

<http://dx.doi.org/10.15295/bmij.v2i2.67>

COMPETITIVE POWER OF TURKEY IN MARITIME TRADE AND TAXATION OF THE ITEMS OF INCOME EARNED BY THE FOREIGN-BASED TAXPAYER INSTITUTIONS

Nilgün SERİM¹

Başvuru Tarihi: 27.06.2014

Kabul Tarihi : 20.07.2014

ABSTRACT

The maritime trade is of serious significance for Turkey, when considered together with the surrounding seas. Turkish maritime trade must be supported through tax incentives .In our study, first, the taxation grounds for the proceeds obtained in Turkey by the foreign maritime transport institutions that are included within scope of foreign-based taxpayers; and then, the taxation of the laying days, days of demurrage, counter-laying fees, dispatch money (incentives for quickening) raised by the foreign maritime transport institutions, and other elements of proceeds raised by the foreign maritime transport institutions within scope of foreign-based taxpayers will be discussed and the grounds for taxation will be examined.

Keywords: Foreign maritime transport institution, foreign-based taxpayers, taxation.

JEL Codes: H29, K340, P450

TÜRKİYE’NİN DENİZ TİCARETİNDEKİ REKABET GÜCÜ VE DAR MÜKELLEF KURUMLARCA ELDE EDİLEN HASILAT UNSURLARININ VERGİLENDİRİLMESİ

ÖZ

Türkiye için deniz ticareti çevre denizleriyle birlikte düşünüldüğünde ciddi öneme sahiptir. Türk deniz ticaretinin vergi teşvikleri vasıtasıyla desteklenmesi gerekmektedir. Bu çalışmamızda ilk önce dar mükellefiyete tabi yabancı deniz ulaştırma kurumlarının Türkiye’de elde edilen hâsılatının vergilendirilme esasları; daha sonra dar mükellefiyete tabi yabancı deniz ulaştırma kurumlarınca elde edilen staryaya, sürastaryaya, kontrstaryaya ücretlerinin, dispeç manilerin (çabuklaştırma primlerinin) vergilendirilmesi ve dar mükellefiyete tabi deniz ulaştırma kurumlarınca elde edilen diğer hâsılat unsurları ele alınıp vergilendirme esasları irdelenecektir.

Anahtar Kelimeler: Yabancı deniz ulaştırma kurumu, dar mükellefiyet, vergilendirme

JEL Kodları: H29, K340, P450

¹ Prof. Dr., Çanakkale Onsekiz Mart Üniversitesi, İİBF Maliye Bölümü

INTRODUCTION

During the part of the Age of Discovery called “the period of geographical explorations” which began as a result of the problems brought about by the Industrial Revolution, in late 15th century, Vasco de Gama opened the Indian sea route to the global seamanship by circumnavigating the Cape of Good Hope. [Magellan](#) circumnavigated South America and reached the Spice Islands. [Christopher Columbus](#) passed the Atlantic Ocean in [1492](#) to reach North America. Hence, although Columbus thought that he had discovered India, in fact he had discovered the New World and the sea route to its treasures. Towards the end of the 1700’s, Captain James Cook conquered the eastern coasts of Australia in the advantage of Great Britain. Moreover, Cook made the greatest contribution to the attempts of drawing a map of the entire world by becoming the first explorer to sail all around the world. In parallel with the developments concerning the discovery of the oceans of the world, the seas began to be exploited for transport and commercial purposes to an increasing extent.

As a result of the exploitation of the seas which cover three fourth of the world, by the nations, their interests conflicted. A need arose for the establishment of a system in order to create equilibrium among the interests of the nations or of the persons belonging to these nations. The rules of the international maritime law included within the international law, which regulates the utilization of the seas and also determines the rights and obligations of the nations and the persons were clarified in time, with the international maritime law contracts.

The International Maritime Law handles the seamanship chiefly through Public Law and in connection with the International Law. Seamanship today covers different activities with many aspects. The Private Law dimension of seamanship is handled by The International Maritime Law. The regulations aiming at improving the maritime sector in some countries and increasing their international competitiveness are included in their own Tax Law. Regulations within the Tax Law concerning the levying of the maritime transport institutions can sometimes become a source of International Maritime Law.

