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RESEARCH ARTICLE

EVALUATION OF THE TURKISH TAX LAWS ON THE TAXATION OF TURKEY'S CRUISE TOURISM AND CRUISE SHIP OPERATION.

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Abstract

According to the Cruise Lines International Association (CLIA) global cruise passengers is 25.9 million in 2017. The demand for this specific form of tourism has almost doubled in comparison with the number of international arrivals. With the increase in demand for cruise tourism, it has become important to link the cruise tourism to the legal rules. Among the Sources of Merchant Law is the fourth book titled "Merchant Merchandise" of the Turkish Commercial Code. On the other hand, the written legal rules concerning the Turkish Maritime Trade Law are not limited to the provisions of the Commercial Code. In addition this article also examine the other laws, regulations and many of which are in the nature of public law, as well as provisions in various international agreements entered into force by the Government of the Republic of Turkey and enforced by our domestic law. In this article in the first section we provide the taxation of cruise tourism and cruise ship operation according to the turkish tax laws. Following section describes specific tax rules of cruise tourism and cruise ship operation in Turkey. Conclusions and suggestions for future researches are presented in the last section.

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Introduction:-

Cruise tourism is part of the maritime-based tourism category. Cruise tourism also includes port visits, visits to the port and shopping activities. The ports where cruise ships are visited and the tourist services offered by cruise tourism in these ports constitute the areas where host countries invest [1].

Cruise ship is the name given to cruise ships that travel for tourist purposes on pre-programmed major routes serving very high standards with many accommodation, dining and entertainment options [2]. Cruise ship cruises start at certain ports. Access and accommodation of participants during and after a certain number of ports and for a certain period of travel will be other components of the touristic product. According to the Cruise Lines International Association (CLIA) global cruise passengers is 25.9 million [3]. The demand for this specific form of tourism has almost doubled in comparison with the number of international arrivals. Today the Mediterranean is the leading European cruising region, second destination in the world after the Caribbean islands. At the cruise market, the Mediterranean has assumed the position of a region offering a wide cultural and natural diversity on a relatively small area [4]. With the increase in demand for cruise tourism, it has become important to link the cruise tourism to the legal rules.

The legal resources of maritime trade can be subject to a dual separation, national and international sources. National Legislation, Laws, Decrees on the Law, Regulations (Regulations), Decisions of the Council of Ministers, Regulations and Communiqués. Other International Legislation is Imo Agreements, International Agreements, Regional Agreements, Bilateral Maritime Agreements and European Union Directives.

Having introduced the research background and the objectives of this study, the rest of this paper is organized as follows. The next section provides the taxation of cruise tourism and cruise ship operation according to the tax laws. Following section describes specific tax rules of cruise tourism and cruise ship operation. Conclusions and suggestions for future researches are presented in the last section.

Taxation of profits given from cruise tourism and cruise ship operation:-

According to the Article 12 of the Turkish Commercial Code [5], establishments established to deal with passengers and goods moving on land, at sea, in the air, in the river and in the lake are considered as "*commercial enterprises*". In addition in the the Article 12 of the Turkish Commercial Code [6], a business is a merchant who operates, in part or in its own name, a merchant. According to this, tradesmen established to deal with freight and passenger transportation by ship are called "merchant" who make these activities partly or even in their own name [7].

Accordingly, the gains arising from freight and passenger transportation in maritime are "*commercial income*" in terms of tax law. Hence, the profits obtained from the cruise tourism activities and from the operation of the cruise ship or the operation of the cruise port are subject to income or corporation tax on the basis of commercial profit. Therefore, the income tax law and the provisions of the corporation tax law are taken as basis for taxation of these gains. If the real person who is operating a cruise tourism activity or operating a cruise ship is income tax, the corporation is subject to corporation tax. This includes non-resident real persons and limited liability legal entities.

Taxation on cruise ship ownership of individuals:-

If the ownership and operation of the cruise ship belongs to a single person, the profit obtained is subject to the income tax on the basis of personal commercial income. If the ownership or operation of the cruise ship belongs to more than one person, profit or loss to be born shall be distributed according to the shares in the ship to the shareholders in accordance with the Article 1076 of the New Turkish Commercial Code. Each shareholder is subject to income tax on his own earnings share and limited to his share.

