EXCHANGE OF INFORMATION VERSUS TAX SOLUTION OF EQUIVALENT EFFECT -
Turkey’s National Report

Prof. Dr. Funda BASARAN YAVASLAR

1. The sources of exchange of information
1.1. Generally
In spite of the growing importance of exchange of information as a type of international cooperation of states against the tax evasion and avoidance, in Turkish Domestic Law, the legal sources in relation to international exchange of information are limited.

The regulations about exchange of information in tax matters are located in two separate Codes in Turkish Law: in the Turkish Procedure Law (TPL)\(^1\) and in the Law No.5549 on Prevention of Laundering Proceeds of Crime\(^2\). The Art. 152/A of TPL, which came into force on 11.06.2013, is the main regulation, which allows to Turkish Revenue Praesidium and to the persons who are authorized for tax audit, to gather information according to the procedures of the international agreements which are in for the exchange of information, under the provisions to be determined by the Ministry of Finance, without being restricted with the scope of Art. 1 TPL. As seen in this Article, the tax administration is authorized only to collect information, in turn, not be alleged that share information with foreign tax administrations. When we take into consideration that the tax administration already has an extremely extended authority to collect information\(^3\) under the framework of Articles 148-151 the following conclusions can be reached: its authority granted by Art. 152/A of the TPL is given in relation to the gathering of information for the purpose of the implementation of the provisions in relation to the exchanging of information included in the international agreements – not being limited to the taxes, fees and duties entering into the general budget or belonging to the special provincial administrations and municipalities-. The collected information would be shared with the authorities of foreign governments under the framework of the international agreements.

Until the enactment of Art.152/A TPL, another regulation was Art. 5 III, s.3 of TPL. According to this regulation, information and documents that are requested under a criminal and administrative investigations conducted by public officials may be given. It is difficult to find a clear answer theoretically, whether it is allowed to give information to foreign tax administrations.

\(^1\) Official Gazette dated 10.01.1961, No: 10703
\(^2\) Official Gazette dated 18.10.2006, No:26323
\(^3\)For a comprehensive study which examines the subject by taking into account the right for the confidentiality of private life, see. BAŞARAN Funda, “Bankaların Bilgi Verme Yükümlülüğünün Sinirları Ve Bilgi Vermemeye Bağlı Özel Usulsuzluk Suçu, -Müşteri sırrını saklama yükümlülüğü ile özel usulsüzlik suçu arasında bir gri bölge-“, Vergi Sorunları Dergisi (periodical), No:143 (August 2000), pp. 178
administration. There is not any administrative decree or any judicial decision about implementation of this provision. But according to my opinion, it is possible to interpret that the information and documentation may be given also to foreign investigation authorities and also to the foreign tax authorities who are carrying out the procedure of taxation and/or sanction under Art. 5 III, s.3 TPL. The Ministry of Finance has a margin of appreciation whether this information is to be given or not and this appreciation should be used in accordance with the purpose of its intended manner. But in practice, the Turkish Tax Administration is not eager to look for information requests, even if the requests from Turkish Statistics Agency was rejected by Tax Administration because of tax secrecy.

No regulation is present at TPL in relation to the Turkish Tax Administration’s requesting information from the foreign tax administrations and/or using in any way the information coming from them (upon request, automatically, or spontaneously). On the basis of international agreements, this is acceptable based on the regulation in Decree Law No. 178 Art. 2, Nr. m, which reads “Monitoring the International organization’s works in relation to the Ministry services, preparing the Ministry’s views with regard to this matter, carrying out the overseas and domestic activities” and the regulation on Nr. s which reads “Developing basic policies and strategies in relation to tax investigation and audit”.

A clear regulation about international exchange of information is located in Art. 12 of Law No.5549, which makes the exchange of information about tax issues possible on the basis of international memorandum of understanding. This is if money laundering is also assosiated with a tax crime.

Turkey, as a candidate country of EU-membership, is negotiating the chapter of taxation. In this context, in Turkey's Programme for Aligment with the Acquis (2007-2013) was located the amendment in Turkish Procedure Law (TPL) about administrative cooperation and mutual assistance. Therefore Art. 152/A of TPL has been brought in to the force. There are some works on a new TPL or on extensive amendments in existing TPL. It can be expected that probably next year, this issue will be included in the Tax Procedure Law in a better way.

These explanations above disclose that Turkish international exchange of information is substantially possible on grounds of international agreements. With Art. 152/A TPL, only all of the debates were eliminated and the legal basis has been formed in the domestic law for the gathering information for the purpose of international exchange of information.

---

6 See below 2 for more information.
7 Ministry of Finance has the authority to manage tax issues –within the jurisdiction of Ministry with international institution.
1.2. Bilateral Tax Treaties as Main Source of Exchange of Information in Turkey

Turkey has a network for international exchange of information, consisting of 82 DTCs, 5 TIEA’s and OECD Mutual Assistance Convention.

As of the tenth of March 2014, 80 of 82 DTC’s of Turkey have been put in force. Three of them (agreements with Austria, Finland, Norway) are revised in accordance with OECD MTC 2010. One of them was canceled and a new version was created.

In Turkey’s DTC’s, mainly the information exchange method envisaged by Art. 26 of the OECD Model Convention was used. Nonetheless, there are certain differences in phrases between the original and Turkish versions of DTC signed by Turkey, it seems that these no not cause problems in practice. DTAs recently signed (Canada, Finland-Revised, Ireland, Norway-Revised, Bahrain, New Zeland, Australia, Switzerland, etc.) include new version of Art. 26 of OECD MTC. Only the Article about exchange of information of five of DTC’s was revised by an amending protocol.

Turkey’s thirteen DTCs (Australia, Bahrain, Brazil, Finland, Germany, Ireland, Kosovo, Luxembourg, Malaysia, Malta, New Zeland, Norway and Switzerland) and all TIEAs contains the term “foreseeably relevant”. In the older 69 DTCs of Turkey there isn’t any term “foreseeably relevant”, but the term “necessary”, which is interpreted in lieu of “foreseeably relevant”.