Around 80% of the world’s trade and around 90 % of the transport activities concerning the imports and exports trade of Turkey is carried out via sea route. The maritime trade is of serious significance for Turkey, when considered together with the surrounding seas. Turkish maritime trade must be supported through tax incentives. In our study, the taxability of the laying days, days of demurrage, counter-laying fees, obtained from the lading ports in Turkey by the foreign

maritime transport that are included within scope of foreign taxpayers within the context of the concepts of Turkish Maritime Law and Turkish Taxation System shall be analyzed, after their evaluation within the scope of the raised proceeds.

1.Detection Of The Corporate Proceeds To Be Raised In Turkey By Foreign Maritime Transport Institutions Included Within Scope Of Foreign-Based Taxpayers

According to the 1st clause of the Article No. 23 of the Corporate Tax Law numbered 5520, “The corporate earnings of the foreign transport institutions to be included within the basis of taxation shall be calculated through the application of the average index ratios on the proceeds.”(Official Gazette, dated 21.06.2006, numbered 26205 (Corporate Tax Law numbered 5520) In the 2nd clause of the same article it has been specified that the average index ratios shall be applied as 15% for the maritime transport for all of the corporations operating in Turkey temporarily or permanently.

According to Article no 23, Clause no (3) and paragraph (b) of Corporate Tax Law “In maritime transport that is carried out between the laying ports in Turkey and the ports of destination abroad, that will allow for transfer to the ship of another institution, the amounts that the institutions collect under whatever title, such as the passenger, cargo and luggage transport fees, also including the charge payments that are collected together with the ticket fees” Official Gazette, dated 21.06.2006, numbered 26205 (Corporate Tax Law numbered 5520) shall be regarded as proceeds raised in Turkey.

The important factor here is that lading is conducted in a port within the borders of Turkey. The destination port’s being located within or outside the borders of Turkey does not have an importance regarding the assumption that the proceeds is raised in Turkey. Moreover, the costal fees that are collected together with the ticket fees shall be included in the proceeds raised in Turkey. According to the subject c) of the said article, “The passenger and luggage tickets that the foreign transport institutions that are included within scope of foreign-based taxpayers sell in Turkey on account of other institutions for the transport activities outside Turkey and the commissions and fees that they pay depending on the freight (carriage) agreements they make in Turkey” are regarded as proceeds obtained in Turkey.

The foreign transport institutions organize the maritime transport activities through permanent representatives. The proceeds they obtain are equivalent to the proceeds obtained through the permanent representatives. And generally the shipping agents in Turkey have the

status of being the permanent representatives of the foreign transport institutions. In accordance with the 4th Article of the Regulations on Shipping Agents, “The Shipping Agents are: natural or legal persons who act on behalf of and on account of the natural or legal persons who own a ship, and captains, operators or freighters on the grounds of the agreements they enter into with them; protect the rights of the same against the third parties and other corporations; and cannot be held responsible except for their own faults and shortcomings with regard to the activities and transactions they carry out.” Official Gazette, dated 05.03.2012, numbered 28224 (Regulations on Shipping Agents) As may be understood from the provision of the article, such services as the reception of the required approvals from the port administrations, implementation of the customs entry and clearance transactions concerning the lading and transported goods, the provision of the persons who will carry out the lading transaction, taking all of the measures concerning the lading, during the process of lading, securing the lading of the ship with the cargo etc. are included within the purview of the agents.

2.Taxation Of The Collections Made In Connection With The Embarkment/ Disembarkment Activities Carried Out By The Foreign Maritime Transport Corporations As Per The Turkish Tax System

2.1. Taxation of the Laydays Fees Collected by the Foreign Maritime Transport Institutions

“The word “Laydays” (Starya) is derived from the Latin word “stare” and describes the time span required for the review of the cargo both during lading and discharging”. (İmregün Diğ., 1986:401) As soon as the marine vessels of the maritime transport corporations arrive at the foreseen home port, and if the lading and discharging had been agreed to be carried out on a specified day, they shall notice the party who demands their goods to be dispatched before the lading, and they shall notice the party who had sent the goods before discharging. This is defined as notice of readiness (New Turkish Commercial Code no. 6102, Article 1152 and 1168). (Official Gazette, dated 14.02.2011, numbered 27846) “For the notice of readiness to be valid and effective, it is obligatory that the notice of readiness reaches its addressee. /New Turkish Commercial Code no. 6102, Article 1152 and 1168). “The laydays start on the first calendar day following the date when the notice of readiness is received by its addressee, and at the time of the lading/discharging if the lading/discharging activity had actually started.If the

