



Taxation of the exchange rates differences dilemma in the context of VAT in Turkey

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Abstract

Exchange rate differences, which involve negative or positive value changes to a particular currency unit against another during the buying and selling exchange process, might as well involve gaps or deficiencies in legal arrangements that in turn result in different interpretations and applications. Controversies regarding this issue are observed particularly in the context of Value Added Tax Legislation.

It is observed that there exists an ongoing conflict between the Council of State and taxation authorities on whether or not the exchange rate differences should be included in determining VAT. This also causes academics, experts and implementers to pursue diverse interpretations and applications. A number of intelligible arrangements regarding the taxation of exchange rate differences with respect to VAT should be made urgently to amend the gaps in law.

Keywords: Exchange rate differences, taxation, Turkish value added tax legislation.

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I. Introduction

In the literature of finance, the term exchange rate refers to, in the most general sense, the charge for exchanging currency unit of a particular country for the currency unit of another, or shortly, its value in terms of another currency unit. Naturally, what determines the value of the currency unit of a particular country against another is the demand for the currency unit in question in another country.

On the other hand, exchange rate difference, which is a self-explanatory term, refers to the negative or positive value changes to a particular currency unit against another during the buying and selling exchange process.

Why, then, do such changes occur? The changes in question are the outcomes of a number of factors. These factors range from those that are economic and financial to those that are political, social, and even global. For example, they may be caused by the difference between the buying and selling rates, or by the degree and scope of parameters such as tenures and interest rates used for obtaining loans to finance certain operations

The general analysis made so far on the negative or positive value changes to a particular currency unit also indicates that particular individuals benefit from some added values. This being the case, there emerges a specific income, which is the financial equivalence of these value changes. In other words, due to VAT, income is obtained, and in financial terms, this is a chargeable event. However, further analysis of the issue and a detailed observation of the applications reveal diverse formations and interactions. This, consequently, obliges taxable people, taxation authorities and figures of fiscal law to produce a wide range of analysis, theses and antitheses.

As also asserted in the conclusion part of this study, assessments made on this issue do not necessarily allow us to assert a synthesis. The issue in question is under an ongoing scrutiny, and it is highly probable that arguments on it will continue in a fashion that does not necessarily promise clear-cut conclusions.

The analysis made in this study primarily focuses on the context provided by Value Added Tax (VAT) legislation, and attempts at presenting the details of the issue in question, along with an examination of the theoretical and practical processes involved.

II. Circumstances When Exchange Rate Differences Occur in the Context of Value Added Tax :

As stated in Article 10/1 of Value Added Tax (VAT) Legislation, there exists two distinct practices regarding operations that generate VAT and result from exchange rate differences emerging with the supply of goods and services. These are listed as follows:

a) Prices of goods and services are determined in terms of Turkish Liras, however, in order to circumvent loss of value in the process of payment – a potential threat due to inflation – prices are indexed to a foreign currency on which the buyer and the seller mutually agree. The reason underlying the equilibration of the prices of goods and services to correspond to a foreign currency can best be explained as an attempt to prevent losses in the real value of goods and services due to inflation.

b) Prices of goods and services are determined in terms of a foreign currency in the very beginning of operations. In this case, prices are paid in a foreign currency on which the parties involved mutually agree. Such operations generally occur when goods and services that are subject to importation and exportation are produced or merchandised, or more specifically, when foreign currency inflow is in question due to the use of goods and services aforesaid. The purpose in this case is to make definitive and clear calculations of costs and profitability in the context of production-cost-profit process, rather than prevention of value loss due to inflation.

When exchange rate differences for particular operations are determined with respect to either a foreign exchange unit and/or Turkish Liras indexed to foreign currency, there emerges changes in the taxation of exchange rate with respect to VAT as well, which entails an analysis of the issue by separately handling the two cases in question.

III. An Evaluation of Exchange Rate Differences in Terms of Value Added Tax

a) Exchange Rate Differences in the Context of Value Added Tax Legislation

It is necessary for the ends of this study to locate the references to exchange rate differences resulting from the daily estimation of the value of Turkish Liras in Value Added Tax Legislation (VATL), and to highlight how the issue is treated by the legislation. In this context, it should be asserted that the term “exchange rate difference” initially appears in

VATL in Article 21, with the subtitle “Assessment in Importation”. The article enlists the aspects that constitute assessment in importation in separate items, and Item “c” states that “The disbursing such as exchange rate differences and price differences calculated by taking into consideration all the other expenses made before the suspension of custom declaration, and untaxed payments” determine the aspects that constitute assessment in importation. Accordingly, exchange rate differences are included in assessment in importation operations, and as a result, they are subjected to VAT.

