“THE VAT SYSTEM OF EUROPEAN UNION AND TURKEY”

SUBTITLE

“THE ANALYSIS OF THE TURKISH VAT SYSTEM COMPARED WITH THE EUROPEAN UNION VAT DIRECTIVE WITH RESPECT TO OBLIGATIONS OF HARMONIZATION DURING THE INTEGRATION PROCESS OF TURKEY”

Prepared by

ISMAIL AGARMIS
ANR 486537
2014

SUPERVISOR: PROF. DR. GERT-JAN VAN NORDEN
“THE VAT SYSTEMS OF EUROPEAN UNION AND TURKEY”

SUBTITLE

“THE ANALYSIS OF THE TURKISH VAT SYSTEM COMPARED WITH THE EUROPEAN UNION VAT DIRECTIVE WITH RESPECT TO OBLIGATIONS OF HARMONIZATION DURING THE INTEGRATION PROCESS OF TURKEY”

Prepared by
ISMAIL AGARMIS
ANR 486537
2014

SUPERVISOR: PROF. DR. GERT-JAN VAN NORDEN

DATE OF SUBMISSION: 24.06.2014
PREFACE

After gaining in debt knowledge thanks to the lecture on Value Added Tax in Cross-Border Situations, I realized that the VAT is not sufficiently introduced in the tax- and business world, although it is one of the most important revenue sources of jurisdictions. Despite the fact that the VAT is structured to tax consumptions in particular private consumptions, due to implementation differences of jurisdictions, the VAT still can lie as a burden on businesses. Although the VAT is seen as a simple consumption tax, in reality it might have a very complicated structure and have consequences for jurisdictions and any person as taxable persons. Due to the attractiveness of the VAT as future’s most efficient taxing tool, I wanted to analyse the VAT systems of Turkey and the European Union. I tried to surface the differences of both systems and their results. I owe my gratitude to my supervisor Prof. Dr. Gert-Jan van Norden for his contribution to let me analyse this research subject from multiple perspectives.

Executing this research brought me pleasure, deepening my knowledge on the subject at the same time. I hope that this research contributes to a better understanding of the VAT systems of both jurisdictions. I tried to transfer that knowledge to the reader by means of this thesis and hope he will have as much fun in reading it as I had in producing it!
ABSTRACT

“THE ANALYSIS OF THE TURKISH VAT SYSTEM COMPARED WITH THE EUROPEAN UNION VAT DIRECTIVE WITH RESPECT TO OBLIGATIONS OF HARMONIZATION DURING THE INTEGRATION PROCESS OF TURKEY”

ISMAIL AGARMIS
International Business Taxation / Law Track / Sub-track; Business Organizations and Strategies
Master Thesis, Submitted 24 June 2014

VAT is one of the most important improvements in the tax world in the 20th century. The VAT has improved and is day-by-day newly introduced in many countries worldwide. VAT has an important position in the European market as a first hometown of the VAT. Despite the lack of common system in direct taxes, the EU has succeeded to implement the Council Directive on a common system of VAT, which is legally binding for all Member States. Therefore the coherency of the Turkish VAT law to the Directive is an essential matter for Turkey as a candidate Member State.

This thesis, based on prior studies, researches and the acquis of both jurisdictions is the result of the analysis of the VAT systems of Turkey and the EU with respect to obligations of harmonization during the integration process. For the purpose of this study, main subjects of the VAT such as taxable person, taxable transactions, the place of supply, taxable amount, rates, exemptions and deductions are separately examined from the perspective of the EU Directive and the Turkish legislation. Thereafter, VAT systems are compared with each other to identify similarities and differences. Finally, the impact of differences and possible solutions are addressed. In conclusion, the thesis argues that despite the structural similarities of both systems, the Turkish VAT law deviates from the EU VAT Directive due to implementing differences. This thesis hopes to provide sufficient analysis of both systems to understand the importance of coherency on both VAT systems.
### GLOSSARY OF ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>BITT</td>
<td>Banking and Insurance Transactions Tax</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>TCA</td>
<td>Turkish Commercial Act</td>
</tr>
<tr>
<td>The ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>TITA</td>
<td>Turkish Income Tax Act</td>
</tr>
<tr>
<td>TTPA</td>
<td>Turkish Tax Procedural Act</td>
</tr>
<tr>
<td>TVTA</td>
<td>Turkish Value Added Tax Act</td>
</tr>
<tr>
<td>VAT</td>
<td>Value Added Tax</td>
</tr>
</tbody>
</table>
TABLE OF CONTENT

PREFACE ................................................................................................................... 3
ABSTRACT .................................................................................................................. 4
GLOSSARY OF ABBREVIATIONS ........................................................................ 5
CHAPTER I .................................................................................................................... 8
   I.1 INTRODUCTION .................................................................................................. 8
   I.2 A SHORT HISTORY of TURKEY with RESPECT to the EU MEMBERSHIP PROCESS ........................................................................... 10
CHAPTER II ................................................................................................................ 11
   II. SUBJECT and SCOPE of VALUE ADDED TAX ........................................... 11
      II.1 Subject and Scope of Value Added Tax in the EU VAT Directive .................. 11
      II.2 Subject and Scope of Value Added Tax in the Turkish VAT Law ................... 12
      II.3 Comparison of the EU VAT Directive and the Turkish VAT Law .................. 13
CHAPTER III .............................................................................................................. 14
   III. TAXABLE PERSON ......................................................................................... 14
      III.1 Definition of Taxable Person in the EU VAT Directive ................................ 15
      III.2 Definition of Taxable Person in the Turkish VAT Law ................................. 18
      III.3 Comparison of the EU VAT Directive and the Turkish VAT Law .................. 20
CHAPTER IV ............................................................................................................... 22
   IV. TAXABLE TRANSACTIONS ............................................................................. 22
      IV.1 Taxable Transactions in the EU VAT Directive ......................................... 22
      IV.1.1 Supply of Goods ....................................................................................... 22
      IV.1.2 Supply of Service ..................................................................................... 23
      IV.1.3 Importation of Goods ................................................................................. 24
      IV.1.4 Intra-Community Acquisition of Goods .................................................... 24
      IV.2 Taxable Transactions in the Turkish VAT Law ........................................... 24
      IV.2.1 Supply of Goods and Services within the Scope of Commercial, Industrial,
             Agricultural or Professional Activities ......................................................... 24
      IV.2.2 Importation of All Goods and Services .................................................... 26
      IV.2.3 Supply of Goods and Services with Respect to Other Activities ............... 28
      IV.3 Comparison of the EU VAT Directive and the Turkish VAT Law .................. 28
CHAPTER V ............................................................................................................... 29
   V. PLACE OF TAXABLE TRANSACTIONS ......................................................... 29
      V.1 Place of Taxable Transactions in the EU VAT Directive ............................... 30
      V.1.1 Place of Supply of Goods ............................................................................ 30
      V.1.2 Place of Supply of Services ....................................................................... 31
      V.1.3 Place of Importation of Goods .................................................................... 33
      V.1.4 Place of an Intra-Community Acquisition of Goods .................................. 33
      V.2 Place of Taxable Transactions in the Turkish VAT Law ............................... 33
      V.2.1 Place of Supply of Goods ............................................................................ 33
      V.2.2 Place of Supply of Services ....................................................................... 33
      V.2.3 Place of Importation of Goods and Services ............................................. 35
      V.3 Comparison of the EU VAT Directive and the Turkish VAT Law .................. 35
CHAPTER VI ............................................................................................................... 38
   VI. TAXABLE AMOUNT ....................................................................................... 38
      VI.1 Determination of Taxable Amount According to the EU VAT Directive ....... 38
      VI.2 Determination of Taxable Amount According to the Turkish VAT Law ........ 39
      VI.3 Comparison of the EU VAT Directive and the Turkish VAT Law ............... 40
CHAPTER VII ............................................................................................................ 41
   VII. RATES ............................................................................................................ 41
VII.1  Applicable Rates According to The European VAT Directive ................................................. 42
VII.2  Applicable Rates According to the Turkish VAT Law .......................................................... 43
VII.3  Comparison of the EU VAT Directive and the Turkish VAT Law ........................................ 44

CHAPTER VIII .............................................................................................................................. 45
VIII.  EXEMPTIONS .......................................................................................................................... 45
VIII.1  Exemptions According to the EU VAT Directive ................................................................. 45
VIII.1.1  Exemptions without Credit with Public Interest Reasoning ............................................. 46
VIII.1.1.1  Hospital, Medical Care and Closely Related Activities ............................................... 46
VIII.1.1.2  Education ....................................................................................................................... 47
VIII.1.2  Exemptions without Credit Related to Other Activities .................................................. 47
VIII.1.2.1  Insurance and Reinsurance Transactions ..................................................................... 48
VIII.1.2.2  Financial Services ....................................................................................................... 49
VIII.1.3  Exemptions With Credit ................................................................................................... 50
VIII.2  Exemptions According to the Turkish VAT Law ................................................................. 50
VIII.2.1  Exemptions without Credit ............................................................................................. 50
VIII.2.1.1  Banking and Insurance Services ................................................................................. 51
VIII.2.2  Exemptions with Credit .................................................................................................. 51
VIII.2.2.1  Exemption on Exportation ......................................................................................... 51
VIII.3  Comparison of the EU VAT Directive and the Turkish VAT Law ........................................ 53

CHAPTER IX ................................................................................................................................. 57
IX.    DEDUCTIONS .......................................................................................................................... 57
IX.1   The Implementation of Deduction According to the EU VAT Directive ............................... 57
IX.1.1  Refund Procedure .............................................................................................................. 60
IX.2   The Implementation of Deductions According to the Turkish VAT Law ............................. 60
IX.2.1  Refund Procedure .............................................................................................................. 63
IX.3   Comparison of the European VAT Directive and the Turkish VAT Law ............................ 64

CONCLUSION .............................................................................................................................. 66
BIBLIOGRAPHY ............................................................................................................................ 68
APPENDIX 1 ................................................................................................................................... 74
APPENDIX 2 ................................................................................................................................... 75
APPENDIX 3 ................................................................................................................................... 76
APPENDIX 4 ................................................................................................................................... 77
APPENDIX 5 ................................................................................................................................... 85
APPENDIX 6 ................................................................................................................................... 85
APPENDIX 7 ................................................................................................................................... 87
APPENDIX 8 ................................................................................................................................... 88
APPENDIX 9 ................................................................................................................................... 89
CHAPTER I

1.1 INTRODUCTION

Taxes are the part of our life from the beginning of the civilization period, although value added tax (VAT) is relatively late in joining the tax world. Before its introduction, domestic indirect taxes were typically limited to defined products such as excises on alcohol and tobacco and particularly sale and turnover taxes. VAT has become a milestone in its history as countries reflect on the need to raise revenue to deal with significant increases in public debt caused by recent economic and financial crises.1 The idea of value added tax appears to have been introduced by a German businessman Wilhelm von Siemens in the 1920s.2 This idea has been developed by the suggestion of the invoice-credit method by Adams in 1921 and vital contributions have been made by Maurice Laure in between 1953 and 1957. The first VAT implemented in France in 1948, which initially applied to the manufacturing stage and no credit for tax on capital goods applied, later on was converted to a consumption-type VAT in 1954.3 In 1965 the VAT was not a worldwide success yet against to dominant position of retail sale taxes in the OECD countries.4 Due to the effectiveness of raising tax revenue in a neutral and transparent manner, VAT spread out all over the world within just a few decades.

At the time of the creation of (the predecessor of) the European Community in 1958, the original six Member States were using different types of indirect taxation, which were mostly cascade taxes. The authorization of harmonization regarding turnover taxes is regulated in Article 99 of the EEC (Current article 93 of the EU Treaty).5 As a following of this authorisation, the implementation of the first common VAT rules, such as establishing a general multi-stage but non-cumulative turnover tax to replace all other turnovers taxes in the Member States, were introduced by two VAT Directives in 1967.6 However these Directives regulated the general structures of the VAT system and set the Member States free to determine the scope and the rate of VAT which was an obstacle to create a uniform VAT system in the Community. By the implementation of the Sixth VAT Directive in 1977 this obstacle was initially eliminated. Despite this improvement, the Sixth VAT Directive was not sufficient due to allowing the Member States many possible exceptions and derogations from the

---

1 A. Charlet and J. Owens, An International Perspective on VAT, Tax Notes International, Volume 59, Number 12, 20 September 2010, p.943
2 L. Ebril, M. Keen, J.P. Bodin, and V. Summers, The Modern VAT, IMF 2001, p.4
3 L. Ebril, M. Keen, Jean-P. Bodin, and Victoria Summers, The Modern VAT, IMF 2001, p.4
4 A. Charlet and J. Owens, An International Perspective on VAT, Tax Notes International, Volume 59, Number 12, 20 September 2010, p.943
5 Current Article 93 of the Treaty “The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Art. 14.
standard VAT coverage.\textsuperscript{7} A next improvement was a White Paper on the Single Market in 1985 and the adoption of the Single European Act in 1992, the harmonization of turnover taxes has taken a vital position to increase the budget of the Community and has taken away all obstacles against an efficiently working Single Market. Parallel to these improvements all directives related VAT matters have been revised and consolidated in 2011 to create a more uniform VAT system in the EU. Current national legislations must be in line with this consolidated version of the Directives (hereafter referred to as the Directive). The Commission did not stop with this step and announced new targets related to Europe 2020 to reach a more functional and competitive Single Market in the EU. Firstly the Single Market Act emphasized the fundamental importance of establishing a definitive VAT regime applicable to cross-border transactions.\textsuperscript{8} With this aim in mind, the Commission started projects to make a simple and clear VAT rule by means of a European VAT Code. Modern business models and standardised obligations related to the progress made in new technologies would be taken into account by the simplified rules of this code. This code should also lay down equal rules governing the right of deduction and some very limited restrictions on the exercise of that right.\textsuperscript{9} Finally modern methods of collecting and monitoring of VAT are examined to have efficient VAT working network. In accordance with this aim an intensive, atomised and rapid exchange of information between national administrations would be created.

On the other side the first studies on Turkish VAT Act (hereafter referred as the TVTA) were started around the beginning of 1970. In 1974 a first draft of the TVTA, which was the result of studies of a technical group, was prepared with cooperation of Germany and finally entered into force on January 1\textsuperscript{st} 1985 with the name of “Value Added Tax - Katma Değer Vergisi”.\textsuperscript{10} Turkey decided to eliminate negative effects of other turnover taxes that were in force at that time and get the benefit of success of implementing VAT rules. By this way Turkey would get financial support for the lack of revenue and besides that a harmonization process would be easier in respect to economic and financial cooperation with the EU. Therefore the new VAT system was inspired by the EU Model. In this respect the Turkish VAT is also a general consumption tax, that covers all goods and services applied to all stages from producer to final consumer and calculated on transaction value with a related rate. The Turkish VAT system has multiple rates and according to the Turkish VAT law, the Council of Ministers is authorized to change the VAT rates based on grounded limits by code.

Although the Turkish VAT system is structured on the EU Directives, the European Commission made some comments in “Chapter 16-Taxation” in the Progress Report of Turkey that the Turkish VAT system is partially in line with the acquis with respect to obligations of harmonization during the integration process of Turkey. However the Commission did not provide the

\begin{itemize}
\item \textsuperscript{7} M. Aujean, Harmonization of VAT in the EU: Back to the Future, EC Tax Review, 2012-3, p.136
\item \textsuperscript{8} European Commission, Communication on the future of VAT, towards a simpler, more robust and efficient VAT system tailored to the single market, COM(2011) 851 final, p.5.
\item \textsuperscript{9} European Commission, Communication on the future of VAT, towards a simpler, more robust and efficient VAT system tailored to the single market, COM(2011) 851 final, p.6.
\item \textsuperscript{10} N. Uzunoğlu, Katma Değer Vergisi Kanunu Yorum ve Açıklamaları, Maliye Hesap Uzmanları Derneği, 2014, Cilt 1, p.13
\end{itemize}
details. I could not find adequate academic researches that analyse both systems in detail including the effect of differences/disparities of both systems on the business organizations and their strategies. The Differences on both systems effects automatically the decision making process of business organizations and their budgetary planning. Therefore I decided to do a research on this subject with the question of “Is the Turkish VAT system in line with the European VAT system with respect to harmonization obligations of Turkey to be a Member State of the EU and what are the effects of disparities on business organizations and their strategies?”. The paper is mainly focused on substantial matters such as the subject and the scope of VAT, the definition of taxable persons, type of taxable transactions, the place taxable transactions, taxable amount, rates, exemptions and deductions. Intra-community transactions and its related matters are purely related with being a member of the EU and therefore these subjects will not be discussed in this study. Furthermore, chargeable events and chargeability of VAT due to the coherence on both systems and administrative obligations and special regimes are not discussed as this would go beyond the scope of this thesis. The method of analysis is structured as explaining firstly the EU implementations, secondly the implementation of the Turkish VAT system on the relevant subject. Finally those two implementations will be criticized in each chapter whether they are in line with each other. In case of inconsistency, possible solutions will be discussed in each related section. Due to limitations of this study, I will not analyse all taxable transactions and therefore I will mainly focus on the transactions, which are differently treated in both systems.

I.2 A SHORT HISTORY of TURKEY with RESPECT to the EU MEMBERSHIP PROCESS

Turkey has a very long history on the way to be a Member State of the European Union, which initially started in July 1959, right after the creation of the European Economic Community in 1958. After all negotiations Turkey and the EEC signed the Ankara Agreement on 12 September 1963 by aiming securing Turkey’s full membership in the EEC through the establishment in three phases of a custom union which would serve as an instrument to bring about integration between the EEC and Turkey. After formation of Customs Union between Turkey and the EU in 1995 Turkey has been officially recognized as a candidate for full membership on 12 December 1999 at the Helsinki summit of the European Council. Following this process, negotiations started on 3 October 2005. The assessment of Turkey’s taxation system by the EU Commission started on June 6th 2006 and after bilateral meetings the screening report of Turkey was published on 24 January 2007. In this report the importance of harmonization in the field of VAT was emphasized. The general information of the Turkish VAT system regarding taxable persons, the scope of VAT, the determination of taxable amount, payment, exemptions and deductions are briefly discussed. After all it is summarized that the overall structure of tax legislation is similar to the EU acquis. However it is also underlined that the
alignment is incomplete even though it follows the main structure of the acquis. The Turkish VAT system is not in detail compared with the Directives in this report. The reduced rate about textile products, different definition of “tax payer”, “taxable person” or “person liable for the payment of VAT”, different definitions of economic activity, wrong implementation of the concept of “place of supply” and “place of delivery”, the unclear distinction made between “tax-base” and “taxable amount”, exemptions for small enterprises were very briefly discussed and criticized.\footnote{11} As a next improvement, the Charter 16 related taxation matters has been opened officially on 30 June 2009 for negotiations between Turkey and the EU.

CHAPTER II

II. SUBJECT and SCOPE of VALUE ADDED TAX

A VAT in general is imposed on the supply of goods and services that is collected in chunks at each stage of production and distribution of goods or the rendition of services in proportion to the value added by each taxable person.\footnote{12} In the case that the VAT is structured based on the destination principle, imports are also subject to the VAT and exports are free of the VAT. In contrast, according to the origin principle, VAT is imposed in the country where goods are produced and services are rendered, where the value is added to those goods and services.\footnote{13} In case the VAT is structured based on origin principle, imports are not taxed and exports bear VAT.\footnote{14}

II.1 Subject and Scope of Value Added Tax in the EU VAT Directive

VAT is a general consumption tax charged on most goods and services traded for use or consumption involving the production and distribution of goods and the provision of services in the EU.\footnote{14} VAT constitutes tax collection in a staged process. In this process, successive businesses entitled to deduct input tax on purchases and account for output tax on sales in such a way that the tax finally collected by tax authorities equals the VAT paid by the final consumer to the last vendor.\footnote{15} With other meaning of this process, VAT is intended to be “neutral”, which means that businesses are able to reclaim any VAT that they pay on goods and services regarding its business.\footnote{16} In the end, the final consumer should be the only one who is actually taxed.

According to Article 2, transactions carried out for the consideration on the territory of the EU by a taxable person acting as such are subject to VAT. Taxable transactions mentioned in Article 2 of the Directive are:

\footnote{14} B. Terra, J. Kajus, Questions and Answers: Value Added Tax (VAT), EVD News, 12 December 2011, IFBD
\footnote{15} Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr. G.J. Norden, Fundamentals of EU VAT Law, 2013
\footnote{16} B. Terra, J. Kajus, Questions and Answers: Value Added Tax (VAT), EVD News, 12 December 2011, IFBD
• supply of goods by a taxable person;
• intra-Community acquisitions of goods from another EU country by a taxable person and non-taxable person provided certain conditions are fulfilled as well as the intra-Community acquisition of new means of transportation by anyone;  
• supply of services by a taxable person;
• import of goods outside the EU

**Territorial Scope:** According to Article 5 of the Directive, the territory of a Member State means the territory of each Member State of the Community to which the Treaty establishing the European Community is applicable, in accordance with Article 299 of the Treaty, with the exception of any territory referred to in Article 6 of the Directive.

### II.2 Subject and Scope of Value Added Tax in the Turkish VAT Law

The subject of VAT is formulated a bit differently in the TVTA, No. 3065 than in the Directive. According to Article 1 of the TVTA, three kinds of transactions are subject to VAT. The following activities/transactions carried out in Turkey are subject to a VAT:

• supply of goods and services provided within the scope of commercial, industrial, agricultural and professional activities
• import of goods and services of any kind
• supply of goods and services with respect to other activities which are exhaustively listed in paragraph 3 of Article 1.

**Territorial Scope:** The territory of Turkey for VAT purposes is regulated similarly to the customs area of the country, which excludes the free zones. The customs area covers Turkey territorial waters, inland waters and airspace.

---

18 According to 6 of the Directive, EU VAT does not apply in the following third territories: Mount Athos, the Canary Islands, the French overseas departments, the Åland Islands and the Channel Islands (territories which form part of the EU customs territory); the Island of Heligoland, the territory of Büsingen, Ceuta, Melilla, Livigno, Campione d’Italia and the Italian waters of Lake Lugano (territories which do not form part of the EU customs territory). Besides these territories EU VAT, in compliance with the Treaty rules, does not also apply in Gibraltar or the part of Cyprus, which is not under the effective control of the government of the Republic of Cyprus. These territories are also considered as third territories.
19 Deliveries and services arising from other activities:
   a) Mail, telephone, telegram, telex and similar services and radio and television services,
   b) Playing and organization of any kinds of betting, gaming and lotteries,
   c) Organization and displaying of shows and concerts participated in by professional artists, and sports events, games, races and compettitions participated in by professional sportsmen,
   d) Sales made at auction halls and customs warehouses, delivery of product vouchers arranged within the framework of the Law numbered 5300
   e) Transportation of crude oil, gas and the products thereof by pipeline,
   f) Leasing operations of properties and rights referred to in Article 70 of the Income Tax Law,
   g) Commercial, industrial, agricultural and professional deliveries and services pertaining or subject to or established or operated by the administrations of the general and annexed budget, special provincial administrations, municipalities, villages and the unions thereof, universities, associations and foundations and all kinds professional associations, and establishments with circulating capital or enterprises pertaining or subject thereto,
   h) Deliveries and services to be taxed based on optional liabilities in order to do away with the competition inequality
II.3 Comparison of the EU VAT Directive and the Turkish VAT Law

When comparing two systems, the subject of the European VAT is a supply of goods and services for consideration as a result of the economic activity performed by a taxable person. In this respect the criteria of “taxable person” and “consideration” have been taken substantial role to determine the taxable subject. However the taxable person and the consideration criteria’s are not centralized while making the definition of the Turkish VAT system’s subject as is done in the Directive. The subject of the Turkish VAT system is mainly structured around transactions carried out for specific purposes such as commercial, industrial, agricultural and self-employment activities. These activities have indeed economic effects as described in the decision of the ECJ, however it is not a wide concept as it has been accepted in the EU VAT system. From this perspective, it also deviates from the system of the Directive. Besides that, the essence of continuity, scope and character of commercial, industrial and agricultural and professional activities is defined and determined in accordance with the provisions of the TITA, and in case where there is no clarity in the TITA, in accordance with the provisions of the TCA and other relevant legislation. By means of this provision, the listed activities have objective interpretation regardless of the status of a taxable or non-taxable person based on the references of the TITA and the TCA. However, according to the Directive, economic activities are irrelevant from the aim and the result of activity. In contrast, the Turkish system refers to special activities with specific aims to determine taxable transactions. Finally some listed taxable activities in Article 1 paragraph 3a-h are inconsistent with the provisions of the Directive where those are regulated as compulsory exempt supplies such as public postal service, leasing activities etc. From my perspective, the TVTA needs to list those activities separately in order to prevent an implementation problem raised from the scope definition of specific activities mentioned above. Otherwise activities mentioned in Article 1-3 might be out of the VAT scope. For example, different from the T-Mobile case, transactions with respect to letting licenses of UMTS frequencies are subject to VAT under Article 1/3-f of the TVTA, although those services do not fall under the listed activities of the public body with respect to commercial, industrial, agricultural or professional activities.

With respect to import-related transactions, both systems tax activities. The Directive classifies only the definition of import of goods and no specific provision under the name of import of services. Those supplies are regulated under the place of supply rules. Due to lack of objective place of supply rules, the TVTA includes services under import activities.

The scope of the VAT is limited to the territory of Turkey, which means that third party transactions are out of the scope as it is done in the Directive.

---

20 Prof. Dr. B. Yaltı, Turkey Value Added Tax, IBFD, 2014, p.17
21 Prof. Dr. B. Yaltı Soydan, Hizmet İşlemlerinde Katma Değer Vergisi, Beta, 1998, p. 109
22 The ECJ, Case C-284/04, T-Mobile Austria GmbH and Others v Republik Österreich, 26.06.2007
23 The Council of State, 9th Chamber, 16.05.2001, E:2001/20, K:2001/2073
In conclusion the regulations regarding the subject and scope of VAT seem to be in line with each other at first glance. However, from my point of view there are some crucial differences. First of all, the consideration criterion is not directly referred to in the TVTA, which means that supplies without consideration is also subject to VAT in Turkey, although this is not the case from the Directive’s perspective. Indeed, in some situations, the provisions of the TVTA have the same effect as the Directive due to the exemptions. In case a consideration is applied, the direct link between the consideration and the supply is also required in both systems. According to a settled case law in Turkey\textsuperscript{24}, it is assumed that there is no direct link between the provided services and consideration with respect to advocate services, in case the fee is ruled by the court and paid by the losing party, not by the client of the attorney at law. It is assumed as a compensation of damage. The link between consideration and supplies is also similarly formulated in the Apple and Pear case\textsuperscript{25} for a different situation but with the same reasoning by the ECJ. Moreover, transactions that are not performed under the listed commercial, industrial, agricultural and/or professional activities will not be subject to VAT, although it might be an economic activity and cause a taxable event according to the Directive. As a result, the concepts of in-scope and out-of-scope in the Turkish VAT system are a little bit differently regulated than the Directive. Furthermore, the Turkish VAT system does not refer to a taxable person to define the subject of the VAT. This inconsistency is solved indirectly by referring different types of activities, which can be only performed by a taxable person. Said in another way, a taxable person has an indirect effect to determine the taxable subject in the TVTA.