laying and discharging period had not been-specified by a contract, the period required in case the lading and discharging is carried out for twenty four hours shall be accepted as the lading and discharging period... The parties might agree upon a fee payment for the lading and discharging period.” (New Turkish Commercial Code no. 6102, Articles 1153 and 1169). (Official Gazette, dated 14.02.2011, numbered 27846)

The lading and discharging periods are detected upon agreement. If not detected upon agreement, they are determined in accordance with the articles no 1153 and 1169 of the New Turkish Commercial Code. “For the calculation of this period, the port where the lading and discharging are to be carried out, the ship which carries the cargo, the facilities and equipments required for lading and discharging, the characteristic of the cargo and the good, as well as arrangements at the port of lading and discharging, and the local commercial customs shall be considered.” the 1156th and 1172nd Articles of the New Commercial Code govern the calculaiton of the lading, discharging and demurrage period. Pursuant to the relevant articles, (1) the lading and discharging periods shall be calculated on an uninterrupted calendar basis. (2) The days on which it is not possible to lade the cargo on the ship or to discharge the cargo from the ship as a result of the incidental reasons occurring within shipper’s or consignee’s field of acticty shall be taken into consideration for the calculation of the lading or discharging period. (3) The days on which it is not possible to lade the cargo on the ship or to discharge the cargo from the ship as a result of the incidental reasons occurring within the transporter’s field of activity shall not be taken into consideration for the calculation of this period. (4) The days on which it is not possible to lade or receive the cargo on the ship as a result of the incidental reasons such as storm, ice invasion or mobilization which are related to the both parties’ field of activity shall be added to the period of lading, while the days on which it is not possible to discharge the cargo from the ship or to carry it ashore as a result of the incidental reasons such as storm, ice invasion or mobilization which are related to the both parties’ field of activity shall be added to the period of discharging; to the extend that the shipper shall pay demurrage fee to the transporter for these days despite the fact that these days are included in the lading period, and the consignee shall pay demurrage fee to the transporter for these days despite the fact that these days are included in the discharge period. (5) At the occasions stated in the third and fourth items, the period shall continue from the point it had stopped when the lading or discharging activity is actually resumed. (6) The period of demurrage shall be calculated uninterruptedly and independently from the occasions stated in the second and the fifth items, unless such occasions arise from the faults and shortcomings of the transporter. As stated above,

the corporation undertaking the transportation process cannot charge a separate fee for the lading and discharging period (unless there is no provision on the contrary state in the freight contract. Because, a freight contract (covering the activity of transporting a cargo from a place to another and delivering it to the consignee) involves the fee determined for the lading and discharging period.

2.2. Taxation of the Days of Demurrage Fees Collected by the Foreign Maritime Transport Institutions

“In cases of full charter (full locating), the entire ship is loaded with the cargo. This amount of goods cannot be ready in the pier. In this respect, the parties determine an additional period for the ship to stay, due to the possibility that the lading is not completed within the period of lading.” (Çağa and Kender, 2006:43) The period of demurrage is the additional lading and discharging period which begins after the end of lading period.

“If agreed on, it is a period which becomes effective as of the end of the lading or discharging period (laying days), the duration of which is from time to time determined by the parties of the freight agreement, and from time to time left without a decision, during which the transporter is obliged to leave the ship under control of the transport committer or the receiver, for a certain days of demurrage fee per day or hour, as decreed in the provision in the agreement.” (Ülgener, 1993:6)

In case that the agreement states the demurrage or the fee of demurrage in particular, but includes no provision regarding the period of demurrage, this period shall be ten days. (New Turkish Commercial Code, Article 1154/2-1170/2). (Official Gazette, dated 14.02.2011, numbered 27846)

