administration and re provided their deficiencies with reduced punishment if necessary and that voluntary compliance to tax can be provided because tax audit eradicates uncertainties.

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