In Turkey’s domestic Law (Artikels 148-151 TPL) nobody (included banks and other financial institutions) has right to avoid giving information to the tax administration citing

---

9OECD, EOI Portal-Turkey, www.eoi-tax.org/jurisdictions/TR#agreements
11 ÖNER Cihat, Uluslararası Alanda Vergi İdareleri Arasında Bigi Değişimi, Yetkin Yayınları, Ankara 2010, 28; Also for the information obtained through information exchange, mainly OECD standards were followed from the beginning, however in time, the methods and scope of keeping the information secret were changed (ÖNER, 121).
12 See ÖNER (for example pages) 28-29, 36, 37, 46, 47, 51,52 for detailed findings.
13 BALCI Süleyman Hayri, Power-Point Prensentation, 7, in: International Conference on “Recent Developments on Exchange of Information and Use of Technology in Tax Compliance of Multinational Enterprises (MNEs)” hosted by Turkish Tax Inspection Board (TTIB), 24 May 2013, Istanbul
14 Luxembourg (amending protocol in force since 01.01.2012), Malesia (amending protocol in force since 25.12.2013), Singapour (amending protocol in force since 07.08.2013). BALCI (7) reports also Belgium and South Africa.
15 OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, Peer Reviews: Turkey 2013 (Combined Phase 1 + Phase 2, Incorporating Phase 2 Ratings), Peer Review of Turkey, No: 330-332 (Peer Review of Turkey); For example see DTA between Turkey and Germany, Art.25 I: “The competent authorities of the Contracting States shall exchange such information as is foreseeable relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of a Contracting State, or its Länder or of its political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.”
16 Peer Review of Turkey, No: 332
confidentiality provisions of their special laws. Therefore, Art. 27 V of the OECD MTC could be implemented without any reservation by Turkey.

Turkey has signed TIEA with Bermuda, Jersey, Gibraltar, Guernsey, the Isle of Man. However the TIEA’s are in force only with two countries: Bermuda and Jersey. It has been reported\(^\text{17}\) that negotiations in various stages for another five TIEAs (among them also Bahamas and Cayman Islands) are in process\(^\text{18}\).

Below is the list of OECD for the agreements signed by Turkey with the focus on regulation for exchange of information\(^\text{19}\):

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type of EOI Arrangement</th>
<th>Date Signed</th>
<th>Date entered into Force</th>
<th>Meets standard</th>
<th>Contains paras 4 and 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>DTC</td>
<td>4 Apr 1994</td>
<td>26 Dec 1996</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Algeria</td>
<td>DTC</td>
<td>2 Aug 1994</td>
<td>30 Dec 1996</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Australia</td>
<td>DTC</td>
<td>29 Apr 2010</td>
<td>5 Jun 2013</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Austria</td>
<td>DTC</td>
<td>28 Mar 2008</td>
<td>1 Oct 2009</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>DTC</td>
<td>9 Feb 1994</td>
<td>1 Sep 1997</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Bahrain</td>
<td>DTC</td>
<td>14 Nov 2005</td>
<td>2 Sep 2007</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>DTC</td>
<td>31 Oct 1999</td>
<td>23 Dec 2003</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Belarus</td>
<td>DTC</td>
<td>24 Jul 1996</td>
<td>29 Apr 1998</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Belgium</td>
<td>DTC</td>
<td>2 Jun 1987</td>
<td>8 Oct 1991</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Bermuda</td>
<td>TIEA</td>
<td>23 Jan 2012</td>
<td>not yet in force</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bosnia and Herzegovina</td>
<td>DTC</td>
<td>16 Feb 2005</td>
<td>18 Sep 2008</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Brazil</td>
<td>DTC</td>
<td>16 Dec 2010</td>
<td>9 Oct 2012</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>DTC</td>
<td>7 Jul 1994</td>
<td>17 Sep 1997</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Canada</td>
<td>DTC</td>
<td>14 Jul 2009</td>
<td>4 May 2011</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>China</td>
<td>DTC</td>
<td>23 May 1995</td>
<td>20 Jan 1997</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Croatia</td>
<td>DTC</td>
<td>22 Sep 1997</td>
<td>18 May 2000</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>DTC</td>
<td>12 Nov 1999</td>
<td>16 Dec 2003</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Denmark</td>
<td>DTC</td>
<td>30 May 1991</td>
<td>20 Jun 1993</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Egypt</td>
<td>DTC</td>
<td>25 Dec 1993</td>
<td>31 Dec 1996</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Estonia</td>
<td>DTC</td>
<td>25 Aug 2003</td>
<td>21 Feb 2005</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>DTC</td>
<td>2 Mar 2005</td>
<td>14 Aug 2007</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
</tbody>
</table>