In case the lading and discharging transactions are not completed within the lading period, provided that the transporter has no liability due to its own fault concerning this situation, the committer of the transport pays the transporter the charges during the required period (the period of demurrage). Namely, the additional charges collected by the transporter from the committer of transport during the course of this additional period, during which the ship is kept waiting, are called the days of demurrage fee. Pursuant to the Articles 1155 and 1172 of the said Law, (1) a “demurrage fee” shall be paid to the transporter for the demurrage period. In case the amount of the demurrage fee is determined by an agreement, the transporter shall not demand an claim a fee exceeding the amount stated in the agreement.” Official Gazette, dated 14.02.2011, numbered 27846 (New Turkish Commercial Code numbered 6102) In case the accidentally damaged goods are not received in the discharging port and left within the ship customarily, this practice, which is contradictory to the general practices in the ports

worldwide, is not taken into account during the calculation of the period of demurrage, although it extends the duration of discharging. “Concerning the laying days, should there be a COP (custom of port; COP) condition in the freight agreement, the duration is determined according to the custom of port ...Should the duration specified in accordance with the custom of port, the transporter may claim for indemnity for this additional period of waiting (demurrage).” (Court of Appeals for the 11th Circuit, dated 21.11.1994 and E.1994/ 4703, K.1994/8770) (Aybay, 2000: 431)

Pursuant to the Articles 1155 and 1172 of the New Turkish Commercial Code (Official Gazette, dated 14.02.2011, numbered 27846) “(3) in case the demurrage fee has not been determined in the agreement, the obligatory and beneficial expenses undertaken by the transporter by reason of waiting exceeding the lading or discharging period can be claimed as demurrage fee. (4) The party obliged to pay the demurrage fee arising at the lading port is the shipper and the transporter shall not be obliged to depart the ship unless the demurrage fee is paid or sufficient security is provided. The transporter can claim the whole loss it suffered as a result of over-waiting due to such a reason. On the other hand, the party obliged to pay the demurrage fee arising at the discharging port is also the shipper. (5) The demurrage fee arising at the lading or discharging port shall be due and payable at the end of the time period taken as a basis for the duration of the demurrage period. No demurrage shall be claimed for the unused time span in the said period. (6) Provisions regarding the freight shall not be applicable even in contrast with the demurrage fee arising at the lading or discharging port.”

The demurrage fee is the additional payment that is made in addition to the freight agreement, in return for the additional period, in case the ship cannot be loaded within the lading period by the committer of the transport or in case the ship cannot be discharged within the period of discharge, by the receiver. Generally “The opinion that the indemnification paid to the transporter by the committer of the transport that arises because the discharging or transport period exceeds the regular duration is included in the transport fee, prevails.”(Maç, 2007) However, “As required by the transport agreement, the demurrage fee paid by the committer of the transport to the transporter in addition to the freight fee must be included in the external freight proceeds should the task not be completed within the duration specified in the agreement.” (Demir, 2006: 135) In the Law, it is clearly specified that the fee collected for the demurrage period is a charge. If it is clearly agreed on in the freight agreement that the demurrage period will be free of charge, the amount will be added on the proceeds of the foreign transport institution that is included within the scope of foreign-based taxpayers, as no fees can be collected during demurrage and thus no condition of tax imposition over the added amount will occur. In the occurrence of other cases such as the payment of the demurrage fee is included within scope of the freight agreement or although there is no provision in the freight agreement that the demurrage fee will be paid, the foreign maritime transport institution that is included within scope of foreign-based taxpayers is, as the transporter, deemed as the claimer of the demurrage fee, since the transporter has the right for claiming the fee for the demurrage period.

The debtor of the demurrage fee is generally the committer of the transport. Although the demurrage fee is paid by the committer of the transport to the shipping agent that bears the status of being the representative of the foreign maritime transport institution that is included within scope of foreign-based taxpayers, the fee shall be added on the proceeds of the maritime transport institution that is included within scope of foreign-based taxpayers and be liable to pay taxes.