The article regarding the definition of a subject in the TVTA should be revised by covering all kinds of supplies irrespective of aim and result to prevent different interpretations and infringements. In that case, the exhausted list in Article 1 paragraph 3 of the TVTA will disappear. Furthermore, the TVTA should leave the references to rules of income tax law and commercial law, hence the aim of those laws are different than the aim of VAT.

\textbf{CHAPTER III}

\textbf{III. TAXABLE PERSON}

In order to collect VAT, most of the VAT regimes require registered (taxable) persons to file returns and remit to tax. In most cases a legal entity is required to register itself if it makes or expects to make at least in accordance with a minimum requirement of annual taxable sales in connection with its businesses or economic activity.\textsuperscript{26}

\footnotesize{\textsuperscript{24} The Council of State, 4th Chamber, 22.07.2009, E:2007/2465, K:2009/1048
\textsuperscript{25} The ECJ, Case-222/82, Apple and Pear Development Council v United Kingdom, 13.12.1983
\textsuperscript{26} A. Schenk, O. Oldman, Value Added Tax, A Comparative Approach, Cambridge Tax Law Series, 2007, p.73}
III.1 Definition of Taxable Person in the EU VAT Directive

The taxable person in the sense of Article 9 is any person who independently carries out in any place any economic activity, whatever the purpose or result of the activity. From this perspective we might conclude that the EU VAT system is structured, based on the global concept. Therefore the definition of a taxable person is not limited to a person established or resident in the EU, or to persons who aim to gain or actually make profit.\(^{27}\) In order to properly understand the definition of a taxable person, I will analyse the key factors of taxable persons and also the meanings given by the ECJ.

*Any person;* Ben Terra prefers to use “anyone”, is not only an individual (self-employed persons) but also a legal person, such as a private or public limited company and besides that joint ventures and partnerships, even when lacking legal personality can be treated as taxable persons.\(^{28}\) In Heerma Case, C-23/98, the ECJ ruled that even the partnerships do not have legal personality according to national law, they may carry on economic activities independently which is to be considered as a taxable person. If partner acts own his name and on behalf himself can become a taxable person.\(^{29}\)

*Any place;* as it is mentioned above, a person does not need to be established or resident within the EU in order to become a taxable person according to the adopted concept at the Directive. The question where a supply is taxed has more importance than where the taxable person must be taxed.\(^{30}\) However it does not mean that in the EU VAT system, the place where a supplier or recipient is based would never be relevant. On the contrary, regarding cross-border services between businesses it is a crucial matter to know where the recipient of the service is established.\(^{31}\)

*An economic activity;* it is defined in Article 9 paragraph 2, as covering all activities of producers, traders and persons supplying services, including mining and agricultural activities, and activities of the professions and the exploitation of tangible or intangible property for the purpose of obtaining income therefrom on a continuing basis. According to the ECJ case law, “obtaining income therefrom on a continuing basis” has been determined as applying not the exploitation of property but also to all activities referred to in Article 9. In this respect an activity is characterized as economic where it is permanent and carried out in return for remuneration that is received by the person carrying out the activity.\(^{32}\) This is also confirmed by the ECJ case law related to the Hong Kong case\(^{33}\) that a person who habitually provides services for traders, free of charge in all cases, cannot be considered a taxable person within the definition of the Directive. The concept of economic activities is very wide interpreted by the ECJ. According to the decision of the Rompelman case\(^{34}\), the intention to be engaged in activities for which a consideration will be obtained can create an economic activity if that

---

\(^{27}\) A. Bal, The Vague Concept of “Taxable Person” in EU VAT Law, Int. VAT Monitor, Sep/Oct 2013, IBFD, p. 294


\(^{29}\) Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr Gert-Jan Norden, Fundamentals of EU VAT Law, 2013, p.5

\(^{30}\) Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr Gert-Jan Norden, Fundamentals of EU VAT Law, 2013 p.7

\(^{31}\) Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr Gert-Jan Norden, Fundamentals of EU VAT Law, 2013, p.7


\(^{33}\) The ECJ, Case 89/81, Hong Kong Trade Development Council v Staatssecretaris van Financiën, 01.04.1982

\(^{34}\) The ECJ, Case 268/83, D.A.Rompelman and E.A.Rompelman-Van Deelen v Minister van Financiën, 14.02.1985
intention can be confirmed by objective circumstances.\textsuperscript{35} Another important point that we reached via the ECJ Tolsma case law\textsuperscript{36} that a supply of services is effected for the consideration within the meaning of Article 2 and is therefore taxable, only if the service and the recipient and the received remuneration is directly related and constitutes the value of the service that is provided.\textsuperscript{37}

Even though the ECJ ruled that the activity is considered per se as an economic activity regardless of its purpose or the results, certain illegal transactions fall outside the scope of the VAT, such as the import and supply of drugs\textsuperscript{38} and the import of counterfeit currency notes.\textsuperscript{39}

Furthermore, the ECJ has ruled in the Polysar case\textsuperscript{40} that a pure holding company, whose activities concern solely the holding of shares in subsidiary companies, cannot be considered as a taxable person. As a complementary idea, the mere acquisition, holding and sale of shares do not constitute economic activity within the definition of the Directive.

Due to implementations of the ECJ mentioned above, EU VAT system has a very broad economic activity approach. On the other hand, some activities are purely accepted as a non-economic activity by the ECJ case law, which means that those transactions will be out of the VAT scope. Some examples of these activities/transactions \textsuperscript{41};

- activities performed only for private use,
- purely acting as owner,
- activities related to public interest and lack of consumption
- activities performed without consideration in general or without any direct link with the received consideration
- activities performed without contractual relationship between activity and received consideration
- sales between non-taxable person on occasional based
- cross border VAT group activities, supplies between members of the VAT group
- activities performed under the rule of non-supply or transfer of a going concern
- purely sale of shares

\textit{Acting independently}; this requirement is in detail explained in Article 10 of the Directive, which excludes employees from an obligation to charge the VAT on services provided to their employers.\textsuperscript{42}

Another important criteria to determine the independency is bearing the economic risks, which ruled at the FCE Bank case\textsuperscript{43} and the van der Steen case\textsuperscript{44} by the ECJ. According to the FCE Bank decision the

\begin{itemize}
  \item A. Bal, The Vague Concept of “Taxable Person” in EU VAT Law, Int. VAT Monitor, Sep/Oct. 2013, IBFD, p. 294
  \item The ECJ, Case C-16/93, R.J. Tolsma v Inspecteur der Omzetbelasting Leeuwarden, 03.03.1994
  \item The EJC, Case 289/86, Happy Family v. Inspecteur der Omzetbelasting, 05.07.1988, http://eur-lex.europa.eu
  \item The ECJ, Case C-60/90, Polysar Investement v.Inspecteur der Invoerrechtener...,20.06.1991, http://eur-lex.europa.eu
  \item Y. Bernaerts, S. Nathoeni, The Ins and Outs of Classifying Turnover for VAT, EC Tax Review, 2011-6, Kluwer Int, p. 292
  \item B. Terra, P. Wattel, European Tax Law, Fiscale Handboeken, Kluwer, Deventer 2008, p.273
  \item The ECJ, Case C-210/04, Ministro dell’Economia e delle Finanze and Agenzia delle Entrate v FCE Bank plc, 23.03.2006,
  \item The ECJ, Case C-355/06, J.A. van der Steen v Inspecteur van de Belastingdienst Utrecht-Gooi/kantoor Utrecht, 18.10.2007
\end{itemize}
fixed establishment of the FCE Bank could not be considered as a taxable person thus the fixed establishment did not bear the economic risks and therefore it did not act independently.

Another important point regarding defining the taxable person is the implementation of the VAT Group in the national law. According to Article 11, Member States may treat associated enterprises as a single entity, although they are legally independent, if they are closely bounded to each other by financial, economic and organizational links. However this is limited to persons established within the territory of a Member State. As a result of this implementation, the VAT group becomes a single taxable person and all transactions carried out within the VAT group are outside the scope of the VAT.\(^{45}\)

A final matter that needs to be discussed with regard to the economic activity is the evaluation of activities of public bodies. Article 13 regulates that a public body can act either in its capacity of public body, or in its capacity of a taxable person.\(^{46}\) However when they engage in such activities, bodies governed by public law must be regarded as a taxable person in respect of those activities where their treatment as non-taxable persons would lead to significant distortions of competition. Although there is no general public body definition in the Directive, we may conclude from the meaning of Article 13 that in order to qualify for the special regime for public bodies, three conditions need to be matched. Firstly the activities must be carried out by a public body and not by contractors or dealers. Secondly it must act in its capacity as public authority while performing those activities. Thirdly those activities must not significantly distort the competition in the Single Market. There is no uniform public body concept in the EU, for example Germany is a federation and the position of the Länder is completely different than the provinces in the other Member States.\(^{47}\) Besides that, the legal system of the Member State does not in all cases distinguish between private and public law, which means that in, for example the UK, the term “bodies governed by public law” does not have a specific legal meaning.\(^{48}\) Finally Article 13 (2) allows Member States to consider exempt activities engaged in by bodies governed by public law as activities in which those bodies engage as public authorities. Regarding this matter, the ECJ ruled that this provision is not aimed at limiting the benefit of treatment as a non-taxable person for VAT under the first paragraph of this provision, but in contrast, it permits Member State to extend that treatment to certain activities pursued by public bodies, which, although they are not activities engaged in by those bodies as public authorities, may nevertheless be considered as such.\(^{49}\)

---

\(^{46}\) Prof. A. van Doesum, F. Nellen, VAT in a Day, Kluwer, July 2013, p.19  
\(^{47}\) Dr. J.J.P. Swinkels, The Tax Liability of Public Bodies under EU VAT, International VAT Monitor Sept/Oct 2009, p.370  
\(^{48}\) Dr.J.J.P. Swinkels, The Tax Liability of Public Bodies under EU VAT, International VAT Monitor Sept/Oct 2009, p.370  
\(^{49}\) Dr.J.J.P. Swinkels, The Tax Liability of Public Bodies under EU VAT, International VAT Monitor Sept/Oct 2009, p.372
III.2 Definition of Taxable Person in the Turkish VAT Law

A taxable person is formulated differently in the Turkish VAT system than in the Directive. The TVTA lists the taxable persons based on type of activities instead of making a general definition of a taxable person. According to Article 8, taxable persons from the VAT perspective are;

- in cases of supply of goods and rendering of services, those who carry out such tasks.
- in cases of import, those who import goods and services,
- in cases of transit transportation, addressees of customs or passing formalities,
- General Directorate of Post Office and administrations of radio and television,
- in cases of betting, lotteries, gambling and similar games of luck, relevant Directorates,
- in cases within the scope of Article 1(3)(c), the organizers and displayers thereof,
- those who lease properties and rights referred to in Article 70 of the Income Tax Law,
- applicants for optional tax liability

In the TVTA, the taxable person has an objective character and it is irrelevant of legal status of person, which means that it can be any person. By the help of meaning of Article 8 in combination with Article 1, we can conclude that a taxable person is any person that supplies goods and services continuously and independently (exception of specific situations addressed in the act) within a framework of commercial, industrial, agricultural and professional activities, or that imports goods and services, or that supplies goods and services within the framework of activities listed in Article 1, paragraph 3 of the TVTA. This definition shows that there is an organic relation between activities subjected to VAT and taxable persons engaged in those activities. Besides that, it is irrespective whether the taxable person is domiciled or established in Turkey or the activity is carried out as principal or agent or activity carried out in accordance with an official obligation. Furthermore, although the TVTA does not openly refer to the independency criteria, we do understand indirectly from the implementations of the Ministry of Finance and settled case law by the Council of State that independency is also a necessary key factor to be treated as a taxable person. For example, according to a settled case by The Council of State, it is ruled that lawyers employed by another lawyer or institution cannot be treated as a taxable person.

The TVTA does not use the term of “economic activity”, however it refers to specific types of activities to determine the taxable person and taxable supply in Article 1 and Article 8. Therefore it is important to explain the definition of commercial, industrial, agricultural and professional activities in order to understand the Turkish VAT system properly. Due to the references in the TVTA, definition,
scope and continuity of taxable activities are determined according to provisions of the TITA and the TCA. The TVTA accepts the following activities as an economic activity:

Commercial and Industrial Activities: Although the TVTA refers to the TITA for definitions of the commercial and industrial activities, we cannot find any definition in the TITA. The TITA only defines the commercial earnings as “earnings resulting from commercial and industrial activities of any kind shall be regarded as commercial earnings”. Furthermore the TITA lists the activities, that can create the commercial earnings from the point of the TITA. (Please refer Appendix 1 for the list according to Article 37 of the TITA).

In respect to the reference of Article 1 of the TVTA to the TCA, we do find some information regarding the definition of commercial and industrial activities. The TCA is structured, based on the concept of business concern. All activities and transactions related to business concern (business organization) or factories or any other kind of manufactories are regarded as commercial activities. However, this concept is a narrow concept compared to the economic business concept. The economic business concept covers all kinds of activities with a profit motive including small activities such as farming, small sized retailer etc. According to the TCA and settled case law, the motivation of obtaining economic benefits, continuity, independency and organizational structure are necessary to be regarded as commercial activity. These measurements are quite similar to measurements of the definition of a taxable person required according to the Directive.

Agricultural Activities: According to Article 52 of the TITA, agricultural activities means “the conservation, transportation, sale or use in any other manner by the hunter, the fisherman or the grower, of plants, animals, fish, forests and products obtained by sowing, planting, preserving, cultivating, breeding and improving or by benefiting directly from nature, on land, and in the sea, lakes and rivers”. Besides that the breeding of stations for reproduction and use of all kinds of agricultural machinery and implements belonging to a farmer in the agricultural production of others shall also be considered as agricultural activities. In case sales are made in shops or a warehouse is opened to this end, the successive phases through which the products pass before reaching the shop or warehouse shall be regarded as an agricultural activity. Furthermore, offices opened by farmers for directing sales and purchases in connection with their agricultural activity shall not be considered as a shop, provided that their activity is limited exclusively to this object. The agricultural activities are in details regulated comparing with the Directive.

Professional Activities: These activities are defined in Article 65 of the TITA as “the execution of work by a person on his own behalf and account and his own responsibility without being attached to an employer and based more particularly on personal work, scientific and professional

53 Prof Dr. B. Yaltı Soydan, Hizmet İşlemlerinde Katma Değer Vergisi, Beta, 1998, p. 98-99
55 N. Uzunoğlu, Katma Değer Vergisi Kanunu Yorum ve Açıklamaları, Maliye Hesap Uzmanları Derneği, 2014, Cilt 1, p.27
knowledge or specialisation, than on capital, and having no commercial character, constitutes the professional activities.

The TVTA does not regulate any special regime such as VAT Group for associated enterprises. However, a taxable person who has several business places such as branches, offices and factories in different places in Turkey, is considered as one taxable person for VAT purposes since such enterprises do not have separate legal personality. (Article 43/2)

Public bodies and public-owned entities are also liable to remit VAT for their supplies, which have commercial, industrial, agricultural or professional nature. Besides that if public bodies import services or goods, they are treated also as a taxable person. (Article 1-final paragraph and Article 7). Public bodies and public-owned entities are treated as a taxable person to avoid distortion of competition.

III.3 Comparison of the EU VAT Directive and the Turkish VAT Law

Although it is mentioned in the screening report of Turkey that “Turkey uses different definitions such as ‘tax payer’, ‘taxable person’ or ‘person liable for payment of VAT’”, in contrast with this statement, the TVTA uses also only two terms such as “taxable person – Vergi Mükellefi” and “person liable for payment of VAT- Vergi Sorumlusu” in parallel to the Directive. Because the EU VAT Directive uses also the term of “taxable person” and “the person liable for payment of VAT”. At some juridical translation, the Turkish term “Vergi Mükellefi” in the TVTA, which is used for “taxable person”, is simultaneously translated as “taxpayer”. However, to my opinion this is a wrong translation lacking an analysis of the concept of this term. “Vergi Mükellefi” is not only liable for the payment of VAT but also a person that deals with listed taxable transactions in the TVTA, which is parallel to the definition of “taxable person” in the Directive. However, the formulation of “taxable person” is indeed differently structured in two jurisdictions.

The Directive provides a clear definition of taxable person. However the TVTA does not define the taxable person but lists persons who are taxable person based on type of activities. On the other hand, when we analyse the key factors that are used for the definition of a taxable person in the Directive and implementations of the TVTA under the provisions of Article 1 and Article 8, we can reach indirectly a definition of taxable person, which is similar to definition in the Directive. With respect to the meaning of “any person” and “any place” criteria to define taxable person, the provisions of the TVTA are similar with the Directive’s. According to the fifth paragraph of Article 1 of the TVTA, the nature of the proceedings shall not be affected and taxation shall not be thwarted by performance of such activities as a requirement imposed by laws or government authorities, by the legal status and personality of those performing such activities, by whether they are Turkish citizens or not, or by whether their residence or workplace or registered head office or business centre is located or not in Turkey. With another meaning of this provision, the subject of the TVTA is regulated based on transactions and irrelevant with the legal status and residence of the person.
In the Directive, the economic activity criterion has a substantial role to define a taxable person. Furthermore the Directive has a very broad economic activity concept by the help of ECJ decisions. The definition of economic activity is formulated independently from the definition done by income or corporate tax law aspects. The EU VAT system covers also all kinds of economic activity irrespective of aim and result of the activity. In order to decide if the economic activity is subject to a VAT, continuity and consideration criteria’s of economic activity also play a major role. Therefore, we need to check various decisions of the ECJ to analyse if the activity constitutes economic activity or not.

In the TVTA, economic activities are not defined but indirectly referred to as specific activities. Besides that, economic activities are not irrelevant from the aim and result of activity. The Turkish VAT system refers to special activities with specific aims to determine an economic activity. The Directive also specially refers to commercial, agricultural, activities of professions in Article 9, paragraph 2, but economic activity is not limited to those activities. From this point, we may conclude that the Turkish VAT system has a narrow economic activity concept. Different from the decision of the ECJ in the Hong Kong case, according to TVTA, the activities without consideration are also subject to VAT and consideration on relevant transaction is determined based on the market value. Furthermore, also different from the Polysar case, holding companies (no special holding company regime available in Turkey), which are merely holding shares in its subsidiaries, are also considered as a taxable person. Besides that, the sale of shares is also taxed under the TVTA, except sale of stock certificates and transactions that fall under Article 17/4-g and r. Furthermore, the criteria of independency and continuity to define economic activities are important and valid criteria to define listed activities in the TVTA and the Directive. Although Article 12 of Directive allows Member States to regard as a taxable person anyone who carries out on occasional basis some activities related to supplying of land and building, there is no such rule in the TVTA.

A direct link between provided services and consideration is also an important criteria for both VAT systems. As mentioned in previous chapters, the Council of State in Turkey has ruled similarly to the decision of the EJC with respect to the “Tolsma” and the “Apple and Pear” cases. Besides that, attorney services are subject to VAT in both systems. However, the attorney fee grounded by the courts is not subjected to VAT in both systems due to the compensation function of damages.

The Directive regards public bodies as non-taxable persons related to transactions in which they engage as public authorities even if they carry out economic activities except listed activities in Annex 1 of the Directive and an existence of significant distortion of competition risk with taxable persons. However, according to the TVTA, public authorities are subject to a VAT with respect to all

---

56 A. Bal, The Vague Concept of “Taxable Person” in EU VAT Law, Int VAT Monitor, Sep/Oct 2013, IBFD, p. 294
57 Prof. Dr. Ş. Kızılot, Şirket Hissesi Satışında KDV Var Mı, Yok Mu?, available at www.hurriyet.com.tr/yazarlar
their supplies within the scope of commercial, industrial, agricultural and professional activities, even if they supply those goods or service due to responsibilities raised from the related public code.

After all these explanations we may conclude that there are no big differences between two regulations with respect to a taxable person. Two important things namely the narrow economic activity concept of Turkey and the non-taxable person status of public authorities in the EU Directive can be criticized. The spirit and aim of Income Tax and Commercial Law are totally different from the VAT. Therefore it is not necessary to make references to those codes to determine the subject of the Turkish VAT. The better option for the harmonization process, Turkey should implement the broad economic activity concept of the Directive in the TVTA. By this way the problem related to in-scope and out-of-scope of VAT will be solved. With respect to public bodies, as a solution for the differences in both jurisdictions and efficient working VAT system, all economic activities of public authorities may subject to VAT to prevent hidden input VAT costs or extra budgetary burden on governments to subsided compensation funds on this respect. As another alternative, the activities of public body carried out in its capacity of public body, which does not constitute a competition in the market, might be treated as an exempt with credit supply to solve the input VAT problem. By this solution, supplies of public bodies can be still put on public display at reduced price as it is aimed. This subject is also under investigation within the framework of Green Paper to have better solution with respect to addressed problems.

CHAPTER IV

IV. TAXABLE TRANSACTIONS

In general, a VAT is imposed on supply for consideration and the supply is taxable if there is a clear connection between the supply and that consideration.\textsuperscript{58} Depending on the destination or origin principle respectively, import or export is treated as a taxable transaction. Furthermore, the classification of a sale as a supply of goods or a supply of services is significant for tax purposes.

IV.1 Taxable Transactions in the EU VAT Directive

The EU VAT Directive taxes four kinds of taxable transactions for VAT purposes as such: i-) the supply of goods; ii-) the supply of services; iii-) intra-Community acquisition of goods; iv-) the importation of goods

IV.1.1 Supply of Goods

According to Article 14, a supply of goods means the transfer of the right to dispose of tangible property as owner. From this definition we do understand that only tangible objects are included in the scope of “goods”. Tangible property term includes also electricity, gas, heat or cooling

energy and the like conform Article 15. Besides that, Article 14, paragraph 2 considers transfers made related to a compulsory transaction, for example by an order made in the name of a public authority against payment or compensation, or pursuant to a contract for hire or purchase or a conditional sale as supply of goods. Furthermore, Article 15 expands the scope of goods and allows the Member States to regard certain supplies as supply of goods even though they do naturally not constitute a supply of goods which the framework of Article 14, such as certain interests in immovable property including rights in rem giving a right of use over immovable property and share or interests equivalent to shares giving the holder thereof de jure or de facto rights of ownership or possession over immovable property or part thereof.

With respect to transferring the right to dispose of tangible property as owner, the ECJ has ruled by SAFE case that the mere economic transferring does not prevent to be considered as supplies of goods. Besides that the ECJ made clear that “supply of goods” does not refer to transfer of ownership in accordance with the procedures prescribed by the applicable national law but covers any transfer of tangible property by one party, which empowers the other party actually to dispose of it as if he were the owner of the property.

Furthermore with respect to self-supply, the private use by a taxable person or other application for non-business purposes must be also regarded as a supply made for consideration. (Article 16)

Finally, the Directive allows the Member State to regard some specific transactions as taxable supply with respect to certain works of constructions as referred in Article 14/3, internal supplies as referred in Article 18 and transfer of total asset or part thereof with another name transfer of a going concern will.

**IV.1.2 Supply of Service**

Article 24 regulates that supply of service is any transaction that does not constitute a supply of goods. Besides that, in Article 25 it is emphasized that the assignment of intangible property, whether or not the subject of a document establishing title, is also a supply of services. Furthermore, the obligation to refrain from an act, or to tolerate an act or situation is also considered as a supply of services. The same rule is valid for the performance of services in pursuance of an order made by or in the name of a public authority or in pursuance of the law. In addition to that, the use of goods forming part of the assets of a business and the supply of services carried out free of charge by a taxable person for his private use or of his staff or more generally, for purposes other than those of his business are treated as a supply of services for consideration. The Directive provides that the Member State may derogate from this rule, provided that this does not lead to distortion of competition.

---

61 The ECJ, Case C-185/01, Auto Lease Holland BV v Bundesamt fur Finanzen, 06.02.2003, http://curia.europa.eu
IV.1.3 Importation of Goods

Conform the external neutrality of the VAT, the VAT burden on goods entering the EU from outside must be equally treated as goods originating in the EU. Therefore import of goods is considered as a taxable event in the Directive. According to Article 30, import of goods means the entry into the Community of goods, which are not in free circulation within the meaning of Article 24 of the Treaty. In addition to that, the entry into the Community of goods which are free circulation, coming from a third territory forming part of the customs territory of the Community is also regarded as import of goods. With respect to services, the external neutrality of the VAT and the objective of general taxation of consumption are realized through the place of supply rules and not under special import rule such as goods.

IV.1.4 Intra-Community Acquisition of Goods

Intra-Community transactions are out of scope of this paper therefore not examined.

