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THE RELATIONSHIP BETWEEN OF TAX COMPETITION AND TAX HAVEN IN THE WORLD AND TURKEY

Abstract:

The country, where the individuals and institutions benefit from public services paying less taxes outside the country, is called tax haven countries.These countries is used as part of economic activities and they are preferred as the center of financial affairs so the phenomenon of interstate competition become a current issue. International tax competition is a tax policy which implementing that economic activity that occurred in another country to take his own country putting a lower tax rate.When taken out the country known as a tax haven it is said that this countries are too small and some of them' name and location in the map are unknown.
The purpose of the study is to find out the relationship between of tax competition and tax haven in the World and Turkey. In this direction, firstly on the conceptual framework tax competition and tax havens issues will be discussed. Secondly, the effects of the relationship between tax competition and tax havens on fiscal policy will be examined. Finally, studies conducted on the fight against tax competition and tax havens in the World and Turkey will be examined.

Keywords:

Tax Competition, Tax Haven, Fiscal Policy, Turkey, Tax Haven Countries

JEL Classification: E00, E21

INTRODUCTION

In general, the countries or regions, in which there is no tax, or taxes are very low is called “tax heaven”. The taxing rates in these places are at the low level in such a way that they will give rise unfair competition to the other countries. Another feature that makes attractive tax heavens is that there is no cash control, which aims at providing easiness to the foreign investors about investing in their countries. In the countries called tax heaven, the application of the principle of confidentiality of transactions and commercial confidentiality is valid, which means that the trade information belonging to the people or agencies doing business with banks; the areas, in which business is done; money gained; and trade secrets cannot be given to the third persons, agencies, and countries under any terms and conditions. This case which leads the taxing authorization every country uses in its own sovereignty area to create serious differences between countries, also leads to the tax competition between the relevant countries.

Harmful tax competition has become negatively affecting EU countries every passing day. For being able to completely eliminate unfair tax competition, the issue that competing countries go to the way of harmonization has become a current issue. Therefore, besides OECD and EU, also in Turkey, many studies were indirectly carried out about the unfair and harmful tax competition. EU and OECD, about direct and indirect taxes, issued many directives regarding the different tax harmonization. In these directives issued, trying to provide harmonization between the tax rates of member countries, it was aimed to be minimized the harms resulted from the unfair competition and, enabling to lower this competition to minimum, it was worked on completely eliminating it.

In the direction of all of these, in this study, after describing tax competition and tax heaven as a concept, it will be tried to be given place the studies carried out by EU, OECD, and Turkey on this subject.

1.The Concept Of Tax Competition And Its Scope

The concepts of taxing and competition is a subject frequently discussed in tax literature and tried to be explained by the concept of “tax competition”. In parallel with the technological developments experienced in the recent years, in the world, important developments were recorded in the merchandise and monetary movements and capital has become moving in a virtual world that does not have any border. Depending on this rapid economic and technological developments experienced, especially less developed and developing countries make a new arrangements in many areas, especially taxing, and try to become an advantageous position from the point of capital inflow, in order to be able to attract the investment- aimed potential capital that is in circulation in the world every moment . (Ay and Meriç,2007:13).

Globalization is an issue affecting many areas in a country from economic, financial, social.and political aspects, The leading area affected from globalization is tax and the most remarkable concept in the area of tax is “tax competition”.

Governments, participating in international agencies such as UN, IMF, and EU, compensate from their sovereignty rights but the only thing they cannot give up is the right to arrange their own taxes (Ay, 2001: 134).

Before describing the concept of tax competition, it will be in place to make some explanations regarding the concepts of tax and competition. Taxes are one of important elements of the government both qualitatively and quantitatively.

***Tax** is the monetary amounts, which government or statutory bodies, based on authorization they obtain from government, forcibly, in unreturned way , and directly receive from the real and legal persons, in order to meet public expenditures and intervene to the economic and social life, in accordance with the law issued by being based on sovereignty right of government* (Türk,1996: 98; Aksoy,1998: 187; Nadaroğlu, 1983: 260).

Tax collecting is based on the principle that every country has the right to determine how many amount of tax to get from the people and agencies within its own borders (Tanrıverdi, p.3.)