The fees collected by the maritime transport institutions within scope of foreign-based taxpayers in return for their demurrage service are liable to VAT. According to the 20th article of the VAT Law, which determines the basis of taxation in the delivery and service transactions, “The tax base in the delivery and service transactions is the charge that represents the costs arising out of these transactions.” Official Gazette, dated 02.11.1984, numbered 18563 (Value Added Tax Law numbered 3065) However, according to the 1st clause of the 14th article of the VAT Law;

- For the transport activities between Turkey and foreign countries (transport that begins in Turkey and ends in a foreign country or transport that begins in a foreign country and ends in Turkey),
- For transit transport activities (transport that begins in a foreign country, passes through the borders of Turkey and ends in another foreign country),

The fees collected for all kinds of passenger and cargo transport are excluded from the scope of VAT.

Should a foreign maritime transport institution that is included within scope of foreign-based taxpayers collect an extra demurrage fee which is added on the transport fee, during the transport activity it conducts from a foreign country to Turkey and or from Turkey to a foreign country, by reason of the extra delay of the ship, this collected fee will be excluded from the scope of VAT in accordance with the 14th article of the VAT Law.

3. Taxation Of Counter-Laying Fees Collected In Turkey By The Foreign Maritime Transport Institutions That Are Included Within Scope Of Foreign-Based Taxpayers

“Counter-laying, expresses the time that is granted in addition to the days of demurrage for the same purpose. Unless decided otherwise, the laying days are without charge whereas the days of demurrage and counter-laying are subject to charges.”. (İmregün Diğ., 1986: 401)The parties may set up the condition for granting an additional time for the ship and making

delay in the departure of the ship, in order for the completion of the lading and discharging, after the end of the demurrage period, which is granted in addition to the period of lading and discharging (laying days). This new additional period is called counter-laying. In order for any demand for the counter-laying period, the lading and discharging processes must not be completed within the period of demurrage. There is no need for any kind of notification for the initiation of the period in counter-laying, just like in the demurrage period. The fee for the counter-laying period is higher than that of the period of demurrage. In respect of application of the Turkish Taxation System, the counter-laying is subject to the provisions specified above, concerning the days of demurrage.

4.Taxation Of Dispatch Money Collected In Turkey By The Foreign Maritime Transport Institutions Within Scope Of Foreign-Based Taxpayers

The dispatch money is also called the incentive for quickening or the incentive for speeding up. “(1) In case that the lading or discharging activity is finished before the period agreed upon in the contract, the agreements stipulating that the transporter shall pay a fee for the unused time span shall be valid and effective. The procedures and principles regarding the calculation of the lading and discharging period shall be applicable for the calculation of the period regarding this amount of fee. (2) In case that the agreement entered into is for the purposes of evading the administrative, financial and punitive provisions effective at the lading or discharging port with respect to the determination of the freight, the first item shall not be applicable” (The 1157th and 1173rd Articles of the New Turkish Commercial Code). (Official Gazette, dated 14.02.2011, numbered 27846)

“In order for prompting the committer of transport for completing the lading faster than anticipated, “dispatch money” is stipulated in the charter agreements. This is the decided amount to be paid by the transporter to the committer of transport in return for the unused portion of the lading period, in case the lading is completed earlier than the anticipated date of the lading. The amount is equal to half of the usual demurrage fee: “dispatch half demurrage: $d \frac{1}{2}$ ”; however, it is also clear that it is determined according to the calculation on the basis of days and hours.” (Çağa and Kender, 2006: 42-43).

The foreign maritime transport institution within scope of foreign-based taxpayers may both be the transporting and the receiving firm of the overseas cargo. For instance, the foreign institution included within scope of foreign-based taxpayers, XYZ Pazarlama İhr.İth.A.Ş., may transport the goods with its own ship and may deliver the goods to its own marketing company, which is at the receiving status. Dispatch money is an incentive that the transporter is obliged to pay. Since the foreign institution within scope of the foreign-based taxpayers, is both the transporter and the committer of the transport, it will not have to pay the incentive to its own company in that case. The dispatch money may only be paid to the captain, the leaser, the committer of the transport and a third person.

The dispatch money is the fee that is paid, according to the article no 1061 of the New Turkish Commercial Code, to the ship owner who uses it on water for the purposes of generating an income or to the person who uses a ship of another person personally or by means of a captain (freighter) for the purposes of generating an income in return for the time earned by the same during the lading or discharging period.

