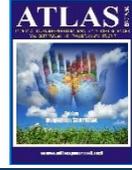




ATLAS INTERNATIONAL REFEREED JOURNAL ON SOCIAL SCIENCES

ISSN:2619-936X



Article Arrival Date:10.11.2018

Published Date:30.12.2018

2018 / December

Vol 4, Issue:15

Pp:1661-1675

Disciplines: Areas of Social Studies Sciences (Economics and Administration, Tourism and Tourism Management, History, Culture, Religion, Psychology, Sociology, Fine Arts, Engineering, Architecture, Language, Literature, Educational Sciences, Pedagogy & Other Disciplines in Social Sciences)

THE SPECIFIC CONDITIONS RELATED TO THE PRESCRIPTION IN IMPOSITION OF TAXES IN TURKEY¹

TÜRKİYE'DE VERGİLERİN TARHINDA ZAMANAŞIMINA İLİŞKİN ÖZELLİK ARZ
EDEN DURUMLAR

Fatma TURNA

Ress, Asst, Marmara University, Faculty of Economics, Public Finance, İstanbul/Turkey

Burcu KUZUCU YAPAR

Ress,Asst,Istanbul Medeniyet University, Faculty of Political Science, Public Finance, İstanbul/Turkey

ABSTRACT

Unless there is a provision in the Turkish Tax Law contrary to the five-year period stipulated for prescription, the prescription is valid for all taxes. The imposition prescription period is linked to the taxable event as a rule. The taxable event is indicated in relevant tax laws according to the characteristics of the taxes. Since time prescription also depends on these special provisions, it differs in terms of certain taxes and situations. In the study, these special cases were examined within the framework of Turkish Tax Law.

Key Words: Imposition prescription, prescription beginning prescription period.

ÖZET

Vergi Usul Hukuku'nda zamanaşımına yönelik belirtilen beş yıllık süre aksine bir hüküm bulunmadıkça bütün vergiler için geçerli olmaktadır. Tarh zamanaşımı süresinin başlangıcı kural olarak vergiyi doğuran olaya bağlanmaktadır. Vergiyi doğuran olayda vergilerin özelliklerine göre ilgili oldukları vergi yasalarında farklılık arz etmektedir. Zamanaşımı bu özel hükümlere bağlı kaldığından bazı vergiler ve durumlar açısından farklılık arz etmektedir. Çalışmada bu özel hususlar vergi hukuku çerçevesinde incelenmiştir.

Anahtar Kelimeler: Tarh zamanaşımı, zamanaşımı başlangıcı, zamanaşımı süresi.

1. INTRODUCTION

Prescription described as expiry of the tax claim due to the passing of time, depends on the very old periods of history. Even if it is pointed in literature as the Twelve Tables Law is the source of prescription, it is stated that the main source is the Babylon Hammurabi's Code. However as it is known that almost a hundred years is needed for a law to be formed, it would not be wrong to say that the concept of prescription is based on older times in verbal means.

The prescription in Turkey, started to develop mainly after the Republic was formed and has tried to continue its progress until today. However there are problems that this development brings along with itself. After all, our tax system became quite complex because of the complicated economic structure and in addition to this the introduction of new taxation, political effects/instability, taxation not being used as tool of public finance, international dimension of taxational transaction which caused some problems to occur.

¹ This study is presented in the conference "2016ICOME: International Congress of Management Economy and Policy" as "The Specific Conditions Related to Prescription in the Turkish Tax Law".

Prescription which is considered as an important reason for the removal of the tax claim has also been influenced by these problems. Prescription as in Tax Law stands out as a concept that must be precisely taken into consideration at the stages of the imposition, the assessment and the collection of the tax. This is not only a matter of tax security but also a consideration which should be applied objectively and should be taken into consideration as a need of the principle of just taxation from the taxpayers law point of view (Ufuk, 1998).

Therefore prescription described as expiry of the tax claim due to the passing of time is an important concept in terms of tax law which is a subdivision of public law. In our study, the concept of imposition prescription will be briefly reviewed and the special features will be discussed in terms of Turkish Tax Law.

2. IMPOSITION PRESCRIPTION CONCEPT

Imposition literally means levy (TLS, 2013). According to the Tax Procedure Law, imposition is an administration action in which the tax administration determines the tax claim over base and rate indicated by the law. According to this, the tax administration carries out an individual executive operation which takes the taxable event into consideration and determines the tax base and the tax rate (Arslan, 2007a: 29).

The tax claim defined as the taxable event constitutes the tax debt for the taxpayer and the tax is levied according to the legal status of the tax acts that occur as stated in the tax law (TPL Art. 19). In this sense, while tax claim is considered as outside the tax administration the taxpayer is considered as directly connected to the tax administration. Furthermore the taxable event may change depending on the tax object. It can be a spending action but also it can be in form of being in possession of something. Undoubtedly it is the relevant tax laws which determine what will be taxable.

As the situation indicated in tax laws occurs in practice, it becomes the cause of taxation. By this mean, legal consequences such as “ tax payment debt” is attached to the tax law. With this legal consequence, the person who is directly the root cause of the taxable event becomes the tax payer and obligated to fullfill the obligations of the taxpayer which are indicated in the law. This obligation causes ordinary actions to be taken by the tax administration against the taxpayer as a result of tax declaration such as imposition or/and assesment. It may also cause extraordinary actions by the tax administration against the taxpayer as a result of the undeclared tax to be noticed such as interest of default and tax loss penalties etc. However, due to the expenses that need to be done, it is not appropriate for the administration to follow up the long delayed tax payments and tax collections. In addition to this the fact that the tax debt remains unpaid for a long time also damages the tax payers’ commercial reputation (Öncel, Kumrulu and Çağan, 2010: 132). For this reason, prescription which look out for public interest is important for in terms of reducing the burden of both taxpayers and judicial bodies.