In Article 20 in VATL, on the other hand, “assessment in supply of goods and services” is defined, followed by both its description in Item 1 as the “price” of these operations, and what is understood by the term “price”. The Item states that “price” is the money, goods, or the sum of all the other benefits, services and values that can be represented in terms of money either received from or indebted to the parties who receive goods, services or to the figures who act on behalf of them.

In Item “c” of Article 24, which describes “Aspects Included in Assessment”, it is also stated that “A number of profits obtained due to delay interests, price differences, interests, or bonuses, and all the benefits, services or values obtained due to a variety of services under different names” are included in the assessment. However, the wording of the article excludes the term “exchange rate difference”, and instead, uses the blanket expressions “a number of profits” which imply a broadly inclusive arrangement and thus result in frequently conflicting applications emerging from the multiplicity of theoretical interpretations and practices.

Yet another adjuration regarding the issue is in Article 26 of VATL. Under the heading “Operations Made in Foreign Currencies”, it is stated that in case the price of an operation is determined in terms of a foreign currency, the foreign currency will be calculated in terms of Turkish Liras at the very moment the chargeable event occurs, and in terms of the current exchange rate at that very moment. That the legislatives assert the particular arrangement in Article 26 is, on a theoretical basis, the reason explaining why changes occur when operations are made in terms of foreign currency and consequently, why exchange rate differences occur¹.

¹ There are no regulations prohibiting the prices of supply of goods and services to be determined in terms of a foreign currency, and to be invoiced. However, according to Article 216 of Tax Procedural Law, all the book keeping activities and records have to be made in Turkish. Records in languages other than Turkish can be kept on condition that records in Turkish are kept as well. Furthermore, Article 215 states that records and

Taxation authorities have, to a certain extent, shaped practices regarding this issue with their assertions in General Communiqué. In the Value Added Tax General Communiqué, with serial number 105², the authorities have presented views parallel to the tax ruling (tax authoritative decision) it has been declaring, and has defined exchange rate difference as a fictive profit³, with the purpose of including it in the assessment and hence taxing it. In the Communiqué in question, the subsection 2 in “Section E” focuses on “exchange rate differences”. It reads as follows: “For the operations where the price is defined in terms of either a foreign currency or Turkish Liras indexed to a foreign currency, in case the price is paid after the fully of partially chargeable event occurs, it is taxed as an aspect of assessment due to the fact that the exchange rate difference that benefits the seller is characteristically parallel to delay interests.

Accordingly, the exchange rate difference which occurs between the date of supply of goods or services and the payment of prices, therefore benefits the seller should be invoiced. For the exchange rate difference documented in the invoice, VAT will be applied with the rate that is valid on the date of supply of goods or services and the payment of prices.

In case the exchange rate difference benefits the buyer on the date when the price is collected, the buyer should invoice the amount of exchange rate difference by calculating VAT for the exchange rate on the date of supply of goods or services.”

Thus, the declarations taxation authorities have made either in communiqués or in tax ruling indicate that they favor including exchange rate differences in assessment by

documents can be kept in accord with a foreign currency as long as they are registered in terms of Turkish Liras. One exception to this is the documents prepared for the clients in foreign countries, where registration in terms of Turkish Liras is not a must.

In addition to these, Article 215 of Tax Procedural Law regulates that The Cabinet may allow some businesses that meet particular conditions to keep records in a currency unit other than Turkish Liras. Consequently, according to the Law, “Businesses whose paid capitals (paid capitals reserved for Turkey for the businesses established abroad) is equal to a minimum of 100 million US dollars, or equivalent to the same amount of Turkish Liras in terms of a foreign currency”, and “businesses where 40% of the capital belongs to individuals that are subject to different laws, and with abodes and residences outside Turkey” will be allowed to keep records in a currency unit other than Turkish Liras.

In case the businesses that meet particular conditions keep records in a currency unit other than Turkish Liras, it is obvious that such businesses will not experience exchange rate differences that those keeping their records in terms of Turkish Liras do.

² **105 Seri No. lu Katma Değer Vergisi Genel Tebliği**, was published in Official Journal (No: 26568, Date: 30.06.2007).