IV.2 Taxable Transactions in the Turkish VAT Law

As mentioned in Chapter I, according to Article 1 of the TVTA, three categories of taxable transactions carried out in Turkey are subject to VAT. These are; i) supply goods and services within the scope of commercial, industrial, agricultural and professional activities; ii) import of all goods and services; iii) supply of goods and services related to other activities listed in the Article 1-3

IV.2.1 Supply of Goods and Services within the Scope of Commercial, Industrial, Agricultural or Professional Activities

The TVTA does not use the term “supply of goods”. It uses “delivery” as a general term, which is equal to the definition of “supply of goods” in the Directive. The TVTA defines the “delivery” in Article 2, as “delivery is the transfer of the right to dispose of a property by owner, or those acting on behalf of him, to a buyer, or those acting on behalf of him.” Besides this general definition it emphasizes that an entrustment of a property to a place or a person pointed at by the buyer, or those acting on behalf of him, has the effect of delivery. Furthermore, in the event that the good is sent to the buyer, or those acting on behalf of him, commencement of the shipment or entrustment of the good to the carrier or driver has the effect of delivery of the good. The TVTA does not provide the definition of “property”. According to Prof. Dr. Ejder Yilmaz, property means all tangible properties and rights to assets, which might be the subject of the property in the legal sense. Prof. Dr. Jale Akipek claims that terms of “goods”, “thing”, and “property” are not synonym. In the hierarchy of these terms, “thing” covers everything which means super-scope term and comes first. Secondly “property” and thirdly “goods” takes place at this hierarchy. In this case all goods are a

---

62 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr Gert-Jan Norden, Fundamentals of EU VAT Law, 2013
63 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr Gert-Jan Norden, Fundamentals of EU VAT Law, 2013
64 Prof. E. Yılmaz, Hukuk Sözlüğü (Law Dictionary), Ankara Yetkin Yayınları, 2004, s.768
65 Dr. G. Yılmaz, Katma Değer Vergisinde Vergiyi Doğuran Olay Olarak Teslim, Adalet Yayınevi, Ankara 2012, p.29
property and thing, but all things and properties need not be goods. After analysis of the whole text of Article 2, we do understand that the terms of goods including movable and immovable goods is meant while making the definition of “delivery” in Article 2, due to the importance of the moment of de facto delivery and the acceptance intangible elements, such as electricity, gas, heating, cooling and the like as tangible elements to include the definition of supply of goods.66

From the definition of delivery, we should understand that two elements are necessary to define a delivery: a-) the existence of a property to be subject to delivery; b-) transfer of the right to dispose of a property by the owner, or those acting on behalf of him, to a buyer, or those acting on behalf of him. According to the Turkish Law, the transfer of actual property will be de facto accepted as a supply with respect to movable properties. The official registration of transfer is considered de jure as transferring of the right to dispose of immovable property.67 If the immovable property is started to use or is rented earlier than formal registration, from the perspective of Turkish VAT, it is assumed that the immovable property has already been supplied.68 According to the settled case law by the Council of State69, if the immovable property de jure supplied but de facto is not supplied than the taxable event does not occur.70 Advance payments are not subject to VAT as long as goods are not delivered, or invoice or similar document is not issued at the moment of payment.71 If the invoice or similar document is issued, the amount of the invoice or similar documents will be subject to a VAT, even if the goods are not delivered de facto.

From the point of the Turkish VAT system, transactions create still a taxable transaction as a supply of goods, even if supplies made without consideration, or the goods are not delivered to the purchaser, or goods are damaged or lost on the way to the purchaser, or cost and/or VAT amount of the transaction is not paid to the supplier.

With respect to multiple supplies with a single movement, according to Article 2 paragraph 2, each stage in between is regarded as a supply of goods. In addition to that, barter transactions are considered as two separate supplies of goods.

Furthermore, Article 3 of the TVTA considers the following transactions as a supply of goods:

- Withdrawal of taxable goods from the enterprise in any manner whatsoever for purposes other than those subject to tax, or disposal of the taxable goods to the staff under names such as wage, premium, bonus, gift, and donation (self-supplies)72
- Use or consumption in any manner whatsoever of the goods for business purposes manufactured by a taxable person in his own enterprise (internal supplies).
- Transfer of possession in sales made on condition that the title is retained

---

66 Dr. G. Yılmaz, Katma Değer Vergisinde Vergiyi Doğuran Olay Olarak Teslim, Adalet Yayınevi, Ankara 2012, p.30
67 Dr. G. Yılmaz, Katma Değer Vergisinde Vergiyi Doğuran Olay Olarak Teslim, Adalet Yayınevi, Ankara 2012, p.31
The transfer of a business as going concern constitutes a supply of goods. However those transactions are exempt under certain conditions of Article 17/4-c of the TVTA.

The Turkish VAT system considers all transactions/activities as a service excluding supply of goods and occasions regarded as supply of goods (deemed supplies) and import of goods. Besides that it is indicated that such transactions may be realized in forms such as making, processing, creating, manufacturing, repairing, cleaning, safekeeping, preparing, assessing, leasing, and undertaking not to do a certain thing. The barter transactions that combine good and service are considered as two separate transactions and will be taxed separately in accordance with provisions applicable to service or goods. According to Article 5, allowing the owner of the enterprise and the operational staff or other persons to benefit free of charge from a service subject to tax is considered as a service. Internal-supplied services are not subject to a VAT. There is no such a special regulation in the TVTA. Besides that the TVTA does not provide specific rules with respect to services provided with regard to going concern.

IV.2.2 Importation of All Goods and Services

According to Article 1-2, import of all kinds of goods and services, which are carried out in Turkey are subject to the Turkish VAT. However, the TVTA does not provide any definition of the term ‘import’. We can find the definition of import in Article 2 of the Special Consumption Tax Act as “Entry into Turkish Custom Zone of goods subjected to tax.” As we understood from this definition, it addresses only import of goods. However the TVTA taxes also import of services. In practice and interpretations of the Ministry of Finance and the Council of State, the import of services is considered as the service, which has been carried out abroad (out of territory of Turkey) but is benefited in Turkey under the rules of Article 6. If the service is carried out and enjoyed abroad, than it is not a taxable transaction under the TVTA. For example, services such as restaurant, hotel, rent a car, advertisement and marketing service that have been carried out and utilized abroad are not subject to a VAT. However, an architectural drawing service regarding a dam project in Turkey provided by an architecture bureau located abroad will be subject to VAT in Turkey, due to the fact that drawings will be used for the project in Turkey. In this case the service recipient is assigned as “a person liable to pay VAT” according to the provision of the TVTA, if the service supplier is not resident in Turkey. In another situation, for example, if a legal or private person obtains credit service from banks or financial institutions located abroad, this credit service will not be subjected to VAT, hence those activities are subject to banking and insurance transactions tax (the BITT) and those transactions are exempt according to Article 17/4 of the TVTA. However, the supplier of a financial service should have the same structure as the business organizations that are subject to BITT in Turkey in order to benefit from exemption. If not, than those services will be subject to VAT in Turkey. In case the financial service provided by the institution, which has same structure required in the BITT, than those

73 C. Yerci, Hizmet İthalatında KDV I-II, Yaklaşım Dergisi, Kasım 2005, sayı 155
services are not subject to VAT in Turkey. Moreover those services are also not subject to the BITT, hence those institutions are not resident in Turkey. Financial services are also exempt according to provision of the Directive. If we check the whole picture, this transaction will not be taxed in both jurisdictions, which creates a non-taxation situation. Furthermore, this situation encourages the tax planning for the EU originated financial institutions. According to this scenario, the transaction is not taxed in both jurisdictions and the input VAT on this transaction is deductible for the EU company.

The term of “utilization of service in Turkey” does not have a clear definition in the TVTA. The Ministry of Finance tries to give meaning to this term via specific examples. However those examples are not representing all situations. For example, commissionaire services provided by foreign companies to Turkish companies with respect to import of goods, are subject to Turkish VAT, hence those services are enjoyed in Turkey. This approach is also in conformance to the destination principle and the place of supply of service rule in the Directive hence customer is located in Turkey. However, if a taxable person receives an advertisement service abroad with respect to the taxable person’s export products, the advertisement service is not subject to the Turkish VAT. The Ministry of Finance indicates that services carried out abroad and also utilized abroad. It can be criticized that the advertisement service has connection with the activities of the taxable person in Turkey hence the company benefits more turnover through the mentioned advertisement service. However the Ministry of Finance does not apply his general approach in this case, as will be described in the next chapter.

From my point of view, utilization should be evaluated from the consumer perspective. Although recipient of service (the Turkish company) established in Turkey and benefits overseas sales in Turkey, if the final consumer enjoys service abroad, indeed mentioned advertisement service should not be subject to a VAT in Turkey. However it is a reality that the determination of the place of effective use and enjoyment is not always that easy. For example, with regard to advertisement services, if advertisement spots of Turkish Airlines are broadcasted via BBC, Turkish consumers can also enjoy that advertisement in Turkey. In this case the Ministry of Finance can claim that the cost with regard to advertisements services might be partially taxed in Turkey. However, to my opinion it is not easy to calculate and split the cost of advertisement service to determine local payable VAT, in case those advertisements are benefitted in the national and international market. If we need to analyse this situation from the perspective of both jurisdictions, from the EU perspective the advertisement service should be taxed in Turkey according to the place of supply rule (B2B) hence the customer is located in Turkey as long as the Member State concerned does not apply optional mechanism regulated in Article 59a. If the Turkish authority considers that service is enjoyed abroad, it will be neither taxed in Turkey. The disparity between two jurisdictions causes a non-taxable situation, which is against the nature of the VAT.

The reason of import of services is treating both transactions provided in Turkey and abroad equally.75

Finally, in the Turkish VAT literature, some experts such as Mehmet Mac (well-known certificated public accountant) and Prof. Dr. Billur Yalti find the term “import of service” unnecessary. Because Article 6 of the TVTA assumes that the transaction carried out abroad but utilized in Turkey is treated as carried out in Turkey. In this case, it will not be treated different from other local taxable transactions. Therefore it is unnecessary to use the term of import of service. Besides that TVTA does not provide any information regarding chargeable event and other related matter regarding the import of service. After analysis of the general picture, I also believe that Article 6 and Article 11 (exemption on export) provides information to determine the place of supply of services. Therefore the term of “import and export of services” is unnecessary.

IV.2.3 Supply of Goods and Services with Respect to Other Activities

These transactions are discussed in chapter 1 and chapter VIII therefore it will not be discussed in this chapter.

IV.3 Comparison of the EU VAT Directive and the Turkish VAT Law

Although the TVTA does not use the term “supply of goods” literally, the concept of “Delivery-Teslim” is quite similar with the definition of “supply of goods” in the Directive. Both systems tend to use the term of goods for tangible goods. The Turkish VAT system also considers the distribution of electricity, gas, heat, cooling and a like as supply of goods. Besides that, with respect to the criteria of transferring of the right to dispose of tangible as owner is also parallel regulated including twofold test combined with the decision of SAFE case. Furthermore, the TVTA addresses de facto delivery moment explicitly in Article 2 to consider as a taxable supply. In contrast with the Hong Kong decision, the TVTA taxes also supplies without consideration. In these situations, the consideration is determined according to market valuation rules. (See Chapter 6) Barter transactions, multiple supplies and deliveries to commissionaire are similarly regulated in both systems. The rules related to internal supplies, using the business assets for his private use of his staff or other disposal free of charge and going concern transactions in the TVTA does not conflict with the rules of the Directive mentioned in Articles 14, 15, 16, 18 and 19. The Turkish VAT system considers the transfer, by order made by, or in the name of a public authority or pursuance of law, of ownership of property against payment of compensation as a supply of goods. However, the properties subjected to this kind of transfer must be used for commercial, industrial, agricultural or professional activities. These transactions are exempt supply under the Directive. On the other hand, this application does not constitute an infringement due to the opt out mechanism in the Directive (Article 137). With respect to the supply of services, the Turkish system uses the residual concept as the Directive does and

75 Prof. Dr. Ş. Kızılot, Açıklamalı ve İçtihatlı Katma Değer Vergisi Kanunu ve Uygulaması, Yaklaşım, 2012 p. 91
considers all supplies as services excluding supply of goods and import of goods and services in any kind. The rules related to self-supply of goods and service and internal supply of goods are also similar. However, the TVTA does not regulate internal supply of service as it is done in the Directive. On the other hand, the internal supply of service is an optional rule, therefore it does not constitute an infringement. Considering going concern transactions, the Directive provides an optional “no-supply” rule. However, the TVTA taxes those transactions in general and applies exemptions for specific situations. The Turkish VAT system does not tax the transactions related to the supply of foods or providing a room to sleep or allocating a residence to his employees at place of business. From the Directive perspective, those supplies might be taxed under certain conditions. Although the import of goods is similarly regulated in both systems, with respect to services both systems use different methods. The TVTA uses unnecessarily the term of import of service and its method in some situation delivers different results, which causes non-taxation and double taxation situations. This matter will be discussed in the next chapter. Furthermore, according to Article 280, in the case of goods which are temporarily exported from the Community, in order to be reimported, Member States shall take the measures necessary to ensure that, on re-import into the Community, such goods may be covered by the same provisions as would have applied if they had been temporarily exported from the customs territory of the Community. However, there is no such a special provision in the TVTA.

CHAPTER V

V. PLACE OF TAXABLE TRANSACTIONS

The place of supply takes a substantial role in VAT when the transactions have a cross-border aspect. The cross-border aspect can be occurred by transactions such as international-between jurisdictions or outside of custom unions or trading blocks or intrabloc-between member countries of a custom union or trading block such as EU, NAFTA, LAFTA etc. or intra-national-between states or provinces within a country (for example in federal countries such as US, Switzerland etc.) or intrastate-between state and local units of government or between municipalities or within a state.

With respect to these transactions mainly two principles namely the origin principle and the destination principle are applied to allocate taxing rights in the VAT system. Under the origin principle, VAT is imposed in the country of production, regardless of where the goods and services are consumed. As a result, export will be taxed and import is exempt. The disadvantage of the origin principle is that the tax burden on imported supplies and local supplies might be not necessarily same, especially when the country of origin applies a higher tax rate as compared to the importing country. On the contrary situation, consumer benefits the rate difference, which means that origin principle has

more consumer efficient aspect. Furthermore this principle imposes an additional administrative burden on business to refund input tax on goods and services purchased from foreign tax authorities. Under the destination principle goods and services are taxed in the country where the goods and services are supplied. The advantage of the destination principle is that all supplies bear the same tax burden when finally supplied to consumer. The disadvantage is the border tax adjustments always seem necessary either by actual tax authorities or by a method of compensation as between the tax authorities involved.\(^78\) There is no general consensus about application of one general principle. Most of countries except CIS countries (former Soviet Republics) and the lack of complete zero-rating of export by China, rely on the destination principle to define the scope of VAT regarding international transactions involving goods.\(^79\) Although the destination principle is accepted as a starting point, the EU VAT Directive uses the combination of both systems. However the intend of the EU is moving to destination principle for all type of transactions as declared in Green Paper documents.

\[\text{V.1 Place of Taxable Transactions in the EU VAT Directive}\]

\[\text{V.1.1 Place of Supply of Goods}\]

The general rule regarding place of supply of goods are based on a distinction whether or not the goods are transported. According to Article 31, the place of supply of goods that are not dispatched or transported is the place where the goods are located at the time when the supply takes place. In case the goods are dispatched or transported by the supplier or by the customer or by a third person, the place of supply is the place where the goods are located at the time when dispatch or transport of the goods to the customer begins. In order to prevent distortion of competition in the Single Market, the Directive regulates distance sales in the Article 33 differently from the general rules. However, due to the scope of this research paper, intra-Community transactions and related subjects such as distance sales will not be discussed. Other rules that we can reach after analysis of all rules of the Directive regarding the place of supply of goods and by the information about “Where to tax” that has been provided by European Commission\(^80\) are, the supply of goods is taxed at the place:

- where the goods are being installed or assembled, if done by the supplier. (Article 36)
- where the point of departure is, if supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community. (Article 37)
- where the taxable dealers established when receiving electricity or gas supplied through the natural gas distribution system.(Article 38),
- where electricity or gas supplied through the natural gas distribution system is effectively used and consumed by the private customer, where such a supply is not covered by Article 38. (Article 39)


\(^{80}\) http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/vat_on_services/index_en.htm
V.1.2 Place of Supply of Services

The place of supply of service rules have been changed as of 01.01.2010 based on destination principle as a result of the application of the effective use and enjoyment rules. The new place of supply of service rules depends on the fact of whether the recipient of services qualifies a taxable person (B2B services) or a non-taxable person (B2C). According to Article 43, taxable persons who are also engaged in non-taxable activities will be treated as a taxable person regarding all services they receive, even if they will use the services for their non-taxable activities. Likewise non-taxable legal persons who are identified for VAT purposes must be also considered to be a taxable person with respect to all services rendered to them. This provision has special consequences for mere holding companies that only hold shares. Although these companies are non-taxable persons, and therefore B2C rules should be applied, according to Article 43, the B2B rules are applied. With respect to B2B services, the place of supply of service is the place where the recipient of the services is established. However, if those services provided to a fixed establishment of a taxable person, the place of supply for those services is the place where the fixed establishment is located. With respect to services supplied to non-taxable persons (B2C service), the general place of supply rule is the place where the supplier has established his business, which is contrary to the legal nature of VAT. According to the nature of VAT, consumption is taxed where this takes place. However, due to practical reasons, the legislator chose to tax cross-border services at the place where the supplier is established rather than where the consumption is taking place.

Next to those general rules valid for B2B and B2C transactions, there are several exemptions applied only for B2C services and also some group exemptions applied for both types of services. Please check the Appendix 2 for a complete overview.

The Directive provides also an optional mechanism in order to prevent double taxation, non-taxation or distortion of competition. According to Article 59a, Member States may consider to shift the place of supply of services, which are either inside or outside the EU to inside or outside their territory, when according to the effective use and enjoyment of service this differs from the place of supply as determined by the general rules regarding hire of means of transport or certain B2C services to customer outside the EU. In this case one of two possibilities need to be opted. The first one is

81 A. van Doesum, H. van Kesteren, G.J van Norden and I. Reiniers, The new rules on the place of supply of services in European VAT, EC Tax Review, 2008-2, p.79
83 P. Wille, New EU Place-of-Supply Rules for Services, International VAT Monitor, January/February 2009, IBFD, p.8
85 A. van Doesum, H. van Kesteren, G.J. van Norden and I. Reiniers, The new rules on the place of supply of services in European VAT, EC Tax Review, 2008-2, p.82
86 Prof. Dr. A. van Doesum, F. Nellen, VAT in a Day, Kluwer, 2013, p.38
87 Prof. Dr. A. van Doesum, F. Nellen, VAT in a Day, Kluwer, 2013, p.39
88 P. Wille, New EU Place-of-Supply Rules for Services, International VAT Monitor, J/F 2009, IBFD, p.10
89 A. van Doesum, H. van Kesteren, G.J. van Norden and I. Reiniers, The new rules on the place of supply of services in European VAT, EC Tax Review, 2008-2, p.84
deal with in the current Article 58(a) when, on the basis of general place of supply rules, a service is considered to take place within the EU, but effective use and enjoyment of that service is outside the EU. A Member State that implemented Article 58 (a) of the Directive, therefore it gives up its right to levy VAT in favour of the third country, where the service is effectively used and enjoyed. The Second alternative is dealt with Article 58 (b) of the Directive when, on the basis of general rules regarding the place of supply, a service is considered taking place outside the EU, but effective use and enjoyment rule of that service takes place within a Member State. In this case the right of levying VAT will shift to a Member State where the service is effectively used and enjoyed.90 One important point needs to be discussed that the Member States should not be free to individually set criteria to determine the place of effective use and enjoyment rule.91 The rules should be settled clearly up by the Commission to prevent the same problems that occurred 30 years ago. As an example of an implementation problem, we can analyse the following cases settled by the ECJ. According to the ECJ decision in Athesia Druck92 and the decision of VAT Committee93, advertising services must be considered as effectively used and enjoyed in the country from which the advertising material is disseminated. However, according to Swinkels, the place where advertising materials are disseminated does not necessarily coincide with the place where the consumer receives the advertisements.94 He gave an example of advertising messages disseminated by radio and television station located in Luxembourg, due to attractive legislation. Those stations provide service to a public located outside the EU. According to this criterion of the ECJ, VAT will be levied in the Member State where the advertising message is not received by targeted public.95 To prevent all these unclear legal certainties and disparities, the Directive should explicitly define the place of consumption regarding the effective use and enjoyment criterion.96 Besides that, the legislator should chose the obligatory provision instead of optional mechanism to prevent double taxation or non-taxation situations raised from the voluntary character of the provision which is also conform with the main aim of this provision.97

From 01.01.2015 rules regarding telecommunications, broadcasting and electronically supplied services to the non-taxable person (B2C services) will be taxed at the place where the private customer is established, has his permanent address or usually resides which is closed solution conform the effective use and enjoyment and the destination principle.

90 A. van Doesum, H. van Kesteren, G.J. van Norden and I. Reimiers, The new rules on the place of supply of services in European VAT, EC Tax Review, 2008-2, p.84
91 T. Ecker, Place of Effective Use and Enjoyment of Services-EU History Repeats Itself, Int.VAT Monitor, Nov/Dec 2012, IBFD, p.410
92 The ECJ, Case C-1/08, Athesia Druck Srl v. Ministero dell’ Economia e delle Finanze, Agenzia delle Entrate, 19-09-2009,
93 Guideline Adopted by the VAT Committee in its 89th meeting of 30 September 2009, available at www.eu.europa.eu
94 J.J.P. Swinkels, Effective Use and Enjoyment of Services under EU VAT, International VAT Monitor, IBFD 2009, p. 208
95 J.J.P. Swinkels, Effective Use and Enjoyment of Services under EU VAT, International VAT Monitor, IBFD 2009, p. 208
96 T. Ecker, Place of Effective Use and Enjoyment of Services-EU History Repeats Itself, Int.VAT Monitor, Nov/Dec 2012, IBFD, p.410
97 Prof. Dr. A. van Doesum, Prof. Dr. H. Van Kesteren, Prof. Dr G.J. Norden, Fundamentals Of EU VAT Law, 2013,
V.1.3 Place of Importation of Goods

The place of import of goods is the Member State within whose territory goods are located when they enter the Community (Article 60). Besides this general rule, the Directive derogate from this rule in Article 61, it provides that where, on entry into the Community, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 156, or under or under temporary import arrangements with total exemption from import duty, or under external transit arrangements, the place of import of such goods shall be the Member State within whose territory the goods cease to be covered by those arrangements or situations.

V.1.4 Place of an Intra-Community Acquisition of Goods

Intra-Community transactions are out of scope of this paper and are therefore not examined

V.2 Place of Taxable Transactions in the Turkish VAT Law

The application of the Turkish VAT is limited to transactions that have been carried out in Turkey. The Turkish VAT system is not purely structured based on one of objective criteria’s such as the origin principle or the destination principle. The TVTA uses both principles for the determination of place of supply as done in the Directive. The TVTA mainly applies the destination principle with respect to export and import transactions, however it also applies effective use and enjoyment rule for the supply of services. The criteria regarding the determination of place of supply are formulated based on the type of supply.

V.2.1 Place of Supply of Goods

According to the Article 6(a), the supply of goods is deemed to occur in Turkey if the goods are located in Turkey at the time of supply. This criterion is regardless whether goods are transported or not. In case of chain transactions, the general rule applies to each transaction within the chain. If the products are purchased or produced and sold/supplied abroad, these transactions are not subject to Turkish VAT, even the invoice sent by company located in Turkey. Besides that the TVTA does not provide any different regulation for supplies on board of means of transport, supplies through distribution systems or assembly and installations supplies.

V.2.2 Place of Supply of Services

The supply of services is deemed to occur in Turkey if the services are rendered or utilized in Turkey. If the services carried out in Turkey, they will be automatically subject to the Turkish VAT without consideration of the place where they are utilized as long as those services are not exempted within the framework of exportation. The nature of proceedings shall not be affected by whether they are Turkish citizens, or by whether their residence or workplace or registered head office or

---

98 Prof. Dr. B. Yaltı, Turkey Value Added Tax, IBFD, 2014, p.17
100 Prof. Dr. Ş. Kızılot, Açıklamalı ve İçtitahlı Katma Değer Vergisi Kanunu ve Uygulaması, Yaklaşım, 2012 p. 443
business centre is located in Turkey. However the TVTA does not provide the definition of “utilization of service”. We reach some explanation through the updated general communiqués in April 2014, which provides us the idea about the administrative approach to give a meaning the term of “utilization of services”. According to the new general communiqué on implementation of VAT two criteria are required to accept that service is utilized abroad. Firstly an invoice should be addressed to customer located abroad. Secondly rendered services must be used for the activities of the customer abroad. With another meaning, it also requires that supplied services shall not be related with its activities in Turkey. According to examples that has been given in the general communiqué, commission service rendered to foreign company regarding exportation are exempt, hence exported product will be consumed abroad thereby commission services is also utilized abroad. On the hand, if the rendered service used for activities of customer in Turkey, than provided service will be subject to tax in Turkey. The Council of State has also different approaches to define the criteria of “utilization of service in Turkey”. According to one of decision settled by 7th Chamber, commissionaire activities of Turkish company located in Turkey rendered to foreign company located in London regarding participating in tender in Turkey considered as exempt supplies hence services were enjoyed by foreign company. However this decision can be criticized from the perspective of administrative approach that the rendered service is related with activities of customer in Turkey. In another example, the travel agency service fee with respect to foreign holidays, are not directly subject to VAT in Turkey. Services and goods that are utilized abroad are not subject to VAT, although it can be criticized that those services have connection with activities of travel agency in Turkey. However, if the part of travel service performed in Turkey, than the Turkish VAT will be applied for that part. From the consumption principle, I do believe that it is a good approach. Because services are provided and also consumed abroad, it should be subject to the local VAT of the consumption place. Although service recipient located abroad and main services utilized abroad, according to the abolished general communiqué numbered 60, the commissionaire services rendered by foreign clients such as hospital, universities or exhibitors to find clients in Turkey were subject to VAT in Turkey. However, if the commission fee was paid by foreign customer not by patients, than the rendered service was not subject to VAT. This approach was conflicted with mentality of given other examples regarding utilization of service in the general communiqués. There is no such an information in the new general communiqué therefore it is unknown what is the position of Ministry of Finance about this subject. It will probably subject to VAT, if invoice is addressed Turkish patient, because it won’t be complete the requirement of the exportation of services mentioned above. From my perspective these services are eventually utilized abroad, therefore it should not be subject to VAT in Turkey.

105 C. Aras, Yurt Dışına Öğrenci ve Hasta Gönderilmesi Nedeniyle Alınan Komisyonlarda KDV, Yaklaşım, 2009, Sayı: 195
With respect to international transport services including transport in transit, the TVTA taxes transportation services limited to the portion of the route that falls within the territory of Turkey. International transportation means transportation that originates outside Turkey but ends within Turkey or transportation that begins within Turkey but ends outside Turkey.\footnote{Prof.Dr. B.Yaltı, Turkey Value Added Tax, IBFD, 2014, p.18}

**V.2.3 Place of Importation of Goods and Services**

The import of goods and services into the territory of Turkey is a taxable event, which is deemed to take place in Turkey and gives rise to a VAT liability for the importer.\footnote{Prof.Dr. B.Yaltı, Turkey Value Added Tax, IBFD, 2014, p.19} In parallel to regulations of the Directive, the TVTA does not make distinguish on taxation between local produced goods and imported goods. They are both subject to general rules of the TVTA. Differently than the EU Directive, the TVTA addresses also import of services. As it is explained in Chapter IV.2.2, services carried out abroad, but utilized in Turkey with respect to activities of taxable person, are assumed as import of services and subject to the Turkish VAT.