***Competition**, as a definition, is a race providing to be made economic decisions freely between enterprises in goods and service market (Yılmaz, 2003:570).*

According to the other definition, it is a confliction and race between the people going toward the same aim (TDK, 2004). In addition, competition is one of the main concepts of market economy (İyibozkurt,2002:71-74).

Tax competition is defined in the relevant literature, in order to generally increase of the level of a country; to enable national capital in the country to be able to become more competitive; and to be able to attract foreign direct capital to the country, as becoming lower total tax charge forming due to tax system in that country, considering the tax environment in the competing countries in this area (Oates and Schwab, 1983: 333).

In the discussions related to tax competition and to especially preventing tax competition, the concepts of tax harmonization and tax coordination are also frequently used. In tax harmonization, while countries makes equal the effective tax rates to each other, they lose their financial independencies.

In return to this, in tax coordination, countries, in order to prevent the inequality and destruction resulted from the high or low tax rates, protecting their financial independencies in tax policies as much as possible, aim coordination (Lassen and Dreyer, 2002: 50).

The concept of tax coordination is determined as “that the states of EU member eliminate the tax barriers in cross-border transactions of government without giving up the sovereignty rights of government”

In tax harmonization, in addition, one regards to the cultural differences of countries and features of the events engendering tax (Roin, 2001:553).

Tax competition and cross-border tax arbitrage are the different concepts from each other (Yılmaz, 2003:61) .Tax arbitrage means providing risk-free gain from a price difference arising from the unbalances in tax system (Karayılmazlar,2003:127). Cross-border tax arbitrage is that a taxpayer or a group of taxpayer obtain a tax advantage, utilizing the difference or confliction related to the structure of transaction and person between tax laws of two countries (Ring,2002:80).

2. The Concept Of Tax Heaven And Its Scope

Tax heavens, with the advantage of not paying for tax or paying for less tax, are the countries inviting the individuals or institutes to invest on their own countries Again, traditional tax heavens provides the way of avoiding tax for taxpayers instead of their paying for tax in high rate in the other countries (Öz, 2004:81).

One of the effects of globalization on tax systems are the tax heavens it reveals. A large part of the countries called tax heaven consists of isle countries and they have population and square area that are inconsiderable in world scale (Bozkurt,2004).

In the document dated April 2, 2009, which is he last report regarding the countries, tax heaven, the following principles are currently in the scope of tax heaven.

*Table-1:**OECD Report: Tax Heavens***

OECD Reports: Tax Heavens (Grey List)	
US Virgin Isles	Liberia
Anguilla	The Maldives Republic
Antigua and Barbuda	Republic of Marshall Isles
Aruba	Monaco Principality
Bahrain	Montserrat
Bermuda	Nauru Republic
Belize	Niue
Gibraltar	Panama
Cook Isles	Samoa
Dominica	Seychellois Republic
Grenada	St. Lucia
Sarkand Alderrney	St. Christopher and Nevis
Netherland Antilles	St. Vincent and Grenadines
Vanuatu Republic	Tongo
Gibraltar	Turks and Caicos Isles
San Marino	St. Kittsand Nevis

Resource: Pehlivan and Öz, 2015, p.129

A study was published by FORBES, an American financial magazine. According to this study, Turkey, with the score of 124.5, took place in 20 ranks of distance to tax hells in ranking, in 27 ranks to tax heavens. It can be easily said that Turkey is not a tax heaven. But, it cannot be said that transfers were not made from Turkey to some tax heavens. For, if the table is examined, in respect with the year 2005, from 43 firms in Turkey, capital export of $ 195 million (in respect with those in Table) to the countries called as tax heaven. In total, it will be seen that capital export of $ 7.7 billion was made to Turkey. In the same period, from the countries that are tax heaven to Turkey, an investment in the value of 15.5 quadrillion was made (Öz and Yaraşır, 2009:32).