If the ownership and operation of the cruise ship belongs to the individual companies, the profits or losses obtained shall be considered as the personal business interests of the partners in the collective companies and shall be subject to the Income Tax. In the case of limited partnerships, the share of the partnership partnership is subject to income tax on the basis of personal commercial income, while the share of the joint-venture partner is subject to income taxation on the basis of the Article 2 and the Article 75 of the Income Tax Law.

Taxation on cruise ship ownership of enterprises:-

Where the ownership and management of the cruise ship belongs to the equity company, the profit earned is subject to the Corporation Tax as corporate income. In case of limited partnerships, the tax base of corporations is calculated on the basis of the profit share of the common partner. If the profit share excluded from the calculation of the corporation tax base of a com- petitive partner and an essential competitive corporation is subject to income tax on the basis of personal commercial income. The profit share paid by the compliant partners is subject to income taxation as the income of the movable capital according to the Article 2 and the Article 75 of the Income Tax Law.

Taxation on distribution of tax exemption benefits as profit share:-

In order to speed up the development of the Turkish maritime and increase the contribution of the tourism economy, the gains obtained from the operation and the transfer of the vessels and yachts registered to the Turkish International Ship Registry [8] in 1999 and the Turkish International Ship Registry have been exempted from income and corporate taxes and funds [9]. Hence, the profits obtained from the operation and transfer of the cruise ships registered to the Turkish International Ship Registry is exempt from income and corporation tax. However, the exception to this requirement is that the cruise ship is registered with the Turkish International Ship Register and that the proceeds are obtained from the operation of these registered vessels. This includes non-taxpayers subject to real persons and institutions.

However, it is seen that the exemption is published by the Ministry of Finance, and the taxpayers of real persons (including the limited liability taxpayers) in the income taxpayers are different from those of the taxpayers [10]. If the income is obtained by the taxpayers of the corporations, it is exempted only from the taxes of the institution and if the income is distributed to the real partners by the corporations, it shall be subject to withholding tax at the rate of 15% of the 6 / b of the Article 94 of the Income Tax Law and declaration according to the Article 85 and 86 of the Income Tax Law.

When the provisions of the Ministry of Finance's General Communiqué on Corporate Income Tax No: 69 are taken into consideration, the profits earned after the registration of the registered ships in the assets of a company with legal personality are exempted from the corporation tax and if the same company distributes profits, the profit shares of the company partners are subject to income tax as a capital investment income.

If the ships as operated or not operated by registered to the Turkish International Ship Registry are transferred, the gains obtained are taxed exempted. In addition, the profit to be derived from the sale of fixed assets and materials that are obligatory to be used in vessels and yachts with respect to these activities is also an exception. However, in the event of a loss from the operation of the ship or yacht or their transfer, these losses and expenses can not be deducted from the gains from other activities.

Taxation of profits arising from the lease of cruise ships:-

It is in the form of securities by the nature of the vessels. However, according to the Article 23 of the Enforcement and Bankruptcy Act [11], the real estate (immovable) category also includes the vessels registered to the Ship Register. In addition, the Article 136 of the Execution and Bankruptcy Law contains the provision that "*provisions concerning the sale of immovable property, and also applicable to the vessels registered to the ship registry*". Therefore, the vessels registered to the Ship Register carry the property of real estate property.

The price paid for the lease of vessels not involved in economic operation is subject to income tax as a real estate capital income. Because, in accordance with the provisions of the seventh paragraph of the Article 70 of the Income Tax Law, "*Ownership of vessels and ship's shares*" according to the provisions of the "ship and ship's shares (not motorized or not toned) owned or rented by the tenants are considered to be real estate capital gains. Therefore, the profits arising from the renting of the cruise ships are subject to the income tax as a contribution to real estate. However, pursuant to the article 5 of the 94th Article of the Income Tax Law, it is foreseen that the taxpayers of the ship and ship owners should pay tax on their payments.

Rental price for renting of vessels including in economic operation is subject to income or corporation tax within the scope of commercial profit to be counted as economic activity due to registration of the govt in economic operation. As a matter of fact, in the 70th article of the Income Tax Law, in the determination of real estate capital income, "*... if the goods and rights are included in commercial or agricultural management, their revenues are calculated according to the provisions related to determination of commercial or agricultural income*".