\(^{17}\) Peer Review of Turkey, No: 326
\(^{18}\) Peer Review of Turkey, No: 326; BALCI, Power-Point Presentation, 8
\(^{19}\) OECD, EOİ Portal-Turkey, [http://www.eoi-tax.org/jurisdictions/TR#agreements](http://www.eoi-tax.org/jurisdictions/TR#agreements). Here it is declared that “The determination as to whether an agreement meets the international standard is based on the results of the peer review process. Where neither jurisdiction has been subject to a peer review, or where one of the jurisdictions is not a member of the Global Forum (and so no information is available regarding whether that jurisdiction can exchange information to the standard) and so it is not possible to say that the agreement meets the standard, then the agreement’s status is “unreviewed”.” Please be informed that the information about TIEA with Bermuda is not updated. It is entered into force on 18.09.2013.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Type of EOI</th>
<th>Date Signed</th>
<th>Date entered into Force</th>
<th>Meets standard</th>
<th>Contains paras 4 and 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>Finland</td>
<td>DTC</td>
<td>6 Oct 2009</td>
<td>4 May 2012</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Former Yugoslav Republic of Macedonia</td>
<td>DTC</td>
<td>16 Jun 1995</td>
<td>28 Nov 1996</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>France</td>
<td>DTC</td>
<td>18 Feb 1987</td>
<td>1 Jul 1989</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Georgia</td>
<td>DTC</td>
<td>21 Nov 2007</td>
<td>18 Feb 2010 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Germany</td>
<td>DTC</td>
<td>22 Sep 2011</td>
<td>1 Aug 2012</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Gibraltar</td>
<td>TIEA</td>
<td>4 Dec 2012</td>
<td>not yet in force</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Greece</td>
<td>DTC</td>
<td>2 Dec 2003</td>
<td>5 Mar 2004</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Guernsey</td>
<td>TIEA</td>
<td>13 Mar 2012</td>
<td>not yet in force</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>DTC</td>
<td>10 Mar 1993</td>
<td>9 Nov 1995</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>India</td>
<td>DTC</td>
<td>31 Jan 1995</td>
<td>1 Feb 1997</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Indonesia</td>
<td>DTC</td>
<td>25 Feb 1997</td>
<td>6 Mar 2000</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Iran</td>
<td>DTC</td>
<td>17 Jun 2002</td>
<td>27 Feb 2005 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Ireland</td>
<td>DTC</td>
<td>24 Oct 2008</td>
<td>18 Aug 2010</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Isle of Man</td>
<td>TIEA</td>
<td>21 Sep 2012</td>
<td>not yet in force</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Israel</td>
<td>DTC</td>
<td>14 Mar 1996</td>
<td>1 Jan 1999</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Italy</td>
<td>DTC</td>
<td>27 Jul 1990</td>
<td>1 Dec 1993</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Japan</td>
<td>DTC</td>
<td>8 Mar 1993</td>
<td>28 Dec 1994</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Jersey</td>
<td>TIEA</td>
<td>24 Nov 2010</td>
<td>11 Sep 2013</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Jordan</td>
<td>DTC</td>
<td>6 Jun 1985</td>
<td>3 Dec 1986 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>DTC</td>
<td>15 Aug 1995</td>
<td>18 Nov 1996 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Korea</td>
<td>DTC</td>
<td>24 Dec 1983</td>
<td>27 Mar 1986</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Republic of Kosovo</td>
<td>DTC</td>
<td>10 Sep 2012</td>
<td>not yet in force</td>
<td>Unreviewed</td>
<td>Yes</td>
</tr>
<tr>
<td>Kuwait</td>
<td>DTC</td>
<td>6 Oct 1997</td>
<td>13 Dec 1999 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>DTC</td>
<td>1 Jul 1999</td>
<td>20 Dec 2001 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Latvia</td>
<td>DTC</td>
<td>3 Jun 1999</td>
<td>23 Dec 2003</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Lebanon</td>
<td>DTC</td>
<td>12 May 2004</td>
<td>21 Aug 2006</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Lithuania</td>
<td>DTC</td>
<td>24 Nov 1998</td>
<td>17 May 2000</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>DTC</td>
<td>9 Jun 2003</td>
<td>18 Jan 2005</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Malaysia</td>
<td>DTC</td>
<td>27 Sep 1994</td>
<td>28 Jan 1997</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Malta</td>
<td>DTC</td>
<td>14 Jul 2011</td>
<td>13 Jun 2013</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Mexico</td>
<td>DTC</td>
<td>13 Dec 2013</td>
<td>not yet in force</td>
<td>Unreviewed</td>
<td>Yes</td>
</tr>
<tr>
<td>Moldova, Republic of</td>
<td>DTC</td>
<td>25 Jun 1998</td>
<td>28 Jul 2000 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Mongolia</td>
<td>DTC</td>
<td>12 Sep 1995</td>
<td>30 Dec 1996 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Montenegro</td>
<td>DTC</td>
<td>12 Oct 2005</td>
<td>10 Aug 2007 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Morocco</td>
<td>DTC</td>
<td>7 Apr 2004</td>
<td>18 Jul 2006 Unreviewed</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>Type of EOI</td>
<td>Date Signed</td>
<td>Date entered into Force</td>
<td>Meets standard</td>
<td>Contains paras 4 and 5</td>
</tr>
<tr>
<td>------------------------------</td>
<td>-------------</td>
<td>-------------</td>
<td>-------------------------</td>
<td>----------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Netherlands</td>
<td>DTC</td>
<td>27 Mar 1986</td>
<td>30 Sep 1988</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>New Zealand</td>
<td>DTC</td>
<td>22 Apr 2010</td>
<td>28 Jul 2011</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Norway</td>
<td>DTC</td>
<td>15 Jan 2010</td>
<td>15 Jun 2011</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Oman</td>
<td>DTC</td>
<td>31 May 2006</td>
<td>15 Mar 2010</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Pakistan</td>
<td>DTC</td>
<td>14 Nov 1985</td>
<td>8 Aug 1988</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Poland</td>
<td>DTC</td>
<td>3 Nov 1993</td>
<td>1 Jan 1998</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Portugal</td>
<td>DTC</td>
<td>11 May 2005</td>
<td>18 Dec 2006</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Qatar</td>
<td>DTC</td>
<td>25 Dec 2001</td>
<td>11 Feb 2008</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Romania</td>
<td>DTC</td>
<td>1 Jul 1986</td>
<td>15 Sep 1988</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>DTC</td>
<td>15 Dec 1997</td>
<td>1 Jan 2000</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>DTC</td>
<td>9 Nov 2007</td>
<td>1 Apr 2009</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Singapore</td>
<td>DTC</td>
<td>9 Jul 1999</td>
<td>27 Aug 2001</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Slovakia</td>
<td>DTC</td>
<td>2 Apr 1997</td>
<td>2 Dec 1999</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Slovenia</td>
<td>DTC</td>
<td>19 Apr 2001</td>
<td>23 Dec 2003</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>South Africa</td>
<td>DTC</td>
<td>3 Mar 2005</td>
<td>6 Dec 2006</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Spain</td>
<td>DTC</td>
<td>5 Jul 2002</td>
<td>18 Dec 2003</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Sudan</td>
<td>DTC</td>
<td>26 Aug 2001</td>
<td>31 Jan 2005</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Sweden</td>
<td>DTC</td>
<td>21 Jan 1988</td>
<td>18 Nov 1990</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Switzerland</td>
<td>DTC</td>
<td>18 Jun 2010</td>
<td>8 Feb 2012</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Syrian Arab Republic</td>
<td>DTC</td>
<td>6 Jan 2004</td>
<td>21 Aug 2004</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>DTC</td>
<td>6 May 1996</td>
<td>26 Dec 2001</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Thailand</td>
<td>DTC</td>
<td>11 Apr 2002</td>
<td>13 Jan 2005</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Tunisia</td>
<td>DTC</td>
<td>2 Oct 1986</td>
<td>28 Dec 1987</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Turkey Republic of Northern Cyprus</td>
<td>DTC</td>
<td>22 Dec 1987</td>
<td>30 Dec 1988</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>DTC</td>
<td>17 Aug 1995</td>
<td>24 Jun 1997</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Ukraine</td>
<td>DTC</td>
<td>27 Nov 1996</td>
<td>29 Apr 1998</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>DTC</td>
<td>29 Jan 1993</td>
<td>29 Jan 1994</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>DTC</td>
<td>19 Feb 1986</td>
<td>26 Oct 1988</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>United States</td>
<td>DTC</td>
<td>28 Mar 1996</td>
<td>19 Dec 1997</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>DTC</td>
<td>8 May 1996</td>
<td>30 Sep 1997</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
<tr>
<td>Yemen</td>
<td>DTC</td>
<td>26 Oct 2005</td>
<td>16 Mar 2010</td>
<td>Unreviewed</td>
<td>No</td>
</tr>
</tbody>
</table>