In general, square areas and population of tax heavens are small. The most important resources of them are tourism and service sector. Although in these countries, tax rates are zero, they receive “fee” from the local enterprises. In addition, foreign companies and their employees consume the local goods and services. With taxing the wages of the local employees and outsiders, the consumptions of these people become an important income resources that are potentially the most important. As a result, this kind of activities make an important contribution to the economies of tax heavens and provides positive extremities. Offshore activities continuing in these countries keep an important place in their economies. The fees or taxes obtained from these activities have an important place in these economies and make an important contribution to income per capita. For example, In British Virgin Isles, it is assumed that there are approx.. 460,000 offshore business enterprises (Öz, 2004:81).

Features of tax heavens:

- ***Lack of tax or taxing in low rate refers to***

taxing economic activities realized in the country in low rate or not taxing them (Yetkiner, 2001:93).

- ***Firmly adhesion to the principle of privacy refers to***

about people dwelling in another country, making information exchange in the other relevant countries, and even having the legal and administrative arrangements equipped with very strict principles of privacy

- ***that tax laws are not transparent refers is that***

tax laws are not understandable and that there are legal and administrative regulations enabling to make specific agreements about the tax rates and tax assessment between tax administrations and taxpayers

- ***Not actually being in active is that***

people or institutes do not have an obligation to engage in an activity at a certain level. The original activity does not actualize in the countries that are tax heaven and these countries do not also make such as demand. Transactions are shown as if they are actualizing here on the paper.

3. The Reasons for That the People and Institutes Prefer Tax Heavens

The reasons for that the individual or institutional investors prefer tax heavens appear in the different areas.

Because of taxing regime that is being implemented in a country, the heavier tax charge on the taxpayer is, the more the negative effects of taxing on taxpayers will be, because taxpayers will search for the remedies of lowering this charge on them to minimum or refer to several legal or illegal ways. Therefore, tax heavens are viewed as the easiest way of being rid of the negative effects of taxing.

Among the reasons for preferring tax heavens, the desire to move away from taxing regime as well as the negativities created by the political, social, and economic conditions in the own countries of investors also take place. More uncertain the mentioned conditions are, more increase the rate of preferring tax heavens will show.

It is possible to collect the reasons for preferring tax heavens under two categories as the cases, in which taxes affect the preferences and the cases, in which taxes do not affect the preferences ***(*** *1984:57-58).*

***The Cases, in Which Taxes Affect the Preferences:* Tax Planning**

That tax rates are low or zero compared to the other countries is the most important reason for preferring the countries that are tax heaven. “Tax planning” expressing that a person arranges their activities in such way that it will enable for him/her to pay for a tax at a minimum level (Cangir, 2000:105) is one of the most important factors forming a desire to utilize the countries that are tax heaven on taxpayer. The activities the taxpayers carry out in the framework of tax planning are as follow (Karsan,1984:58-59) :

- Thanks to that tax rates are low and that exclusions and exemption are broad in tax heavens, taxpayer prefers the country that is tax heaven in order to reduce the tax charge on him/her in the large rate compared to his/her own country.

- The taxpayers in the countries, whose tax administrations do not necessarily or are not well-organized, consciously keeping back in tax payments in their own countries, transfer the taxes that should be pay for the taxes to government in time to tax heavens. Thus, they both obtain tax-free gain and gain more than tax and late fee or interest he/she will pay to government.

- Taxpayers can lower the incomes they obtain from several trade activities with tax heavens to the minimum level with the ways such as showing the expenditures made in these countries more than they are or hiding the incomes obtained in these countries and, through tax heavens, can provide quite good gain. The dimensions of imaginary export made with the country under consideration reveal another remarkable issue.

- Taxpayers, collecting their gains in the countries that are tax heaven, they can transfer them to the main center, which is in active in any country, where gain does not subject to tax, without taxing.

4. Tax Competition In The World And Turkey: Struggle With Tax Heavens

4.1. Tax Competition In The World : Struggle With Tax Heavens

In our age, governments, in order to make to be able to realize their common aims in the economic, political, military or more different areas, established many organizations such as **United Nations** (UN), **European Union** (EU), **World Health Organization** (WHO), **Organization of Petrol Exporting Countries** (OPEC), and **Organization of Economic Cooperation and Development** (OECD).