Taxation of profits from the circulation of cruise ships:-

If the vessel is owned by a commercial enterprise or a company, the vessel is subject to income tax or corporate tax on the basis of commercial income. If the ships belong to individuals, they are subject to inheritance and transfer tax if they are transferred by inheritance or unrewarded. Because, in the Article 144 of the Law on Inheritance and Transfer Tax, subject to the inheritance of the persons in the nationality of the Republic of Turkey and the inheritance of the goods in Turkey or, in any case, in a non-binding manner, subject to the transfer of a person to another person or to a transfer of inheritance. Therefore, it is subject to the inheritance and transfer tax according to the fact that the vessels belonging to the persons are transferred by Inheritance and the goods are accepted as real estate goods.

However, it is explained in the other exceptions mentioned in the Article 5 of the Corporate Tax Law. Income and income from the operation and transfer of yachts registered to the Turkish International Ship Registry pursuant to Law No. 4490, provision of income and corporate taxes and exemption from funds. This exemption is limited to the profits that real and legal persons have gained from the operation and transfer of the vessels and yachts they have registered with the Turkish International Ship Registry. However, regardless of whether the registered vessels and yachts registered in Turkey are operated or not, the earnings from the transfer are also considered as exceptional [12]. In case the registered vessels and yachts registered with the Turkish International Ship Register are used for a

hotel or restaurant management (floating hotel or restaurant), can not be evaluated within the scope of the operation of the ship operation, so it is not possible to benefit from such exceptions.

Taxation in the other taxes:-

There are some provisions in Special Tax on Consumption Tax, Value Added Tax and Inheritance Tax Law on Taxation of Cruise Vessels in tax laws.

Special consumption tax:-

In the Article 1 of the Private Consumption Tax Law, the goods mentioned in the said law (II);

- In the first acquisition of those who are subject to registration and registration to the National Ship Register,
- Registration of the National Ship's Register and importation of those not subject to registration, or delivery by the builder or builder,

special consumption tax has been put into effect.

According to this, since the registration of the cruise ships to the National Ship Register is compulsory, they will be covered by the Special Consumption Tax Law in their initial acquisitions. Registration of the national ship registry and the status of the import of those not subject to registration, or the delivery of the goods by the builders against the private consumption tax law, shall be considered within the following principles.

In accordance with the relevant legislation, the "registration" statement in the Article 2 (1) c of the Special Consumption Tax Law is "a registration and a registered statement made to the traffic, municipality, port and the register of civil airports kept in the Ministry of Transport General Directorate of Civil Aviation". In accordance with this provision, only vessels which are required to be registered and registered in the port registry shall be deemed to be vested and registered vessels. But;

- Since ships navigating only in the inner waters and in places without port headings are obliged to register with the administration of the inland water craft (however, according to the Inland Water Vehicles Regulation [13], it is obligatory to register in places where there is a port presidency),
- Due to the fact that the vessels not in the position of a commercial vessel are not required to register and register with the National Ship Registry,

are not counted from the ships subject to registration in terms of the Special Consumption Tax Law.

The Article 847 of the Turkish Commercial Code stipulates that the registration of a ship registered in a foreign ship registry to the Turkish International Ship Registry requires that the foreign register of the owner be deleted. Therefore, foreign vessels are not counted as vessels subject to registration.

Accordingly, from the goods covered by the List of the Special Consumption Tax Law (II);

- 18 gross tonnage under the sea for navigation boats,
- Passengers and navigators (except those who watch at the port headquarters) not to watch at sea,
- Yachts (commercial yachts and yachts of 18 gross tons or more),
- Other recreational and sporting boats passing 100 kilograms,
- Yachts in private yachts, regardless of tonilatos,

importation of such vessels or delivery by importers is subject to the Special Consumption Tax in order to be excluded from the vessels subject to registration in the application of the Special Consumption Tax Law.

Value Added Tax (VAT):-

Value Added Tax (VAT) Law has been put under the provision of the Value Added Tax (VAT) for deliveries and services within the scope of commercial and agricultural activities in the first paragraph of Article 1 of the Law.