³ Veysi Seviğ, “*Dönem Sonunda Mevcut Stoklara Giderlerden ve Kur Farklarından Pay Verilmesi*”, **Yaklaşım**, December 1993, pp.2.

regarding them as delay interests⁴. However, it is also observed that in a number of tax ruling made by taxation authorities, there is an exception to the view that includes exchange rate difference in the assessment, referring to “the international and public procurements where the determination of prices in terms of either foreign currencies or national currency indexed to a particular foreign currency”⁵.

In the light of the explanations above, it is concluded that in spite of the fact that there exists no clear arrangements regarding the exchange rate differences in the Legislation, taxation authorities nevertheless regard exchange rate differences as delay interests and tax them. Furthermore, in the Communiqué that proposes clarifications to the issue, the same authorities include all the exchange rate differences in the assessment, without necessarily distinguishing between the operations on the basis of how the prices are determined: either in terms of a foreign currency or in the national currency indexed to a foreign currency.

b) An Evaluation of Exchange Rate Differences in Terms of Value Added Tax

There exists no adjudications in the VATL regarding the inclusion of exchange rate differences in the assessment, except that they are included in the assessment in importation operations⁶. Upon an analysis a number of adjudications, adjudications and tax ruling, two opposite views are observed in the doctrine, one of them stating that exchange rate differences should be included in assessments, and the other one stating that they should not. The Council of State decisions generally hold the view that exchange rate differences should not be included in the assessment. Especially the decision made by The Council of State, The Plenary Session of the Tax Law Divisions in 2006 has constituted the jurisprudence regarding this issue. However, parallel to the tax ruling made in the Value Added Tax General Communiqué, with serial number 105, the taxation authorities have clearly asserted their decision to include exchange rate differences in the assessment by

⁴ Gürol Ürel, “*KDV Uygulamasında Kur Farkları*”, *Vergi Dünyası*, October 1998, No: 206, <http://vergidunyasi.com.tr/DergiIcerik.aspx?ID=2193>., pp.3.; İrfan Sarıkaya, “*Yine ve Yeniden Kur Farklarında Katma Değer Vergisi Sorunsalı*”, *Vergi Dünyası*, No: 312, August 2007, pp. 12.

⁵ Maliye ve Gümrük Bakanlığı Gelirler Genel Müdürlüğü’nün Muktezası (No: 41304 and Date: 30.06.1993); Maliye Bakanlığı Gelirler Genel Müdürlüğü’nün Muktezası (No: B.07.GEL.053/5324-191/32761 and Date: 04.08.1997), <http://turmob.org.tr/turmobil/basin/m16.201.doc>.

⁶ Mehmet Maç, “*Kur Farklarının KDV Karşısındaki Durumu*”, *Yaklaşım*, April 2001, <http://turmob.org.tr/turmobil/basin/m16.201.doc>., pp.2.; İrfan Sarıkaya, “*Yine ve Yeniden Kur Farklarında Katma Değer Vergisi Sorunsalı*”, pp.14.

regarding them as delay interests. Moreover, the communiqué in question has endured despite the Council of State's jurisprudence, and after the jurisprudence came into effect.

It is thus observed that a high number of writers, and more importantly, of taxation authorities, have commented on whether exchange rate differences should be included in the assessment or not. The above references to the decisions made by the taxation authorities indicate the authorities' decree regarding the inclusion of exchange rate differences in the assessments stated in the tax ruling made in the Value Added Tax General Communiqué, with serial number 105. In the tax ruling that were made before and after the communiqué came into effect, it is also observed that exchange rate differences are regarded as delay interests and price differences, which should be taxed as aspects of assessments.

The term "the amount of incurring debts" that appears in the definition of "price" in Article 20 of the legislation is among the preambles asserted by the writers who hold the view that exchange rate differences are aspects of assessments. Yet another one is the blanket terms used in the definition for "aspects included in assessment" in Article 24, Item "c", reading, "a number of delay interests, price differences, interests, or bonuses..."⁷. In addition to this, those holding this view assert that the aspects included in the assessment of Article 24 appear in the form of nouns, and that the words "a number of", which imply a set of nouns with similar characteristics, also refer to "income aspects" that bear similar characteristics that are assessed. They also state that the absence of a verbal reference to the exchange rate difference in the Legislation does not necessarily constitute a preamble for exonerating exchange rate differences from assessment⁸. The legal solution the writers in question propose for the view held by the opposite group, who assert that there might be both advantageous and disadvantageous exchange rate differences, appears in Article 35 in VATL, under the heading "changes in assessments and the amount of deduction"⁹. Some of