OECD, in order to eliminate the problem it first met in 1930s, called tax competition, tax heaven, and preferable tax regime, and negative effects it causes in the global area, beginning from 1996, with the support and cooperation of member countries, began to search for solution ways. The other study is the one, which was initiated under the name of “Package of Struggle with Harmful Tax Competition in EU” that first became current issue in the meeting hold by Finance and Economy Ministers of EU member countries in Verona in April 1996, which a more concrete content was brought in September 1997, and which is still continuing.

In struggle with tax competition and tax heavens, the studies and solution suggestions of OECD and EU are the most comprehensive and effective studies (Öz,2005:92-93).

4.1.1. The Studies Carried Out by OECD

In 1960s, beginning with the efforts of Federal Germany to attract attention to the issue of tax heavens, in the time of 30 years continuing to 1990s, in the world, many things have changed and developed. In parallel with these, the countries that are tax heaven used this time in favor of them and, together with that all countries of the world begin to suffer from these developments, in 1996, OECD dealt with the issue and initiated the first study related to tax heavens beginning from this date (Heper and Hoşyumruk, 2002:72-73).

In 1996, as a result of the studies initiated with the meeting of OECD Council of Ministers, the following reports were published by OECD.

- on the dates of April 27-28, 1998, “Harmful Tax Competition - An Emerging Global Issue”;
- in 2000, “Toward Global Cooperation: Improvements in Defining and Eliminating The Harmful Tax Applications ”;
- in 2001, “OECD Project on Harmful Tax Applications: 2001 Progress Report”.

In addition, on the date of February 28, 2002, “List of Countries That Do Not Cooperate” was published, and finally, “2004 Progress Report ” was published by OECD countries.

As OECD accelerates its studies regarding harmful tax competition, on the one hand, while a constriction is observed in the offshore services of the countries called tax heaven, on the other hand, the countries under consideration have begun to express their disturbance in louder way.

İf it is necessary to give an example, while offshore sector downsized by 20% in 2000, in only Antigua, the number of offshore bank that was 78 two years ago fell to 18.

4.1.2. Studies of European Union

European Union, founded in 1957 with Rome Treaty, becoming a foundation with 25 member today with 6 founder member as well as 19 countries participated in the different dates is one of the successful examples of economic congruence (Yamaç, 2005: 108).

EU adopted to realize integration gradually developing among the member countries as a target. In this context, in Union, the free circulation of people, capital, services, and goods; following the common policies in the areas such as agriculture, transportation, foreign trade, and competition, approximating the national legislations, and making economic policies compatible were determined as the main principles and important distances were recorded in the application (Gürhan and Aktürk, 2001:248-365).

Together with the pass to Single Market System, among in- Union countries and from out of Union countries, an environment encouraging the input of investment formed. Hence, single market system engendered the result that tax competition between union-member countries increases due to the efforts of member countries to have from investment potential forming in Union. European Commission thinks of that this kind of competition will be harmful for Union and that low income regimes formed by union- countries will be against union legislation about government aids (Öner,2004:7).Therefore, in European Union, after removing the borders, in order to eliminate the problems that emerges, it was gone to the coordination and adaption of the taxes in the member countries (Hoşyumruk, 2003: 86). In this direction, a certain priority was presented. The most remarkable example about tax congruence is minimum 15% of VAT application in 1992.

In EU, tax competition is seen to be quite prevalent. For example, in 1989, due to Germany charges a stoppage of 15% onto interest income, a capital of DM 100 million went out the country in one and half year. Again, in 1990, with lowering the rate of tax received via stoppage in Belgium from 25% to 10%, domestic investors closed out their foreign investments and, consequently, the flow of capital gain turned from deficit in the rate of 3% of GDP in 1989 and to a small of surplus in 1990. In Spain, a private taxing system in favor of national holding companies in 1997.ible It is possible to proliferate these examples given with the different applications of member countries (Giray, 2003:133).

Another element encouraging tax competition in EU is that the size difference between the countries that are the member of union is deep. While there were large countries such as Germany, United Kingdom, and France, on the one hand, there are small countries such as Luxemburg, Belgium, and Netherland, on the other hand.