Provisions relating to the imposition prescription are regulated in the articles 113 and 114 in Tax Procedure Law (TPL). According to the article 113 paragraph 1 of the TPL prescription is the expiry of the tax claim due to the passing of time. According to the second paragraph of the same article prescription is applied whether the taxpayer is an applicant or not. According to a more clear statement, as the prescription occurs, the tax imposition, the tax assessment and the tax collection will no longer be referred. This is because for tax debt to me realized, the taxation procedure must take place. The fact that tax imposition and tax notification transactions are not realized means that the tax debt has not become obvious.

In article 144 of the same law it is stated that “imposition and the taxes which are not noticed to the taxpayer in five years starting from the following year of the calendar year which the

tax claim occurred are considered to be (imposition) prescribed. According to this, (imposition) prescription is a type of prescription which occurs when the taxpayer has not been notified despite the time that is stated in the relevant law for the tax to be imposed and notified to the taxpayer has passed (Oktar, 2011: 134). In other words imposition prescription can be defined as “ the power of fiscal administration to obligate the taxpayer in prescription periods stated in the tax law” (Arslan, 2007b: 110).

3. THE BEGINNING OF THE IMPOSITION PRESCRIPTION PERIOD.

The prescription period and its functioning is regulated in article 114 of the TPL. In the relevant article it is stated as “imposition and the taxes which are not notified to the taxpayer in five years starting from the following year of the calendar year which the tax claim occurred are considered to be (imposition) prescribed. According to this the general period of the imposition prescription is accepted as 5 years. The law maker states that the taxes which are not notified and imposed in five years will be considered as prescribed by taking the first day of the first year following the year which tax claim occurred as the reference date. Taxable event is the key factor to determine the beginning of imposition prescription.

The taxable event is also the key factor for applying the regulating procedures which are called the tax laws and the secondary legislation. In article 19 of TPL the taxable event is defined as it occurs as the event that is stated in law for the tax claim to occur happens or as the legal procedure becomes complete. The procedures such as imposition and notification have no effect on the beginning time of the tax claim. Taxpayer status occurs as the taxable event occurs. (Öncel, Kumrulu and Çagan, 2010: 134). According to this, first of all the date when the taxable event occurred should be determined. When it comes to the taxable event, usually economic activity comes in mind. Although taxable event comes out as income tax, corporation tax and added value tax, sometimes a legal transaction/treatment can also be regulated as the taxable event by various laws. Taxable event is the key factor to determine the beginning of imposition prescription. However the presence of the taxable event does not make the administrator claimant (Doğrusöz, 2004: 1). What makes the administrator a claimant is the imposition process to be made which determines the debt and its amount.

On the other hand, the law provision also requires that the imposed tax to be notified in a certain amount of time. The taxpayer must be notified of the imposed tax debt. After this formal declaration the taxpayer accepts the debt or resorts to the legal remedies. This is because the key factor for the administrative and legal periods to start is the notification date. The way the result of imposition notified to the taxpayer is also very important in case of the beginning of prescription period (Bilici, 2010: 68). It is because notification is the most important phase for the taxpayers to be aware of the tax debts which is a result of calculation ex officio, calculation of completed tax or the administrative assessment done by the tax administration.

Therefore since the notification of a tax claim that is not imposed is not possible, the prescription period begins as the tax claim is imposed. On the other hand even if the tax claim is imposed, the tax claim which is not notified to the taxpayer in five years will be imposition prescription (Karagöz, 2008: 124). From this point of view it can be said that these three factors must be realized in order for the imposition prescription to take place (Arslan, 2007b: 111);

- ✓ A tax claim to occur,
- ✓ Five years of time must have passed (usually it is a five year period but there are some exceptions),
- ✓ During this/these period(s) the imposition and/or the notification must be made.

It should also be noted that unless there is a contrary provision five year period is valid for all taxes which are the subject of TPL. Unless there are no provisions in law for the taxes, duties, fees and the raisings attached to these about prescription referring to the first article of the TPL, the general provisions stated in article 114 of the TPL about prescription will be applied. In this case five years of imposition prescription period is valid for all the taxes, duties, fees and the raisings attached to these which are stated in article 1 of the TPL (Arslan, 2007b: 116). However the relevant tax laws contain special provisions for the prescription period and fort he beginning of the same period. In this case applications are made according to the special provisions.

4. THE SPECIFIC CONDITIONS FOR THE BEGINNING OF IMPOSITION PRESCRIPTION PERIOD

Unless there is a contrary provision about prescription in TPL, the five year period is valid for all taxes. The beginning of imposition prescription is related to the taxable event as a rule. The taxable event differs in relevant tax laws according to the characteristics of the taxes. Due to the fact that the prescription is subject to these special provisions, it differs in terms of some of the following taxes and situations.

4.1 The Prescription in Case Bound Exception Implementation

The prescription period of the taxes that are not collected partially or totally as a result of the case bound exeption and exemption implementations begins on the beginning of the year fallowing the date on which the exeption and exemption clauses were violeted (TPL Art. 114/3). It is stated in General Communique Serial Number 187 that the prescription for taxes and penalties shall start from the beginning of the year following the date on which the clauses were violated. The relevant provision in Law No: 5228 cancelled the provision for the deduction of investment regulated in Law No: 3239 and enlarged the content of the provision in framework of exeption and exemption. In addition, the content of this provision was based on the violation of the provision of deduction of investment for promoting economic development, which was in force in the 1960s (Karagöz, 2008: 146; Ürel, 2012: 251; Arslan, 2007a: 36).

According to the relevant article, in case of the violation of the clauses about the implementation of the deduction of investment, the imposition prescription period is considered as five years from the beginning of the calendar year following the date on which the clauses were violated. Here, the timing of the violation by violating the exceptions and exemptions can occur either in the form of a violation of the clauses after the beneficion of exceptions and exemptions or in an unfair way to exploit the exemptions and exemptions in spite of the lack of the clauses. In these cases the exeptions and exemptions must be cancelled and these issues must be subject to taxation. Tax loss will also arise as the clauses are violated. Therefore, the imposition prescription for such cases that must be taxed will last five years begining on the first day of the calendar year following the date on which the clauses were violated (Arslan, 2007a: 36). However, in deduction of investment implementation, it is not clear what is meant by the violation of terms. According to Ürel (2012: 240-241) this matter is in the scope of substantive tax law not the adjective tax law and it does not stand as a problem or hessitation for TPL which is adjective tax law.