Therefore, as the purchase of vessels engaged in commercial and agricultural activities is included in the Value Added Tax, cruise ship purchases are also included. However, according to the first paragraph (a) of the Article 13 of the Value Added Tax Law, the delivery of maritime transport vehicles made for this purpose to taxpayers whose activities are partially or wholly owned or operated in various forms are exempt from Value Added Tax.

Therefore, the purpose of the cruise ships is an exception, as it is operated for tourism purposes. However, those who buy ships for sale are excluded from the exception.

Value Added Tax on shipments to shipbuilding operations:-

According to the first paragraph (a) of the Article 13 of the Value Added Tax Law, it is stipulated that the deliveries and services made in connection with the construction and construction of sea transport vehicles are exempt from VAT.

In this matter, it is foreseen that the deliveries related to the ship building made to the person belonging to the property of the ship built in the General Communiqué of Value Added Tax Law [14] No. 48 and the services rendered shall be counted as the Value Added Tax exception.

In other words, deliveries made to the person handling the ship or the person who engages in the leasing business and services rendered (including shipbuilding services) are exempt from the Value Added Tax.

Value Added Tax in ship repair, maintenance and repair services:-

According to the first paragraph (a) of the Article 13 of the Value Added Tax Law, it is stipulated that services rendered in the form of modification, repair and maintenance of sea transport vehicles are exempt from VAT.

In the General Communiqué of the Value Added Tax Law No. 48, it is stated that the services specified for the application of the exception are required to be made to the taxpayers whose activities are to be hired or operated in various forms.

However, in the same General Communiqué; it is stated that the following cases are outside the scope of exception, that is, subject to the Value Added Tax;

- The acquisition of vehicles (ships) as private property and the delivery, modification, maintenance and repair services of vehicles (ships) in case of use,
- In the event that these activities are never carried out or performed accidentally, even if they are displayed between the subjects of the vehicles (the vessels), in the delivery or modification, maintenance and repair services of the vehicles (ships),

Value Added Tax is applied.

Value Added Tax on ship lease:-

According to the provision in the 299th article of the Code of Obligations it is stated that *"a lease contract, a leaseholder's use of something or leaving it to the tenant to use it together with the use of it, and the tenant has undertaken to pay the agreed rental price"*. For this reason, the right to dispose of the rental is not transferred. Only the right to use is transferred. The property right on the property belongs to the property.

The value added tax (VAT) is linked to the delivery condition of the exception process in article 13 of the law (a). According to this person, either the delivery of the vehicles or the delivery of these vehicles to be delivered to the body will be made in delivery or service. In the 4th article of Value Added Tax Law, renting is also counted as a service. However, the use of this service in the manufacture and construction of the goods subject to delivery is essential.

Renting a ship is considered as real estate leasing. Accordingly, in accordance with the Article 17 (d) of the Value Added Tax Law, the value added tax is included if the leased property is registered in the balance sheet of the economic enterprise according to the provisions of *"Renting of immovables not included in economic enterprises"*. In other words, if the registered vessels are rented in the bank of the enterprise, it is subject to the Value Added Tax.

In accordance with the Article 13 / a of the VAT Law, renting services to taxpayers whose activities are partly or wholly owned or operated in various ways by the chartering of a marine vehicle whose VAT is exempted from VAT on 01/08/2008 is subject to VAT of 1% it will be subject [15].

Value-Added Tax on services provided abroad:-

According to the Article 1 of the Value Added Tax law, transactions made in Turkey fall into the subject of taxation. Also, the Article 6 of the Value Added Tax (b), services rendered or assessed or utilized in Turkey shall be deemed to have been performed in Turkey. Therefore, services made abroad are subject to taxation.

Therefore, the value added tax must be accrued in the rent payments made to the owner for the ship leased from abroad and it shall be paid in taxable form as the responsible person by the lessee.

Determination of tax base in foreign transportation institutions in cruise tourism:-

The principles regarding the determination of the tax base of real persons and companies subject to limited taxpayers engaged in transportation business are regulated in the Article 45 of the Income Tax Law. According to the article, *"the profits obtained by those who are subject to the taxpayer status in the transportation works carried out between Turkey and the foreign countries are determined according to the principles of the determination of the earnings of foreign transportation institutions subject to the Taxation of Institutions"*. Therefore, the above principles will be taken into consideration in the case of cruise tourism subject to limited taxpayers.