As mentioned above, with the increasing tax competition, although the relevant studies are based on 1970si in the studies in these years, any achievement could not be provided. Following this study, in 1996, EU Commission prepared a report on the danger of tax competition. Report, in order to protect the financial incomes from erosion, presented a comprehensive action package to the countries. Later, throughout 1997, a tax policy group consisting of ministries of finance of the member countries met for making a work about the issue. As a result, of these meetings, with the law signed on the date of December 1, 1997, this basically includes the commitment of the parts to end up the harmful tax package until 2003 (Yamaç,2005: 108).

In terms of tax competition, investigation includes the laws, administrative arrangements, and administrative applications in tax system of a country. In the works made with EU, about determining whether or not the application is harmful, the criteria accepted are (Öz, 2005:118):

-the effective tax rates of the relevant country, which is significantly lower than taxing level applied by the whole country;

- whether or not the tax advantages are applied to those mon- established or to the transactions realized by those –non- established.

- keeping tax advantages from the domestic economy, applying the transactions of specific regime and therefore, whether or not national tax basis is affected.

- whether or not tax advantage is a privilege assigned economic transactions, in which there is no real economic activity.

- in determination of tax bases of multinational companies, among international standards applied, whether or not there are applications deviating from the standards, especially determined by OECD.

- whether or not tax arrangements are transparent.

When compared with the effort of OECD to impede tax competition, the attempts of EU to impede is seen to contain the important differences in respect with either the criteria counted or the quality of legal binding . For example in EU works, if reducing the rates of corporation tax holds the quality of applicability to all companies without making discrimination of domestic-foreign, it is accepted a far tax application.

In this context, arrangement targets on determining tax bases in privilege in favor of companies and, tax applications effectively providing to reduce tax load via tax discounts(Söğüt, 2003: 222).

Again, the work of EU was mostly related to commercial activities, while the work of OECD was related to the financial transactions and the other activities. In addition, in EU work, while member countries are undertaken certain responsibilities, in the work of OECD, especially tax heavens and information exchange stands out(Öz, 2005:119).

Finally, in ECOFIN Meeting of EU Ministers of Finance, held in Luxemburg, on the date of 03.06.2003, a package was adopted consisting of three main packages (Öner, 2004:8):

- In taxing businesses, the codes toward preventing unfair competition (thecode of conduct),

- Directive about taxing interest and royalty payments between the businesses related to each other,

- Directive taxing regarding savings.

In June 2001and February 2002, some actions regarding government aids about preferred tax systems in some member countries were put into operation by European Commission By ECOFIN, some preferred regimes were allowed for extending until the year 2010/21011: Belgium Coordination Centers, Ireland Foreign Capital Centers, Luxemburg Holding Companies, Netherland Finance Companies and Madeira Free Region (Öner, 2004:8).

The directive accepted regarding taxing savings will put into operation, beginning from the data of January 1, 2015. Directive was principally based on “information exchange” However, on this issue, Belgium, Luxemburg, and Austria were exempted from this directive throughout transition process and it was accepted that these countries apply “withholding”. However, in these countries, those obtaining interest income have the rights to prefer “information exchange” instead of being imposed on them. The rate of withholding to be applied will be 15% at the beginning,20% three years later, and 35% following the next three years. The time of transition period under consideration potentially contains uncertainty. This period will last until an agreement will be reached by EU with the third countries out of Union (Switzerland, Liechtenstein, Marino, Monaco, Andorra and USA) and the regions (Channel Islands, Isle of Man, etc.) under sovereignty of the member countries about interest payments and information change (Öner, 2004:9).

4.2. Tax Competition in Turkey -Struggle with Tax Heavens

Under this title of the study, the struggle efforts made in Turkey will be mentioned; however, before reporting the struggle efforts, the phenomenon tax competition and tax heaven in Turkey will be examined. In our study, the concepts of tax heaven and preferred tax regime was stated as application methods of tax competition and these concepts were tried to be explained Now, while the situation in Turkey is explained, it is not explained as tax competition and will be explained in terms of applications of tax heaven and preferred tax regime.