In short, the incentive for quickening, that is, the dispatch money

“is the amount that is paid by the transporter to the committer of the transport for completing the lading, or, to the consignee for completing the discharging faster than anticipated, in return for the days or hours saved. The economic role of this money is to prompt the committer of transport and the consignee for saving time on the periods of lading or discharging. Thus the transporter will have the opportunity to conduct many more voyages with its ship. This money may only be demanded on the condition that it is clearly decided on in the agreement.”(Kender and Çetingil, 1984:87)

Since the dispatch money is paid to the committer of the transport by the foreign maritime transport institutions (transporter) it is regarded as an expense item. Since it is impossible to associate the freight proceeds of the foreign maritime transport institutions within scope of foreign-based taxpayers with the dispatch money, these paid incentives for quickening must be associated with the real outlays of the foreign transport institution within scope of foreign-based taxpayers; because the payments of dispatch money by the foreign maritime transport institutions within scope of foreign-based taxpayers constitute an expense item.

The incentives for quickening may be added on the proceeds of the foreign maritime transport institution within scope of foreign-based taxpayers only with the following method. For instance, when a foreign maritime transport institution within scope of foreign-based

taxpayers makes a payment to another foreign transport institution within scope of foreign-based taxpayers, (the committer of transport or the consignee) in return for the days or hours saved, in case it completes the lading or discharging faster than anticipated, it is then possible for the paid foreign maritime institution to include this amount into its proceeds and thus the obtained dispatch money may be levied tax.

5.Taxation Of Other Elements Of Proceeds Collected In Turkey By The Foreign Maritime Transport Institutions Within Scope Of Foreign-Based Taxpayers

In the occurrence of a violation by the company of the prohibition of lading articles to the ship, in accordance with the article no. 1111 of the New Turkish Commercial Code, “the captain shall be obliged to pay the freighter the highest freight which can be demanded at the point and time of lading and at such travels for similar goods. The right of the freighter to claim compensation for the loss which the freight paid by the captain does not compensate is reserved” Official Gazette, dated 14.02.2011, numbered 27846 (New Turkish Commercial Code numbered 6102)

- In case that the ship suffers a damage, pursuant to the provisions of the 1210th Article of the New Turkish Commercial Code, “The distance freight to be paid by the shipper to the transporter, shall not exceed the value of the rescued goods determined on the date and at the place where they have been secured.” Official Gazette, dated 14.02.2011, numbered 27846 (New Turkish Commercial Code numbered 6102)
- Other claims of the affreighter arising from the freight agreement such as penal sums etc.
- Such proceeds as the profits raised by the foreign maritime transport institution within scope of foreign-based taxpayers, by utilizing the ship in accordance with the purpose for which it was assigned, the salvage and assistance fees of the salvage ships, the towing fees paid to the tugboats etc.

As may be clearly understood, the freight proceeds are included within scope of the other elements of proceeds concerning the foreign maritime transport institutions within scope of foreign-based taxpayers. The freight proceeds is the fee paid by the transport institutions within scope of foreign-based taxpayers to the foreign transport institutions in return for the transport of cargo with a ship, in accordance with the signed agreement. Other freight proceeds will be levied tax as incidental commercial profit, in case they are raised by the foreign maritime transport institutions within scope of foreign-based taxpayers, without any offices or permanent representatives in Turkey; and this will be declared with a special declaration. Other freight proceeds will be liable for tax payable within the context of Corporate Tax, after being included in the corporate earnings and will be declared-with an annual declaration, in case it is raised as

commercial earnings by the foreign maritime transport institutions within scope of foreign-based taxpayers.

CONCLUSION

In accordance with the paragraph b) of the 3rd clause of the 23rd article of the Corporate Tax Law numbered 5520, concerning the maritime transport beginning from the laying ports in Turkey and ending in the destination ports abroad or ending in a port abroad, which will carry out a transfer to a ship belonging to another institution, all of the fees and sums as fees that are collected in return for charges arising from passenger, cargo and luggage transport, including the costs collected together with the ticket fees, are included in the proceeds of the foreign transport institution within scope of foreign-based taxpayers and is liable to pay taxes.