On the grounds of Article 5 of Law No. 5228, this provision is stated to be valid if the purpose of the act is to use case bound exemptions, such as stamps and duties, for deduction of investment and foreign exchange earning activities. Moreover, it is aimed to clarify the prescription period for the taxes, duties and the fees which can not be collected as a result of violation of exception provisions and to eliminate the hesitations that arise (Batun, 2013: 114).

In short, if the investor violates the terms of deduction of investment implementation, tax loss will occur due to the fact of the taxes which are not assessed and the prescription period will start on the beginning of the calendar year following the date on which the terms are violated due to uncollected taxes and penalties (Arslan, 2007b: 121). However in cases which the taxpayer does not violate the terms of the deduction of investment, it is necessary to admit that the general provisions will be applied in the framework of the imposition prescription (Ürel, 2012: 240). In addition, these characteristics should be taken into account in the retention of documents related to these exceptions and exemptions (Seviğ, 2013).

4.2. The Prescription in Long Term Construction and Repair Extending to Years.

The earning in long term construction and repair extending to years is considered to be done in the year the job is done including the stripping extending to years and it is mentioned in the aforementioned year declaration (ITL Article 42). In other words for long term construction and repair jobs extending to years, the tax claim which is also the taxable event occurs in the year that the work is completed and the prescription period starts in the first day of the calendar year following the year in which the work is done.

This fact has not been clearly expressed in Income Tax Law (ITL) but there is no doubt that the prescription period for the long term construction and repair extending to years starts after the year in which the job is done yet as it is stated in TPL that prescription period starts in the beginning of the calendar year in which tax claim occurs and for the long term construction and repair jobs the tax claim occurs on the following calendar year in which the job is done, the prescription will begin after the year that the income relevant to this job is declared (Nas, 2011: 320).

It should also be noted that the period of construction and repair work involving more than one calendar year is not a 12-month calendar year. For example, if a construction and repair work starts on 10.11.2016 and completed on 03.03.2017, although the work lasts for about 4 months, the work is distributed to more than one calendar year, so profit or loss is taxed as profit or loss of the year(s) when the work is finished and is not taxed according to the year(s)². However, if there are more than one construction and repair work done in different years, or if construction and repair works and other works are done together, the issue of how to process common expenses and amortizations differs in terms of prescription (Arslan, 2007b: 119).

The distributed general overhead expenses accruing from years of construction and repair works are recorded as expenses in the related year. The beginning of the prescription for this expense is the beginning of the calendar year following the year in which the construction and repair work is completed. The beginning of the prescription period for the the general expenses other than expenses of the long term construction and repair extending to years is the first day of the calendar year in which they are recorded and prescripts in five years (Arslan, 2007b: 119-120).

The amortization of the depreciation unit which are used jointly in the construction and repair work or in other works are distributed according to the number of days they are used for each work. The part of the distributed amortization amount that belongs to the construction and repair jobs extending to years is recorded as an expense of the related year and the prescription period for this amount begins on the first day of the following calendar year. The

² *The end date and the prescription in construction and repair works, "Where construction and repair works are subject to temporary and final acceptance procedures, the date on which the temporary acceptance has been approved by the administration shall be deemed to be the end date. In other cases, the date on which the work is actually completed or actually terminated is considered to be the end date. (ITL Article 44). The prescription period starts from the beginning of the calendar year following these dates.*

prescription period of the amortization expenses other than the constructing and repair jobs extending to years starts on the first day of the following calendar year (Arslan, 2007b: 120). In addition, the amortization expenses are examined as a separate topic.

4.3 Prescription in Terms of Collection at Source for Corporations

Taxpayers are subjects to the income tax according to their income. However there is another form of collection in which tax responsible(s) declare and pay the income tax which is collected at source in corporations as an exceptional implementation. This method named as tax cut (collection at source) is oftenly used due to its practicality in tax transactions (Karagöz, 2008: 147).

One of the elements of income tax which is collected at source over the Corporation earnings is the earning on movable assets. These are regulated in Article 96/6-b of TPL as well as they are regulated in articles 15 and 30 of Corporate Tax Law (CTL). The beginning of the prescription for the taxes collected at source according to these articles is the year following the date on which taxable event occurred legally as it is discussed by the advisory commission³ because the beginning of the prescription period is determined according to the occurrence of the taxable event. The validation of the tax claim is embodied in article 19 of TPL titled as "The Taxable Event". According to this article tax claim is born as the legal conditions are realised or a taxable event takes place. The regulation in the related article makes only the general determination as its in all the regulations in TPL. The moment tax claim is incurred will be determined according to the individual tax laws (Akkaya, 2014: 1). Accordingly it is not a correct approach to defend the opinion that the prescription period should start from the first day of the following year in which the tax is collected from the source and to accept that the tax responsibility is incurred on the date the tax is collected from the source. (Öncel, Kumrulu and Çağan, 2010: 134; Nas, 2011: 320). It is because for the beginning of the prescription period the taxable event is taken as basis. The incurrance of the tax responsibility should not be regarded as the beginning of the prescription period without the incurrance of the taxable event.

4.4 Prescription for Tax Refund

According to the ITL the taxes which are collected on source should be deducted over the income tax which is calculated over the declaration of the related year. In case the deducted amount is more than the tax calculated over the declaration, the difference must be noticed to the taxpayer by the tax administration and the taxpayer must apply for the refund of the difference within a year (ITL Art. 121). If the taxpayer does not apply for the refund within a year, taxpayer will no longer have the right to get the refund. By this mean the one year period has the foreclosure characteristic and foreclosure is not possible without notice (Council of State 4. D. 26.06.1970, E: 1968/4834; K: 1070/3778).