The determination of the corporate income in foreign transport institutions is regulated in the Article 23 of the Corporate Tax Law. According to article provision; *"The corporate income to be tax base of foreign transportation institutions shall be calculated by applying the average average rate of revenues. The average rates are 15% for maritime transport for all institutions operating permanently or accidentally in Turkey"*.

Commercial and agriculture incomes are taxed within the scope of a non-resident taxpayer, and the revenues earned in Turkey by foreign transportation institutions are; sea and air transport from the loading ports in Turkey to the ports of destination in the foreign country or to the foreign port to be transferred to the ship of the other institution, the amount they receive as passenger, freight and baggage handling fees, including the expense provisions received together with the ticket amount, shall be deemed revenue [16].

The persons and organizations acting as intermediaries in the transportation business collect dues or shares on behalf of some institutions in Turkey and if they receive a commission, these commissions and fees shall also be deemed to have been obtained in Turkey [17].

For the transportation works of foreign transport institutions outside Turkey passenger and baggage tickets they sell in Turkey for other institutions' accounts and commissions and fees they pay for freight contracts they make in Turkey are also considered to be the proceeds obtained in Turkey [18].

Foreign transport institutions and the branches or agencies that represent them in Turkey are obliged to keep a *"Revenue Book"* and to write this report in order and in detail in the order in which they are obtained in Turkey. Apart from this, there is no need to keep a book.

The average rate of return for that year and the non-resident corporation gains are applied to the total amount of the revenues in the book of revenues. There is a corporation tax to be paid by applying the corporate tax rate to the calculated earnings. However, the principles laid down in reciprocal or international tax treaties aimed at preventing double taxation are taken into account in taxation.

The tax deductions of corporations within the institution are made on the basis of the amount transferred to the headquarters after deducting the corporation tax calculated from the previous corporate tax without deduction and exemptions of the limited liability taxpayer corporations giving yearly or special tax returns.

Conclusion and recommendations:-

Cruise tourism and cruise ship operation activity is subject to taxation under Income and Corporation Tax as *"Commercial Income"* as the resulting gains.

However, in our research on our study; we have found that there is no direct tax law in Turkey and there is not a direct material related to cruise tourism within the current tax laws, unlike the European Union and some world countries in relation to cruise tourism.

It has been determined that taxes, duties, fees and fees related to cruise tourism are taxed and collected within the framework of the authorities transferred to some public institutions and organizations by laws and regulations. In addition, depending on the fulfillment of some services related to cruise tourism, it has also been determined that the compulsory collection authority of tax-like wages has been transferred as a provision for services provided to private sector organizations.

In the Turkish tax system, the current tax advantages provided to promote the maritime industry are not sufficient for the intended purpose. For example, the application of withholding taxation on profit distribution in tonnage tax applications is not available in many applications. However, the incentives applied in these countries are generally more comprehensive and advantageous than the incentives applied in our country. In this case, it can be said that the incentives applied in our country do not make the industry really attractive. In other words, the expectations have not been clearly revealed and full and comprehensive incentives have not been provided at the required level in order to reach full expectations. The consequence of this situation is that the taxation system creates a tax system that can not make the expected contribution to the development of the industry and contrary to the incentives provided in this system, tax losses are born. Since there is not enough data at hand, how much tax loss is incurred by the incentive applications and how much progress is being made in the sector should be put into concrete by the administrative units.

Turkey is also taxed on shipbuilding operations; the application of the "tonnage tax" applied in many countries today, the combination of the taxes in this direction, will facilitate the application in addition to the existing disarray.

The Turkish tax system does not have sufficient clarity in applications related to the maritime sector. There are contradictory situations in terms of tax application in the sector. One reason for this complexity is regulations that are not based on trust in the legislation.

Regulations that are not based on trust are elaborated and complexized as much as possible. Where necessary, it is possible to make simpler arrangements at the beginning of the practice, which has much heavier penal sanctions than today, based on trust-based systems. This situation creates a negative situation both in terms of existing investors and institutions in the sector as well as new investors.

Various arrangements can be made taking into consideration the systems of the countries which are going forward in the sector. However, it is not the fact that the regulations are similar to the practices of the country, but should try to give better conditions for the competitiveness of our country.

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