Turkey has signed the Amended Convention on Mutual Administrative Assistance in Tax Matters in 03.11.2011. This Contract has not been ratified by law yet and and therefore is not in force with the following: the exchanging of information, concurrent tax investigations, overseas tax investigations, collaboration and notification in collection is foreseen for the fields of income tax, corporate tax, and value added tax. The scope of these administrative collaborations is not limited to the residents and citizens of the countries who are a party to the agreement, but it also covers the residents and citizens of third countries.
2. The collection and exchange of information under anti money laundering legislation

Under Turkish law, the concept of “beneficial owner” has been defined by the Regulation on the Measures for Prevention of Money Laundering and Terrorist Financing\(^{20}\) (Art. 3 I, Nr. h) as “The real persons who carry out transactions before the incumbent, real person or persons who control the legal person or the entities with no legal personality, or the real person or persons who is the final beneficiary of the account or the transaction belonging to them”. What is meant by “incumbent” here are the persons who carry out activities in the fields of “banking, insurance, pension, capital markets, money lending and other financial services, postal and transportation services, lotteries and betting games; persons who deal with or intermediate in trading of foreign exchange, real estate, precious stones and metals, jewelry, transport vehicles, construction machinery, historical artifacts, works of art and antiques trade, and Notary Publics, sports clubs and the persons who are active in other areas identified by the Council of Ministers”\(^{21}\)(Law No. 5549 on Prevention of Laundering Proceeds of Crime\(^{22}\)Art.2, Nr. d and Art. 3). From the point of tax law, even if the transaction before these institutions is carried out confidentially by another person on behalf of them, the real beneficiary will be taxed at the moment it is detected; because by performing the event (for example, generating interest income) which gives rise to the tax, it gains the legal status of a taxpayer. This situation is also required by the economic approach principle\(^{22}\) included in Art. 3/B I of the TPL. Because, in accordance with the fact that the tax is in proportion with the financial power, the principle mandates the taxation of the actual financial power at the actual owner. On the other hand, pursuant to the individuality of the penal responsibility principle, only the person who committed the crime or the fault can be punished (Turkish Constitution Art. 38 I); therefore the beneficial owner will be punished if he had committed any crime or fault.

Turkey’s Financial Intelligence Unit is the “Financial Crimes Investigation Board” (MASAK). MASAK, which was founded in 1996\(^{23}\), is a unit working directly under the Minister within the structure of the Ministry of Finance’s main organization.

In the Law No. 5549, there is no such regulation in relation to the automatic reporting of information acquired under the Law No.5549 (in the framework of Prevention of Crime Proceeds, by MASAK,) to The Presidency of Revenue Administration –who has the duty of assessing and collecting the tax in Turkey– and to Tax Inspection Board (VDK) –who has the duty of performing tax controls-. However, this does not mean that the relevant information cannot be provided to the mentioned institutions. But the information in relation to tax evasion are learned by them already at the procedure of MASAK’s fulfillment of its duties, and it is being practiced in this way. The reason for this idea is as follows: 1) In Tax Procedure Law’s Articles 148 and 149, the authority is given to the Ministry of Finance to collect information\(^{24}\) about all types of –private or public law- persons, about a concrete

---

20 Official Gazette dated 16.092008, No:26999
21 Official Gazette dated 18.10.2006, No:26323
24 For the subject, see BAŞARAN, Vergi Sorunları Dergisi (periodical), No:143 (August 2000), pp. 178
situation or in general, for one time or regularly. Therefore it is possible for The Presidency of Revenue Administration who is an Institution of the Ministry of Finance and the Tax Inspection Board—who works directly under the Minister of Finance—to request continuous information about the “detected beneficial owners” by making an application to MASAK. MASAK cannot refrain from providing information by putting forward the privacy provision in the private laws (TPL Art. 151). 2) Revenue Administration Chairman, Tax Investigation Board Chairman and MASAK Chairman are working within the Coordination Board for Combating Financial Crime25 (Law No. 5549 Art. 20 II). 3) Because of lack of inspectors in MASAK, tax inspectors from Tax Investigation Board are authorized to conduct the audit in the name of MASAK. There are no legal obstacles against the use of the information learned by the Tax Control Board for tax audits, and the use of information learned by The Presidency of Revenue Administration for the detection and collection of taxes and tax penalties of an administrative nature. It is obligatory for MASAK to report to the Chief Public Prosecutor’s Office the situations which constitute a crime and at the same time the tax offenders. Pursuant to the Turkish Penal Code Art. 279, for a public employee, “With regard to learning with connection to its duty that a crime is committed which requires examination and investigation in the name of the public; to fail at or to delay reporting to the authorized officials the mentioned crime”, is an offense.

When we come to the topic of whether MASAK can give the information at hand to foreign administrations for the purpose of making administrative and penal taxation, or not; in order to ensure the exchange of international information in the matters under its scope of duty, the Chairman of the MASAK has been authorized to sign mutual memorandums of understanding, which don’t qualify as international agreements, with the corresponding institutions in foreign countries, and to amend the signed memorandums of understanding (Law No. 5549 Art. 12, s.1). In the framework of the memorandums of understanding put into force by the Council of Minister’s Decision, the exchanging of the acquired information with corresponding international Institutions is legally possible (Law No. 5549 Art. 12, s.2).

When we examine the Law No. 5549 and the regulations in connection to it, it can be seen that the system is based especially on the detection of the information in relation to identification. The following must be understood from the ID information of real persons: name and surname, place of birth and date, nationality, identification (type and number), address and signature samples, if any, telephone number, fax number, electronic mail address, and information in relation to occupation and profession (Regulation Art. 6). For Turkish Citizens, the following additional information is required: mother’s and father’s name and Turkish Nationality ID number; in case of the establishment of permanent business relationship, the address of the establishment (Regulation Art. 6). On the other hand, the following must be understood from the ID information of legal persons: the legal person’s name, trade register number, tax identification number, business activity, address, telephone number, fax number and electronic mail address (if any) and the name of the person authorized to represent legal person, his last name, birth date and place, nationality, type and number of identity document, sample signature (Regulation Art. 7). For Turkish Citizens, who represent the legal party, the following additional information is required:

25Pursuant to Law No. 5549 Art. 20, the Coordination Board has become the administration who will put into force the law drafts for the prevention of the laundering of crime proceeds, and with the Decision of the Council of Ministers.
mother’s and father’s name and Turkish Nationality ID number (Regulation Art. 7). When this information merges with the information related to “before which incumbent and what type of transaction the person carried out, and the contents of this transaction”, we encounter a system in which even the information in relation to the person private life (for example, a gift sent by him to his friend, the lottery ticket he purchases, going to the matches of a sports club that he likes) is recorded. The transfer of a capital, above a certain figure, can be accepted as a rule under the “field of activity”, and its recording can be acceptable due to the reason that it is not included in the private life in “stricto sensu”. However, the recording of the private life in “stricto sensu” at this degree, in our opinion, is an immoderate intervention to the confidentiality of private life. The people are “recorded” on a constant basis and therefore they are faced with the threat of being elaborately examined in detail. The current system is inviting people to act transparent at all times and to move away from anonymity. The State’s establishing of an audit mechanisms in order to ensure security, which is one of its duties, and its continuous gathering of information in order to operate these mechanisms, is an understandable situation. However, the making of this in a way as to not leave any private life to the individual, almost giving to individuals the sense of being potential criminals living in an open prison, is in our opinion bringing pressure to the limits of moderateness. The security purposes shall not be the means of unconstitutional intervention to rights.

There isn’t any specific research or statistical information to show, whether the such an exchange of information under Law No.5549 has a negative impact on the free movement of capital. But when it is considered, that this Law went in to force on 18.10.2006 and within the exchange of information was stipulated, the chart below demonstrates that,

26 Law No. 5549 Art. 2, Nr. d and Art.3
27 The persons stipulated above, in the transactions made before them, or in the transactions they intermediate, prior to the making of the transaction, are obliged to identify the persons who made the transaction and the persons from whom the transaction are made in the name and account of; from the suspicious transactions and from the transactions which they are a party to or which they mediate, they are obliged to inform the Chairmanship about the transactions which exceed the amount determined by the Ministry. This amount is 20,000 TL (approximately 7,500 EUR), and 2,000 TL (approximately 750 EUR) in electronic transfers (Regulation Art. 5, Nr. b and Nr. c.). On the other hand, the suspicious transactions shall be reported regardless of their amount (Regulation Art.5 I, Nr.d.). In addition, MASAK and the audit staff personnel assigned by it are authorized to fully and accurately obtain all types of information, documents and the their related records in all forms of media, and the information and passwords necessary for accessing these or for making them legible, from the above mentioned persons, as well as the public institutions and organizations, the real and legal persons and the Institutions who do not have a legal personality, and they are authorized to request the provision of necessary assistance from them while performing this duty (Art. 7). Eventually, except for the banks with public capital and the state owned enterprises (including the Republic of Turkey Central Bank), pursuant to their laws or fields of activity, an access system can be established by the Chairmanship within the procedures and principles to be determined by the Ministry and the authorized bodies of the institutions and organizations of the relevant Ministry which qualify as public Institutions, to reach the information processing systems of the public institutions and organizations, and the institutions/organizations of nature public organizations who record information in relation to the economic events, elements of wealth, tax liabilities, birth registry records and illegal activities (Art. 9).
28 Central Bank of Turkey (NUDRLALI Özlem, Doğrudan Yabancı Sermaye Yatırımları, Power-Point Presentation, 2, 05.03.2012, Ankara
international cooperation by exchange of information didn’t effect the free movement of capital negatively.

3. The exchange of information system in practice
An official statistical study is not present in relation to the quantity of information requests coming from the foreign tax administrations, the average reply times, and whether the provided information is deemed sufficient or not; and in relation to the quantity of information requests sent from Turkey to the foreign tax administrations, the average reply times, and whether the provided information is deemed sufficient or not. The same situation also applies to the information exchanges potentially realized under the framework of the TIEA’s which just recently entered into force after the middle of 2013. Only information is to be found in the “Peer Review report of Turkey 2013” for OECD and in a presentation which was held in an international conference organized by Turkish Tax Inspection Board in May 2013. This information was provided in these materials mentioned above:


29 See above footnote 15
30 See above footnote 13
Based on the calculation method\textsuperscript{31} Turkey received 518 requests from 37 Treaty Partners from 2009 to the end of 2011. The first five countries which requested most from Turkey were Ukraine, Russia, Bulgaria, Germany, United Kingdom. In 260 cases the requested information has been provided partially or substantially by Turkey\textsuperscript{32}. Information was provided in 11\% of the cases within 90 days, 30\% of the cases within 180 days and 41\% of the cases after one year has passed. The International Exchange of Information Section of Turkey received a request from a Contracting State checks the validity of the request, and sends it to the related auditing department for necessary investigation; if there is no need for investigation, request can be replied directly by the Exchange of Information Unit\textsuperscript{33}. It is stipulated in Art. 140 I, Nr. 6 TPL that a limited tax audit in maximum six months and an unlimited tax audit must be finished in maximum one year. If it is imperative for the tax auditor to take more time, he is authorised to ask for additional time.

Turkey requests information mostly from the United Kingdom, United States, Italy, Netherlands, Germany. Spontaneous information is received especially from Germany, the Netherlands, the United Kingdom, Belgium, Denmark, the Czech Republic, Sweden, and Finland by Turkey\textsuperscript{34}. It was received automatic information mostly from the United Kingdom, Denmark, Japan, Finland and Norway\textsuperscript{35}. The number of records between 2009-2011 including information about immovable properties, payments of dividends, interest, royalties, pensions, salaries etc. are approximately 8,000\textsuperscript{36}.

4. The new era of the automatic exchange of information: FATCA

Under U.S. Treasury Code Sections 1471 through 1474 and Notice 2013-43, which is effective for payments after June 30, 2014, generally, all foreign financial institutions (FFIs) are required to enter into disclosure compliance agreements with the U.S. Treasury (unless an exemption or FATCA Intergovernmental Agreement applies), and all non-financial foreign entities (NFFEs) that are not excepted under the regulations must report and/or certify their ownership or be subject to the same 30 percent withholding\textsuperscript{37}. Therefore, with FATCA, foreign financial institutions are required to report to the Internal Revenue Service (IRS) about their US person account holders, to disclose the account holders' names, TINs, addresses, and the transactions of most types of accounts. FATCA is a representation of the USA's confidence in itself, a confidence based on economic and political power in the international arena; in case of the failure to comply with FATCA, it would result in a failure in the performance of many overseas transactions for banks, including the syndication and

\textsuperscript{31} Calculated method is a method where the number of taxpayers (individual or entity) about whom information is requested, regardless of whether more than one piece of information is requested in respect thereof. See Peer Review of Turkey, No:377, footnote 13

\textsuperscript{32} Peer Review of Turkey, No: 381

\textsuperscript{33} BALCI, Power-Point Presentation 16

\textsuperscript{34} Peer Review of Turkey, No:328

\textsuperscript{35} Peer Review of Turkey, No:329

\textsuperscript{36} BALCI, Power-Point Presentation 18

securitization credits; therefore this would give rise to significant problems in the foreign trade of a country who has not complied to FATCA.