**V.3 Comparison of the EU VAT Directive and the Turkish VAT Law**

The determination of “the place of supply” is differently formulated in both jurisdictions. The Directive has more objective criteria’s to define the place of the supply based on mainly destination principle. The Directive considers also the origin principle with respect to supply of goods with transport and B2C services in specific circumstances. Although the destination principle is mainly applied for distance sales, in some specific situation, it has effect of origin principle. For example if the supplier’s annual sales are below the threshold applied by the customer’s Member state and if the supplier does not opt to tax in the Member State of destination, goods are taxed where the goods are located when the dispatch or transport to the customer begins. Furthermore, the Directive has no special concept for the import and export of services hence it is regulated under the rules of place of supply. The Directive introduces also the effective use and enjoyment rule to avoid double taxation, non-taxation or distortion of competition. In practice, the effective use and enjoyment takes place where a recipient actually consumes services without taking consideration of the agreement, payment or beneficial interest. By using of the effective use and enjoyment rule, the Directive shifts taxing right from the Member State to third country or from third country to the Member State, where services is effectively used and enjoyed\footnote{J.J.P. Swinkels, Effective Use and Enjoyment of Services under EU VAT, International VAT Monitor, IBFD 2009, p. 207}. However, this application is an optional mechanism for Member States and only applied to third party transactions and is not allowed for the Member State in between. Therefore it does not provide an efficient solution in comparing with targeted aim. On the contrary side, the TVTA has no general objective criteria’s to determine the place of supply based on B2B or B2C services. The TVTA applies the destination principle with respect to export and import of goods, which is in line with the Directive. On the other hand the TVTA combines the destination principle

\footnote{Prof.Dr. B.Yaltı, Turkey Value Added Tax, IBFD, 2014, p.18}
and the effective use and enjoyment rule to determine the place of supply with respect to services. The TVTA applies the effective use and enjoyment rule for the situation in which services are carried out abroad but utilized with regard to activities of taxable person in Turkey and in which services are carried out in Turkey but utilized abroad, which is also similar to the implementation of the Directive. However it is not an optional mechanism in the TVTA as done in the Directive. Although both jurisdictions use different methods to determine the place of supply, at the end both methods may provide a same result. For example, if a Dutch company provides consultancy service to Turkish company, it will be indeed taxed in Turkey according to both jurisdictions. From the Directive perspective, it is a B2B service and taxed where the customer is established. From the Turkish VAT perspective, although the service is carried out abroad, it will be accepted as import of services hence it is utilized in Turkey. However if the Turkish company utilizes that service abroad than it won’t be subject to VAT in Turkey, which causes a non-taxation situation as long as the Netherlands does not apply optional mechanism of the Article 59a. If we apply this example for B2C services, we reach the same result. With respect to export of services, the TVTA considers as an exempt supply as long as the service is not utilized in Turkey and the invoice is addressed to customer located abroad. For example, if a Turkish company provides consultancy services to a Dutch company, under certain conditions, it is treated as an exempt supply in Turkey and is subject to the Dutch VAT. However if the Dutch company utilizes rendered services for his activities in Turkey, than the Turkish VAT will be applied. From the Directive perspective, in the same situation, the Dutch VAT will be applied as long as the Dutch company does not use those services for its activities in Turkey, in which case the Dutch authorities opt for optional mechanism provided by Article 59a of the Directive. Finally, if the Directive changes its structure and applies the effective use and enjoyment rule as obligatory mechanism, the methods of both jurisdictions will provide same result. Otherwise due to the application of different methods, supplies might be treated differently which ends up in a non-taxation or double taxation. Furthermore, in order to prevent any disparity or conflict, both jurisdictions should provide binding and clear definition of effective use and enjoyment rule. Besides that the TVTA should also leave the reference to the criteria of invoicing and direct link to business activities and focus on the place of utilization.

The TVTA does not provide a specific place of supply rule regarding services rendered by commissionaires or intermediaries. The TVTA considers the act of agent who is acting as an intermediary within a supply of goods as service and subjects to general rules. On the other hand the Directive regulates that the intermediary service rendered to a non-taxable person is taxed where the underlying transaction is supplied in accordance with the Directive. Although the methods of both jurisdictions are different, final result deliveries same effect. For example, if non-taxable person asks an intermediary to find a company to move his furniture from Turkey to the Netherlands, irrespective where the intermediary is establish, the commissionaire service will be taxed according to Article 46 and Article 49 with respect to transportation service. From the Turkish VAT perspective, even the
intermediary established in Turkey, the intermediary services is also partially exempt from Turkish VAT due linked to international transportation, which provides same result with the provision of the Directive. The commissionaire services linked to export activities are also exempt in both systems.

The TVTA eventually does not derogate the rules regarding the place of supply of goods in the Directives. The main rule mentioned in Article 6 (a) of the TVTA is line with the provisions of Article 31 and 32 of the Directive, hence the place of supply is eventually the country where the goods exist at the moment of the supply.

With respect to services connected with immovable property, the TVTA does not imply any special provision such Article 47 in the Directive. However the general implementation of services connected to immovable property in Turkey is similar with the provision of Article 47.\textsuperscript{109} Both systems do not define the term of connected services. The Article 47 provides some example regarding connected services. The question arises if the scope of connected service is limited with these listed services or not? For example, if a Dutch Municipality requires an investigation service in Turkey to search if its client has any immovable property in Turkey or not. Can we consider this service as connected services to immovable property? From my point of view, the investigation service cannot be included to this scope. The listed service has a direct connection with the immovable property. However an investigation service can be considered as a data search service. The disparities between two jurisdictions can also cause a problem with respect to this subject. Firstly we assume that it is a connected service according to the Directive perspective, than the Turkish VAT will be applied. However, if the Turkish VAT system does not consider as a connected service, it will be exempt supply as long as rendered service is not utilized for the activities of customer in Turkey. In this case non-taxation situation occurs. If we assume that it is not considered as connected service according to the Directive’s perspective, than the service will be normally considered as B2C services and therefore subject to tax in Turkey, hence the supplier is established in Turkey. If the Turkish VAT system considers the service as an exempt supply due to reasons mentioned above, than it will be again a reason for non-taxation. If we consider the Municipality as taxable person within the framework of Article 43 (2), than this service will be considered as B2B services. In this case Dutch VAT will be applied hence the customer is located in the Netherlands. On the other hand, if the Turkish VAT system considers the service as connected service than the Turkish VAT will be applied, which will be a reason for double taxation. Even it seems a simple difference, when the banks and other investigation requirements are involved, it might have a quite impact on the revenue and the cash flows of the businesses.

With regard to electronic services, no specials rules are applied in the TVTA and general rules mentioned above do not constitute a conflict with the related provisions of the Directive.\textsuperscript{110}

\textsuperscript{109} N. Uzunoğlu, Katma Değer Vergisi Kanunu Yorum ve Açıklamaları, Maliye Hesap Uzmanları Derneği, 2014, p.691
\textsuperscript{110} B. Yalı, Elektronik Ticarette Vergilendirme, DER Yayınları, p. 234-237
CHAPTER VI

VI. TAXABLE AMOUNT

A VAT is in principal imposed on the amount of money and the value of non-monetary consideration received for a taxable supply.¹¹¹ VAT principally considers a subjective value of supplies instead of objective value to determine taxable amount, hence subjective value is the actual consumption, which VAT aims to tax.¹¹² For particular situations, in order to calculate taxable amount, special valuation rules might be required.

VI.1 Determination of Taxable Amount According to the EU VAT Directive

Under Article 73 of the Directive, taxable amount includes everything, which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply. With regard to consideration, the amount is not important, even low or symbolic amount should be subject to VAT.¹¹³ The term of consideration has a subjective character, shall be expressed in money, shall have a direct link with the supply of goods or services, is a common Community term and also contains other related costs.¹¹⁴ With combination Article 73 and Article 78, taxable amount includes the sale or purchase price, taxes, levies, duties and all other charges exclusive VAT, as well as incidental expense such as commission, packaging, transport and insurance costs charged by the supplier to the purchaser. However price reductions for early payments by the way discounts and rebates allowed at the time of the supply are not included. Furthermore if the price is reduced after the supply, or if there is a cancellation or non-payment, the taxable amount can be reduced.

With regard to supplies such as self-supply and internal supply of goods, the Directive rules that taxable amount is the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time when the application, disposal or retention takes place. Furthermore, with respect to self-supply of service, the Directive rules that taxable amount is the full cost to the taxable person of providing the service. Finally for an internal supply of service, taxable amount is considered as the amount of open market value of the service supplied. In case no comparable supply of service, taxable amount is not less than the full cost to taxable person of providing service.

With respect to the importation of goods, the taxable amount is the value of customs purposes, determined in accordance with the Community provisions in force with the effect of open market value where the price is not sole consideration. The open market value of imported goods means the amount which an importer at the marketing stage at which the importation takes place would have to

¹¹³ Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals Of EU VAT Law, 2013
¹¹⁴ Dr. Butler, Non-monetary consideration in the context of VAT: the status of the judgement in Empire States v Commissioners of Customs and Excise in the light of later judgments, EC Tax Review, 2001-4, p.234
pay to a supplier at arm’s length in the country from which the goods are exported at the time when
the tax become chargeable under conditions of fair competition to obtain the goods in question. The
Article 86 rules that taxes, duties, levies, and other charges due outside the Member State of
importation, incidental expenses such as commission, packaging, transport and insurances, incurred up
to the first place of destination within the territory of Member State of importation, excluding VAT
must be included to taxable amount. Furthermore, Member States must take steps to ensure that the
tax treatment of the goods for VAT purposes is the same as that which would have been applied had
the repair, processing, adaption, making-up or re-working been carried out within their territory, when
goods are temporarily exported from the Community are re-imported after having undergone, outside
the Community, repair, processing, adaptation, making-up or re-working. Under Article 90, in the case
of cancellation, refusal, or total or partial non-payment or where the price is reduced after the supply
takes place, the taxable amount can be reduced according to conditions that are determined by the
Member State.

VI.2 Determination of Taxable Amount According to the Turkish VAT Law

Under the rules of TVTA, taxable amount is the value of consideration against to supplied
services and goods. The consideration is defined as “the money, good and the total of benefits,
services and assets that are provided in other forms and can be expressed in monetary terms, which are
received in any matter whatsoever or borrowed from persons to whom the good was delivered or the
service was rendered or persons acting on their behalf in exchange for such transactions.” According
to this definition, the consideration shall have subjective character, be expressed in monetary, have a
direct link with the supplied services or goods. From the TVTA perspective, consideration can be in
advance or on credit, it does not affect to calculation of the total taxable amount. With respect to
subjective character of the consideration, the TVTA has some limitation on this criterion. In cases of
transactions with undetermined value and in case the value is expressed in assets other than money
such as in kind (e.g. barter transactions), the taxable amount is the market value according to the
nature of the transaction. Furthermore, in cases where the value is obviously below the market value
and where the taxpayer cannot reasonably explain the difference, the market value shall be taken as
the taxable amount. The TVTA refers Article 267 of the TTPA to determine the market value. The

116 Article 267 – The market value is the value that an asset, not having an actual price or the price whereof is unknown or
could not be fixed exactly, would represent as compared with similar assets if it were sold on the day of its valuation. The
market value shall be determined according to the following criteria, in the order in which they are stated:
First rank: (average price basis) If assets of the same kind and quality have been sold in the course of the month of
valuation or in the preceding months, the market value shall be calculated according to the “average sale price”, to be
calculated by the taxpayer according to the quantities and prices of these sales. This basis can be applied only if the monthly
quantity of sales is not less than 25% of the market value.
Second rank: (cost price basis) If the asset, whose market value, has a known value or if it is possible to calculate
the same, the taxpayer shall determine this value himself by adding 5% for wholesale and 10% for retail sales.
Third rank: (basis of assessment) The comparable values that could not be determined according to the foregoing
procedures shall be determined, upon request, by the Commission of Assessment by the way of assessment. Assessments
shall be made by help of investigating the cost price and market value with consideration of depreciation. The taxpayers’
right to petition the tax courts is reserved. However, filing a suit shall not stop the assessment and collection of the tax.
combination of the rules of the TTPA and Article 27 of the TVTA, the transactions with respect to internal supply, self-supply and all types of barter transactions, will be also revaluated according the market value.\footnote{Prof. Dr. B. Yaltı, Turkey Value Added Tax, IBFD, 2014, p.19}

Under Article 24 of the TVTA, expenditures on transportation, loading and unloading costs performed by the vendor up to the place shown by the receiver, packaging expenses, insurance, commission and similar expenses, taxes, duties, fees, shares and funds, various incomes such as interest cost, price difference, interest, and premium and all types of benefits, services and assets provided under the name of services and similar names are included to taxable amount.

In case the value is charged in foreign exchange, the foreign exchange is converted into the Turkish currency at the moment of chargeable event. Furthermore, with respect to businesses whose price is determined on the basis of a certain tariff, taxable amount cannot be less than the tariff. Discounts in line with business practices and the VAT itself are not included to taxable amount.

The TVTA allows the taxable person to adjust taxable amount due to the return of the goods, failure to realize the transaction, abandonment of the transaction or other reasons. However the TVTA explicitly does not refer to bad debts.

In some circumstances and for specific type of transactions taxable amount is specially determined by law and the Ministry of Finance is authorized to determine special types of taxable amount in consideration of the characteristics of a business. (See Appendix 3 for Article 23)

With respect to importation, taxable amount is the total amount of all taxes, duties, levies and charges including special consumption tax at importation and all other expenses incurred and not taxed prior to the registration of the customs declaration and differences paid due to price and exchange rate changes.

Finally regarding the international transportation of goods and passengers provided by those who do not have their residence, registered head office and principle office in Turkey, the Ministry of Finance is authorized to determine taxable amount in consideration of the exemplary amounts of kilometre per person and ton in transportation in the country. (Article 22)

\textbf{VI.3 Comparison of the EU VAT Directive and the Turkish VAT Law}

The definition and scope of taxable amount are quite similar regulated in both systems. However the subjective character of the consideration criteria is more limited in the TVTA than the Directive. The Directive applies open market value mainly for the valuation of internal supply of services and importation of goods. It is determined based on at arm’s length principle in the territory of the Member State. However the TVTA applies the market value not at arm’s length but based on

In cases where the market value is calculated by the taxpayer himself, the entries and tables referring to these calculations shall be preserved as vouchers. The value estimated ex officio by judicial authorities without any consideration to the foregoing bases and the elements indicated in the decrees fixing the criteria of agricultural profits shall replace the market value. Remunerations to be market value where the actual amount thereof is not known or cannot be determined exactly in manufacturing work done against remuneration shall also be determined according to the same bases.
standard rank system determined by the TTPA, which might provide a different result than the arm’s length. Furthermore the TVTA applies the market valuation method at very broad scope such as self-supply goods and services, internal-supply of goods, other situations where the price is unknown or in case the price is very low than the market value and parties cannot explain the reason sufficiently. From this perspective the subjective character of consideration is very often affected by the evaluation of other third party such as tax inspectors who is not party of main transaction. I do believe that the way of application of market value method removes the TVTA from the spirit of VAT.

Regarding the scope of taxable amount for importation of goods, both systems are comparably similar structured. The TVTA adds more incidental expenses than the Directive such as incomes arise from the price differences, interest, or exchange rate difference etc. However, the TVTA deviates from the Directive regarding elements, which shall be reduced from the taxable amount. In this respect, the TVTA accepts only two elements such as discounts given conform to business practices and VAT itself. However, the Directive provides extra opportunity to discount bad debts (Article 79/c). The TVTA does not give opportunity to discount VAT related with bad debts. However bad debts are specially regulated in the TPA. According to this regulation bad debt can be written off in case the court or bailiff office execution process is started or if the suspense amount is too small and not worth to start legal procedure and is not able to be collected despite to all written reminders. 118

Besides that, no special regulation for temporary re-importation activities is regulated in the TVTA as done in Article 280 of the Directive. Turkish system aims not to make difference between the transactions carried out in Turkey and also carried out abroad.

CHAPTER VII
VII. RATES

A Rate is an element to calculate tax due for VAT purposes. The rate is also regardless of how many stages a good passes through before it reaches the consumer. In principle three types of rate such as standard rate, reduced rate and zero-rate are applicable. The reduced rate is mostly applied for social reasons with respect to public interest and also for economic reasons to encourage for special economic activities. Zero-rate is mostly applied for exportation transactions in which the taxable person does not charge VAT on the sale but entitled to an input credit for VAT imposed on purchases allocated to the sale. 119 In some systems such as the EU and Turkey, exemption with credit also functions as zero-rate. On the other hand exemptions without credit does not have zero-rate function. Therefore exemptions should not always directly be associated with “zero-rate”. Zero-rate is also used for the intra-Community transactions in the Directive.

118 M. Taş, Şüpheli Alacaklarda KDV’ye İsabet Eden Kisim İçin Karşılık Ayrılabilir Mi?, Yaklaşım, Sayı:Subat 1994
VII.1 Applicable Rates According to The European VAT Directive

One of the important lacks of harmonization process regarding VAT is applying harmonized common VAT rates. Harmonization of VAT rates in the EU is very important step to eliminate obstacles against to sufficient working Single Market. Rate differences can be reason for the distortion of Single Market. The European Commission are still working on total harmonization of rates, however due to political reason it seems currently impossible to have one type harmonized rates. Therefore the European Commission has made some frameworks, which shall be applicable to determine the applicable rates in the Member States. Main basic principles determined by the Directive are:

- supplies of good and services subject to VAT are normally subject to a fixed rate with minimum 15% (Article 96 and 97). Although this minimum rate is a “may clause”, all Member State applies not less than 15% as standard rate. This fixed/standard rate must be applied in same proportion for supply of services and for the supply of goods. However no maximum rate is defined in the Directive. Due to the gentlemen’s agreement Member States do not apply more than %25 as standard rate exemption Hungary due to budgetary reasons.\(^1\)

- standard rates are applied equally for the service and goods acquired in or outside the EU.

- Member States are also allowed to apply one or two reduced rates with minimum 5% (“May Clause”) for the services and goods limited listed in Annex III. (“Shall Clause”)

- reduced rates are not applicable for electronically supplied services. (Article 98)

- after the consultation of VAT Committee, Member States are allowed to apply reduced rate to the supply of gas, of electricity or of district heating, provided that no risk of distortion of completion arises. (Article 102)

Although some services and goods are not listed in Annex III, the Directive allows some Member States to use reduced rates for specific supply of goods or services. For example Portugal is allowed to apply one of the two reduced rates to the tolls on bridges in the Lisbon area. I will not focus on all other special provisions.

According to the explanatory notes in the Directive with respect to the reasoning of the consolidated EU VAT Directive, the main reasons for the application of reduced rates are simplification of the tax burden on people with low income, tackling with the problem of unemployment and reducing the incentive for the business concerned to join or remain in the black economy, supporting social and cultural events, economical, environmental and fiscal technical reason.

One of another applied rates in Member State is “zero rate” or with other definition “exemption with credit”. Member States are allowed to apply exemptions with deduction of input VAT to certain supplies of goods and services. In practice these exemptions function as zero rate, %0

\(^1\) Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals Of EU VAT Law, 2013,
rate is charged on the supplies, where input VAT related with these supplies can be deducted. With respect to applying a single rate or multiple rates, the intention of the OECD and the European Commission are moving from multiple rates to a single rate to cut administration and compliance costs by providing a simplified VAT system. The main reason of applying multiple rates is a political choice to support basic necessities such as food and clothing for poor households, encouraging social activities and supporting specific economic sector such as environmental friendly products, agricultural activities etc. However, researches on the reduced rates suggest that they are rarely effective in achieving distributional objectives and not an effective method to alleviating the tax burden on low-income private persons. The application single rate with combination of adjusting income tax and social welfare will provide more efficient result to achieve redistribution goals. Besides that it is emphasized in the Green Paper that the application of a single rate to all goods or services would be an ideal solution from the point of view of maximising economic efficiency. The application of multiple rates has a negative impact on the Single Market with combination of disparities on the place of supply rules based on origin or destination principle. Due to the correction mechanisms in the Directive, this effect is minimised, however it is still a treat for the efficient working Single Market. Therefore the intention of the EU is reducing the scope of goods and services to subject reduced rate in the Annex III and slowly moving the application of a single VAT rate.

VII.2 Applicable Rates According to the Turkish VAT Law

Under the current rules, the TVTA applies 10% standard rate for all transactions subject to VAT. However the TVTA authorizes the Council of Ministers to increase such rate up to four times (40%) and reduce to 1 %. Furthermore the Council of Ministers is allowed to determine different rates for various types of goods and services and some goods at retail stage, the tax value of land or residences where construction takes place and supply of residences based on the location within the aforementioned limits. By this rule, the Council of Minister has more flexible authorization to change rates according to its economic, social and political policies without any requirement of authorization of Turkish Assembly (TBMM-Grand National Assembly of Turkey). Although the researches show us that the application of different rates is not effective method to distribute welfare and has no substantial role on choices of consumer, due to political reasons this method still is in use. The TVTA does not specifically regulate standard and reduced rates as it is done in the Directive. The division of standard and reduced rates application is provided by the decree of the Council of

---

121 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals Of EU VAT Law, 2013
124 A. Güzel, Katma Değer Vergisi, Esasları, Iade İşlemleri, İstisnalar, Gazi Kitapevi, Ocak 2011, p.294
Ministers and subject to be changed very often. The current rates that are applicable in Turkey according to the consolidated decrees of the Council of Ministers as follows:\footnote{Available at web site of Revenue Administration, http://www.gib.gov.tr/index.php?id=830}:

- Supplies which are not listed in Annex I and Annex II in the Decree are subject to 18%.
- The goods and services listed in Annex I are subject to 1%. Annex I covers the supply of goods and services such as in particular agricultural products, newspapers and periodicals and the supply of such goods in electronic environments (See Appendix 4).
- The goods and services listed in Annex II are subject to 8%. Annex II covers mainly basic foodstuffs and other goods and services listed in details mainly based on Custom Tariff list such as medicines, medical services and equipment, raw materials, agricultural machines, book and similar publications, textile products, restaurant services (See Appendix 4).

With respect to financial leasing, the applicable VAT rate is determined according to the VAT rate, which would be applied on the supply of goods through the leasing transactions, excluding transactions listed in sub-clauses of 16 and 17 of Annex I. Furthermore, the decree of Council of Ministers applies different rates according to stage of sale. For example, 1% is applied for some of certain types of goods at wholesale stage. However, for same products, 8% or 18% is applied at retail stage. For example the supply of fresh vegetables and fruit effected to and from taxable persons in the wholesale markets established according to the relevant legislation is subject to 1%.

The TVTA does not use the term of “zero-rated transactions” but it refers to exemption with credit. This subject will be discussed in details in next chapter “exemptions”.

\section*{VII.3 Comparison of the EU VAT Directive and the Turkish VAT Law}

Although the TVTA applies a single rate for all types of taxable transactions, multiple rates are applied in practice due to authorization of the Council of State. The Directive also allows the Member States to apply multiple rates. Therefore the application of Turkey is still in line with the Directive. The current standard rate of Turkey is in line with the advice of the Directive with respect to the minimum requirement. However the scope of goods and service subject to reduced rates is not line with the Directive. Furthermore one of the current reduced rates (1%) is not in line with the minimum requirement of 5% in the Directive. Even though the minimum requirements with respect to rates in the Directive are not binding, all Member States follow this advise except the lower reduced rate, which were already granted as of 01.01.1991. Furthermore the Directive allows the Member States to apply reduced rates for specific products and services listed in the Annex III. If we compare the listed products and services in the Decree and Directive, there are remarkable differences. For example, raw materials for textile products, textile products itself, electronically supplied products/services, agricultural machineries, funeral services, financial leasing services, second-hand cars and more are not listed in Annex III of the Directive. Furthermore, the application of different rates for same goods at different stages in supply chain is not in line with the Directive. The
application of different rates in combination with disparities due to different place of supply rules based on the destination or the origin principle may cause a negative effect in the market of both jurisdictions, therefore VAT rate has a substantial role in the harmonization process. Besides that a single rate application is also good method to tackle with a fraud caused by benefiting reduced and standard rates differences.

CHAPTER VIII

VIII. EXEMPTIONS

Exemptions are in general applied to two categories of supply; activities in the public interest and supplies of services that are considered as being too difficult to tax. Both categories of exemptions have historical backgrounds. With respect to first category, the aim of these exemptions was principally to achieve distributional and social objectives for example to diminish what is perceived to be the natural regressivity of VAT by exempting certain services such as heath care, education or alternatively to increase consumption of so-called merit products such as sports or cultural events. Besides these exemptions, technical exemptions were introduced to VAT systems to avoid the perceived difficulties of fitting certain supplies such as financial services and insurance transactions, supplies and letting of immovable property and gambling etc. The aim of VAT exemptions is that suppliers do not have to charge VAT on the supplies to their customers and eventually provides those services or goods cheaper.

In practice, exemptions are applied with or without credit. If the exemptions are applied with credit, taxable person is allowed to apply an exemption and also deduct the input VAT on costs relating to this transaction. This is also called as “zero-rate”. However, if the exemptions are applied without credit, taxable person is still allowed to apply an exemption, but not allowed to deduct the input VAT on costs relating to that transaction.

VIII.1 Exemptions According to the EU VAT Directive

In principal, all supplies of goods and services made by taxable persons for consideration are subject to VAT. The Directive has several exemption categories based on the distinction between the exemption with credit and without credit. The reason of exemptions is mainly public interest in services and products and technical difficulties. First category exemptions are in practice also referred as zero-rates, although technically are exemptions and no rates applicable. Intra-community supply of

126 R. de la Feria and H. van Kesteren, Introduction to This Special Issue-VAT Exemptions: Consequences and Design Alternatives, Int.VAT Monitor, Sep/Oct 2011, IBFD, p.300
127 R. de la Feria and H. van Kesteren, Introduction to This Special Issue-VAT Exemptions: Consequences and Design Alternatives, Int.VAT Monitor, Sep/Oct 2011, IBFD, p.300
128 Prof. Dr. A. Van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013,
129 Prof. Dr. A. Van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
130 F. Schulyok, The ECJ’s Interpretation of VAT Exemptions, Int.VAT Monitor, Jul/Aug 2010, IBFD, p. 266
goods and exportation of goods can be given as an example. The advantage of this method is that it does not cause a cascading tax burden. The basic idea of the second category exemptions is to ensure that prices of exempt supplies for consumers should be kept as low as possible and should not be increased by VAT. However the disadvantage of this category is that it causes the cascading. Due to this reason suppliers whose supplies are exempt can add hidden input vat costs to his charges to final customer, which occurs higher cost. From this perspective the aim of this method is not partially reached. We can classify the exemptions without credit based on their application reasons:

- to limit the concept of “taxable person”; Article 132 (1/k) and 132 (1/m)
- to correct concept of “taxable transactions”; Article 135 (1/b-f)
- due to public interest; Article 132 (1/a-q)
- economic and technical reasons; Article 135 (1/b-f)
- interaction with other taxes; Article 135 (1/a, i, k)

Under the provision of the Article 131, Member States are allowed to introduce conditions for a correct and straightforward application of exemptions with consideration of preventing evasion, avoidance or abuse. However it is far from the mentality of harmonization of taxes. Exemptions are derogations of general taxable transactions, therefore needs to be interpreted and applied in same way to prevent misapplication and distortive competition situation.