However the problem here is about until when the taxpayer can demand refund in case the tax administration does not notice the taxpayer. In other words it is important to determine if the responsibility of the tax administration to notice the taxpayer is a subject of the prescription or not. In literature there are those who indicate that the accrual slip can replace the notification. However the accrual slip is not subject to the provisions of notification. The basis for the application time is the notification date not the accrual slip to be arranged. By this mean the accrual slip given is not considered to be enough.

³ Advisory committee of Tax Inspectors Board, Date of 12.10.1966 and Publication No: 148, General No: 151/12 "the beginning of the prescription period must be regarded as the beginning of the year following the year in which the taxable event or legal status is arisen, not the year following the year in which the corporation earnings are realized" (See. Arslan, 2007b: 124).

According to Özbalcı (1985) tax administrations not fulfilling their obligation to notify by mistake or negligence does not prevent them to make the refund. In TPL, the mutual rights and liabilities of the tax administration and the taxpayers is limited with the prescription period of five years. There is no reason to keep the relevant notification obligation as an exception. For this reason, it is possible for the taxpayer to demand the amount determined with the accrual slip within the period of five years of prescription, and to terminate the prescription with this request.

According to the Income Tax General Notification published by the Ministry of Finance with serial number 252 it is stated that the taxes which are not deducted and collected at source these five specifications are applied;

- i- If the taxpayer applies within five years from the date that declaration made the refund must be paid to the taxpayer as a deduction,
- ii- In cases such as the taxpayer did not apply within five years from the date the declaration made, deduction refund is impossible since the taxpayer's claim has prescribed,
- iii- Within 5 years from the date the declaration is made if the application is made within a year from the date the tax claim is notified to the taxpayer by the tax administration, refund in cash and deduction refund must be paid to the taxpayer by the tax administration,
- iv- Within 5 years from the date the declaration is made if the application is not made within a year from the date the tax claim is notified to the taxpayer by the tax administration, refund in cash and deduction refund must not be paid to the taxpayer.

On the other hand it is considered that in some cases within five years the declaration is made the tax administration does not notify the taxpayer about the tax claim and as a result of this the taxpayer does not apply for the refund within five years, the refund claim is prescribed. However it must be kept in mind that in some cases the tax examination personnel consider that even if the tax administration does not notify the taxpayer about the refund claim, it will be valid as the corporation tax declaration is made and within one year from the date that the accrual slip of the declaration is taken the tax refund which the taxpayer did not apply gets prescribed.

Therefore if the refund is based on an adjudication the amount of the refunds such as tax, late fee and penalties must be notified to the taxpayer by the tax administration in 30 days after the decision of the court is notified to the tax administration. In this case prescription is a key point for refund yet the period foreseen in the article 120 of TPL is not taken as basis. The prescription period is considered to be 10 years as the relevant person can ask a ten years of prescription period for the administrative adjudication (Can, Bülbül and Dağışan, 2012: 599).

4.5 Prescription of Earlier Year's Losses

In ITL Article 88 and in CTL Article 9 the prescription period of earlier year's losses is implied to be 5 years. However there is no special provision or indication in the law about the deduction of the earlier years' losses and to determine when the prescription period for the deduction of earlier year's losses start. According to Aslan (2007a: 37-38) the beginning of the prescription period for the year that the earlier year's losses deducted must be the first day of the following year in which the loss deduction was made yet as in the law, the loss is considered as an income with the profit and even if the firm activities lasted with profit or loss, the result is declared with annual declaration which is a reason to think that the beginning of the prescription period for the year that the earlier year's losses deducted must be the first day of the following year in which the loss deduction was made.

However there are some assertors saying the earlier year's losses are not a reason for tax claim accordingly imposition prescription period cannot begin in the year the loss was made as the imposition prescription period begins in the first day of the following calendar year in which the tax claim occurred. At first sight this opinion may look reasonable but according to the taxable event, the imposition of tax and the application of these concepts over taxing the income of the firms, the opinion seems to be not that right. In anyway whatever the results of the periodic firm activities are the firms have the obligation to make annual declaration according to the income and corporation taxes. The income and corporation taxes are imposed according to this declaration and the earlier year's loss does not effect the taxation of the period including the prescription period. Therefore, it is considered to be more appropriate for the nature of the business to start the prescription period for the deduction of the earlier year's losses on the first day of the following year of the the year in which the loss deduction was made (Arslan, 2007a: 37-38).

It is also necessary to indicate that the documentation of the records is highly related with the retention and presentation liability of the taxpayers. The retention and presentation liability of the taxpayers is regulated parallel to the prescription period. As a matter of fact the taxpayers who are obligated to keep records according to law, must retain the records as well as the documents which are indicated in the law for five years starting from the first day of the following calendar year (TPL Art. 253). Moreover as there are no exceptions in the law about the retention and to extend the period of presentation, it is stated that tax examinations can be made during the imposition prescription time including the accounting period (TPL Art. 138).

According to the established case-law of the Council of State, earlier years losses must be certified in the year they are deducted due to the fact that earlier years losses are factor of the base of the year in which they are deducted. For example, a taxpayer who deducts the year 2006 loss in the 2011 tax declaration must maintain the 2006 books and proofs until 31.12.2016, the end of the five-year prescription period of 2011. Otherwise, one of the elements in the 2011 Declaration that affects the formation of the yearly base is deemed not to be certified and therefore the deduction for the loss is not accepted. However there is no binding regulation on this matter. Based on the 10-year period of retention specified in article 82 of the Turkish Commercial Code (TCC) (former TCC Article 68), The Council of State considers the loss as not certified in case the taxpayer abdicate to declare the books and the proofs which are required to investigate how real the earlier years loss is depending on the fact that the taxpayer no longer has the obligation to retain (Bakmaz, 2010; Council of State 4. D. 29.03.1973, E: 1972/1565, K: 1973/1524).