⁷ İstanbul YMM Odası Raporu, **Kur Farklarının KDV Karşısındaki Durumu**, İstanbul, 15.08.2007.; Volkan Yüksel, "**KDV Uygulaması Açısından Kur Farklarının Durumu**"; Nihat Uzunoğlu, "**Kur Farklarının KDV Karşısındaki Durumu (I)**", *Vergi Dünyası*, No: 268, October 2003.; Nihat Uzunoğlu, "**Kur Farklarının KDV Karşısındaki Durumu (II)**", *Vergi Dünyası*, No: 269, January 2004.; Önder Sezgi, "**İstihkakı Döviz Cinsinden Düzenlenen İnşaat Onarım İşlerinde Kur Farklarının KDV Karşısındaki Durumu**", *Vergi Dünyası*, October 1997, No: 194, <http://www.vergidunyasi.com.tr/DergiIcerik.aspx?ID=1770>.; İlhan Kırıktaş, "**Döviz Cinsinden Teslimlerle İlgili Özel Durumlar ve KDV Uygulaması**", *Yaklaşım*, March 1997, www.yaklasim.com/mevzuat/dergi/makaleler/1997031004.htm-24287-bytes.

⁸ İstanbul YMM Odası Raporu, **Kur Farklarının KDV Karşısındaki Durumu**, pp.7.

⁹ Under the heading "Changes in the Amount of Assessments and Reductions", Article 35 of VATL regulates the following: "In cases where changes occur in the assessment due to the restitution of goods, the incompleteness of operations, the cancellation of operations or etc., both the tax debts occurring due to the taxed operations carried out by the tax payer, and the tax reductions the tax payer has the right to due to being subjected to the

these writers also hold the view that exchange rate differences should be categorized under a separate heading “supply of services” that is realized following the supply of goods or services, and should be assessed as a “financing service”¹⁰. Upon analyzing the decisions made by the Council of State in the past years, it is observed that even though those asserting that exchange rate differences are aspects of the assessment are high in number, there are also those asserting the opposite¹¹.

It is also observed that the taxation authorities and some writers have published tax ruling, communiqués and articles which state that, with respect to the Articles 20, 24/c and 35 in the Legislation, exchange rate differences bear the characteristics of delay interests, and are therefore among the aspects subject to assessment.

Even though the taxation authorities have published Value Added Tax General Communiqué, with serial number 105, for including exchange rate differences in the assessment, arguments regarding whether or not they should still continue. Hence most of the decisions made by the Council of State, stating that they should not¹². The consensus reached by the Council of State, The Plenary Session of the Tax Law Divisions in 2006 is a significant one regarding this issue due to the jurisprudence it constitutes. In the particular decision involving the consensus in question, the Council of State, The Plenary Session of the Tax Law Divisions asserts that on the collection date, advantageous or disadvantageous exchange rate differences obtained with respect to the chargeable event that occurs on the date of the supply of goods are not included in the price. The preamble for the decision reads as follows: “The Law Number: 3065, with Article number 10/a asserts that with respect to

taxed operations are changed with respect to the particular characteristics of the change in question, and in the period the changes have occurred, in so far as the goods restituted have actually entered the business and that this is recorded in the bookkeeping and the tax return.”

¹⁰Istanbul YMM Odası Raporu, **Kur Farklarının KDV Karşısındaki Durumu**, pp.8.; See also. Ali Alıç, “*Vade Farklarının Vergi Hukuku Açısından Değerlendirilmesi*”, pp.2.; Tuncay Çetin, “*Kur Farkları KDV Matrahına Dahil Midir?*”, pp.2.

¹¹ **Danıştay Onbirinci Dairesi'nin Kararı**, (Date: 04.10.2000, Decision no: 2000/3658), <http://www.kazanci.com.tr/>; **Danıştay Dokuzuncu Dairesi'nin Kararı**, (Date: 09.03.1999, Decision no: 997/1706), <http://www.danistay.gov.tr/kerisim/container.jsp>.