With respect to interpretation of exemptions, the ECJ ruled that VAT exemptions constitute an independent concept of the EU law and they must be interpreted strictly, which does not mean that they are to be construed in a manner that would deprive them of their intended effect. However, after overall evaluation of the case law, we may conclude that the ECJ’s interpretation on the scope of VAT exemptions is no longer solely based on strict interpretation of the legal provisions.

Due to wide range of applicable exemptions in the Directive and limited scope of this paper, I will only examine a few exemptions, namely those that are differently formulated in both jurisdictions.

VIII.1.1. Exemptions without Credit with Public Interest Reasoning

Please check Appendix 5 for the whole list provided by the Directive.

VIII.1.1.1 Hospital, Medical Care and Closely Related Activities

Under Article 132/1-b, an exemption applies to hospital and medical care and closely related activities undertaken by bodies governed by public law or under social conditions comparable to those applicable to bodies governed by public law, by hospitals, centres for medical treatment or diagnosis and other duly recognized establishments of a similar nature. Besides that, under Article 132/1-c, the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned is exempt. If the provision of medical care is not exempt, Member State is

131 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
132 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
133 F. Schulyok, The ECJ’s Interpretation of VAT Exemptions, Int.VAT Monitor, Jul/Aug 2010, IBFD, p. 266
134 F. Schulyok, The ECJ’s Interpretation of VAT Exemptions, Int.VAT Monitor, Jul/Aug 2010, IBFD, p. 270
allowed to apply reduced rate on it with conform Annex III. According to rules settled in case law, this exemption covers only treatment of human and excludes the medical care to animals.\textsuperscript{135} With respect to definition of medical care, the ECJ ruled that the Directive is intend to cover services which have as their purposes the diagnosis, treatment and in so far as possible, cure of diseases or health disorders.\textsuperscript{136} With another meaning of this ruling, medical care must have a therapeutic aim.\textsuperscript{137} Furthermore hospital, medical care and related activities must be undertaken by bodies governed by public law and other duly recognized establishments of a similar nature. On the other hand, Article 132/1-c provides Member States a discretionary power to apply restrictions to medical care provided by bodies not governed by public law.\textsuperscript{138} Regarding the “closely related activities”, the ECJ ruled that closely related activities should not be interpreted constrictedly since the exemption of activities closely related to hospital and medical care is designed to ensure that the benefits flowing from such care are not hindered by the increased costs of providing it that would follow it.\textsuperscript{139}

**VIII.1.1.2 Education**

Under Article 132 1-i and j, children’s or young people’s education, school or university education, vocational training or retraining including the supply of services and of goods closely related thereto provided by public bodies or by other organizations recognized by the Member State concerned as having similar objects and tuition given privately by teachers and covering school or university education are exempt. The Directive does not provide the definition of educational activity. However, according to the ruling of the ECJ with regard to Horizon College, transfer of knowledge and skills between a teacher and students is a particularly important element of educational activity.

The exemption includes the materials such as goods and readings and other services ancillary to the educational activities such as the use of library etc.\textsuperscript{140} However the books and other study materials that are provided via supplier such as bookstore are out of the scope. School education should be limited to type of education that is prescribed and/or at least regulated and supervised by the public authorities in the public interest.\textsuperscript{141} For example driving schools will not be classified as school education. Besides that according to case law settled by the ECJ research projects that are carried out by state universities against consideration is not considered as exempt supply.\textsuperscript{142} Furthermore secondment of teachers by educational institutions is also not considered as exempt supply.\textsuperscript{143}

**IX.1.2 Exemptions without Credit Related to Other Activities**

Under the provision of Article 132, following transactions are exempt:

\begin{itemize}
    \item \textsuperscript{135} The ECJ, Case 122/87, Commission of the European Communities vs. Italian Republic, 24 May 1988
    \item \textsuperscript{136} The ECJ, Christoph-Dornier-Stiftung für Klinische Psychologie vs. Finanzamt Gießen, Case C-45/01, 6 November 2003
    \item \textsuperscript{137} Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
    \item \textsuperscript{138} J. Swinkels, VAT Exemption for Medical Care, Int.VAT Monitor, Jan/Feb 2005, p.14
    \item \textsuperscript{139} Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
    \item \textsuperscript{140} Dr J.J.P. Swinkels The Exemption for Education under EU VAT, Int.VAT Monitor, Sep/Oct 2010, IBFD, p.340
    \item \textsuperscript{141} Dr J.J.P. Swinkels The Exemption for Education under EU VAT, Int.VAT Monitor, Sep/Oct 2010, IBFD, p.341
    \item \textsuperscript{142} The ECJ, Case C-287/00 Commission of the European Communities v. Federal Republic of Germany, 20 June 2002
    \item \textsuperscript{143} The ECJ, Case C-434/05, Horizon College vs. Staatssecretaris van Financiën, 14 June 2007
\end{itemize}
Due to the application of these exemptions, following significant difficulties are occurred:\(^{144}\):

- aggressive tax planning with respect to irrecoverable input VAT,
- serious legal ambiguity on definition, scope and interpretation of exemptions
- high compliance costs regarding determination of recoverable input VAT based on pro-rate rules
- tax cascading where the supplier is an intermediate step in the production, input VATs becomes a hidden cost which causes business price distortion against to consumers.
- encouraging internal supplies to have own accountancy and advisory department

Due to listed disadvantages, the Commission has proposed a Council Directive amending the Directive, with regard to the treatment of insurance and financial services in 2007.\(^ {145}\) However there is no definitive outcome of this initiative.

**VIII.1.2.1 Insurance and Reinsurance Transactions**

According to general concept, main service provided to policyholders is a financial intermediation through risk pooling.\(^ {146}\) However, the price of intermediation on this service is very difficult to determine. With respect to pure insurance such as car or theft insurance, the price of intermediation is the difference between premiums received and claims met by insurance company. Therefore, taxing premiums without allowance for claims would be clearly an unsuited approach. The difficulties become more complicated in case a life insurance combined savings and risk-pooling elements or in case of annuities.\(^ {147}\) Due to these technical difficulties, politicians decided to exempt insurance and reinsurance transactions, including services of insurance brokers and insurance agents.

Although the Directive does not provide a definition of insurance, the ECJ has ruled in Card Protection Plan case that insurance transaction means that insurer undertakes, in return for a premium, to provide the insurer, in the event of materialization of the risk covered, with the service agreed when the contract was concluded.\(^ {148}\) According to settled case law, exemption will not be applied to intermediary services regarding insurance transactions where a service provider only takes over administrative work from an insurer, acquires, supervises and trains agents, exclusively renders advisory services or explicitly accepts applications for loans or insurance or provides information about those financial services.\(^ {149}\) An insurance agent must be involved in the process of concluding insurance contracts and the involvement can be derived from the circumstances that the agent receives

\(^{144}\) R. de la Feria, The EU VAT treatment of insurance and financial services (again) under review, EC Tax Rev. 2007-2, p.75
\(^{146}\) R. de la Feria, The EU VAT treatment of insurance and financial services (again) under review, EC Tax Rev. 2007-2, p.74
\(^{147}\) R. de la Feria, The EU VAT treatment of insurance and financial services (again) under review, EC Tax Rev. 2007-2, p.74
\(^{148}\) The ECJ, Case C-349/96, Card Protection Plan Ltd v Commissioners of Customs & Excise, 25 February 1999
\(^{149}\) H.M. Grambeck, Online Insurance Mediation under EU VAT, Int. VAT Monitor, Mar/Apr 2012, p.108
a commission based on the insurance contracts that have actually been concluded between insurers and insured.\textsuperscript{150}

\textbf{VIII.1.2.2 Financial Services}

Most of countries have opted to exempt financial services due to the difficulties of identifying and calculating the value of financial services on a transaction-by-transaction basis. Financial sectors are in principal divided into two categories.\textsuperscript{151} First category is based on clear fee or commission charge is paid. Second category is based on the profit amount, which is the difference between interest paid on deposits and interest charged on loans. The problem occurs mostly with second category. The value added occurs with only intermediation service between lenders and borrowers regarding this second category. In order to determine the correct intermediation charge, it is necessary to deduct interest charged by the financial institution to borrower, not only the interest paid to the depositor, but equally a premium for the risk of bad debts.\textsuperscript{152} With respect these transactions, the cost of capital for any particular loan will depend upon the riskiness of each loan.\textsuperscript{153} Consequently determining the price that banks pay for capital is difficult which makes also automatically difficult to determine the added value by given loan.\textsuperscript{154} Another problem is that it is practically impossible for tax authorities to determine whether a high rate of interest in a loan represents big profits, which creates value added and therefore should be taxed, or a big risk premium, which creates a cost and therefore should not be taxed.\textsuperscript{155} The level of complexity of financial transactions increases when several types of financial flows are incorporated.

Under financial services mainly these services are exempt:

\textit{Credit activities (Article 135/b-c)}: the granting and negotiation of credit management of credit by person granting it and also the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit. From this definition we do understand that credits granted by any person other than bank and financial institutions also falls within the scope of exemption.

\textit{Payment activities (Article 135-d)}: transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, excluding debt collection and factoring.

\textit{Dealings in banknotes and coins (Article 135/e)}: Transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors’ items.

\textit{Dealings in securities (Article 135/f)}: Transactions, including negotiation, excluding management and safekeeping, in shares, interests in companies or associations, debentures and other securities

\textsuperscript{150} H.M. Grambeck, Online Insurance Mediation under EU VAT, Int. VAT Monitor, Mar/Apr 2012, p.108
\textsuperscript{151} R. de la Feria, The EU VAT treatment of insurance and financial services (again) under review, EC Tax Rev. 2007-2, p.74
\textsuperscript{152} R. de la Feria, The EU VAT treatment of insurance and financial services (again) under review, EC Tax Rev. 2007-2, p.74
\textsuperscript{153} H. Huizinga, A European VAT on financial services?, Economic Policy, October 2002, p. 505
\textsuperscript{154} H. Huizinga, A European VAT on financial services?, Economic Policy, October 2002, p. 500
\textsuperscript{155} H. Huizinga, A European VAT on financial services?, Economic Policy, October 2002, p. 500
excluding documents establishing title to goods, and the rights or securities referred to in Article 15-2. *Management of special investment funds (Article 135/g)*

The Directive allows Member State to provide a right of option for taxation in respect to listed financial services. Some of EU countries such as Germany, Belgium and France have provided their taxpayers a right of option for taxation in this respect.\(^{156}\)

According to the list provided by the Directive, exemption does not cover all financial services. For example renting safety box, debt collection and investment advisory services are not exempt supplies.

**VIII.1.3 Exemptions With Credit**

Under the rules of the Directive, following transactions/supplies are exempt with credit;

- Exemption for the intra-Community transactions
- Exemption on importation
- Exemption on exportation
- Exemptions related to international transport
- Exemptions related to certain transactions treated as export
- Exemption for the supply of service by intermediaries
- Exemptions for transactions relating to international trade

Due to the limitation of this study and wide-scope of exemptions, these exemptions are directly compared with the TVTA in section VIII.3

**VIII.2 Exemptions According to the Turkish VAT Law**

In parallel to provisions of the Directive, the Turkish VAT system has also two types of exemptions such as exemption with credit and without credit. The TVTA categorises exemptions in six different groups as such:

- Exemption on export
- Exemption on transportation
- Diplomatic exemptions
- Exemption on importation
- Exemptions for social and military purposes and other exemptions
- Exemptions related to means of transport, oil prospecting activities and investments based on incentive certificates

Due to wide range of applicable exemptions in the TVTA and limited scope of this paper, I will only examine a few exemptions, namely those that are differently formulated in both jurisdictions

**VIII.2.1. Exemptions without Credit**

Please check Appendix 6 for the whole list.

\(^{156}\) H. Huizinga, A European VAT on financial services?, Economic Policy, October 2002, p. 506
VIII.2.1.1 Banking and Insurance Services

Under the Turkish VAT law, transactions carried out by banks and insurance companies that fall within the scope of banking and insurance transaction tax (hereafter referred as “the BITT”) are exempt to avoid double taxation.\textsuperscript{157} According to the provisions of excise tax with regard to the BITT, transactions are strictly connected with the certificated banks, insurance companies and financing companies. Due to this provision, financial services are differently regulated than the Directive, hence transactions carried out by a taxable person that is out of this scope are subjected to VAT. For example if the credit is obtained form one of connected company or third party company will be subjected to VAT.\textsuperscript{158} However under the current rules of the Directive, this transaction would be exempt. Besides that specific type of financial services such as financial leasing and factoring performed under the Financial Leasing, Factoring and Financing Companies Law is not subject to the BITT, therefore it is not exempted from VAT.

According to the Turkish Excise Tax Law, transactions that falls within the scope of the BITT carried out by banks, insurance companies or financing companies, which their registered head office is not located in Turkey, are not subject to the BITT. Therefore the question is raised whether those transactions are subject to Turkish VAT or not. This question has been answered with the general communiqué issued by the Ministry of Finance. According to this general communiqué, those transactions are not subject to VAT, if they are provided by certain establishments which have same structure as determined in the BITT according to their national law.\textsuperscript{159} For example if the credit is obtained from a company, which is financing company according to national law where it is located, this transaction is not subject to VAT in Turkey. If the creditor company is not authorized to provide credit service under its national law, than it will be subject to VAT. By this principle no different rules applied for the services obtained from local establishments and foreign establishments, which is also conform the exemption on importation.

VIII.2.2. Exemptions with Credit

Please check Appendix 7, 8 and 9 for a complete overview. Due to the limitation of this study and wide-scope of exemptions, these exemptions are directly compared with the Directive in section VIII.3

VIII.2.2.1 Exemption on Exportation

In accordance to destination principle, supply of services and goods with regard to exportation are exempt from VAT. With this exemption, it aimed that goods and services should leave the country without any VAT burden. According to the provisions of the TVTA, exportation on services and goods covers the supply of goods and its connected services; service rendered to customers located

\textsuperscript{157} Prof.Dr. B. Yalçın, Turkey Value Added Tax, IBFD, 2014, p.31
\textsuperscript{158} A. Tolu, Ortaklara Cari Hesap Yoluyla Verilen Borç Paraların KDV’ye Tabi Olduğuna Açıklık Kavuşturuldu, Yaklaşım, Eylül 2010, Sayı 213
\textsuperscript{159} V. Yüksel, Yurt Dışından Temin Edilen Kredilerin BSMV ve KDV Karşısındaki Durumu, Yaklaşım, 2011, Sayı 228
abroad; roaming services rendered in Turkey under reciprocal international roaming treaties; VAT on goods purchased by non-resident travellers; the VAT paid by those who do not have residence, workplace, registered head office and business centre in Turkey for goods and services that they will purchase in relation to their transportation activities, and for goods and services that they will purchase in relation to their participation in fairs, expos and exhibitions is returned on condition of reciprocity and finally the VAT on goods delivered by manufacturers to exporters for export purposes.

The conditions required with exportation with respect to the supply of goods are as follows:

- Supply of goods should be addressed to customer located abroad
- Goods should be delivered through the customs zone of Turkey or delivered to free zone or customs warehouse

Although the TVTA provides an exemption for services connected with supply of goods with respect to export activities, the Ministry of Finance does not allow exemption on those services.\textsuperscript{160}

Exportation of goods covers also the supply of goods by manufacturer to exporter with condition that they are exported. However the system works different than direct exportation rules. In case manufacturer sales goods to exporter, VAT must be charged but VAT is not going to be paid by exporter.\textsuperscript{161} The manufacturer includes this VAT in his periodic returns. However, the VAT will be computed and assessed but it will be deferred. If the goods are exported within 3 months from the beginning of the month following date of the supply to the exporter, the deferred will be cancelled. In order to benefit from this exemption, the goods supplied by manufacturer must be exported by the customer without any modification, change or similar treatment.\textsuperscript{162}

With regard to exportation of services, conditions that are required based on Article 12 of TVTA and the general communiqué on implementations of the TVTA as follows:

- services must be supplied to customer located outside the territory of Turkey, or located in free zone which is outside the customs area
- services must be carried out in territory of Turkey
- service should be enjoyed abroad,
- invoice or similar documents should be addressed to customer located abroad

As it discussed in previous chapters, the TVTA does not provide the definition of the utilization of service abroad. According to the approach of Ministry of Finance, the service should not be connected with the customer’s activities in Turkey. From this perspective we might conclude that the Turkish VAT system combines the destination principle with the real place of enjoyment. The Council of State interprets little bit differently. According to the settled case law, utilization of service abroad means that the result of services that has been carried out in Turkey, should be enjoyed abroad by the customer located abroad.

\textsuperscript{161} F. Saraçoğlu, H. Ejder, Katma Değer Vergisi’nde Varış Ülkesinde veya Menşe Ülkesinde Vergilendirme ve İhracat İstisnasi, Dokuz Eylül Üniversitesi, İktisadi ve İdari Bilimler Fakültesi Dergisi, Cilt 17, Sayı 1, 2002, s.74
\textsuperscript{162} Prof.Dr. B. Yaltı, Turkey Value Added Tax, IBFD, 2014, p. 27
VIII.3 Comparison of the European VAT Directive and the Turkish VAT Law

The exemption implementation methods of both jurisdictions are similar which are mainly based on exemption with credit and without credit. However the classification and scope of exemptions are differently regulated in both jurisdictions. The EU VAT system focuses more on social and cultural purposes, while the Turkish VAT system focuses on more economic, social and military purposes. The Directive provides social exemptions mostly based on object, which means that they are applicable for both public and private bodies. However the Turkish VAT system provides those exemptions mostly for public bodies.

For an overview of exemptions provided only in the Directive and the TVTA:

<table>
<thead>
<tr>
<th>Exemptions Provided Only By The Directive</th>
<th>Exemptions Provided Only By the TVTA</th>
</tr>
</thead>
<tbody>
<tr>
<td>➢ Public postal services,</td>
<td>➢ Supplying railway vehicles to taxable persons who is renting or operating them in different ways including modification, repairmen and maintenance services related to these vehicles and supply of goods and services related to the manufacturing of these vehicles.</td>
</tr>
<tr>
<td>➢ The provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned,</td>
<td>➢ Exemptions for military purposes</td>
</tr>
<tr>
<td>➢ The supply of services by dental technicians and the supply of dental prostheses by dentists and dental technicians</td>
<td>➢ Exemption for petroleum exploration</td>
</tr>
<tr>
<td>➢ The supply of services by independent groups of persons -Cost sharing</td>
<td>➢ Supply of machinery and equipment with respect to grounded investment certificate</td>
</tr>
<tr>
<td>➢ Tuition given privately by teachers and covering school or university education</td>
<td>➢ Construction, modernization and enlarging of, harbour, airports rail lines which connects to ports</td>
</tr>
<tr>
<td>➢ The supply of transport services for sick or injured persons in vehicles specially designed for the purpose by duly authorized bodies</td>
<td>➢ Supply of water for agricultural purposes and non-commercial retail deliveries of drinking water to the villagers by legal entities in the village, services relating to land improvement by public enterprises, agricultural cooperatives and farmers’ associations</td>
</tr>
<tr>
<td>➢ The activities, other than those of a commercial nature, carried out by public radio and television bodies</td>
<td>➢ Supplying some specific services to certain type of public authorities such as Directorate General of Press, Publication and Information</td>
</tr>
<tr>
<td>➢ Betting, lotteries and other forms of gambling</td>
<td>➢ Postage stamps</td>
</tr>
</tbody>
</table>
In contrast with the application in the Directive, the TVTA taxes the public postal service and its related postal stamps. The fiscal stamps are exempt in both systems.

With regard to education services, the TVTA provides the exemption with very limited scope comparing with the provisions of the Directive. Under the Turkish VAT system, private schools are allowed to provide education services without consideration limited to 10% (50% for private university and colleges) of their capacity in concerned period. Above this range it will be subjected to VAT based on market valuation. On the other hand these services are totally exempt under the rules of the Directive. For example if a private person receives tuition by a teacher privately he will be exempt under the Directive. However same service is subjected to VAT with an 18% rate. If this service is provided through specific institutions, 8% is applied. The exemption on education services in the Directive covers also supply of goods and services related thereto. However there is no specific rule in the TVTA about it, apart from equipment of handicaps necessary for their education. With respect to exemption on sportive activities, it can be considered that they are in inline with each other. The TVTA provides exemption on those activities provided by specific public and political bodies, associations served to public interest and foundations, which are exempt for tax reasons. However the Directive provides more general scope by referring to non-profit organizations. Indeed, the come out is similar.

With respect to medical and hospital services including laboratory service, supply of human organs and blood, the TVTA provides this exemption only for specific public bodies\(^{163}\). Those services provided by private organizations are subject to tax with 8%.\(^{164}\) However the Directive provides this exemption also for private organizations. Furthermore, dental services and supply of dental prostheses are not exempt under the current rules of TVTA, although they are exempt in the Directive. Turkey has provided the exemption based on taxable subject instead of taxable object. The general aim of this exemption is providing these basic necessities with minimum cost. In this respect, it should not be matter if those services carried out by public bodies or private persons.

Under the rules of the Directive, the supply of certain cultural services and the supply of goods closely linked thereto carried out by public bodies or by other cultural bodies recognised by the Member State concerned are exempt. However there is no clear information on which types of cultural activities are exempt and also no consensus between the implementations of Member States. The Annex III provides also possibilities for Member State to apply reduced rate for certain type of cultural activities in case exemption is not applied. According to the TVTA only the supply of goods and services in relation to cultural educational activities through operation or management of theatres, concert halls, libraries, exhibitions, reading and conference halls, and sports facilities by specific

\(^{163}\) performed by the administrations of the general and annexed budget, special provincial administrations, municipalities, villages and the unions thereof, universities, establishments with circulating capital, public institutions and enterprises founded under law, professional associations in the nature of public institution, political parties and trade unions, retirement and relief funds founded under law or possessing legal personality, associations beneficial to public good, agricultural cooperatives, and the foundations granted tax exemption by the Council of Ministry

\(^{164}\) Y. Pehlivan, A. Erdoğan, Sosyal Amaçlı Teslim ve Hizmetlere İlişkin KDV İstisnasi, Yaklaşım Aralık 2004, Sayı 17
public bodies are exempt. If these services are provided by private organizations they are subject to VAT. In contrast the Directive’s regulations, tickets with respect to cinema, concerts, opera, ballet etc. are subject to VAT without any exemption. Besides that the TVTA provides also exemption for the architectural services rendered to the beneficiaries of projects on building-survey, restoration and restitution of officially registered immovable cultural assets covered by the law on protection of cultural and natural assets and supply of goods used for realization of those projects under Article 17/2-d which is not exempt in the Directive.

Radio and television services provided by public bodies are also subject to VAT under the rules of the TVTA. Although these services, other than commercial nature, are exempt according to the Directive.

On the issue of insurance and financial services, those services are exempt under the rules both systems. However the implementation of exemption is different from each other. For example the Directive applies the exemption based on object and not the subject. According to the Directive all organizations’ activities with respect to those services are exempt. However the TVTA focuses on the subject of exemption. Limited organizations like banks, insurance companies, licenced agencies, bankers that fall under the scope of the BITTA, are exempt with respect to insurance and financial services. If a group company provides a loan to another group company, this service is subject to VAT under the provisions of the TVTA, although it is exempt according to the Directive. However, financial and insurance services are taxed in Turkey under the rules of the BITT which is a kind of an indirect tax and similar to VAT. The EU Commission plans to apply bank and insurance transaction tax but it is still in process. Furthermore the financial advisory services are not exempt in the Directive, although according to the BITT, all activities of bank and insurance companies excluding their activities fall under the Financial Leasing Act, are subject to the BITT. Besides that the current rules of the Directive allows Member State to ground a right of option for taxation with regard to financial services. (Article 137) Taxable person who provides insurance services is not allowed to opt for taxation. However the TVTA does not provide any right to opt for taxation.

Furthermore, the leasing or letting of immovable property is exempt under the rules of Directive, albeit the TVTA provides exemption on leasing of immovable property, which does not form part of the business assets of an enterprise. If the immovable property forms the part of business assets than those transactions will be subject to VAT under the rules of TVTA. Besides that the transfer of the immovable property, which has been subject to a leasing contract under the Financial Leasing, Factoring and Financing Act between the leasing company and the lessee, is exempt from the VAT, as long as provided that the property was acquired from and leased back to the lessee. The rules of the TVTA do not infringe with the Directive, hence the Directive allows the Member States to provide a right of option for taxation.

---

165 Prof. Dr. B. Yalti, Turkey Value Added Tax, IBFD, 2014, p. 31
Under the rules of the Directive the supply of land, other than building land, and building under certain conditions are exempt. However these transactions are taxed under the TVTA’s provisions excluding concerned transactions has been performed with the aim of establishing an organized industrial zones and small industrial sites.

According to the Directive, betting, lotteries and other forms of gambling are exempt. However these transactions can be subject to limitation and conditions laid down by each Member States. On the other hand the TVTA taxes all these kinds of services without any limitation.