Therefore, in case imposition prescription period expires for any reason, the duration of the tax examination will be extended accordingly, but no such link is established with regard to the retention and presentation periods of the books and proofs. According to this in periods such as imposition prescription period is more than five years, tax examination can be made for the period before the five years period and in case the books and the proofs of the relevant period is required the tax payers have no obligation to submit them (ISYMMO, 2013:5). Taxpayers can only submit books and proofs voluntarily. In case they do not submit, it is possible that they get rejected because the relevant outgoing is not certificated (Temizyürek, 2010: 128). As a result, the beginning of the prescription period for the earlier years losses is in parallel with the period of retention and presentation of books and proofs, and it takes five years starting from the beginning of the year following the period when the loss deduction is made.

4.6 Prescription of Amortization Expenses

Amortization is the process of amortization over a period of time, depending on whether the economic asset used for more than one year is worn out, abraded or depreciated and is an expense in essence (Temizyürek, 2010: 128). The amortization records are linked to each other, provided that the depreciation of each year is separately recorded starting from the date of beginning of depreciation (TPL Art. 189) and in this way, it is possible to certify the amortization procedure which is much longer than the prescription period, just as it is in earlier years losses (Arslan, 2007a: 37).

The amortization for economic asset is made depending on the economic life by the Ministry of Finance since December 31, 2003. Accordingly, since December 31, 2003 in Turkey, the economic life of depreciable assets are determined between 50 years and 2 years and amortization ratios are calculated depending on this (Seviğ, 2013). In this respect the period of retention is tied to the prescription period by the law but no reference is made to the cases in which the prescription period is variable due to the taxable event. On the other hand, in practice, the documents related to the acquisition of depreciation unit and the record of the amortization separated in the previous years require a five-year retention period, since the beginning of the calendar year following the year in which the asset is fully depreciated (Kürk, 2010: 180).

In this case, the beginning of the prescription period of amortization expenses also starts from the beginning of the year following the year in which the expense is recorded. This situation is undoubtedly due to the fact that the relevant expense effects the taxable period of the related year just like in the earlier years losses. However, as an exception of this subject, the prescription of the amortization of the depreciable assets used in long term construction and repair or common use of them in these works and other works is start from the beginning of the year following the year when the construction and repair work is over (Arslan, 2007b: 120). This situation forms the exception of the prescription

4.7 The Prescription of R&D Deduction

If the tax base is insufficient in the R&D deduction, the amount that can not be deducted in the related period is transferred to the next accounting period. In this case, there is uncertainty about determining the beginning of the prescription period. In the law, it is foreseen that the amount that can not be deducted in the related period will be transferred to the next accounting period but the period to benefit from this is not stated (ITL Art. 89/9, CTL Art. 10/1a). However, Article 3 of the Law on the Support of R&D Activities states that these expenditures will be amortized through capitalization according to VUK and that they will be recorded as an expense directly if an economic asset does not occur. It is stated in the same article that the amount that can not be deducted in the related accounting period will be transferred to the next accounting periods because of the insufficient profitability.

Furthermore, in the 13/6 paragraph titled "Tax Stamp Exception" of Implementation and Supervision Regulation on the Support of R&D Activities, the exemption papers and the documents which constitute the basis for the application of exemption, organized in relation to R&D and innovation activities, it will be kept for 5 years from the date it was issued and it will be presented to relevant persons and institutions when necessary. According to the related items, we can say that the documents issued for R&D activities will be kept for five years and look like depreciation expenses. In this sense, the prescription period for the R&D deductions starts from the beginning of the year following the year in which the discount is made, just like the depreciation expenses, and lasts for 5 years. The retention period of the relevant documents is probably 5 years starting from the following year(s) of the year in which the R&D deduction is made.

Even if the deduction items exceeding one year such as long term construction and repair jobs, loss deduction, implementation of deduction of investment and R&D deduction are different in terms of time, the prescription period will be 5 years starting from the year following the year in which the relevant deduction items affect the taxation period of the concerned year. The beginning of the retention period of proof must last 5 years starting from the beginning of the year following the year in which the deduction items has been completely terminated (Seviğ, 2013).

4.8 Prescription in Special Accounting Period

According to the law, income tax and corporation tax are levied on the income and profits that a natural person or corporation subject to corporation taxation has earned in a calendar year. The "calendar year" specified here is the actual time period used to determine the income or the profit. However, in accordance with Article 174/3 of the Tax Procedure Law, if the activities and transactions of the calendar year do not conform to the nature of the calendar year, the Ministry of Finance may designate 12 months of special accounting periods. Thus, an exception has been made for the calendar year, under the name of the special account period (Öncel, Kumrulu and Çağan, 2010: 246; Kaneti, 1987: 314).

According to this, the prescription may vary depending on whether the accounting period is a calendar year or a special accounting period. If the accounting period is calendar year, the prescription period is five years from the beginning of calendar year in which the taxable event occurred. If the accounting period is a special account period, the prescription period expires after five years from the beginning of the year following the closing of the accounting period (TPL Art. 174; Özyer: 202). For example for a corporation following the special accounting period of 01.06.2008–31.05.2009 the prescription period starts on the first day of the following year which is 01.01.2010 and ends at the end of fifth year which is 31.12.2014. the tax claim that is not imposed and noticed in this period will be prescribed.

4.9 Prescription in The Liquidation of The Corporations

As in the case of income tax the special cases valid for case bound exception, long term construction and repair jobs, exceeding deduction refund due to income tax, and special accounting periods, also valid for corporation tax.

According to Article 17 of the CTL; whatever the reason is, the period of liquidation shall be applied instead of the period of accounting at the taxation of the corporations which become liquidated. The liquidation period starts from the date on which corporations enter into liquidation phase, and the period from this date to the end of the same calendar year and each calendar year after this period is considered as an independent liquidation period.