¹² **Danıştay Vergi Dava Daireleri'nin Kararı**, (Date: 18.10.2006, Decision no: 2006/286), **Danıştay Dergisi**, Year:37, No: 115, 2007, pp.87-88.; **Danıştay Yedinci Dairesi'nin Kararı**, (Date: 12.02.1991, Decision no: 1991/587); **Danıştay Dokuzuncu Dairesi'nin Kararı**, (Date: 26.05.2004, Decision no: 2004/3556), <http://www.danistay.gov.tr/kerisim/container.jsp>; **Danıştay Onbirinci Dairesi'nin Kararı**, (Date: 01.12.1998, Decision no: 1998/4093), <http://www.kazanci.com.tr/>; **Danıştay Yedinci Dairesi'nin Kararı**, (Date: 15.10.2003, Decision no: 2003/4293), [http://www.yaklasim.com/danistay/read_result.asp?file_name=/danistay/kanunlar/004/004024001012.htm](http://www.yaklasim.com/danistay/read_result.asp?file_name=/danistay/kanunlar/004/004024001012.htm;); **Danıştay Üçüncü Dairesi'nin Kararı**, (Decision no: 2001/385), Yargı Kararları, **Vergi Sorunları**, No: 164, May 2002, pp.150-152.); **Danıştay Yedinci Dairesi'nin Kararı**, (Date: 28.04.2004, Decision no: 2004/1161), Yargı Kararları, **Vergi Sorunları**, No:220, January 2007, pp.180-184.

‘the supply of goods and services, a chargeable event occurs as goods are supplied and services are realized’. Article Number 26, on the other hand, states that, on condition that the price is determined in terms of a foreign currency, the foreign currency in question will be calculated in Turkish Liras with respect to the exchange rate currency on the date the chargeable event occurs. As the regulations indicate, due to the fact that a chargeable event occurs with the supply of goods and services, in case the price is calculated in terms of a foreign currency, it will be calculated with respect to the exchange rate currency on the date the chargeable event occurs, and will be recognized as a profit. Exchange rate differences caused by foreign currencies paid on different dates cannot have a positive or negative influence on prices. Even though the term “price” has been clearly explained in Article 20 of the Legislation, the legislatives refer to Article 24, Item “c”, which state that all delay interests, interests and bonuses are included in the assessment; however, exchange rate differences are excluded. Therefore, “the positive or negative exchange rate differences that are observed on the date when a chargeable event occurs due to the supply of goods and services are not included in the prices on the date of clearing the bills.”

Those stating that exchange rate differences are not included in the assessment justify their point by referring to the fact that exchange rate differences have been excluded from Article 24/c. They also assert that if they were to be assessed by the legislatives, they would have definitely appeared in the wording of the article in question¹³. Hence the arrangement in Article 21 of the legislation, which include importation operations in the assessment. Moreover, by making references to the “prohibition of comparison” of Tax Legislation, they state that no comparisons can be made by referring to the phrase “a number of” in Article 24/c, and that exchange rate differences cannot be assessed by means of a comparison to interests or delay interests¹⁴. In addition to this, they also assert that exchange

¹³ **Danıştay Vergi Dava Daireleri’nin Kararı**, (Date:18.10.2006, Decesion no: 2006/286), **Danıştay Dergisi**, Year: 37, No:115, 2007, pp.87-88.

¹⁴ Mehmet Maç, “**Kur Farklarında KDV Aranmamalıdır**”, **Mükellefin Dergisi**, February 2002, <http://www.turmob.org.tr/turmob/basin/M114.102.doc>; Şükri Kızılot, “**Yurt İçi İnşaat Taahhüt İşlerinde Vergisel Sorunlar**”, **Yaklaşım**, July 1996, http://www.yaklasim.com/mevzuat/dergi/read_frame.asp?file_name=199607823.htm; Mehmet Maç, “**Kur Farklarında KDV**”, **Lebib Yalkın**, February 2002, No:110, <http://www.mevbank.com.tr/mevbank/doc/dvframe3.asp?docid=35409&lcode=down&count=0&minpar=0&maxpar=0&mode1=1&src=kur+farkında+KDV&srct=1>; İrfan Sarıkaya, “**Yine ve Yeniden Kur Farklarında Katma Değer Vergisi Sorunsalı**”; Mehmet Koç, “**Döviz Cinsinden Belirlenen Bedelin Geç Ödenmesi Nedeniyle Ortaya Çıkan Kur Farklarında KDV**”, **Yaklaşım**, September 1997, www.yaklasim.com/mevzuat/dergi/makaleler/1997091143.htm-37603-bytes, http://www.yaklasim.com/mevzuat/dergi/read_result.asp?file_name=/mevzuat/dergi/makaleler/2003114004.ht