Whether the applications of country that is tax heaven are in favor or at the expense of Turkey are can be explained with the comparison of resource total going from Turkey to these countries and coming from these countries to Turkey. When the composition of foreign capital investments made on our country is regarded, it is seen that some part of capital comes from tax heavens such as Jersey and Guernsey.

Table-2: **In 2005, Capital Export Made From Turkey to the Countries that Are Tax Heaven (USD)**

Country	Firm	Capital
Bahama Isles	2	10,704,409
Bahrein	12	39.380.750
Cayman Isles	5	1,021,000
Gibraltar	1	9,713,290
Netherland Antilles	5	1.856.000
Jersey Isles	6	2.908.120
Monaco Republic	1	10.200.000
Niue Isles	1	585.000
Virgin Isles	10	118,847,868
Total	43	195.216.437
Turkey Total	1.609	7,791,083,984

Resource : Pehlivan and Öz, 2015, p.120

According to 2001 Report of Foreign Capital General Directorate, Treasury Secretariat, especially Panama and Netherland Antilles, the share of investments resulted from the countries having character of tax heaven in total investments approaches to 10% (Eyüpgiller, 2000:186-189).

Through Turkish banks in Turkey, generally, account is opened an offshore bank belonging to the same group. With this transaction, just as laundering money is realized, tax advantage is provided and higher interest income is obtained, because in these countries, generally, stoppage is not made or is made in the lower rate. This application also provides a variety of advantages to the mediating bank in terms of profitability. The most important one of these advantages, directing fund abroad, is being rid of required reserved (Bilici, 2004:5).

It is put forward that approx.. one-fourth of total deposit is kept in off –shore banks (Akdiş:p.6).

On the other hand, in terms of trade of narcotic drug, it is put forward that Turkey is a bridge country and transition point. In Susurluk Report, it was expressed that the size of black money in Turkey was $ 50 billion. Only through the transfer of black money, $ 5-6 billion remains to Turkey. It was stated that factor income i.e. value added Turkey provides through all activities of black money wax $ 9-10 billion (Uygur, 1999: 14) .

About the rate of unrecorded economy in Turkey to recorded GDP, estimations ranging between 25% and 100% are made. In 2000 Report of OECD, this rate was declared as 66%. The OECD average in the same year was 17%.

Turkey actively participated in the Forum of Harmful Tax Competition, initiated by OECD in 1998. As a result of the studies carried out by OECD, in OECD 2000 Report, in the list of preferred regimes belonging to the member countries two regimes from

Turkey took place. One of these is the regime of Istanbul Off Shore Bsnk and other is the applications of free region.

OECD, together with the other member countries, examined these regimes. After this list was published, also considering the other factors, in Turkey, some arrangements were made related to these regimes. Besides this, Turkey, with the Law of New Corporation Tax, numbered 5520, come into force in 2006, in order to prevent the behaviors disturbing tax competition, introducing implied gain distribution through transfer pricing, taxing the gains of foreign corporation controlled, and new arrangements regarding tax heavens to our tax system, the concept of implied capital was reorganized and tied to the objective criteria (Ekinci, 2007:93).

4.2.2. Offshore Banking Regime

In Turkey, with the No. 90/1210 Decision of Board of Minister, issued on the data of December 6, 1990 and the No.90/999 Board of Ministers, published in Official Journal, numbered 20671, on the date of October 20,1990, the region of “Offshore Banking of Istanbul Atatürk Airport” was formed but this region was actually never implemented.

In Turkey, the arrangements related to Offshore Banking were identified by the No.4289 Decision of Board of Ministers, in this arrangement, even though the permission associated with establishing bank to engage in an activity of Offshore Banking will be given by Council of Bank Audit and Regulation (CBAR/BDDK) and these banks will operate in the bases determined by this Council, it is stated that about these banks, Item 40 of Banking Law and Law of Central Bank, in which regulations such as the required reserve and general available money take place cannot be applied.

In Item 12 of Regulation on the Foundation and Activities of Banks, the regulations related to that the banks established in Turkey open branch or agent abroad, establish partnership and participate in the partnerships established take place and, in this scope, the bases regarding that the banks established in Turkey open branch in offshore regions were determined.