If the independent liquidation period starts and ends in the same year, then imposition prescription is subject to general provisions and in accordance with Article 114 of the TPL, it starts from the the beginning of the year following the year when the liquidation is over and ends at the end of the fifth year. However if the independent liquidation period is not over during the year it started, then the prescription period for all the liquidation periods will begin on the first day of the calendar year following the year on which the liquidation is ended (Arslan, 2007b: 127). Again, in relevant General Communique Serial Number 1, it is stated that for the liquidations lasting more than a year, the imposition prescription period starts on the year following the year on which the liquidation period has ended.

It should also be noted that this situation is only valid in terms of implementation of corporation tax. For taxes other than the corporation tax the imposition prescription will be determined according to the general provisions (Ürel, 2012: 242).

4.10 Prescription of Stamp Tax

The period of imposition prescription is determined mainly on the axis of the taxable event. In case of stamp tax, the taxable event is not determined as a provision in Stamp Tax Law (STL) Article 1 and comes into play when the paper which has been subject to taxation is arranged. The stamp tax of these papers which are arranged to prove a particular point, is prescribed after 5 years from the beginning of the calendar year following the date on which the paper is issued (Arslan, 2007a: 34).

However, as an exception to this, the tax claim relevant to the document is re-born in case of re-utilization of the provision on VUK article 114/4 after the expiration of the imposition prescription period. In this sense, regardless of the five-year prescription period, the use of paper is regarded as a taxable event, and the stamp tax is levied on beneficiaries of the documents after the period expires (Arslan, 2007a: 34; Arslan, 2007b: 134). In other words, the second occurrence of the taxable event means the birth of a separate tax claim (Özyer: 207). In addition, even if some authors refer to this as a cutoff of imposition prescription (Apak, 2011), it is not related to the cutoff or interruption of prescription. It is necessary to think of this circumstance not as the recommencing of the prescription but as the reoccurrence of the taxable event for a second time, or in other words, the occurrence of a separate tax claim (Özyer, 178-179).

In all cases provision of the arranged paper is benefited whether it is subject to the stamp tax or not the date of the taxable event and the current provisions must be taken as basis. After the expiration of prescription period, if a paper containing more than one transaction is made to be used for only one of its provision, the tax claim is born in respect of all transactions in the paper. Moreover, for the papers arranged in as currency, in the case of special cases such as the change of the base, the change of the upper limit due to the change of the exchange rate of currencies, the variables in the date on which the paper is utilized are taken into consideration, not the date on which the paper is issued (Pehlivan, 2011).

4.11 Prescription of Real Estate Tax

The taxable event for real estate tax occurs in circumstances such as ownin a building or land in borders of Turkey, grant of usufruct, consideration of existance of an owner and usufruct if there is none (Arslan, 2007b: 130). In this case prescription period of real estate tax must be calculated as five years from the first day of the year following the year in which taxable event occurred.

However, in Article 40 of the Real Estate Tax Law (RETL), the start of the prescription period for building and land taxation has been specially resolved. According to this it is stated that the prescription period for the taxes and penalties of the buildings and lands which are not declared will start from the beginning of the year following the date on which the building and the land is noticed by the administration. Therefore prescription period in real estate tax is not related to the taxable event as in other taxes but related to the relevant immovable property to be noticed by the municipalities (Arslan, 2007a: 33). The General Communique Serial Number 6 and 12 of the RETL clarify that the prescription period for tax and penalties related to the tax will start from the year following the date on which the administration has noticed that buildings and land have not been declared.

4.12 Prescription in Inheritance and Gift Tax

In Inheritance and Gift Tax Law, the beginning of the prescription is stated as the date that the tax liability started not the date that taxable event occurred such as date of death or date of donation (Nas, 2011: 315). According to Article 20 of IGTL the liability of inheritance and transition tax; if the declaration is made, begins at the date of declaration for the goods shown

in the declaration; in cases the goods are not declared in declaration and/or declaration is not made, begins on the date when the goods transferred are determined by the administration; in the cases of registry of estate, bookkeeping or official liquidation, it begins the on the date on which such proceedings are supplied by the court. The imposition prescription in IGT shall commence on the first day of the year following the calendar year in which the circumstances specified in the article complies with this provision. In revelant General Communiqué Serial No 1 of IGTL it is stated that to determine the imposition prescription period the date of liability will be considered as starting point and then the imposition prescription will be calculated.

The issue here is that even though the taxable event is attributed to death or donation, neither the granting of the tax declaration nor the incompleteness of declaration is considered to be sufficient for the occurrence of the taxable event. On the other hand, the tax administration's knowledge of the goods related to taxation which are not notified to the administration is taken as a basis for the process of prescription (Kaneti, 1987: 126).

Just as in real estate tax, prescription in this tax type is realized by removing the root cause between the meaning of the concept of tax liability and the taxable event in terms of time (Arslan, 2007a: 33). The lawmaker ignoring the principle that the beginning of the prescription depends on the taxable event, reduces the possibility of tax claim to be prescribed and also this causes taxable event not to occur until the gift is declared and noticed by the administration (Karakoç, 2007: 322). Moreover, during this period, the tax bases and tax amounts to be paid are downsizing in real terms due to inflation and as well as there is no compensation for such a downsizing, it is also a possibility late declaration not to be subject to any penalty other than delay fee or irregularity fine (Ufuk, 2002: 116).

On the other hand if the date of death / transition which the tax claim occur was taken as basis as the beginning of prescription, the potential to collect the tax would be lost after 5 year from the date of death/transition. The purpose of the given provision is not only to specify the date of the declaration, but also the beginning of the prescription. However, if it is Article 40 of the RETL, or if it is Article 20 of the IGTL, both types of tax are criticized when they are evaluated from the point of view of prescription provisions, that prescription causes a lengthy result which is incompatible with the purpose to maintain public order (Karakoç, 2007: 322).