rate differences are not prices that are equivalent to supply of goods or services, which are subject to Value Added Tax¹⁵, and that they are caused by merely parity changes of Turkish Liras and foreign currencies, namely, by the effects of inflation, which emerge outside the will of the parties involved¹⁶. This is also due to Article 24/c, which indicates that the aspects involved in assessment occur in a particular time, rate, or amount that have been predetermined and mutually agreed on by the parties of the operation. Exchange rate differences, however, do not suggest such predetermined or mutually agreed aspects. As this view asserts, delay interests or price differences are primarily included in the price at the moment the chargeable event occurs, or, if they occur later, they are included in the assessment. However, exchange rate differences cannot result in changes in the prices simply because they become definite with respect to the current exchange rates at the date the chargeable event occurs, and as a result, cannot be regarded as an aspect of assessment¹⁷.

We hold the belief that, once the general norms are determined as such, some other distinctions with respect to the cases that result in the emergence of exchange rate differences should also be made, regarding how they should be considered in relation to VAT. As those considerations are being made, we will base our assertions and comments on the operations inevitably involving exchange rate differences.

As the detailed analysis made above indicates, the first group of operations involving exchange rate differences are those where prices of goods and services are determined in terms of a foreign currency. The second group of operations, on the other hand, are those where prices of goods and services are determined in terms of Turkish Liras, however, in order to circumvent loss of value in the process of payment – a potential threat due to inflation – prices are indexed to a foreign currency on which the buyer and the seller mutually agree¹⁸. Such a grouping will allow us to evaluate the issue in more depth.

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¹⁵ İrfan Sarıkaya, “*Yine ve Yeniden Kur Farklarında Katma Değer Vergisi Sorunsalı*”, pp.15; Mustafa Koç, “*Kur Farklarının KDV’ye Tabi Turulmaması Gerektiği*”, *Yaklaşım*, October 2005, No: 154, http://www.yaklasim.com/mevzuat/dergi/read_frame.asp?file_name=2005107033htm, pp.2).

¹⁶ İstanbul YMM Odası Raporu, *Kur Farklarının KDV Karşısındaki Durumu*, pp.9.; Mehmet Maç, “*Kur Farklarında KDV*”, pp.3.

¹⁷ Mehmet Maç, “*Kur Farklarında KDV Aranmamalıdır*”, *Mükellefin Dergisi*, pp.3; Mehmet Maç, “*Kur Farklarında KDV*”, pp.1.

¹⁸ M. Sacit Basmacı, “*Dövizli İşlemlerden Doğan Kur Farklarında KDV Sorunu- II*”, pp.3.; Mehmet Maç, “*Kur Farklarında KDV*”, pp.3.; *Danıştay Yedinci Dairesi’nin Kararı*, (Date: 07.10.1996, Decision no: 1996/3414),

<http://www.mevbank.com.tr/mevbank/doc/dvframe3.asp?docid=10572&lcode=down&count=0&minpar=0&maxpar=0&mode1=1&src=kur+farki&srct=1>.

Nevertheless, the General Communiqué, with serial number 105, does not necessarily employ such a grouping. It primarily adopts the view that includes all different kinds of exchange rate differences in the assessment, regarding them as delay interests. Moreover, there exists no regulations as to the date the chargeable event occurs. In the General Communiqué, with serial number 105, however, the chargeable event in the context of exchange rate differences is defined as the collection of foreign currency debts. Accordingly, there emerges a conflict between what the two regulations regard as “chargeable events”, hence the Legislation on one hand, which, with respect to profits, acts on the accrual basis, and the Communiqué on the other hand, which acts on the collection basis.

In the context of the distinction made above, it is possible to state that there exists different taxation methods, depending on the operations that result in different chargeable events. The article in the Legislation which refers to the prices indexed to a foreign currency is clear, and resists all kinds of interpretations. The article in question is Article 26 of VATL, and under the heading “operations made with foreign currencies”, it covers the regulation reading as follows: “in case the price is determined in terms of a foreign currency, the foreign currency will be calculated in terms of Turkish Liras with respect to the current exchange rate of the date when the chargeable event occurs”. When this is taken into consideration, one may conclude that if prices are determined in terms of a foreign currency, they will be calculated in terms of Turkish Liras with respect to the current exchange rate of the date when the chargeable event occurs – given the fact that a chargeable event occurs on the date of the supply of goods and services. When seen under this light, then, one may conclude that because the prices and assessments of operations made via a foreign currency become definite and finalized due to the current exchange rate on the date the chargeable event occurs, exchange rate differences are not to be regarded as aspects that should be included in the assessment merely for the fact that they (will potentially) emerge later¹⁹.