The supply of goods with respect to exportation is quite similar regulated in both systems. This exemption also provides the right of deduction of input VAT according to the rules of both jurisdictions. With respect to the supply of services, the Turkish VAT system deviates little bit from the Directive. According to the Directive, the supply of service with respect to exportation is exempt including transport and ancillary services. The place of supply is ruled with certain definition and conditions. For example B2B services, the place of supply of service is the place of customer where located. The Directive does not refers to the use and enjoyment principle with respect to B2B services exemption optional mechanism-Article 59a. However the TVTA goes one step further and accepts the service provided abroad and enjoyed in Turkey through its business activities, it is deemed to be supplied in Turkey and it is not accepted as export. On the other hand the Directive does not look for this specific evaluation apart from B2C services with respect to telecommunications, broadcasting and electronically supplied services. I do believe that implementation of the Turkish VAT system is quite in line with the destination principle. Under this principle, services or goods should be taxed in the place where it is finally consumed. Although the company is located abroad, invoices are addressed to abroad and paid by foreign company, the services eventually enjoyed in Turkey. Therefore it should be taxed in Turkey. However it might be difficult to determine it in every case in practice. The TVTA should provide more specific rules of applying the effective use and enjoyment. Besides that the Directive provides a limited exemption with respect to goods to be carried in the personal luggage of travellers. The value of the supply including VAT should be more than 175 Euro. However the TVTA does not requires any limitation.

With respect to international transportation, the Directive provides the exemption only for the vehicles, which operates on high seas and international routes with regard to aircrafts. However the TVTA provides this exemption broader than the Directive by applying exemption for all specific transportation vehicles, not limited to use for international transportation.

With regard to commissionaires, the supply of services with regard to transactions such as exportation, international transport and transactions treated as export and transactions carried out outside the Community provided by commissionaires who act in the name and on behalf of another person are exempt. However there is no specific regulation on these transactions in the TVTA. According to general communiqué of the Ministry of Finance, commissionaire services with respect to export activities are also exempt from the VAT.
In the view of import, import of gold by central banks, import of goods with respect to international organizations and diplomatic, import of gas through a natural gas system (including transportation) or import of electricity or of heat and cooling energy through heating or cooling networks, the exempt supplies under the rules of Directive and domestic rules and other matters regulated in the Directive in details will be exempt. The TVTA also provides the same exemption with respect to these import activities. However, the TVTA provides exemption for import of gas and raw petroleum through pipeline or transportation services. There are no specific rules for electricity.

Finally according to the TVTA, apart from the exempt supplies performed under Article 17, paragraphs 1, 2, 3-a and 4-e. (mainly related to social, educational, military, financial and insurance activities), taxable persons have the possibility to opt out the exemption application on their supplies in a very broad scope compared to the scope a described by the Directive through Article 137.

Due the differences between the TVTA and the Directive on exemptions, the system itself pushes a taxable person to arrange tax planning and causes an unequal treatment of a taxable person in comparable situations. Those differences might indeed distort markets of both jurisdictions.

CHAPTER IX

IX. DEDUCTIONS

VAT systems tax consumptions. In this concept, the term of consumption is to be understood as private consumption, rather than productive consumption. The neutrality principle of the VAT guarantees neutrality for taxable persons through an immediate and full deduction of all input VAT incurred in economic activities performed, except the effect of the pre-financing of VAT and administrative burden on the taxable persons. According to the Glossary of OECD, deductible VAT is the VAT payable on purchases of goods or services intended for intermediate consumption, gross fixed capital formation or for resale which a producer is permitted to deduct from his own VAT liability to the government in respect of VAT invoiced to his customers. In this respect the right of deduction has an important role to provide the balance between the output VAT charged for his supplies and the input VAT incurred on the supplies of goods or services made to him, in line with the neutrality principle.

IX.1 The Implementation of Deduction According to the EU VAT Directive

The European VAT is structured as a general indirect tax on consumption. Due to the neutrality and simplicity principle, the EU VAT is levied at all stages of the process of production and

166 A. van Doesum, G.J. van Norden, The Right To Deduct under EU VAT, Int. VAT Monitor, Sep/Oct. 2011, IBFD, p.323
168 Available at http://stats.oecd.org/glossary/detail.asp?ID=568
169 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
distribution of goods and services.\textsuperscript{170} However, the VAT charged on the stage in the production and distribution process is intended to be transferred to the final consumer.\textsuperscript{171} Therefore the burden of VAT should be carried only by final consumers.

Under the current rules of the Directive, a taxable person has right to deduct the VAT due or paid in respect of supplies to him carried out or to be carried out by another taxable person, or internal supplies that has been regulated under the rules of Article 18-a and 27 or intra-Community acquisitions, or exported products by him, or imported by him or its supplies with regard to certain international transportation under Article 148, or other supplies fall under the rules of Articles 151-152 (exemptions relating to certain transactions treated as exports), 153(exemptions for the supply of services by intermediaries), 156, 157/1-b, Articles 158 to 161 or Article 164 (exemptions for transactions relating to international trade).\textsuperscript{172} According to Article 167, the right of deduction comes due at the moment the deductible tax becomes chargeable. The Directive provides the deduction only for the goods and services used for the purposes of taxable transactions including taxable transactions carried out outside the Member State, if the transactions would be eligible for deduction of tax had occurred in the territory of the Member State (Article 169). With another meaning taxable person cannot deduct VAT for goods and services supplies that are used for exempt supplies or non-economic purposes. Besides that under the rules of Article 173, if taxable person uses goods and services supplied for both taxed transactions and exempt transactions may eventually deduct only the tax that is attributable to the former transactions.\textsuperscript{173} The calculation method, which is called as “pro-rata calculation” for the dual VAT situations is regulated under the rules of 174.\textsuperscript{174} Under this rule, it is difficult to determine to what extend specific inputs are actually used for the taxable transactions and exempt transactions. The Member States are allowed to apply a single pro rata fraction for whole business or separate pro rata fraction for each division of the business. The Dual VAT situation occurs when the taxable person is engaged with taxable and non-taxable transactions.

The scope of the right to deduct input VAT is determined in following steps\textsuperscript{175}:

\textit{First Step:} determination of extent inputs (direct costs) can be attributed to taxable transactions. The VAT on these costs can be fully deducted if these costs are directly and immediately linked to taxable transactions. If they are directly linked to exempt transactions than the input VAT related those cost cannot be deductible.

\textit{Second Step:} the costs where cannot be linked directly to taxable transactions or exempt transactions, the related VAT is in principle non-deductible. At this step, it must be determined whether the costs of the goods and services from part of the overheads relating to a clearly defined part

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
\end{flushright}

\begin{flushright}
Pro-rata: (turnover attributable to transactions giving rise to deduction/total turnover)*100
\end{flushright}

\begin{flushright}
\end{flushright}
of a taxable person’s economic activities. If it can be clearly defined than the input VAT is fully deductible.

**Third Step:** in case the input VAT cannot be deductible according to taken first two steps, at the third step, the cost should be analysed whether can be considered as forming part of taxable person’s general costs and, as such are included in the prices of goods and services supplied by taxable person. In this case, the input VAT can be partially deducted.

If all these steps do not induce the partially or fully deduction, than input VAT cannot be deductible anymore.\(^{176}\)

With respect to exempt supplies without credit, Article 169-c provides an exception for taxable persons to deduct or refund the input VAT on their transactions performed for the purposes of financial and insurance services that are exempt under the rules of Article 135/a to f, where their customer is established outside the Community or where those transactions relate directly to goods to be exported out of the Community.

Under the rules of Article 16, the application of goods for business use as sample or as gift of small value is not treated a supply of goods for consideration. With other meaning, those supplies are not subject to VAT. With respect to deduction of input VAT on those goods, taxable persons are allowed to deduct input VAT on those goods used as long as used for taxable transaction conform Article 168. However each Member State uses different limit and criteria for determination of small value gifts and sale samples.

In relation to application of deduction, if the amount of deductions exceeds the amount of VAT due in a given tax period, the Member States are allowed apply either a refund or carry the excess forward to the following period. In case of liquidation, the refund method does not cause a problem. However if a Member State applies the carry forward method, the Directive does not provide any legal certainty to refund the deferred VAT on this respect. For the perspective of neutrality principle, I do believe that the deferred amount should be written off or deducted from other tax debts. If these options cannot be applicable, the rest-deferred amount should be refunded.

In the sense of adjustment of deduction, Articles 184 and 185 require taxable person to adjust the initial deduction where it is higher or lower than that which he was entitled or where after the return is made some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled or price reductions are obtained. From the wording of Article 184, it is not clear that if this provision deals with also situation in which a taxable person deducts the input VAT where it was initially break the law or directive, for example if he deducted the input VAT where the goods and services were used for exempt supplies, or on contrary situation in which he did not reclaim any input VAT where had to.\(^{177}\) No adjustments of deductions are necessary in the case of transactions remaining totally or partially unpaid or in the case of destructions, loss or theft of property.

\(^{176}\) A. van Doesum, G.J. van Norden, The Right To Deduct under EU VAT, Int. VAT Monitor, Sep/Oct. 2011, IBFD, p.325
\(^{177}\) Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
duly proved or confirmed, or in the case of goods reserved for the purposes of making gifts of small value or giving samples as addressed in Article 16. On the other hand, the Directive allows Member State to require recalculation in cases of transactions remaining totally or partially unpaid or in the case of theft. Furthermore, with regard to capital goods, adjustments must be spread over five years including that in which the goods were acquired or manufactured. Member States are allowed to extend adjustment period up to 20 years.

IX.1.1. Refund Procedure

As mentioned the burden of VAT should not lie on taxable businesses conform the neutrality of VAT principle, therefore the Directive imposes a special refund procedure for foreign taxable person. By the help of the refund procedure, the taxable persons who are not established in a Member State and has not supplied any goods or services in the Member State concerned with the exemption of transport services or those on which tax is payable by the customer alone are grounded to apply the special refund procedure under certain conditions to reclaim paid local input VATs. In other situations such as making taxable supplies, importing goods or no possibility of reserve charge mechanism, those non-taxable person are required to register themselves and file a VAT return and reclaim the foreign VAT via that regular VAT return. The Directive 2008/9/EC regulates the procedure for the taxable person who is established in another Member State and the Directive 86/560/EEC regulates the procedure for the taxable person who is established outside the EU. With this respect, the Directives may also provide or require mentioned taxable persons to assign tax representative to perform all formalities in concerned Member State. The tax preventative may exercise all the rights and is obliged to fulfil all obligations deriving from application of the rules on VAT relating to operations effected in the Member State concerned.

IX.2 The Implementation of Deductions According to the Turkish VAT Law

Under the rules of TVTA, taxable persons are allowed to deduct their input VAT on received services and goods including transactions under importation with respect to their business activities from their output VAT. In case the total input VAT amount exceeds the total output VAT for certain period, the surplus input VAT will be deferred next period or will be refunded in certain limited situations. In case the total output VAT exceeds, than the positive rest of output VAT will be directly paid to the tax authority. In order to obtain right of deduction of input VAT, following conditions must be met:

- to be identified as taxable person for VAT purposes
- goods and services purchased or imported must be used for business purposes
- input VAT should be deductible. (Some of input VATs cannot be deductible, Art.30)

---

178 Prof. Dr. A. van Doesum, Prof. Dr. H. van Kesteren, Prof. Dr G.J. Norden, Fundamentals of EU VAT Law, 2013
180 V. Arif Şimşek, Abdullah Tolu, Katma Değer Vergisinde İndirim, Yaklaşımı Yayınları, Nisan 2002, p.61-64
VAT must be explicitly indicated on an invoice, or similar documents which is addressed to taxable person. However the Ministry of Finance accepts retail receipts, which is not directly addressed to taxable person with regard to daily necessities of business such as stationeries, cleaning materials and food.\textsuperscript{181} Furthermore the Council of State ruled that if VAT is charged to real consumer or factual recipient of services or goods without addressing its name on its invoices, deduction should be granted to taxable person, otherwise it is consistent with tax neutrality principle.\textsuperscript{182} On the other hand with another decision of the Council of State, it is also ruled that taxable person is not allowed to deduct VAT, which is not addressed to his name on the invoice.\textsuperscript{183} There is no consensus on the invoices declared by the personnel on which his/her name is addressed instead of company name. The State of Council gave also different decisions on it as the ECJ did.

VAT must be registered on statutory books

VAT burden should be factually undertaken, not only against to invoice.

input VAT with related to importation must be already paid.

In parallel to the Directive, the right of deduction of input VAT can be used during the period in which the relevant documents are entered in the statutory books pursuant to laws, providing no later than the calendar year in which the taxable event has occurred. Taxable person is not allowed to deduct the input VAT if he did not declare in the related calendar year.

With respect to importation, the taxable person is allowed to deduct the input VAT raised from importation of goods as long as VAT amount is specifically mentioned on the customs receipt, the related VAT is paid to tax authorities and the customs receipt is registered on statutory formal books. As it is discussed in previous chapter, the services carried out abroad but enjoyed in Turkey, is considered as importation of services and subjected to Turkish VAT. In this case the taxable person who enjoyed the services should declare VAT to tax office as a person for liable to pay tax and also entitled to deduct the concerned VAT at its VAT return. Unlike the importation of goods, the VAT with regard to importation of services is not necessary to be paid at the moment of deduction.\textsuperscript{184}

Under the normal conditions, the input VAT with respect to exempt supplies without credit are not deductible, however the TVTA provide a special deduction with respect to transfer, division, conversion and merger of business in case the transferor, taxable person who dissolved or quit the business. The transferee or exiting company after these transactions is allowed to deduct as long as it does not cause the double deduction.\textsuperscript{185}

The input VAT with respect to promotion materials, goody bags and sale samples within the framework of marketing activities can be deductible under certain methods. In case the applicable rate

\textsuperscript{182} The Council of State, 9th Chamber, 12.05.1994, E:1993/2595, K:1994/2333
\textsuperscript{184} Prof. Dr. Ş. Kızılot, Açıklamalı ve İchtihatlı Katma Değer Vergisi Kanunu ve Uygulaması, Yaklaşım, 2012 p.1264
\textsuperscript{185} Prof. Dr. Ş. Kızılot, Açıklamalı ve İchtihatlı Katma Değer Vergisi Kanunu ve Uygulaması, Yaklaşım, 2012, p.1266
for those is lower than or equal to attached main sale goods/service, input VAT of those can be fully deducted. In other situations, only the total amount of input VAT on promotion materials, which is equal to total output VAT on supplied goods/services can be deductible, rest amount of input VAT on promotion materials will be considered as cost. If those products are not attached to any sale products, just supplied for marketing reason in compliance with general accepted business practices, the input VAT will be deductible under general rules.

In case the business is liquidated, taxable person must calculate the VAT on unsold goods based on the market value. After all these transaction, if there is still outstanding deductible VAT, that amount cannot be refunded under the current rules of the TVTA, which is also conform settled case law of the Council of State. According to the Ministry of Finance and the Council of State, liquidation does not constitute a reason for a refund of outstanding deductible VAT amount under the rules of the TVTA. Those amounts can be registered as cost.

Input VAT on the following transactions is not deductible (Article 32):

- VAT on goods and services that are used for exempt supplies or non-taxable activities,
- VAT on cars purchased for business purposes excluding used at enterprises whose business partially or wholly is renting or operating those cars,
- VAT on goods that are casually lost, excluding due to earthquake, flood disaster, or in fire areas where the Ministry of Finance declares as a case of force majeure.
- VAT on expenditures that are not considered as deductible business expense pursuant to related provisions of the Income and Corporate Tax Laws.

The TVTA allows taxable persons to deduct the input VAT with respect to specific exempt transactions, which are in details listed in previous chapter. (See VIII.2.2.)

The TVTA also provides a same pro-rata method as the Directive does to calculate deductible and non-deductible VAT amount, in case taxable person deals supplies with deduction right and without deduction.

Pro-Rata Formula: (The total amount of exempt supplies with deduction / the total sales) * 100

For example, if a company sales goods with deduction right amount to 50.000 Euro and 30.000 Euro without deduction right. Total sales will be 80.000 Euro. We assume that total input VAT is 15.000 Euro. In this case pro-rata for non-deductible VAT is: (30.000/80.000)*100 = 37,5%. The total non-deductible VAT is 5.625,00 Euro, which means 9.375 Euro can be deductible from the total output VAT. ((50.000/80.000)*100)

In cases where changes take place in taxable base due to the return of the goods, failure to realize the transaction, cancellation of the transaction or other similar reasons, the taxable persons must adjust the input and output VATs on their registration in the period when the return or

187 Prof. Dr. Ş. Kızılot, Açıklamalı ve İştihahlı Katma Değer Vergisi Kanunu ve Uygulamaları, Yaklaşım, 2012 p.1297
188 Prof. Dr. Ş. Kızılot, Açıklamalı ve İştihahlı Katma Değer Vergisi Kanunu ve Uygulamaları, Yaklaşım, 2012, 2012 p.1498
cancellation occurs. Furthermore if the person charges VAT on invoices or similar documents although transaction is not subject to tax or no right to issue a VAT on such documents, are liable to pay such tax. This rule is also applied if more VAT charged than the amount imposed by law. In such situations, the Ministry of Finance is authorized to regulate refund mechanism for over charged VAT to customer irrespective of whether he is entitled to claim a deduction or not.\footnote{Prof.Dr. Billur Yaltı, Turkey Value Added Tax, IBFD, 2014, p. 38}

\textbf{IX.2.1. Refund Procedure}

In general when the total amount of input VAT exceeds the total amount of output VAT, the exceed amount is deferred the subsequent VAT period and not refunded. In general the VAT refund is grounded on a yearly basis for goods and services subjected to reduced rate. Furthermore, the input VAT with respect to exempt supplies with credit are deducted from output VAT. If the taxable person deals only with exempt supplies or total output VAT is less than the input VAT, under certain conditions, refund is applicable. Firstly the refund is provided on monthly basis by credit against to other taxes owed to the Treasury, social security premiums, debts to governmental institutions, municipalities, debts in relation to goods and services provided from enterprises whose 51\% of capital, or more, is publicly owned or included within the scope of privatization.\footnote{Prof.Dr. Billur Yaltı, Turkey Value Added Tax, IBFD, 2014, p. 37} After all the rest of amount will be refunded on a yearly basis according to the written request of taxable person within the following year till end of November.\footnote{Ö. Çakıcı, A. Kütükçü, M. Bahattin Akçay, M. Ersan, İndirimli Oran ve lade, Türmob Yayınları-444, p.503}

The taxable person may also benefit from the rapid refund procedure (HIS), in case following conditions are met\footnote{The General Communiqué on VAT Applications, p.194-195 available at www. http://www.gib.gov.tr}:

- the taxable person should have been already registered for VAT purposes for at least 5 years
- the last balance sheet data must meet the following thresholds; assets TRY 200 million; tangible fixed assets TRY 50 million; equity TRY 100 million; and sales TRY 250 million (at least three of them should be required)
- At least 250 employees must be employed in the calendar year prior the application
- taxable person must have clean compliance record for the last 5 years
- all taxes exempt deferred taxes should have been paid

After obtaining a HIS certificate, the VAT refund shall be paid back immediately in cash or by way of credit against other tax debts, without the need for an official audit report, or a guarantee or an approval report of a fiscal consultant. Cash refunds shall be realized within 5 days from the date of the refund application, whereas refund by way of credit shall be completed at the date where the necessary documents for a refund are submitted.\footnote{Prof.Dr. B. Yaltı, Turkey Value Added Tax, IBFD, 2014, p. 38}
Non-resident taxable person with a place of business or agent (dependent or independent) in Turkey is entitled to claim a deduction or refund in the same way as resident taxable person.\textsuperscript{194} The TVTA does not provide VAT representative institution as provided in the Directive. In case preventative of non-resident taxable person involves the transaction, than the business income will be treated as carried out in Turkey.

The TVTA does not provide a special refund scheme for non-resident taxable persons with respect to the VAT on purchased goods and services for the purposes of transactions related to an economic activity carried out abroad which would be entitled for VAT deduction or refund if it has business place in Turkey. On the other hand, with respect to transportation activities and commercial activities at exhibitions and fairs, taxable person who does not have its residence, legal seat, place of management or a place of business in Turkey, is granted to a refund on reciprocal basis and under certain conditions for goods and services purchased. Besides that VAT on goods and services purchased by foreign suppliers for the purpose of cinematographic works approved by the Ministry of Culture and Tourism is refunded to the foreign suppliers under certain conditions defined by the Ministry of Finance. One of important condition is that foreign cinematographic work suppliers should not have been registered as taxable person in Turkey with respect to the individual income tax, corporate income tax or VAT. The refund exceeding TRY 1,000,00 can only be realized with an official audit report.

The lack of special refund system for non-resident taxable person puts the Turkish VAT system conflict with the external neutrality principle of VAT. Due to this lack, the vat burden lies on non-resident taxable person, which is against to aim of VAT.

\textbf{IX.3 Comparison of the European VAT Directive and the Turkish VAT Law}

In principle, the TVTA and the Directive provide the right of deduction of input VAT occurred with respect to business activities. Besides this general rule, the Directive and the TVTA requires that input VAT on internal supplies are not deductible if those services or goods had been provided by another taxable person and would not be wholly deductible. (With respect to internal supply of services, these supplies are not taxable event under the TVTA therefore the input VAT regarding those services cannot be deducted under Article 32 of the TVTA.) Besides that the Directives does not allow the deduct input VAT on expenditures particularly related to luxuries, amusements or entertainments which are not strictly related to business activities. On the other hand the TVTA refers to rules of personal income tax and corporate income tax. If the expenditures are not acceptable as cost from the point of those laws, input vat on those expenditures are also not deductible. The method is different but those codes reference to also non-business costs, therefore outcomes of both systems are indeed same.

\footnote{Prof.Dr. B. Yaltı, Turkey Value Added Tax, IBFD, 2014, p. 40}
In case the taxable persons provide both type of supplies such as exempt with deduction right and without deduction right, the TVTA and Directive grant to deduct input VAT based on proportional rate (pro-rata) in case input VAT can not be directly attributed to one of those supplies or linked with both types of supplies. Only the difference is that pro-rate is in detail regulated on the Directive, however the TVTA does not regulate those details and authorizes the Ministry of Finance to regulate it. However the outcomes in practice currently are similar with the Directive.

The adjustment conditions with respect to transactions are in principle also quite similar. The Directive provides more legal clarity comparing with the TVTA. However I do believe that this situation does not constitute an infringement. Furthermore the adjustment conditions on transactions totally or partially unpaid are more flexible than the Turkish VAT system. The TVTA does not allow adjustment with respect to bad debts. Bad debts can be only treated as a loss under certain conditions.

With respect to exceed input VAT amount, the Directive lets Member State to provide two options such as refund or carry forward to the following period. However the TVTA in principal does not provide refund. The refund possibility is granted only for specific exempt supplies with credit, which is named as full deduction, discussed in detail in previous chapter, and for the taxable person who only deals business subject to reduced rate. In case of liquidation, taxable person is still not allowed to receive a refund. It will be registered as cost. The Directive does not also provide any provision on this subject. Therefore the provisions of the TVTA are not conflict with the Directive. On the other hand, I do believe that the method of TVTA causes a cash-flow effect on the businesses and in some situation stays as a burden on business, which is against to the neutrality of VAT. VAT should not stay as burden on businesses.

Although the Directive provides a special refund system for non-resident taxable persons ,the TVTA does not provide such a refund system. The lack of a special refund system for non-resident taxable person in the TVTA constitutes an inconsistency with the obligatory rules of the Directive and also against to the neutrality of VAT principle. Although non-residents taxable persons are allowed to register themselves in Turkey and follow the general rules and get option to write off the deferred VAT in case no possibility for carrying forward, this method can be still no efficient solution in some situation and the deferred VAT can remain a tax burden on businesses. Therefore the TVTA should provide a special refund system to prevent these kinds of inconsistent situations.
CONCLUSION

In line with the aim of this thesis, I analysed the structure and substantial principles of the EU VAT Directive and the TVTA by means of a comparing method to search at which level the TVTA is in line with the EU VAT Directive with respect to the harmonization process of Turkey on the way being one of the Member States in the EU. Furthermore, I tried to address to main differences and their impacts on the business organizations as well as the market. At first glance, the EU VAT Directive and the TVTA seem to have structured around the same principles and rules to tax consumptions, however, after further investigation we will realize that the TVTA differs from some substantial elements of the Directive as well as from the neutrality principle on the VAT in general.

With respect to the subject and scope of VAT, although in general the scope of VAT is similar with the Directive, on the one hand the TVTA provides a narrow scope compared to the Directive due to the lack of clear definition of economic activity and on the other hand, from the perspective of the consideration criterion, the TVTA applies a very broad scope by including all transactions without consideration. I do believe that the combination of the broad economic activity concept of the Directive and the application of the TVTA with respect to including all transactions will be a better solution to have an efficient working VAT system. In this case the transactions without consideration might be determined based on the open market value under certain conditions. Those conditions should not be differed from the main principle of the VAT and reason to move away from VAT to business taxes. By this option, it will not be necessary to regulate internal and self-supplies in detail. Furthermore, internal supplies will not have an encouraging effect anymore for the taxable person that only deals with exempt supplies without credit to have their own big accountancy or advisory departments. From my perspective, this option is also a good solution for equal treatment of big enterprises and small-medium size enterprises, which have no opportunity to create their own departments as these lead to high costs.

As far as the taxable person is concerned, the TVTA should provide a clear definition of a taxable person in parallel to the Directive provisions by including all economic activities irrespective of aim and results with the limitation of excluding illegal activities.

In terms of taxable transactions, in principle both jurisdictions tax same type of supplies. In parallel to adjustments on the criteria of consideration and economic activity, other addressed problems will be also solved.

On the issue of place of supply, the concept of place of supply regarding services is differently formulated in the TVTA than in the Directive. The TVTA does not apply objective rules to determine the place of supply based on B2B and B2C services. The destination principle is combined with the effective use and enjoyment rule. However, the Directive applies this rule, as “may clause”. Due to this main difference, non-taxation and double taxations situations are occurring. In the case the TVTA changes its structure based on the principles of the Directive or the Directive applies the effective use and enjoyment rule as obligatory mechanism, this problem can be solved.
In the view of taxable amount, the Directive emphasizes the importance of the consideration criterion and the principle of subjective value, while Turkey taxes all transactions including without consideration and applies the principle of objective value to determine the taxable amount. The tool of open market value is formulated differently and is used in different situations in both systems. The application of different methods causes indeed the in-scope and out-of-scope of VAT problems, different economic impacts on the businesses and unequal treatment of Turkish and European consumers. The subjective value should have leading role in VAT. The open market value should be applied for limited situations under certain conditions to prevent involvement of the tax authorities for the determination of taxable amount. Otherwise the VAT turns into business tax structure.

With respect to rates, the list of goods and services subject to the reduced rate must be adjusted according to the Directive. The application of single rate will be a good solution for this problem and also tackling with fraud.