As a result, the five year prescription period is valid for all taxes that are in TPL unless contrary provision is stated. However, IGTL and RETL extend this period forever with exceptional provisions (Öncel, Kumrulu and Çağan, 2010: 132-133).

4.13 Prescription in Value Added Tax

According to VATL Article 10, taxable event is the delivery of the goods which are subject to the main taxation (Article 2 VATL) or the performance of the service (Article 4 VATL) and various other transactions. For this reason, the prescription in VAT is realized as 5 years from the year following the calendar year in which the taxable event occurs as a result of the transactions and situations stated in VATL Article 10 (Erginay, 1986: 100).

According to the VAT provisions, if the deductible VAT is higher than the calculated VAT during a taxable period, the difference is transferred to the next taxable period. In this case, taxpayers whose VATs are generally higher than the VATs calculated may not declare VAT to be actually paid over long periods. It is not possible for taxpayers who declare deferred VAT for more than 5 years to adjust their amounts before 5 years due to deferred VAT and to make additional assessment in this way (Ürel, 2012: 251). However, some tax inspectors interpret prescription as the period in which the payable VAT in the VAT declaration table of the taxpayer takes into account of the transfer structure of the deferred VAT. Although this is

not possible, it is better to accept the date of delivery and service as the period from which the tax claim is due (Ateş, 2010: 279). Because, in the jurisprudence case, the concept of the calendar year in which the tax claim is due is accepted as the date when the delivery and service are made. (Ürel, 2012: 251; Council of State, 9.D., 24.9.2003; E:2000/5813, K:2003/4581).

In The Banking and Insurance Transaction Law which is brought into force by Transaction Tax Law No 6802 that is repealed by VAT, the prescription starts from the year following the calendar year in which these transactions are made and is completed at the end of the five year period (Erginay, 1986: 100).

4.14 Prescription in Motor Vehicles Tax

According to the Article 9 of the Motor Vehicles Tax Law (MVTL); the motor vehicle tax is considered to be realized annually on the first days of January of every year by the tax administration at where the recording and registration are done. The realized tax does not get notified to the taxpayer and it is deemed served on the date it is realized. According to this there is no imposition prescription in MVT (Oktar, 2011: 140).

However, with the 27th article of the Law No. 5766 dated 4.6.2008, it has been decided that, as of 01.07.2008, the quot "If the motor vehicle tax that should be accrued is incomplete or not accrued at all, this tax shall be additionally assessed by the related tax administration" is added (MVTL Art. 9/2). In this respect, the prescription period for MVT in this context is stated to start on the date this situation is determined by the administration (Yücel, 2010: 255). MVT also has two equal installments in January and July each year. The tax shall be subject to collection prescription if it is not paid (or if not collected) within five years from the beginning of the year following the year in which the tax is due (Oktar, 2011: 140).

4.15 Tax Errors Correction Prescription

The imposition prescription period set forth in Article 114 of the TPL is also valid as a rule in for the correction prescription on the correction of tax errors (TPL 116-126). Accordingly, the correction prescription for correcting tax errors (TPL 116), calculation errors (TPL 117) and taxation errors (TPL 118), is five years from the beginning of the year following the occurrence of tax claim. It is not possible to correct the tax errors determined after the prescription period expires. As taxpayer may demand correction by applying to the tax administration provided that the subject of this application remain within this period, the tax administration may go to correction ex officio (Arslan, 2007b: 159).

However, in Article 126 of the TPL, special cases concerning the prescription period are mentioned (Nas, 2011: 321; Ürel, 2012: 243). According to this, the correction prescription for the taxes which are imposed and noticed on the last year of the prescription period can not be less than a year beginning from the date that error was made. In the second special case, the prescription period for the tax notified by way of announcement and accrued without being subject to a case in the tax court shall not be less than one year from the date on which the taxpayer's payment order is notified. The third special case is about the taxes which payment order is noticed by publication with the assessment advice letter. In these cases, there is a possibility that the taxpayer is not informed about the tax debt until the levy is executed. With this feature in mind, it is stated that the prescription can not be less than one year from the date of the execution of the levy (Ürel, 2012: 243). Thus, in all these three cases, it is possible for the prescription period to exceed six years. In advance rulings related to the subject it is stated that the correction prescription period is five years as the imposition prescription period is and it is also stated that this period may exceed up to one year in cases specified in Article 126 of TPL.

5. CONCLUSION

The five year period related to the prescription stated in the Turkish Tax Law is valid for all taxes unless contrary provision is stated. The beginning of the imposition prescription period, depends on the taxable event as a rule. The taxable event differs in relevant tax laws according to the characteristics of the taxes. Since prescription depends on these special provisions, prescription differs in terms of some taxes and situations.

In this respect, it has been determined that there are different opinions about the beginning of prescription period for the taxes collected at source and the beginning of the prescription period for the amortization expenses and R&D deduction seem to be undetermined. It is also understood that during the taxation periods, the beginning of the prescription period cause inequality between taxpayers and contrary to tax equity. It is also clear that the beginning of the prescription period for the inheritance and gift tax and the real estate tax is extended like forever in a way which is not compatible with the public order.

All these situations show how important the time is in the legal sense, but also show that the laws are inadequate in some cases. In this sense, every change made in the law can cause another problem while solving a problem. Therefore it is very important for the tax law in terms of prescription that every kind of change to be done in terms of taxation must be in accordance to the canons of taxation.