From Turkey’s standpoint, changes are required both in the legal and technical infrastructures for compliance with this new reporting and withholding system required through FATCA. In this context, in addition to the legislators, both the relevant administrative institutions (Ministry of Finance, Banking Regulation and Supervision Agency, Capital Markets Board, the Treasury), and the financial and non-financial institutions, they need to make modifications to their internal systems, control frameworks, processes and procedures for the timely compliance with these regulations.\(^{38}\)

According to unofficial information, the Revenue Administration is promptly performing the studies necessary for compliance with FATCA. The authorized personnel of the Ministry of Treasury Revenue Administration, who are working with the USA Internal Revenue Service (IRS) with regard to the matter, have stated that the compliance works will be completed by the date of July 1, 2014.\(^{39}\) However, it is known that some banks who have a concern about the administrative amendments not being completed until this date have initiated their own compliance works and moreover two banks have even made an application to the IRS for initiating the compliance works. Through this, it is aimed to avoid inclusion on the black-list and to perform the banking transaction within this framework, even if the Turkish Ministry of Finance fails in the timely completion of the study.\(^{40}\)

5. Joint audits and multinational audits
Turkey has an interest in international cooperation and therefore attends the OECD Forum on Tax Administration. In this context, Turkey as a member, supports the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes and as one of the commission members, had prepared the Joint Audit Report 2010.\(^{41}\)

There is no doubt that to collect/receive information from persons who are related to taxable events and/or process and use this information and/or to perform tax audit is a public authority and needs the legal basis. According to Art. 6 III, s.2 of the Turkish Constitution, no person or organ can use a state authority, which is not based on the Constitution. Legislative authority is vested in the parliament and this authorization is non transferable (Art. 7 Turkish Constitution); executive powers and duties are fulfilled by the President and the Council of Ministers in compliance with the Constitution and the law (Art. 8 Turkish Constitution). It is noteworthy that the Turkish Constitution does not clearly regulate whether the executive power is transferable or not. Notwithstanding, in some

---

38 Krş. SAGLAM Necdet, FATCA Düzenlemeleri ve Türkiye, Dünya (journal), 26.07.2013, and Deloitte, FATCA: A new disclosure and withholding regime, above footnote 37
40 According to the news, the Ministry of Finance has held a meeting with the Banks Association at the beginning of April 2014 and requested the banks to wait for them, and to execute a separate work in the event they cannot complete the necessary works until 01.07.2014.
cases, assigning public service duties to the persons who are not government officials or to persons who are not contracted by the government, and in this context the assignment of some public powers to these persons, has been accepted by the Constitutional Court\textsuperscript{42}. However, the debatable situation here is whether or not it is possible to assign the executive power to a foreign public officer, or to share it with him.

It must be stated that; globalization and the consequential increasing capital, and the mobility of people and goods, is forcing the tax administrations to make an international collaboration against the threat of tax loss. Nonetheless, in our opinion, and in any case, in order for a foreign public officer to come to Turkey and audit a taxpayer, a clear regulation with definite limits in Turkish constitution is required. Otherwise, a situation may emerge that is against the constitution. On the other hand, the Turkish Constitution’s Art. 90 IV, s.1-2, which reads “The international agreements duly put into force have the effect of a law. No applications can be made to the Constitutional Court with respect to these, by alleging that they are against the constitution.”\textsuperscript{43}, orders the implementation of the international agreements in the domestic law, as a “law”, even if they are against the Constitution, proven that they are duly put into force. Therefore, sharing the public authority of

\textsuperscript{42} Turkish Constitutional Court dated 19.03.1987, E.1986/5, K.1987/7 (www.anayasa.gov.tr): “The sworn-in certified public accountants can provide accounting services to real or legal persons for the accounting, administration, finance and fiscal legislation; in addition, they will have the duty and power to certify the taxpayers’ financial statements which will be the basis for their tax base, from the point of relevant financial legislation, current accounting principles and audit standards, in other words to approve the accuracy of their income/loss records and their registration in compliance with the provisions of the financial regulations, and therefore to certify the accuracy of the declared tax bases. Although the vesting of the current tax audit personnel of the Ministry of Finance and Customs with this duty and power through such regulation will not hinder the using of the examination and inspection power granted to the public administration, a certification procedure to be carried out by the sworn-in certified public accountants will qualify as a document examined by the Ministry’s authorized staff members unless it is deemed necessary by the Ministry. Due to this reason, a certification procedure to be carried out by the sworn-in certified public accountants shall qualify as "public service". After determining that the performed service qualifies as public service, it will be necessary to research whether the sworn-in certified public accountants are public officers in the form of an "officer" or "public official". There is no doubt that the sworn-in certified public accountants are not "officers". Because these persons are not staff members who are included in the permanent and constant personnel of the administration, who are included in the bureaucratic hierarchy, and who receive a salary from the government. On the contrary, they are self-employed persons who are providing a consultancy, who sign a Contract with real and legal persons in accordance with the provisions of the special law, and who are working for a fee. However, due to the reason that the above mentioned certification authority is granted to them, it is obvious that they are using a public authority and that their service is a public service. On the other hand, the relationship between the government and the sworn-in certified public accountants is a public law relationship. Because, the granting of a duty to them is realized through a law, not through a special law contract. Therefore, the sworn-in certified public accountants must be considered “public officials” due to the certification power they possess.” (The highlight in the text belongs to the author).

\textsuperscript{43} For a justified criticism of this situation and a recommendation for pre-audit see AYBAY Rona, Uluslararası Anlaşmalara İlişkin Olarak Türk Hukuku’nda Önemli Bir Eksilik: Ön Denetim, Mülkiye (periodical), Volume.32, No:258, pp.17
collecting/receiving information, processing and using this information, performing tax audits with a foreign administration on the basis of international agreement is practicable.

In this context, the option of joint audit is possible for Turkey, not under the framework of the DBTs that were signed, but under the framework of TIEAs. On the other hand, there is no officially or unofficially declared information with regard to whether a joint audit has been conducted up to this time, or not.

6. The “realpolitik”: tax solutions of equivalent effect alternative to exchange of information

There are various means in practice for the collection of tax in Turkey. These can be separated into two as ordinary and extraordinary means.