According to the fifth book of Turkish Commercial Code, that regulates the provisions concerning Maritime Trading, the lading period expresses the span of time that is required for the lading of the cargo into the maritime transport vehicle and the discharging of the cargo from the maritime transport vehicle. Unless decided otherwise, no charge is demanded for the lading period. However, if it is decided in the agreement that a fee must be paid for the lading period, the demanded charge must be included in the proceeds of the foreign maritime transport institution within scope of foreign-based taxpayers and must be liable to pay taxes.

The period of demurrage is the additional lading and discharging period which begins after the end of lading period. The transporter is paid the demurrage fee in return for the extra time span which is used upon the failure of the completion of the lading and/or discharging activities within the anticipated period based on some reasons that are not included in the responsibility of the transporter.

Counter-laying expresses the time that is granted in addition to the days of demurrage for the same purpose. Should the parties decide that the ship should be delayed in order for carrying out the lading/discharging transactions after the end of the period of demurrage the fee paid to the transporter for the days that are used for this purpose is the counter-laying fee.

The fee payments collected by the foreign maritime transport institutions within scope of foreign-based taxpayers in return for the demurrage and counter-laying periods are included in the proceeds of these institutions and are levied pay taxes.

The fees collected by the foreign maritime transport institutions within scope of foreign-based taxpayers in return for their demurrage service are subject to VAT and if the foreign maritime transport institution is conducting transport from a foreign country to Turkey or from Turkey to a foreign country, and if during this period it collects an additional demurrage fee depending on the reason that the ship is too much delayed, this fee will not be included within scope of VAT.

Dispatch money is a kind of incentive-like payment, paid by the transporter, that is, within the context of our subject, by the foreign maritime transport institution, which aims at prompting the committer of transport or the consignee for conducting the lading and/or discharging within the shortest time possible. This payment made by the foreign maritime transport institution within scope of foreign-based taxpayers is not an income item, but an element of expense for that institution.

The elements that must be evaluated within scope of the freight proceeds by the foreign maritime transport institutions, that is, the amounts to be paid by the captain that commits the lading on his/her own behalf in order for the indemnification of the loss of the consignee, the dead freight, the distance freight, and the claims arising from penal sum etc. must be included within the proceeds earned in Turkey and liable to pay taxes.

Bibliography

- Aybay, Gündüz (2000). **Deniz Ticaret Hukuku ile İlgili –notlandırılmış-Yargıtay Kararları (Noted Decisions of the Council of State regarding Naval Trade Law)**, İstanbul: Aybay Yayınları, Publication No:30, Law Series: 13.
- Çağa, Tahir and Rayegan Kender (2006). **Deniz Ticaret Hukuku-II,Navlun Sözleşmesi (Naval Trade Law-II, Freight Contract)**, 8th ed., İstanbul: Arıkan Basım Yayın Dağıtım Ltd.Şti.
- Demir, Şeref (2006).**Uluslararası Taşımacılık/ Lojistik, KDV istisna ve İadesi (International Transportation/Logistics, VAT Exception and Return)**, İstanbul: Gelirler Kontrolörleri Derneği.
- İmregün, Oğuz, Merih Kemal Omağ and Fehiman Tekil (1986).**Ticaret Hukuku (Commercial Law)**, (Ed.Akar Öcal,Ömer Zühtü Altan), No:37, Eskişehir:Anadolu Üniversitesi yayınları.
- Kender, Rayegan and Ergon Çetingil (1984). **Deniz Ticareti Hukuku Dersleri (Naval Trade Law Lessons)**, İstanbul: Filiz Kitabevi.
- Maç, Mehmet (2007). **KDV Uygulaması (VAT Application)** (e-book), [http:// www.bdodenet.com.tr/kdv/kdv1.pdf](http://www.bdodenet.com.tr/kdv/kdv1.pdf), (Erişim:10.03.2007)
- Official Gazette, dated 02.11.1984, numbered 18563 (Value Added Tax Law numbered 3065)
- Official Gazette, dated 21.06.2006, numbered 26205 (Corporate Tax Law numbered 5520)
- Official Gazette, dated 14.02.2011, numbered 27846 (New Turkish Commercial Code numbered 6102)
- Official Gazette, dated 05.03.2012, numbered 28224 (Regulations on Shipping Agents)
- Ülgener, Fehmi (1993), **Sürestarya Süresi ve Ücreti (Period and Charge of Laying Days)**, Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü Yayınları.