Although this regime is not actually implemented, since it is legally existent, in the OECD 2000 Report, it took place among the preferred regimes belonging to the member countries. Later, this regime was completely abolished by Regulation on the Foundation and Activities of Banks, issued by Council of Bank Audit and Regulation .

4.2.3. Arrangement on Security Establishment Realized by the No 5520 Law of Corporation Tax

4.2.3.1. Arrangement on Taxing Controlled Institute Gains

With the No.5520 Law of New Corporation Tax, the arrangements were introduced associated with taxing controlled foreign institute gains in order to be protected from the applications of some countries - related to attracting the funds and investments to their own countries at the expense of the other countries- bringing the ability to delay tax and leading to harmful tax competition and to tax the incomes of taxpayers directing their investments by means of subsidiary to low income tax countries abroad they obtain from here under certain conditions without waiting their transferring to Turkey (5520 Sayılı Yeni Kurumlar Vergi Kanunu Gerekçesi, İ.S.M.M. M.O. 2007).

According to this arrangement, the direct or indirect and separate and together capital, profit share of the fully responsible, real persons, or institutes and corporate gains of their foreign subsidiaries they controlled by having at least 50% of the right to vote, whether they are distributed or not, (the law, numbered 5520) the profits of foreign subsidiaries, even if they are not distributed to the companies in Turkey, are taxed in Turkey, adding to taxing base of the company in Turkey, in case that the following conditions realize together:

a) that 25% or more of total gross product of the subsidiary consist of passive qualified incomes such as profit share, license fee, and income of security sale out of commercial, agricultural, or self-employment activity carried out through capital, organization, and personnel employment in proportion with the activity;

b) that the subsidiary abroad holds total tax charge of corporation tax and like in less rate than 10% through profit before tax; and

c) that total gross product of subsidiary established abroad in the relevant year exceeds foreign currency corresponding to 100,000.

In case that the conditions specified above are existent, corporate gain, which will be subjected to the tax in Turkey will be found by taking into account the highest share the corporation in Turkey has in its foreign subsidiary in the relevant account period.

On the other hand, in case that profit share is distributed through the subsidiary established abroad obtains, corporate tax of the profit shares obtained will be calculated through the part not taxed in the scope of this item in Turkey.

As known, our system of corporate tax makes the subject of taxing from the aspect of corporation tax the gains obtained from the investments made by means of subsidiary, depending on the profit distribution from the gain the subsidiary of interest obtains. Even though the general rule is in this form, in the countries, in which there are zero or low rate tax applications, due to the fact that there is no obligation to distribute the profit, since the institutes in these countries or the dominant partner do not make profit distribution, for delaying to tax the gains that form, there is a very heavy environment. With the arrangements of controlled foreign institute, in order to struggle with the unfair tax competition, deeming the profits of the taxpayers investing on foreign subsidiaries in these subsidiaries, whether they are distributed or not, obtained from the aspect of tax applications, the gains attributed to these subsidiaries are included in the scope of Corporation Tax in Turkey (Ekinci, 2007:98).

4.2.3.2. Arrangement Regarding the Distribution of Implied Gain via Transfer Pricing

Application of the item "implied gain" taking place in 17th item of the previous Law of Corporation Tax led important confliction to emerge in terms of either domestic or foreign corporations and, in view of this, for solving this problem, in new law, some arrangements were made in parallel with the applications in OECD countries. That is, the item of "the distribution of implied gain via transfer pricing" taking place in 13th item of the new law of Corporation Tax, numbered 5520, was set for this aim (Tuncer, 2006:164-399).

These arrangements made related to transfer pricing were made compatible with OECD model. Thanks to these arrangements, detecting the tax losses and evasions resulted from using transfer pricing in such a way it will lead tax loss will become easier.

In general, transfer pricing can be defined as a pricing mutually applied in the presentation of goods and services in the main companies or sub-companies with which a business is connected from the aspect of income, expenditure, and profit share, and which is included in the same common interest from the aspect of profit share; or in partnerships, subsidiaries, and branches it is in dominant position in respect with management and supervision (Saraçoğlu and Kaya2006: 150*).* In terms of tax accounting, it can be defined as a method and accounting technique, which provides multinational companies to evade tax, shifting their profits between the main companies and subsidiaries that are located in the different countries.