Ordinary means are “denouncement (pay)”, “penitence” and “reconciliation”. These can be briefly explained as in the following:

a. Denouncement: Art. 6 of the Law No. 190544, dated 26.12.1931 includes the provision that those who denounce a tax loss will be paid a denouncement premium at the amount between 10 and 15 percent of the total amount of tax and penalties to be charged. The method and the content of the denouncement are not defined by the Law, however, in practice, tax administration seeks the presence of the following information in a denouncement, in order that the denouncement is considered valid45: full name, address and telephone number of the denouncer, full name or trade name, full address of the denounced and the subject of the denouncement (if the location, date and time are also reported, operations will be completed more quickly). In case the information sought in a typical denouncement is missing or insufficient, no action is taken due to the denouncement or complaint. Except the case of a denouncement of tax fraud and a case of search conducted on this denouncement46, the identity of the denouncer is kept confidential even though the denouncement is found ungrounded. In 2013, a sum of 7,105,157 TL (approximately 2,475,664 EUR) was sent to the relevant tax offices to be paid to a total of 462 denouncers as denouncement pay47.

b. Penitence: Under the Art. 371 of the TPC, “for taxes declared, if the taxpayers committing acts resulting in a tax loss48, denounce their wrongful acts themselves with a petition to the relevant official authority”, they will not be charged any tax penalty and no criminal complaint will not be filed against them on tax fraud. However, this provision is applicable only if, a) no official authority knew the situation before the taxpayer’s application of

44 The Law on Denouncement Premium to be Paid to Those Denouncing the Hidden Movable and Unmovable Property and Usufruct and Permanent Taxes Thereof, Official Gazette dated 31.12.1931, No. 1905
46 Art. 142 IV TPL: “If the search, conducted after the denouncement, reveals no tax loss, the denounced may request the identification of the denouncer and in this case the tax Office is obliged to inform the denouncer.”
48 According to Art. 371 TPC, those jointly committed the acts of tax loss, which results in the tax charges, can also submit the petition of penitence.
penitence, b) Tax declarations not submitted before were submitted within 15 days after the written petition of penitence, c) Missing or wrong declarations were corrected or completed within 15 days after the written petition of penitence, d) Subject overdue taxes denounced by the taxpayer were paid within fifteen days together with the default interest accrued.

c. Reconciliation: Regulated by the TPC additional Articles 1-11 and can be both performed before and after the determination of taxes, reconciliation, in fact, is a means for the taxpayer to persuade the tax administration on the matters relating to the taxable event and the tax basis by submitting the available documents and information\(^49\). However, Turkish Law unfortunately is applied very differently than the foregoing, as a kind of tool for the taxpayer to negotiate\(^50\) at certain levels with the administration on the amount of the tax and administrative fines, without relying on any structured criteria. Certainly this poses a clear breach of the constitution (equality principle (Turkish Constitution Art. 10), principle of ability to pay (Turkish Constitution Art. 73 I), legal administration principle (Turkish Constitution Art. 2 and Art. 123), it is a very effective tool for the quick collection of taxes. In such that, in 2013, there were 95,126 petition of reconciliation after tax determination and 88,024 out of them were resulted in reconciliation and, after the reconciliation, the total receivable tax of 357,937,380 TL (approximately 124,716,857 EUR) dropped to 270,476,069 TL (approximately 94,242,532 EUR) while the total tax penalty of 460,815,890 TL (approximately 160,563,027 EUR) dropped to 27,027,669 TL (approximately 9,417,306 EUR)\(^51\).

On the other hand, extraordinary means of tax collection is, unfortunately, the frequently announced “tax amnesties”. It is such that, after 1980, ten tax amnesties were announced and it is now known in practice that a tax amnesty is expected just about every 2.5 years\(^52\). According to the Turkish Constitutional Court, tax amnesties do not constitute a breach of the “equality principle” since the beneficiaries of amnesties and others “are not in the same

\(^{49}\) For more information please see BAŞARAN YAVAŞLAR Funda, “Türk Vergi Hukuku’nda Uzlaşma”, MÜLIBFD-Prof. Dr. Ömer Faruk Batırel’e Armağan Sayısı, Anniversary Volume.25 (2008), No:2, pp. 309-337 and “Uzlaşma Uygulaması Hukuka Uygun mı?”, Vergi Sorunları Dergisi (periodical), No:257 (February 2010), pp.163-171

\(^{50}\) No doubt that tax authority is superior in this negotiation.

\(^{51}\) http://www.gib.gov.tr/fileadmin/faaliyetraporlari/20132013_Faaliyet_Raporu.pdf. 1.3.2. However, figures presented by Central Reconciliation Commission (comprised of one Deputy Commissioner and one Head of the Department under the Chairmanship of the Commissioner of the Revenue Administration) and by Coordination Reconciliation Commission (comprised of Head of Department and/or Heads of Group and/or Legal Advisors and/or Directors assigned by the Commissioner Deputy Commissioner under the Chairmanship of Deputy Commissioner or one of the Head of Departments in the Revenue Administration or First Legal Advisor) are as follows: number of petitions for reconciliation: 106, number of files reconciled: 68; tax debt subjected to the reconciliation: 136,308,931 TL, tax debt after reconciliation: 45,140,531 TL; amount of tax penalty subject to reconciliation: 191,520,594 TL, amount of tax penalty after reconciliation: 3,574,932 TL.

\(^{52}\) For examples, please see YARAŞIR Sevinç, Vergi Afları ve Türkiye’deki Vergi Aflarının Değerlendirilmes, Vergi Dünyası (periodical), No.378 (March 2013), pp. 175. (pp. 182, 186); BAŞARAN YAVAŞLAR Funda, “Yeni Yılın Başında “Af” ve Uyanması Beklenen Adalet”, 08.01.2011, http://www.bumindogrusoz.com/artikel.php?artikel_id=139
legal situation” and, again to the Court, tax amnesties inherit public benefits such as “decreasing the tax disputes, establishing justice, alleviating the burden on the administration and the justice authority.”