REFERENCES

- Akkaya, M. (2014). "Vergi Hukukunda Sorumluluk", Adana 1. Muhasebe Uygulamaları Sempozyumu, Adana, www.adanasmmmo.org.
- Apak, S. (2011). "Tarh Zamanaşımı Koşullarının İlgili Anayasa Mahkemesi Kararı Işığında Değerlendirilmesi", Vergi Sorunları, 270.
- Arslan, E. (2007a). "Tarh Zamanaşımı", Vergi Dünyası, 314.
- Arslan, M. (2007b). Vergi Hukukunda Zamanaşımı, Yaklaşım Yayınları, Ankara.
- Ateş, Ö. F. (2010). "Devrene Katma Değer Vergisinin Tahakkuk (Tarh) Zamanaşımı Süresi Açısından Değerlendirilmesi", Yaklaşım, 213.
- Bakmaz, Z. (2010). "213 Sayılı VUK Uyarınca Tutulması Zorunlu Kılınan Defterlerin Muhafazasında Özellik Arz Eden Hususlar", Yaklaşım, 215, <http://www.ozdogrular.com>, 25 Mart 2014.
- Batun Ö. Ç. (2013). Vergi Hukukunda Süreler Sorunlar ve Çözüm Önerileri, Seçkin Yayınları, Ankara.
- Bilici, N. (2010). Vergi Hukuku, Seçkin Yayınları, Ankara.
- Can, B.; Bülbül, Z. & Dağışan, V. (2012). Emlak Vergisi Hukuku, Şifre Yayınları, İstanbul.
- Candan, T. (2007). Açıklamalı Amme Alacaklarının Tahsil Usulü Hakkında Kanunu, Maliye ve Hukuk Yayınları, Ankara.
- Coşkun K. N. (2012). "Zamanaşımı Sürelerine Etkisi Açısından 'Mücbir Sebepler' ve 'Ödeme'ye Eleştirel Bakış", Ankara Üniversitesi Hukuk Fakültesi Dergisi, 61(3), 15 Aralık 2012.
- Council of State 4. D. 26.06.1970. E. 1968/4834. K. 1070/3778.
- Council of State 4. D. 29.03.1973. E. 1972/1565. K. 1973/1524.
- Council of State 7. D. 17.11.1986. E.1985/21. K.1986/2528.

- Council of State 9. D. 24.9.2003. E.2000/5813. K.2003/4581.
- Council of State 9. D. 10.06.1988. E. 1997/3722. K. 1998/2442.
- Çağan, N. (1975). Vergi Hukukunda Süreler, Ankara Üniversitesi Hukuk Fakültesi Yayınları, Ankara.
- Doğrusöz, A. B. (2004). “Tarh Zamaşımı ve Özellikleri”, Dünya, 21 Ekim 2004.
- Eray, S. (2008). “Damga Vergisinde Zamaşımının Vergi Usul Kanununun 113 ve 114’üncü Maddeleri Yönünden Değerlendirilmesi”, Vergi Sorunları,241.
- Erginay, A. (1986). Vergi Hukuku, Savaş Yayınları, Ankara.
- ISYMMO. (2013). “Tarh Zamaşımı Dolduktan Sonra Defter Belge İbrazı İstenmesi Şeklindeki Uygulamanın Değerlendirilmesi”, <http://www.istanbulymmo.org.tr>, 25 Mart 2014.
- Kaneti, S. (1986/1987). Vergi Hukuku, İstanbul Üniversitesi Hukuk Fakültesi Yayını, İstanbul.
- Karabacak, Y. (2013). “Vergi Karmaşıklığı Modern Vergi Sistemlerinin Kaçınılmaz Sorunu mudur?”, Mali Çözüm, 120(23), ss. 15-30.
- Karagöz, B. (2008). “Vergi Hukukunda Zamaşımı”, Yayınlanmamış Yüksek Lisans Tezi, Marmara Üniversitesi, Sosyal Bilimler Enstitüsü, İstanbul.
- Karakoç, Y. (2007). Genel Vergi Hukuku, Yetkin Yayınları, Ankara.
- Kürk, M. (2010). “Mükelleflerin Yasal Defter Ve Belgelerini Saklama Süresi Ve İstisnaları”, Mali Çözüm, 98.
- Nas, A. (2011). “Vergi Hukukunda Tarh Zamaşımı”. Ankara Üniversitesi Hukuk Fakültesi Dergisi, 60(2).
- Oktar, A. (2011). Vergi Hukuku, Türkmen Kitabevi, İstanbul.
- Öncel, M.; Kumrulu A. & Çağan N. (2010). Vergi Hukuku, Turhan Kitabevi, Ankara.
- Özbalcı, Y. (1985). Vergi Usul Kanunu Yorum ve Açıklamaları, Feryal Matbaacılık, Ankara.
- Özyer, M. A. (2014). Vergi Usul Kanunu Uygulaması, Hesap Uzmanları Derneği, İstanbul.
- Pehlivan, G. (2011). “Damga Vergisine Tabi Olup Tarh Zamaşımına Uğramış Kâğıtların Hükmünden Yararlanılması Durumunda Vergi Alacağının Yeniden Doğmasında Özellikli Durumlar”, Vergi Dünyası, 357.
- Seviğ, İ. V. (2013). “Defter Ve Belgelerin Muhafaza Ve İbraz Süresinde Zamaşımı”, <http://www.ito.org.tr>, 13 Aralık 2013.
- TDK (Turkish Language Society-TLS), (2014). <http://tdkterim.gov.tr/bts/>, 25 Mart 2014.
- Temizyürek, O. (2010). “Tarh zamaşımı, Tarh Zamaşımının Hukuki Sonuçları ve Zamaşımı Süresi Dolmuş Dönemlere İlişkin Defter ve Belge İbrazı”, Yaklaşım, 215.
- Ufuk, M. T. (2002). “Veraset ve İntikal Vergisinde Zamaşımı”, Yaklaşım, 120.
- Ufuk, M. T. (1998). “Vergi Hukukunda Zamaşımı”, Vergi Dünyası, 202.
- Ürel, G. (2012). Vergi Usul Kanunu Uygulaması, Seçkin Yayınları, Ankara.
- Yücel, M. (2010). “Vergide Zamaşımını Önleme Uygulamasına Anayasal Fren: Takdir Komisyonuna Sevk Tarh Zamaşımını Durdurmayacak Ya Da Vergi İnceleme Elemanlarını Bekleyen Uykusuz Geceler”, Mali Çözüm, 97.