Regarding exemptions, the Directive applies exemptions mainly for social and cultural purposes and due to technical difficulties. On the other hand, the TVTA focuses on more economic and military purposes. Besides that, the TVTA provides exemptions in particular for public bodies, although the Directive mostly applies to public and private bodies. Comparing the general aim of the application of exemptions, I do believe that those exemptions should be provided for both. On the other hand, the exemptions should be minimized to have an efficient working VAT system, which is also in line with the results of economic research and the spirit of the VAT. Due to hidden input VAT costs and other problems raised from the application of exemptions, OECD countries and the EU Commission are planning to narrow the scope of exemptions which should be followed by Turkey as a member of the OECD and a candidate Member State of the EU. Finally, if the differences between the TVTA and the Directive on exemptions are not revoked, the system itself pushes a taxable person to arrange tax planning and this situation causes an unequal treatment of a taxable person in comparable situations, which will distort the market of both jurisdictions.

From the point of deductions, the TVTA makes the refund possible in very limited situations compared with the Directive, which puts the TVTA in conflict with the neutrality principle of VAT. In particular, the TVTA shall provide a special refund regime for non-resident taxable persons in line with the provisions of the Directive. Deductions are strictly connected with exemptions. Therefore different application methods of exemptions create also problem from perspective of the deduction.

In conclusion, due to the fact that the starting point of the Turkish VAT system is based on the principles of the EU Directives at that time, it can be concluded that no major harmonization is required concerning the main structuring principles of the Directive. However, the TVTA is still required to adjust itself on many details as addressed to have full harmonization as required by the EU. As long as those differences are not solved, the burden of VAT will be kept lying on the taxable businesses, the system itself will keep encouraging the taxable person for tax planning and it will have unnecessary budgetary effects on businesses due to compliance and extra administrative burdens.
BIBLIOGRAPHY

Literatures in English


Ad van Doesum, Herman van Kesteren, Gert-Jan van Norden and Irene Reimiers, The new rules on the place of supply of services in European VAT, EC Tax Review, 2008-2, p.79

Ad van Dossom, Herman van Kesteren, Gert-Jan van Norden, Share Disposals and the Right of Deduction of Input VAT, EC Tax Review 2010/2, Kluwer International

Prof. Dr. Ad Van Doesum, Prof. Dr. Herman Van Kesteren, Prof. Dr Gert-Jan Norden, Fundamentals Of EU VAT Law, 2013

Prof. Dr. Ad van Doesum, Frank Nellen, VAT in a Day, Kluwer, 2013,


Aleksandra Bal, The Vague Concept of “Taxable Person” in EU VAT Law, International VAT Monitor, September/October 2013, IBFD

Alen Charlet and Jeffrey Owens, An International Perspective on VAT, Tax Notes International, Volume 59, Number 12, 20 September 2010

Ben Terra, Julie Kajus, Questions and Answers: Value Added Tax (VAT), EVD News, 12 December 2011, IFBD

Ben Terra, Peter Wattel, European Tax Law, Fiscale Handboeken, Kluwer, Deventer 2008

Prof. Dr. Billur Yalçın, Turkey Value Added Tax, IBFD, 2014


Dr Deborah Butler, Non-monetary consideration in the context of VAT: the status of the judgement in Empire States v Commissioners of Customs and Excise in the light of later judgments, EC Tax Review, 2001-4, p.234

Felix Schulyok, The ECJ’s Interpretation of VAT Exemptions, Int.VAT Monitor, Jul/Aug 2010, IBFD, p. 266

Hans-Martin Grambeck, Online Insurance Mediation under EU VAT, Int. VAT Monitor, Mar/Apr 2012, p.108

Harry Huizinga, A European VAT on financial services?, Economic Policy, October 2002, p. 505


Joep J.P. Swinkels, Effective Use and Enjoyment of Services under EU VAT, International VAT Monitor, IBFD 2009

Joep Swinkels, VAT Exemption for Medical Care, Int.VAT Monitor, Jan/Feb 2005, p.14
Dr Joep J.P. Swinkels, The Exemption for Education under EU VAT, Int.VAT Monitor, Sep/Oct 2010, IBFD, p.340
Dr. Joep J.P. Swinkels, The Tax Liability of Public Bodies under EU VAT, International VAT Monitor September/October 2009
Liam Ebril, Michael Keen, Jean-Paul Bodin, Victoria Summers, The Modern VAT, IMF 2001
Michael van de Leur, Watch Out, You May Be a Taxable Person, International VAT Monitor September/October 2013, IBFD
Michel Aujean, Harmonization of VAT in the EU: Back to the Future, EC Tax Review, 2012-3
Patrick Wille, New EU Place-of-Supply Rules for Services, International VAT Monitor, January/February 2009, IBFD, p.8
Rita de la Feria and Herman van Kesteren, Introduction to This Special Issue-VAT Exemptions: Consequences and Design Alternatives, Int.VAT Monitor, Sep/Oct 2011, IBFD, p.300
Rita de la Feria, The EU VAT treatment of insurance and financial services (again) under review, EC Tax Review, 2007-2, p.75
Thomas Ecker, Place of Effective Use and Enjoyment of Services-EU History Repeats Itself, Int.VAT Monitor, Nov/Dec 2012, IBFD, p.410
Yves Bernaerts & Sandhya Nathoeni, The Ins and Outs of Classifying Turnover for VAT, EC Tax Review, 2011-6, Kluwer International

Literatures in Turkish
Abdullah Tolu, Ortaklara Cari Hesap Yoluyla Verilen Borç Paralarının KDV’ye Tabi Olduğu Açıklığı Kavuşturuldu (The clarification is made that loans granted to shareholders are subject to VAT), Yaklaşım, Eylül 2010, Sayı 213
Ahmet Güzel, Katma Değer Vergisi, Esasları, İade İşlemleri, İstisnalar (VAT, Its Essentials, Refund, Exemptions), Gazi Kitapevi, Ocak 2011, p.294
Billur Yaltı, Elektronik Ticarette Vergilendirme (Taxation in E-Commerce), DER Yayınları, 2003
Prof. Dr. Billur Yaltı Soydan, Hizmet İşlemlerinde Katma Değer Vergisi (Bir Karşılaştırmalı Hukuk Denemesi), (VAT on Services- A Comparative Law Study), Beta, 1998
Cahit Yerci, Hizmet İthalatında KDV I-II (VAT on Importation of Service I-II), Yaklaşım Dergisi, Kasım 2005, sayı 155
Prof. Ejder Yılmaz, Hukuk Sözlüğü (Law Dictionary), Ankara Yetkin Yayınları, 2004
Fatih Saraçoğlu, Haydar Ejder, Katma Değer Vergisi’nde Varış Ülkesinde veya Menşe Ülkesinde Vergilendirme ve İhracat İstisnası (Taxation in Destination or Origin Country under VAT and Exemption on Exportation), Dokuz Eylül Üniversitesi, İktisadi ve İdari Bilimler Fakültesi Dergisi, Cilt 17, Sayı 1, 2002, s.74

Dr. Güneş Yılmaz, Katma Değer Vergisinde Vergiyi Doğuran Olay Olarak Teslim (As a Taxable Event “Delivery” in VAT), Adalet Yayını, Ankara 2012


Metin Taş, Şüpheli Alacaklarda KDV'ye İabetic Eden Kısım İçin Karşılık Ayrınlabilir Mi?, (Is the Provision for Bad Debts Allowed for the Amount of VAT) Yaklaşım, Sayı: Şubat 1994


Nihat Uzunoğlu, Katma Değer Vergisi Kanunu Yorum ve Açıklamaları Cilt 1-2, (Comments and Descriptions of Value Added Tax Act-Volume 1-2) Maliye Hesap Uzmanları Derneği, Ocak 2014,

Nuri Değer, İthalat İşlemlerinde Katma Değer Vergisi Uygulaması (VAT on Importation), Yaklaşım Şubat 1998

Ömer Çakıcı, Abdullah Kütükcü, M. Bahattin Akçay, Mustafa Ersan, İndirimli Oran ve İade (Reduced Rate and Refund), Türmob Yayını-444, p.503

Sakıp Şeker, Hizmet İthalatı ve İhracatında KDV Uygulaması (VAT on Importation and Exportation of Services), Yaklaşım Yayıncılık, 1993

Prof. Dr. Şükrü Kızılot, Açıklamalı ve İctihatlı Katma Değer Vergisi Kanunu ve Uygulaması (Value Added Tax Act and Its Implementations with Explanations and Juridical Decision), Yaklaşım Yayıncılık, 2012
V. Arif Şimşek, Abdullah Tolu, Katma Değer Vergisinde İndirim (Deduction of VAT), Yaklaşım Yayınları, Nisan 2002, p.61-64

Volkan Yüksel, Yurt Dışından Temin Edilen Kredilerin BSMV ve KDV Karşısındaki Durumu, Yaklaşım, (The Analysis of the Loans Obtained From Abroad under Banking and Insurance Transactions Tax and VAT) Aralık 2011, Sayı 228

Yafes Pehlivan, Ali Erdoğan, Sosyal Amaçlı Teslim ve Hizmetlere İlişkin KDV İstisnası (Exemption of VAT on Supplies with Social Purposes), Yaklaşım Aralık 2004, Sayı 17

Yılmaz Özbalcı, Katma Değer Vergisi Kanunu Yorum ve Açıklamaları (Commentaries of Value Added Tax Act), Oluş Yayıncılık, Ankara 2001

Online Sources - Beneficial Web Sites-Official Documents
http://www.gib.gov.tr - Turkish Revenue Administration


Where to Tax available at http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/vat_on_services/index_en.htm


Case Law – Turkish VAT System

*Most of cases are available at www. http://www.danistay.gov.tr

The Council of State, 9th Chamber, 12.05.1994, E:1993/2595, K:1994/2333

Case Law- the EU VAT Law

Case C-16/93, 03.03.1994, R.J.Tolsma v Inspecteur der Omzetbelasting Leeuwarden, http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d0f130d50db2e722c6a04645998488973bb441b9.e34KaxiLc3eQc40LaxqMbN4Oa3aNe0?text=&docid=98984&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=777552


Case C-4/94, BLP Group v Commissioners of Customs & Excise, 06.041995 available at eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61994CJ0004


Case C-185/01, Auto Lease Holland BV v Bundesamt für Finanzen, 06.02.2003, http://curia.europa.eu


Case C-434/05, Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College) v. Staatssecretaris van Financiën, 14 June 2007 available at http://curia.europa.eu

Case C-465/03, Kretztechnik AG v Finanzamt Linz, 26.05.2005, available at curia.europa.eu
APPENDIX 1

ARTICLE 37 - Earnings resulting from commercial and industrial activities of any kind shall be regarded as commercial earnings.

In the application of this Law, the following earnings shall be considered as commercial earnings.

Earnings derived from:

1. The operation of mines, stone and lime quarries, extraction of sand and pebbles, operation of brick and tile kilns;
2. Jobber activities;
3. Running private school and hospitals and the like;
4. Regular operations of sale, purchase and construction of real estate;
5. (Amended by Law No.202/ Art.17 dated 19/ 2/1963) The activities of persons engaged regularly in purchase and sale of securities in their name and for their own account;
6. (Amended by Law No.202/ Art.17 dated 19/ 2/ 1963) Parcelling out a land purchased or acquired by way of exchange, within the five years following the date of acquisition and the sale of such land by lots, or as a whole within the said period or in the subsequent years.

Shares received on partnership profits, by partners in collective partnerships, and active partners in commandite partnerships, whether ordinary or limited by shares, shall be considered as personal commercial earnings (The provision of article 66 shall be reserved.).

Commercial earnings shall be determined in accordance with the Tax Procedural Law and according to the procedures of actual assessment (balance sheet or operation account) or simple assessment.

Members of the liberal professions who are running private schools and hospitals or similar establishments shall be entitled to include the earnings obtained from the practise of their liberal profession in the accounts of the establishment.

---

195 Available at http://www.argustercume.com/publications.asp
APPENDIX 2

Exemptions limited to B2C services:\(^{196}\):

- Intermediary services are taxed at the location where the main transaction, in which the intermediary intervenes, is taxable according to the provisions of the Directive. (Article 46)
- Services consisting of valuation of or works on movable tangible property are taxed at the place where the services are physically delivered. (Article 54)
- Transport of goods, other than intra-Community transport, is taxed according to distance-covered. (Article 49)
- Ancillary services to the transport of goods, such as loading and unloading services, are taxed in the Member State where those services are physically carried out. (Article 54)
- Electronic supplied services, provided by suppliers established in a third country to non-taxable person in the EU, are taxed at the place of where the customer resides or has a permanent address. (Article 58).
- Radio and television broadcasting service and telecommunications services, supplied by suppliers established in a third country to non-taxable person in the EU, are taxed at the place where private customer effectively uses and enjoys the services (Article 59b)
- Advertising services, services with respect to intellectual properties, consultant and advocate services, financial services, telecommunications services, broadcasting and electronically supplied services provided to the customer established in a non-EU country, are taxed at the place where the customer is established. (Article 59)
- Long-term hiring of means of transport services are taxed at the place where the private customer is established or has his permanent address or usually resides except for cases where the supplier of a pleasure boat is established in the same Member State in which he puts the boat at disposal of the customer.

Exemptions valid for both services (B2C and B2B):

- Services connected with immovable property are taxed where immovable property is located. (Article 47)
- Passenger transport services are taxed according to the distances covered. (Article 48)
- Services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment and similar activities are taxed at the place where those activities actually take place. (Article 54)
- Restaurant and catering services, other than those supplied on board ships, aircraft or trains during the section of a passenger transport affected within the EU are taxed at the place where the services are physically carried out. (Article 55)

---

\(^{196}\) http://ec.europa.eu/taxation_customs/taxation/vat/how_vat_works/vat_on_services/index_en.htm
Restaurant and catering services supplied on board ships, aircraft or trains during the section of a passenger transport affected within the EU are taxed at the place of departure of the transport. (Article 57)

Short-term hiring of means of transport is taxed at the place where the means of transport is actually put at the disposal of the customer. (Article 56)

APPENDIX 3

(Article 23 of the TVTA) Special types of taxable amount are as follows:

a. The value paid for participation in all types of lottery including the National Lottery,

b. In cases of horse races and other games of luck and pari-mutuel betting, the price charged in return for participation in such races and games and the admission collected for entry to the places where they are held,

c. In cases of organization and performance of shows and concerts participated in by professional artists and sports activities, matches and races and competitions participated in by professional sportsmen, the admission collected for entry to the places where such activities are performed and the value of the deliveries and services provided at such places,

d. At the sales made at customs warehouses and auction halls, the final sale value.

e. (Subparagraph added by Article 2 of Law No. 3099) In delivery and importation of jewellery made of gold or including gold and gold coins, the taxable base is the amount remaining after the deduction of the ingot gold value,

f. (Subparagraph added by Article 2 of Law No. 3099) The Ministry of Finance and Customs is authorized to determine special types of taxable base in consideration of the characteristics of a business.
APPENDIX 4

Reduced Rates

List 1: Goods subject to 1% VAT rate

(1) raisins, dried figs and apricots, walnuts, hazelnuts, pistachio nuts, pine nuts, peanuts, chestnuts, roasted chickpeas, sunflower and courgette;
   gallnuts, acorns, hemp seeds and colza;
   liquorice roots, liquorice extract, gypsophila, sumach leaf, bay leaf, linden, thyme, sage,
(2) mahalep, cumin, sesame, aniseed, poppy seeds, fennel seeds, besom fibres and besom seeds,
   capers, carob, carob seeds, curcuma seeds, apricot seeds, coriander, bitter almonds, mushrooms
   and sugar beet;
   wheat, bulgur, barley, corn, oat, millet, rice in the husk, soya beans, dried beans, dried kidney
   beans, dried broad beans, chickpeas, lentils, potatoes, dried onions and garlic, olives, olive oil,
(3) small cattle and bovines, bees and goods listed under code 2 (meat and giblet) of the Customs
   Tariff List (excluding goods listed under code 02.07 (meat and edible offal of poultry) and
   02.09.90 (pig fat));
(4) wheat flour and breads;
(5) certified seeds and leaves of wheat, barley, corn, rice in the husk, bean, peanut, sunflower, soy
   bean, sugar beet, potato, cotton, chickpea, clover, trefoil, ordinary, vetch and other vetches;
   the supply of fresh vegetables and fruit effected to and from taxable persons in the wholesale
   markets established according to the relevant legislation;
(6) the supply of frozen animal sperm;
(7) newspapers and periodicals (other than those supplied in a special cover and subject to the 18%
   VAT rate according to Act 3266) and the supply of such goods in an electronic environment
   (except electronic newspaper and periodical readers, tablets and similar devices);
   the supply of second-hand vehicles enumerated in below codes of the Customs Tariff List:
   8701.90.50.00.00 – second-hand vehicles
   87.03 – cars and similar vehicles for human transport (except vehicles in code 87.02) (including
   station wagons and racing cars) (only cars, station wagons, racing cars, land vehicles, jeeps, etc.,
   motorized caravans, vehicles with electric or gas or sunlight motors, snow vehicles)
   (8703.10.11.00.00) (except vehicles produced for special purposes such as
   ambulances, vehicles for transportation of prisoners, vehicles for money transportation, funeral
   cars, fire brigade vehicles) (the supply of second-hand cars by enterprises engaged in car rentals
   and similar activities like transportation, driving schools and taxi cab business is subject to 18%
   VAT);
   the supply of penetration asphalts under code 2713.20.00.00.11 of the Customs Tariff List (except
   cut-back asphalts);
(8) the supply of residences of less than 150 sq. m and supplies of land for the construction of social
   (9) residences by municipalities, Social Residence Administration and their associated enterprises
   (only the portions of the land corresponding to the residences of less than 150 sq. m in area);
(10) the supply of construction services to house building cooperative societies;
(11) the supply of construction services to public social security institutions and municipalities for
   residences of less than 150 sq. m in area (note that in case a residence of less than 150 sq. m is
   located within a municipality of a big city, and the real estate tax base of it is calculated on
   between TRY 500 and TRY 1,000 per sq. m, the supply of such residence is subject to VAT at a
   rate of 8%. If the real estate tax base is calculated on over TRY 1,000 per sq. m, the VAT rate
   applicable on the supply of such residences is 18%);
(12) the supply of funeral services;
(13) leasing of means of transport to be used for sea, air and railway transportation to enterprises
   engaged in rentals and similar operations of such vehicles;
(14) leasing of machinery and equipment by financial leasing companies to taxable persons who have
   an investment document, provided that the machinery and equipment form part of a qualifying

197 Prof.Dr. B. Yalti, Turkey Value Added Tax, IBFD, 2014, p.59
the supply of goods to leasing companies and the leasing of machines and equipment by leasing companies, enumerated under the following codes of the Customs Tariff List:

- 84.02 Steam or other vapour generating boilers (other than central heating hot water boilers capable also of producing low pressure steam); superheated water boilers;
- 84.03 Central heating boilers other than those of heading 84.02;
- 84.04 Auxiliary plant for use with boilers of heading 84.02 or 84.03 (for example, economizers, superheaters, soot removers, gas recoverers); condensers for steam or other vapour power units;
- 84.17 Industrial or laboratory furnaces and ovens, including incinerators, non-electric;
- 8418.61.00.00 Heat pumps (excluding those in 84.15);
- 8418.69 Others (other refrigerating or freezing equipments);
- 84.19 Machinery, plant or laboratory equipment, whether or not electrically heated (excluding furnaces, ovens and other equipment of heading 85.14), for the treatment of materials by a process involving a change of temperature such as heating, cooking, roasting, distilling, rectifying, sterilizing, pasteurizing, steaming, drying, evaporating, vaporizing, condensing or cooling, other than machinery or plant of a kind used for domestic purposes; instantaneous or storage water heaters, non-electric;
- 84.20 Calendering or other rolling machines, other than for metals or glass, and cylinders thereof;
- 84.21 Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus for liquids or gases;
- 84.24 Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sandblasting machines and similar jet projecting machines;
- 84.26 Ships’ derricks; cranes, including cable cranes; mobile lifting frames, straddle carriers and works trucks fitted with a crane;
- 84.28 Other lifting, handling, loading or unloading machinery (for example, lifts, escalators, conveyors, teleferics);
- 84.29 Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers;
- 84.30 Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile drivers and pile extractors; snow ploughs and snow blowers;
- 84.32 Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers;
- 84.33 Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers;
- machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 84.37;
- 84.34 Milking machines and dairy machinery;
- 84.35 Presses, crushers and similar machinery used in the manufacture of wine, cider, fruit juices or similar beverages;
- 84.36 Other agricultural, horticultural, forestry, poultry-keeping or bee-keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders;
- 84.37 Machines for cleaning, sorting or grading seed, grain or dried leguminous vegetables; machinery used in the milling industry or for the working of cereals or dried leguminous vegetables, other than farm-type machinery;
- 84.38 Machinery, not specified or included elsewhere in this chapter, for the industrial preparation or manufacture of food or drink, other than machinery for the extraction or preparation of animal or fixed vegetable fats or oils;
- 84.51 Machinery (other than machines of heading 84.50) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made-up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics;
- 84.55 Metal-rolling mills and rolls therefor;
84.68 Machinery and apparatus for soldering, brazing or welding, whether or not capable of cutting, other than those of heading 85.15; gas-operated surface tempering machines and appliances;
84.74 Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or moulding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry moulds of sand;
85.01 Electric motors and generators (excluding generating sets);
8502.11 Of an output not exceeding 75 kVA (Electric generating sets and rotary converters:
-Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines);
8502.12 Of an output exceeding 75 kVA but not exceeding 375 kVA (Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines);
8502.13 Of an output exceeding 375 kVA (Electric generating sets and rotary converters: Generating sets with compression-ignition internal combustion piston engines (diesel or semi-diesel engines);
8502.20 Generating sets with spark-ignition internal combustion piston engines;
8502.31 Wind-powered generating sets (only of an output 500 KVA);
85.04 Electrical transformers, static converters (for example, rectifiers) and inductors;
85.13 Industrial or laboratory electric furnaces and ovens (including those functioning by induction or dielectric loss); other industrial or laboratory equipment for the heat treatment of materials by induction or dielectric loss;
84.06 Steam turbines;
84.10 Hydraulic turbines, water wheels, and regulators therefor;
84.11 Turbojets, turbopropellers and other gas turbines;
8413.19.00.20.00 Pumps with measuring and pricing devices;
8413.19.00.90.12 Other pumps with measuring device;
8413.40.00.00.00 Concrete pumps;
8413.60 Other rotary positive displacement pumps;
8422.30.00.00.00 Machinery for filling, closing, sealing or labelling bottles, cans, boxes, bags or other containers; machinery for capsuling bottles, jars, tubes and similar containers; machinery for aerating beverages;
8422.40.00.00.00 Other packing or wrapping machinery (including heat-shrink wrapping machinery);
8423.30 Constant weight scales and scales for discharging a predetermined weight of material into a bag or container, including hopper scales;
8425.20 Fork-lift trucks; other works trucks fitted with lifting or handling equipment;
84.39 Machinery for making pulp of fibrous cellulosic material or for making or finishing paper or paperboard;
84.40 Bookbinding machinery, including book-sewing machines;
84.41 Other machinery for making up paper pulp, paper or paperboard, including cutting machines of all kinds;
84.42 Machinery, apparatus and equipment (other than the machine tools of headings 8456 to 8465) for preparing or making plates, cylinders or other printing components; plates, cylinders and other printing components; plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished);
8443.16.00.00.00 Flexographic printing machinery;
8444.00 Machines for extruding, drawing, texturing or cutting man-made textile materials;
84.45 Machines for preparing textile fibres; spinning, doubling or twisting machines and other machinery for producing textile yarns; textile reeling or winding (including weft-winding) machines and machines for preparing textile yarns for use on the machines of heading 8446 or 8447;
- 84.46 Weaving machines (looms);
- 84.47 Knitting machines, stitch-bonding machines and machines for making gimped yarn, tulle, lace, embroidery, trimmings, braid or net and machines for tufting;
- 8448.11.00.00 Dobbies and jacquards; card-reducing, copying, punching or assembling machines for use therewith;
- 8448.19 Other (Parts and accessories of machines of heading 84.44, 84.45, 84.46 and 84.47 or of their auxiliary machinery);
- 8449.00 Machinery for the manufacture or finishing of felt or nonwovens in the piece or in shapes, including machinery for making felt hats; blocks for making hats;
- 8452.21.00.00.00 Automatic units (other sewing machines);
- 8452.29.00.00.00 Other;
- 84.53 Machinery for preparing, tanning or working hides, skins or leather or for making or repairing footwear or other articles of hides, skins or leather, other than sewing machines;
- 84.54 Converters, ladles, ingot moulds and casting machines, of a kind used in metallurgy or in metal foundries;
- 84.56 Machine tools for working any material by removal of material, by laser or other light or photon beam, ultrasonic, electrodischarge, electrochemical, electron beam, ionic-beam or plasma arc processes; water-jet cutting machines;
- 84.57 Machining centres, unit construction machines (single station) and multi-station transfer machines, for working metal;
- 84.58 Lathes (including turning centres) for removing metal;
- 84.59 Machine tools (including way-type unit head machines) for drilling, boring, milling, threading or tapping by removing metal, other than lathes (including turning centres) of heading 84.58;
- 84.60 Machine tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, other than gear cutting, gear grinding or gear finishing machines of heading 8461;
- 84.61 Machine tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off and other machine tools working by removing metal or cermets, not elsewhere specified or included;
- 84.62 Machine tools (including presses) for working metal by forging, hammering or die-stamping; machine tools (including presses) for working metal by bending, folding, straightening, flattening, shearing, punching or notching; presses for working metal or metal carbides, not specified above;
- 84.63 Other machine tools for working metal or cermets, without removing material;
- 84.64 Machine tools for working stone, ceramics, concrete, asbestos-cement or like mineral materials or for cold working glass;
- 84.65 Machine tools (including machines for nailing, stapling, glueing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials;
- 84.77 Machinery for working rubber or plastics or for the manufacture of products from these materials, not specified or included elsewhere in this chapter;
- 8479.10.00.00.19 Others (machinery for public works, building or the like);
- 8479.50.00.00.00 Industrial robots, not elsewhere specified or included;
- 8479.89 Other (other machinery with special functions);
- 8480.71.00.00.00 Injection or compression types (Moulds for rubber or plastics);
- 8480.79.00.00.00 Other;
- 8515.80.10.00 Ultrasonic machines and apparatus (for treating metals);
- 8515.80.90.10.00 Other machines and apparatus (for treating sources other than metals); and
- 8515.80.90.00.00 Others.