The latest amnesty in Turkey was announced with the Law dated 13.11.2008, with No. 5811 and in 2011, with the Law dated 13.02.2011 with No.6111. The purpose of the Law No.5811 is gaining, for the benefit of the national economy, foreign assets of real and legal persons, such as cash, cash in foreign currency, gold, movable property and capital market instruments and enforcing the capital structure of the enterprises by registering the unmovable property, located in Turkey but not recorded in the equity of the enterprises (Art. 1). By the application of this Law, the amount of tax accrued is 557,520,348 TL (approximately 194,257,960 EUR) from the foreign assets and 1,019,104,956 TL (approximately 355,088,834 EUR) from the national assets. With the application of Law No.6111, which covers the taxes to subject to declaration, which were to be declared until December 31, 2010 and receivables accrued before December 31, 2010 such as annual charges, motor vehicles tax, etc., all of the default interest and delay penalty together with the penalties connected to the base tax was abandoned when taxpayers pay the recalculated debt found by applying the update rate (CPI/PPI); furthermore, other conveniences were also introduced, such as not being subjected to tax inspection and tax determination for the years in increase due to an increase in the base and tax, correcting the records by declaration of inventory, paying the outstanding debt, recalculated within the

---


55 For critics, please see BAŞARAN YAVAŞLAR, “Yeni Yılın Başında “Af” ve Uyanması Beklenen Adalet”, 08.01.2011, http://www.bumindogrusoz.com/artikel.php?artikel_id=139: “… the criterion to define if the taxpayer falls within the same legal status or not, is the “ability to pay”. The principle of ability to pay in taxation of Article 73 I of the Constitution, as a principle helping to distribute the tax burden equally on the public, stipulates imposing taxes on taxpayers in proportion to their financial power, i.e. imposing same on those with same ability to pay whereas imposing differently on those with different ability to pay. That means, contrary to the Constitutional Court’s mentioned approach, for example an employee and a merchant, earning same revenue in, say, 2008 will have the same legal status as they have same ability to pay. Therefore, of the taxpayers with same ability to pay and therefore subject to same amount of tax, collecting taxes from one group at the source by stoppage whereas applying a different collection method for the other group and then prizing further the taxpayer, who abused the facility of this collection method by partially paying or not paying at all, by announcing an amnesty, is against “the principle of ability to pay in taxation.” (The highlight in the text belongs to the author).

56 The Law on Gaining Certain Assets for the Benefit of National Economy, Official Gazette dated 22.11.2008, No.27062

57 The Law on Amending the Laws on Restructuring Certain Receivables and the Law on Social Security’s General Health Insurance and Certain Other Laws and Legislative Decrees, Official Gazette dated 25.02.2011, No.27857 (1st Duplicate)

application of Law, in installments or with credit card. More than 39.4 TL billion of public debt was restructured by this Law.\textsuperscript{59}

Turkey did not sign any special international agreement for the purpose of tax collection, such as the Rubik Tax Agreement or an agreement similar to that signed between the UK and Liechtenstein\textsuperscript{60}.

7. The legitimacy of tax solutions other than exchange of information

Art. 38 IV of the Turkish Constitution stipulates that “Illegally obtained findings cannot be considered as evidence”\textsuperscript{61}. Art. 217 II of the Penal Procedure Code says that “Any criminal charge can be evidenced with any finding obtained by legal means.” The purpose of such prohibition on findings is to protect the human rights and fundamental rights and liberties\textsuperscript{62}. Evidence obtained by committing a crime is illegally obtained evidence in all cases. Art. 239 I of the Turkish Penal Code defines that “giving and disclosing the documents and information classified as commercial, banking or customer secrets, which were learnt due to the nature of the post and title, to unauthorized people” is an act of crime. Furthermore, giving and disclosing these illegally obtained information and documents to unauthorized people is also an act of crime. Therefore, illegally obtaining information, information classified as customer secret, from a bank official, this information and evidence fall within the scope of the prohibition of evidence. According to the Turkish Law, it is by no means possible to use such information regardless of the user, including the tax administration\textsuperscript{63}.

\textsuperscript{59} ERDAĞ Nevzat, Torba Yasada % 81 İle Rekor Tahsilat, http://www.nevzaterdag.com/torba-yasada-
\textsuperscript{60} See the webpage of Revenue Administration, entitled with “international legislation”, http://www.gib.gov.tr/index.php?id=1055
\textsuperscript{61} ÖZTÜRK/ERDEM, Ceza Muhakemesi Kanunu, 11. Ed., Ankara 2007, 483: with the phrase “finding”, use of all traces, products and indications as evidence, which are not yet regarded as typical evidence, is prohibited.
\textsuperscript{62} ÖZTÜRK/ERDEM, 484
\textsuperscript{63} Turkish Constitutional Court dated 19.12.2012, E.2011/1, K.2012/1 (http://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCgQFjAA&url=http%3A%2F%2Fwww.anayasa.gov.tr%2Ffiles%2Fyuce_divan_2011.doc&ei=FRx4U4-HG8mUPLH6gaAB&usg=AFQjCNF8B3VYk3eq4I7g12DC_hsXNselYQ&bvm=bv.66917471,d.bGE): “The main purpose of the penal justice is to reach the material truth. There are two main streams in contemporary law systems for whether the illegally obtained evidence can be based in taking decision in penal justice. One of them envisages the balancing the public benefit in revealing the material truth vis-à-vis the rights of the person violated during the illegally obtaining evidence, and using illegally obtained evidence to depend on, should the public benefit weighs more and otherwise not using the evidence in taking a decision. According to the second approach, this evidence should not be used in taking a decision without investigating if there was a public benefit in investigating the material truth or if the individual rights were violated during the illegally obtaining of evidence. ... in our law system, it is understood that the second approach was adopted i.e. the illegally obtained evidence is prohibited to be used in penal justice regardless of whether the individual rights were violated during the illegally obtaining of evidence. However, as it is indicated in doctrine and in several decisions of the General Assembly of the Law Chambers of the Court of Cassation, simple procedural mistakes which do not hamper the validity of the procedures done during the obtaining the evidence must not be considered in this respect.”
The above mentioned laws on tax amnesties, i.e. Law No. 4811 and No. 6111 are very comprehensive and also includes the taxes to be paid from the revenues generated by the off-shore accounts and administrative fines.

8. Conclusions
The merits of cooperation and, therefore, the exchange of information are well understood by many countries in the fight against tax losses and fraud. Rapid developments observed in the recent years are an outcome of this new approach and understanding. Turkey, too, pays attention to these developments. It is Turkey’s desire to have a good network of international exchange of information. That’s why it actively participates and cooperate with OECD.

However, for example, considering that the OECD Mutual Assistance Convention has not been ratified by law yet in Turkey and considering also the limited number of signed TIEAs, it becomes clear that Turkey needs to improve its performance in this subject.

By taking into account every aspect, either through international conventions and/or internally, especially needs to regulate the issues of prohibition of evidence or joint audit, which may require several changes to be made in the internal law, closely related to the taxpayer’s rights. Therefore, we believe that a specialized international court on tax issues, which would legally protect the taxpayers, is increasingly needed.