The arrangements regarding transfer pricing were ensured in 13th item of the new law of corporation tax, numbered 5520. According to the 1st paragraph of this item, if the corporations make transactions of buying and selling goods and services with the relevant people through the return or price they identify in such a way that is against the principle of compatibility with their peers, the gain is deemed as partly or completely distributed in implied way. The transactions of buying and selling, manufacture and building, renting and leasing out; borrowing and lending money; transactions requiring the payments of premium, wage, and like are evaluated as buying and selling the goods and service in any case.

The concept of the relevant person passing in the provision of this paragraph was explained in 2nd paragraph of item. According to this, the relevant person expresses the own partners of institutes; the real person, institute, or its administration, to whom the institutes and its partners are related; and the real person or institutes, to whom it subject directly or indirectly in terms of supervision and capital. The spouses of partners, the lineal kin of the spouses of partners, their collateral kin, including third degree, and brother –in law kin are also deemed as the relevant person. In addition, considering whether or not the tax system of country in which the gain is obtained, provides the ability the same as Turkish taxing system creates and, information exchange, all transactions made with the people in the countries or regions announced by Board of Ministers will be deemed made with the relevant people.

The principle of compatibility with the peers is explained in 3rd paragraph of the item. According to this, the principle of compatibility with the peers expresses that the price or return, which be applied in the transactions of buying and selling the goods and services made with the relevant people should be compatible with the return or price, which will form in case that there is no such a relationship between them. The institutes, which makes the buying and selling goods and services with the relevant persons, using the prices and return in compatible with their peers, will not be kept responsive to the distribution of implied gain. For not being kept responsive to this application, the institutes should determine whether or not the returns and prices they apply in the transactions they make with the relevant are compatible with their peers and that they should be sure that they are compatible with peers according to:

a) the method of comparable price, comparing them with market price;

b) the method of cost plus, adding a reasonable profit rate;

c) the method of resale price, adding a reasonable brut sale profit; and

d) the method they will identify, in case that it is not possible to use any of these (Kızılot, 2006:165).

CONCLUSION

In the globalizing world order, in the capitalist system depending on market system, the increase of mobility of capital led the process, in which the countries compete for being able to attract more foreign capital to their own countries, to gradually accelerate. Besides the positive effects of globalization on tax policies, it has also negative effects such as that the countries providing the ability to avoid from the tax to the institutes and persons and lower their taxes to the minimum level direct the capital having geographical mobility to their own countries. The countries, for being able to attract more foreign capital investment, go toward lowering their interest rates compared to the other countries. While this case reduce tax load in terms of the countries that have intention to invest on the country of interest, for the other countries, where the tax rate is relatively high, a negative case emerges. Hence, under these conditions, unfair competition emerges. On the other hand, since that the tax rates of countries completely different from each other can form a barrier in healthily applying the thought market comprising a base in the foundation of EU, the issue of making compatible of the tax rates and bases between all other countries has become important.

OECD member countries agreed with the definition of tax heaven emerging as a result of unfair competition; definition and classification of harmful competition, and what the actions should be struggling with this in the theoretical plan. Especially, against the countries that are tax heaven, that treasury officials arranging the investments that are wanted to ne made abroad show a specific sensitivity is in place.

In competition on taxing, the countries that comprise a source for the unfair and unbalance distribution of tax load are called tax heaven. In comprehensive struggle with the countries defined as tax heaven and sanctions applied toward them, the point that should be primarily paid attention is that most of multinational companies carry out their activities in tax heavens. That, is almost all taxpayers being in active in tax heavens are multinational. Hence, sanctions that will be applied to the countries of interest can lead more tax loss and more unfair distribution of the tax compared to the previous case. This leads a dead-end in economy.

Struggling with tax competition is harmful. That is, competition should not be objected. If there is no competition, the developed countries will be more developed and, therefore, they will receive more share from the cake of hot money, while undeveloped or less developed countries will continue to be starved or will regress much more.

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