The supply of the Quran (including the interpretative books and commentaries), the Bible and the Torah.

The supply at the retail stage of the goods listed above in items (2)(a) is taxed at the rate of 18% and the supply of the goods listed in items (1), (2)(b) and (3) at the retail stage is fixed at 8%.
List 2: Goods and services subject to an 8% VAT rate

A – Basic foodstuffs
The supply of goods enumerated under the below codes of the Customs Tariff List are subject to 8% VAT:

<table>
<thead>
<tr>
<th>Code</th>
<th>Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>01.01</td>
<td>horses, donkeys, mules, etc.;</td>
</tr>
<tr>
<td>01.02</td>
<td>beef;</td>
</tr>
<tr>
<td>01.03</td>
<td>pork;</td>
</tr>
<tr>
<td>01.04</td>
<td>sheep and goats;</td>
</tr>
<tr>
<td>01.05</td>
<td>poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys, and guinea fowls;</td>
</tr>
<tr>
<td>01.06</td>
<td>live poultry, that is to say, fowls of the species Gallus domesticus, ducks, geese, turkeys, and guinea fowls;</td>
</tr>
<tr>
<td>02.07</td>
<td>meat and edible offal of poultry;</td>
</tr>
<tr>
<td>02.09</td>
<td>pig fat;</td>
</tr>
<tr>
<td>04.08</td>
<td>milk, milk products, egg and honey;</td>
</tr>
<tr>
<td>04.09</td>
<td>rumen, etc.;</td>
</tr>
<tr>
<td>0504</td>
<td>goods listed under code 0601.20.00.11, 0601.20.10.00.12, 0602.10, 0602.20, 0602.90.10.00.00, 0602.90.00.00, 0602.90.30.00.00</td>
</tr>
<tr>
<td>0602</td>
<td>(vine, seedling-plants, roots, etc.);</td>
</tr>
<tr>
<td>07</td>
<td>vegetables (fresh, dried, chopped, sliced, frozen, etc.) listed under code 7;</td>
</tr>
<tr>
<td>08</td>
<td>fruits (fresh, dried, chopped, sliced, frozen, etc.) listed under code 8;</td>
</tr>
<tr>
<td>09</td>
<td>tea, coffee and spices listed under code 9;</td>
</tr>
<tr>
<td>10</td>
<td>grains listed under code 10;</td>
</tr>
<tr>
<td>11</td>
<td>oils listed under code 15 (only oil proper for human consumption and raw oil used in the production of such oil);</td>
</tr>
<tr>
<td>12</td>
<td>goods listed under code 16 (salami, pastrami, sausage, etc.);</td>
</tr>
<tr>
<td>13</td>
<td>goods listed under code 17 (sugar, candy, delight, dessert, etc.);</td>
</tr>
<tr>
<td>14</td>
<td>goods listed under code 18 (cacao, chocolate, etc.);</td>
</tr>
<tr>
<td>15</td>
<td>goods listed under code 19 (spaghetti, macaroni, cake, pastry, etc.);</td>
</tr>
<tr>
<td>16</td>
<td>goods listed under code 20 (canned food, pickle, fruit juice, dried fruits, etc.);</td>
</tr>
<tr>
<td>17</td>
<td>goods listed under code 21 (tomato paste, ice cream, ready-made soup, sauce, etc.);</td>
</tr>
<tr>
<td>18</td>
<td>goods listed under code 22.01, 2202.10.00.00.19, 2202.90, 2204.30, 2209.00.91.00.00, 22.09.00.99.00.00 (water, beverages, etc.);</td>
</tr>
<tr>
<td>19</td>
<td>goods listed under code 2306.90.11.00.11, 2306.90.11.00.19, 2306.90.19.00.11, 2306.90.19.00.19 (olive-pomace oil); and</td>
</tr>
<tr>
<td>20</td>
<td>goods listed under code 2501.00.91.00.11, 2501.00.91.00.12, 2501.00.91.00.19 (salt).</td>
</tr>
</tbody>
</table>

In cases where a good is enumerated under both List 1 (see Annex I) and List 2, 1% VAT rate is applied.

B – Other goods and services
The supply of the following goods and services is subject to 8% VAT:

<table>
<thead>
<tr>
<th>Code</th>
<th>Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>raw and fibre cotton, linter cotton, cotton fibre waste, mohair (tops and natural), non-carded or combed wool;</td>
</tr>
<tr>
<td>2</td>
<td>raw hides and skins of bovine or equine animals, raw hides and skins of sheep or lambs, enumerated in the position numbers 41.01 and 41.02 of the Customs Tariff List (except astrakhan, broadtail, karakul, Persian and similar lambs and Indian, Chinese, Mongolian or Tibetan lambs), raw hides and skins of goats and kids enumerated in position number 41.03 of the Customs Tariff List (except Yemen, Mongolian or Tibetan goats and kids);</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>3</td>
<td>fibres and any kind of filaments used for the production of fibres, etc.;</td>
</tr>
<tr>
<td>4</td>
<td>any kind of fabric, including those produced from cotton, wool, linen, synthetic materials and lace, band, pad, etc.;</td>
</tr>
<tr>
<td>5</td>
<td>all kinds of textile products such as clothing, lingerie, hats, socks, hand gloves, scarves, quilts, bed sheets, towels, etc. (except beds);</td>
</tr>
<tr>
<td>6</td>
<td>(a) all kinds of leather products and clothes (including hats, hand gloves, belts, etc.);</td>
</tr>
<tr>
<td></td>
<td>(b) goods listed under code 4302.19.95.00.19 of the Customs List (only bull furs);</td>
</tr>
<tr>
<td>7</td>
<td>shoes, boots, slippers and similar goods;</td>
</tr>
<tr>
<td>8</td>
<td>bags, luggage, suitcases and similar products;</td>
</tr>
<tr>
<td>9</td>
<td>rugs and similar products;</td>
</tr>
<tr>
<td>10</td>
<td>custom textile manufacturing services;</td>
</tr>
<tr>
<td>11</td>
<td>cash registers (within the scope of Act 3100);</td>
</tr>
<tr>
<td>12</td>
<td>tachographs (within the scope of Act 2918);</td>
</tr>
<tr>
<td>13</td>
<td>roll or cut papers under codes 48 01.00 and 48.02 of the Customs Tariff List;</td>
</tr>
<tr>
<td>14</td>
<td>books and publications of a similar nature (the 18% tax rate is applied for those which are supplied in a special cover) and stationary goods (e.g. eraser, pencil, notebook, ruler, paint, etc.) and electronic books and electronic publications (except electronic readers, tablets and similar appliances);</td>
</tr>
<tr>
<td>15</td>
<td>education and training carried out by private schools and universities and carriage and school dormitory services for students;</td>
</tr>
<tr>
<td>16</td>
<td>cinema, theatre, opera, operetta and ballet tickets;</td>
</tr>
<tr>
<td>17</td>
<td>baby food, anti-serums used for human and animal health, immunoglobulin, blood products and vaccines;</td>
</tr>
<tr>
<td>18</td>
<td>medical products licensed or permitted for importation by the Ministry of Health and raw materials for the production of pharmaceutical products;</td>
</tr>
<tr>
<td>19</td>
<td>medicines and similar products used for agricultural purposes;</td>
</tr>
<tr>
<td>20</td>
<td>medicines and similar products used for veterinary purposes (except veterinary cosmetics);</td>
</tr>
<tr>
<td>21</td>
<td>medical services (including ambulance services);</td>
</tr>
<tr>
<td>22</td>
<td>the supply of goods and the leasing of machines and equipment thereof, enumerated under the following codes of the Customs Tariff List:</td>
</tr>
<tr>
<td></td>
<td>2520.20.90.10.00 dentistry plasters</td>
</tr>
<tr>
<td></td>
<td>2520.20.90.11 medical plasters</td>
</tr>
<tr>
<td></td>
<td>2804.40.00.00 oxygen</td>
</tr>
<tr>
<td></td>
<td>2844.40.20.00.11 radioactive iodine</td>
</tr>
<tr>
<td></td>
<td>2844.40.20.00.12 radioactive phosphorus</td>
</tr>
<tr>
<td></td>
<td>2844.40.20.00.13 radioactive carbon</td>
</tr>
<tr>
<td></td>
<td>2844.40.20.00.14 radioactive cobalt</td>
</tr>
<tr>
<td></td>
<td>2844.40.20.00.19 others</td>
</tr>
<tr>
<td></td>
<td>2844.40.30.00.00 artificial radioactive isotope compounds (euratom)</td>
</tr>
<tr>
<td></td>
<td>30.01 organs and glands for medical treatment, etc.</td>
</tr>
<tr>
<td></td>
<td>30.05 medical materials, etc.</td>
</tr>
<tr>
<td></td>
<td>30.06 pharmaceutical preparations, etc.</td>
</tr>
<tr>
<td></td>
<td>33.06 preparations for dental health, etc.</td>
</tr>
<tr>
<td></td>
<td>3307.90.00.90.11 contact lens or artificial solutions for eyes</td>
</tr>
<tr>
<td></td>
<td>3407.00.00.10.00 other dental plasters</td>
</tr>
<tr>
<td></td>
<td>3407.00.00.90.11 dental wax</td>
</tr>
<tr>
<td></td>
<td>3407.00.00.90.13 dental calibration materials</td>
</tr>
<tr>
<td></td>
<td>3407.00.00.90.14 dental calibration materials</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>3701.10.10.00.00</td>
<td>used for dental, medical or veterinary purposes</td>
</tr>
<tr>
<td>3701.20.00.90.12</td>
<td>celluloid or other plastic materials used for medical purposes</td>
</tr>
<tr>
<td>3821.00.00.00.00</td>
<td>medical cultures, etc.</td>
</tr>
<tr>
<td>3822.00</td>
<td>reactive and reference materials used in laboratories and diagnosis(除外 those listed under 30.02 or 30.06)</td>
</tr>
<tr>
<td></td>
<td>plastics and plastic products (only urinary bags, gloves, test tubes, condoms, etc.)</td>
</tr>
<tr>
<td>39</td>
<td>rubber and rubber products (only urinary bags, gloves, test tubes, condoms, etc.)</td>
</tr>
<tr>
<td>40</td>
<td>spectacles</td>
</tr>
<tr>
<td>7015.10.00.00.00</td>
<td>sterilization materials</td>
</tr>
<tr>
<td>8419.20</td>
<td>dialysis machines</td>
</tr>
<tr>
<td>8421.29.00.00.11</td>
<td>others (only electrical or battery-operated tooth machines)</td>
</tr>
<tr>
<td>90.11</td>
<td>combined optical microscopes, etc. (except spare parts)</td>
</tr>
<tr>
<td>90.18</td>
<td>medical, dentistry and veterinary machines and equipment (except spare parts)</td>
</tr>
<tr>
<td>90.19</td>
<td>respiration machines, ozonotherapy machines, mecanotherapy machines, massage machines, etc. (except spare parts)</td>
</tr>
<tr>
<td>9020.00</td>
<td>other respiration machines and gas masks (except spare parts)</td>
</tr>
<tr>
<td>90.21</td>
<td>orthopedic equipments (except spare parts)</td>
</tr>
<tr>
<td>9022.12.00.00.00</td>
<td>tomography machines</td>
</tr>
<tr>
<td>9022.13.00.00.00</td>
<td>others (used in dentistry)</td>
</tr>
<tr>
<td>9022.14</td>
<td>others (used for medical, surgical and veterinary purposes)</td>
</tr>
<tr>
<td>9022.21</td>
<td>others (used for medical, dentistry, surgical and veterinary purposes)</td>
</tr>
<tr>
<td>9027.80</td>
<td>other machines and equipment</td>
</tr>
<tr>
<td>9022.22.12.00.00</td>
<td>dentalistry chairs</td>
</tr>
<tr>
<td>9022.22.13.00.00</td>
<td>others (except spare parts)</td>
</tr>
<tr>
<td>9506.91.90.00.00</td>
<td>others</td>
</tr>
<tr>
<td>9603.21.00.00.00</td>
<td>toothbrushes</td>
</tr>
<tr>
<td>9001.30.00.00.00</td>
<td>contact lenses (only for optical purposes)</td>
</tr>
<tr>
<td>9001.40</td>
<td>glasses (only for optical purposes)</td>
</tr>
<tr>
<td>9001.50</td>
<td>glasses (only for optical purposes)</td>
</tr>
<tr>
<td>90.03</td>
<td>glasses (only for optical purposes)</td>
</tr>
<tr>
<td>9004.10.10.00.00</td>
<td>glasses (only for optical purposes)</td>
</tr>
<tr>
<td>9004.90</td>
<td>others (only for optical purposes);</td>
</tr>
<tr>
<td>23</td>
<td>residue of crushed seeds, bran, scurf, fish flour, meat flour, bone flour, blood flour, tapioca, sorghum, straw, full-fat soya, vetchling and all kinds of scientific mixed animal feed;</td>
</tr>
<tr>
<td>24</td>
<td>services provided by cafes, patisseries, restaurants, diners and similar facilities, excluding (a) serving of alcoholic drinks; (b) services supplied by casinos, nightclubs, bars, taverns, dancing and other entertainment places; (c) services provided by first-class restaurants, and by restaurants in hotels with three and more stars and in holiday villages;</td>
</tr>
<tr>
<td>25</td>
<td>the supply of accommodation services supplied by hotels, motels, pensions and similar facilities, including service commissions of travel agents;</td>
</tr>
<tr>
<td>26</td>
<td>services at rest-homes and similar places for the elderly and disabled persons;</td>
</tr>
<tr>
<td>27</td>
<td>municipal services regarding waste water;</td>
</tr>
<tr>
<td>28</td>
<td>the supply of goods enumerated under the following codes of the Customs Tariff List:</td>
</tr>
<tr>
<td>8424.81</td>
<td>agricultural machinery</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>8428.2030.90.00</td>
<td>elevators and conveyors used in agricultural purposes</td>
</tr>
<tr>
<td>8428.90.71.00.00</td>
<td>loaders used for agricultural purposes</td>
</tr>
<tr>
<td>8428.90.95.90.11</td>
<td>hydraulic loaders for agricultural tractors</td>
</tr>
<tr>
<td>8432.10</td>
<td>plough plows</td>
</tr>
<tr>
<td>8432.21.00.00.00</td>
<td>pitchfork</td>
</tr>
<tr>
<td>8432.29</td>
<td>others</td>
</tr>
<tr>
<td>8432.30</td>
<td>seeders</td>
</tr>
<tr>
<td>8432.40</td>
<td>fertilizer machines</td>
</tr>
<tr>
<td>8433.20</td>
<td>harvesting machines</td>
</tr>
<tr>
<td>8433.30</td>
<td>others</td>
</tr>
<tr>
<td>8433.40</td>
<td>bailing machines</td>
</tr>
<tr>
<td>8433.51.00.00.00</td>
<td>reapers</td>
</tr>
<tr>
<td>8433.52</td>
<td>others</td>
</tr>
<tr>
<td>8433.53</td>
<td>root removing machines</td>
</tr>
<tr>
<td>8433.59.11.00.00</td>
<td>others</td>
</tr>
<tr>
<td>8433.59.19.00.00</td>
<td>others</td>
</tr>
<tr>
<td>8433.59.30.00.11</td>
<td>reaping machines</td>
</tr>
<tr>
<td>8433.59.30.00.12</td>
<td>reaping machines</td>
</tr>
<tr>
<td>8433.59.30.00.13</td>
<td>reaping machines</td>
</tr>
<tr>
<td>8433.59.80.00.11</td>
<td>cotton harvesting machines</td>
</tr>
<tr>
<td>8433.59.80.00.12</td>
<td>corn harvesting machines</td>
</tr>
<tr>
<td>8433.59.80.00.13</td>
<td>corn stripping machines</td>
</tr>
<tr>
<td>8433.59.80.00.19</td>
<td>others</td>
</tr>
<tr>
<td>8433.90</td>
<td>spare parts</td>
</tr>
<tr>
<td>8434.10.00.00.00</td>
<td>milker machines</td>
</tr>
<tr>
<td>8436.10.00.00.00</td>
<td>machines for animal feeding</td>
</tr>
<tr>
<td>8436.80.91.00.00</td>
<td>automatic basins</td>
</tr>
<tr>
<td>8436.80.99.00.11</td>
<td>machines for beekeeping</td>
</tr>
<tr>
<td>8436.80.99.00.12</td>
<td>other machines for beekeeping</td>
</tr>
<tr>
<td>8436.80.99.00.13</td>
<td>mechanic shears</td>
</tr>
<tr>
<td>8510.20.00.00.12</td>
<td>shears</td>
</tr>
<tr>
<td>8701.10.00.00.00</td>
<td>others</td>
</tr>
<tr>
<td>8701.90.11.00.00</td>
<td>tractors (motor power not exceeding 18 KW)</td>
</tr>
<tr>
<td>8701.90.20.00.00</td>
<td>tractors (motor power exceeding 18 KW but not exceeding 37 KW)</td>
</tr>
<tr>
<td>8701.90.25.00.00</td>
<td>tractors (motor power exceeding 37 KW but not exceeding 59 KW)</td>
</tr>
<tr>
<td>8701.90.31.00.00</td>
<td>tractors (motor power exceeding 59 KW but not exceeding 75 KW)</td>
</tr>
<tr>
<td>8701.90.35.00.00</td>
<td>tractors (motor power exceeding 75 KW but not exceeding 90 KW)</td>
</tr>
<tr>
<td>8701.90.39.00.00</td>
<td>tractors (motor power exceeding 90 KW)</td>
</tr>
<tr>
<td>8716.20.00.00.00</td>
<td>towing vehicles for agricultural purposes;</td>
</tr>
</tbody>
</table>

29 the supply of goods enumerated under the following codes of the Customs Tariff List:

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>84.29.52.10.00.00</td>
<td>excavators</td>
</tr>
<tr>
<td>84.29.52.90.00.11</td>
<td>excavators</td>
</tr>
<tr>
<td>84.29.59.00.10.11</td>
<td>other</td>
</tr>
<tr>
<td>84.47</td>
<td>knitting machines, sewing machines, etc.</td>
</tr>
<tr>
<td>84.52.10</td>
<td>sewing machines</td>
</tr>
<tr>
<td>84.52.21.00.00.00</td>
<td>others</td>
</tr>
<tr>
<td>84.52.29.00.00.00</td>
<td>others</td>
</tr>
<tr>
<td>84.58</td>
<td>lathes</td>
</tr>
<tr>
<td>84.59</td>
<td>lathes</td>
</tr>
</tbody>
</table>
APPENDIX 5
Under the provision of Article 132 of the Directive, following transactions are exempt;

- Public postal services, Article 132/1-a
- Hospital and medical care, Art.132/1-b
- Medical care, Article 132/1-c
- Human organs, blood and milk, Article 132/1-d
- Dental services, Article 132/1-e
- Cost sharing exemption, Art.132/1-f
- Welfare and social security work, Article 132/1-g
- Supply closed linked to protection of children, Article 132/1-h
- Education, Article 132/1-i
- Private education, Article 132/1-j
- Supply of staff by religious or philosophical institutions, Article 132/1-k
- Non-profitmaking organizations Article 132/1-l
- Sport and physical education, Article 132/1-m
- Cultural services, Article 132/1-n
- Fund raising events, Article 132/1-o
- Transport of sick or injured persons, Article 132/1-p
- Public Radio and Television, Article 132/1-q

APPENDIX 6
According to the TVTA following activities are exempt without credit:

- transactions with cultural and educational purposes, Article 17/1
- transactions with related to health, environment and social welfare Article 17/2-a undertaken by bodies governed under public law
- education and training service provided by private schools, universities and colleges for free charge Article 17/2-b
- supply of goods or services rendered free of charge as a requirement of law, Article 17/2-b
- supply of goods or services rendered free of charge to the institutions and establishments laid down Article 17/1, Article 17/2-b
- donation of food, cleaning materials, clothing and oil for heating to organizations and foundations carrying out food-bank activities with the purpose of aid to the poor within the framework of the procedures laid down by the ministry of finance, Article 17/2-b
- supply of goods and service provided in relation to the deliveries and services to be rendered free of charge by foreign countries to their diplomatic missions and consulates in turkey, foreign charity and aid organizations, and institutions and associations referred to in paragraph 1 of this article, Article 17/2-c
- the architectural services rendered to the beneficiaries of projects on building-survey, restoration and restitution of officially registered immovable cultural assets covered by
the law on protection of cultural and natural assets and supply of goods used for realization of these projects Article 17/2-d

➢ license, permit, approval and similar services provided by professional associations in the nature of public institution following the duty by law and in accordance with their founding objectives, and supplies of printed papers to be used in relation to such services by such establishments (excluding deliveries of motor vehicles registered plates) Article 17/2-e

➢ supply of goods and services provided by military factories, shipyards and ateliers in accordance with their founding objectives Article 17/3

➢ merger, acquisition and division transactions under certain conditions required by Income and Corporate Income taxes, Article 17/4-c

➢ transactions on letting of immovable properties not included in economic enterprises. Article 17/4-d

➢ transactions covered by the Banking and Insurance Transaction Tax and services with regard to insurance transactions concluded by insurance agents, Article 17/4-e

➢ transactions on issuance of credit guarantee by institutions laid down in Article 7 subparagraph (24) of the Corporation Tax Law, Article 17/4-e

➢ supply of ingot gold, ingot silver, precious gemstones (diamond, brilliant, ruby, emerald, topaz, sapphire, chrysolite, pearl, cubic virconia), foreign currency, currency, revenue stamp, fee stamp, precious papers, shares, bonds, and metal, plastic, rubber, natural rubber, paper, and glass scraps and wastes (including ingots manufactured from scrap metal). Article 17/4-g

➢ supply of water for agricultural purposes and non-commercial retail deliveries of drinking water to the villagers by legal entities in the village, services relating to land improvement by public enterprises, agricultural cooperatives and farmers’ associations. Article 17/4-h

➢ services provided in free zones, Article 17/4-i

➢ transportation services of foreign crude oil, gas and the products thereof by pipeline. Article 17/4-j

➢ supply of land and workplaces by economic enterprises to establish organized industrial zones and small industrial sites Article 17/4-k

➢ transactions of asset management companies under the provisions of Law No. 4743. Article 17/4-l

➢ certain type of transactions performed by Saving Deposit Insurance Fund. Article 17/4-m

➢ information services provided to Directorate General of Press, Publication and Information. Article 17/4-n
warehousing, storage and terminal services provided in relation to goods subject to importation and export transactions in customs warehouses, temporary storage places and in customs areas where custom services are provided and leasing of workplaces where tax-free sales are made and the independent units thereof such as warehouses and stores. Article 17/4-o

- supply of immovable goods by the Treasury and the Building Sites General Directorate and the easement right establishment transaction made by the Treasury. Article 17/4-p
- sale of real estates and share hold by specific institutions. Article 17/4-r
- supply of residences collateralized and put in pledged for housing finance. (Art. 17/4-ş)
- the storage of goods in a bonded warehouse. (Article 16/1-c)
- exemptions based on international treaties which does not provide reimbursement. (Article 19/2)
- construction and contracting service provided to housing cooperatives which has special licence before the amendment of new rules, municipalities and social security institutions. (Temporary Article 15)
- certain type of transactions carried out in technological development zones. (Temporary Article 20/1)
- donation of computer and equipment to Ministry of Education (Temporary Article 23)
- supply of services and goods provided to UN and OECD
- other exhausted lists provided by temporary articles

APPENDIX 7

According to the TVTA following activities are exempt with credit VAT;

- exportation of goods and services. (Article 11/1-a)
- roaming services (Article 11/1-a)
- supply of sea, air and railway transport vehicles including construction, maintenance and repairment services (Article 13/a)
- supply of services for sea and air transport vehicles at harbour and airport. (Article 13/b)
- supply of oil prospecting services, construction and modernization of oil pipelines (Article 13/c)
- prospecting, operating, enriching and refining activities with regard to gold, silver and platinum. (Article 13/c)
- supply of machinery and equipment with respect to grounded investment certificate (Article 13/d)
- construction, modernization and enlarging of harbour, airports and rail lines which connects to ports (Article 13/e)
supply of goods and service with respect to national security (Article 13/f)
international transportation (Article 14/1)
supply of diesel to specific vehicles which carry out goods subjected to export. Art. 14/3)
supply of goods and service to diplomatic institutions and personnel thereof (Art. 15/1-a)
supply of goods and service to international organization with conform international treaties which provides tax allowance. (Article 15/1-b)
supply of equipment necessary for disabled person’s education, proficiency and daily life, (Article 17/4-s)
exemptions based on international treaties which provides reimbursement (Article 19/2)

APPENDIX 8
Exemptions on importation provided by the TVTA as follow:

- temporary importation for inward processing that are not in free circulation such as complementary goods, raw materials, semi-finished products, outward processing regime is exempt from VAT with condition of payment of deposit.
- goods must be re-exported within a certain period, at latest 24 months, without any change to the goods if the VAT is secured by a deposit.
- importation of certain type goods that are exempt from custom duties is exempt from VAT with reference to Article 167 of Customs Act.
- importation of goods after outward processing without changes in nature. These goods are exported for processing in foreign country under a special permission. After the processing the goods are re-imported without VAT. Only value added will be subject to tax.
- returned exported goods that have not been changed in nature are exempt as long as the payment of VAT amount that had initially been relieved at the time of exportation.
- the goods to which the provisions on transit and customs warehouse regimes and temporary storage and free zones are applicable

---

198. N. Değer, İthalat İşlemlerinde Katma Değer Vergisi Uygulaması, Yaklaşım Şubat 1998,
APPENDIX 9

Exemptions with respect to transportations are categorized in five different groups such as\(^{199}\):

- Supply of sea, air and railway transport vehicles to taxable person who deals with leasing or operating of those vehicles including supply of goods and service provided in relation to the manufacture and construction of such means, and services arising in the form of modification, repair and maintenance thereof
- services provided at ports and airports for vessels and aircrafts
- construction, modernization and enlarging of harbour, airports and rail lines which connects to ports( this exemption is indirect related to transportation)
- supply of diesel to specific vehicles which carry out goods subjected to export
- in transit transportation and international transportation services that fall under the scope determined by the Council of Ministers. This exemption is only to taxable person whose residence, registered head office and business center are not located in Turkey on condition of reciprocity with relevant countries

\(^{199}\) N. Öztürk, Uluslararası Taşımacılıkta KDV İstisnası Uygulamaları: Yaşanan Sorunlar-I, Yaklaşım Şubat 2012, Sayı 230