The Turkish Accounting Standard Issue No. 12²⁰, published by Turkish Accounting Standards Board, gives a detailed picture of the definition of exchange rate differences, along with an in-depth analysis of the cases where they occur, and their

¹⁹ İbrahim Özdemir and Mustafa Çelen, “*Vade ve Kur Farklarının Özel Tüketim Vergisi Karşısındaki Durumu*”, *Vergi Dünyası*, No: 264, August 2003, pp.29.; Tuncay Çetin, “*Kur Farkları KDV Matrahına Dahil Midir*”, pp.1.

²⁰ M. Sacit Basmacı, “*Dövizli İşlemlerden Doğan Kur Farklarında KDV Sorunu –II*”, pp.2.; Veysi Seviğ and Bumin Doğrusöz, “*Kur Farkının Belgelendirilmesi ve KDV*”, *Referans Daily Newspaper*, Date: 19.08.2009.

accounting process. The Standard regulates “Accounting the Effects of Exchange Rate Differences”, and Article 7 in the Standard makes a thorough explication of accounting for the operations made via a foreign currency²¹. The article reads as follows: “the operation made via a foreign currency should be included in the accounting records of a given business with respect to the current exchange rate on the date the operation is realized”. It is observed that the amendment made to the article in question is parallel to that in Article 26 of VATL. Therefore, in the operations where prices are determined in terms of a foreign currency, prices are recorded in terms of Turkish Liras, and with respect to the current exchange rate on the date the chargeable event occurs. This also entails a VAT procedure for the operation in question.

Article 12 is yet another article regulating exchange rate differences in the Turkish Accounting Standard Issue No. 12, which indicates that exchange rate differences emerge as a result of the changes in the exchange rate between the operation date and the date of payments and/or collections. The exchange rate differences in question are primarily caused by the possibility that the operation date and the date of payments and/or collections might fall into different accounting periods, or the accounting periods for each might overlap. The article states that in both cases, exchange rate differences should be reflected on “profits and costs”. There are also those in literature who assert that advantageous exchange rate differences should be accounted, included in accounting records as profits, and recorded in “Exchange Profits, Number 646”, without being invoiced²². Parallely, the disadvantageous exchange rate differences should be recorded in “Exchange Losses, Number 656”. The preamble for this view is the decision made by The Council of State, The Plenary Session of the Tax Law Divisions in 2006, stating that “The exchange rate differences that emerge with respect to the date on which the chargeable event occurs are not included in the forward sales made in terms of a foreign currency on the date the bill is cleared”. The focus then shifts to exchange rate differences resulting from operations where prices of goods and services are determined in terms of Turkish Liras in order to circumvent loss of value in the process of

²¹ **12 No. lu Türkiye Muhasebe Standardı**, was published in Official Journal (No: 26122, Date: 28.03.2006).

²² Feriştah Sönmez, “*12 No.lu Türkiye Muhasebe Standardı- Kur Değişim Etkilerinin Muhasebeleştirilmesi*”, http://www.econturk.org/Turkiyeekonomisi/Feristah_I.doc; Sadi Işıklılar, “*Dövizle Bağlı Kredi, Alacak ve Borçlarda Hasıl Olan Kur Farkları Tekdüzen Muhasebe Sistemi, Türkiye Muhasebe Standardı ve Vergi Mevzuatı Açısından*”, Lebib Yalkın, January 2007, No: 1, pp.2-3, <http://www.mevbank.com.tr/mevbank/doc/dvframe3.asp?docid=101290&lcode=down&count=0&minpar=0&maxpar=0&mode1=1&src=kur+farki&srct=1>

payment due to inflation, but are later on indexed to a foreign currency on which the buyer and the seller mutually agree. An evaluation of their status with respect to VAT will also be made. When analyzing this, one should clearly make the distinction between the operations stated above and those where the prices are determined in terms of a foreign currency and the collections are made after the supply of goods and services, in terms of a foreign currency on which both parties mutually agree. This is due to the fact that the advantageous exchange rate difference that emerges when prices, which are predetermined in terms of a foreign currency, are paid after the supply of goods and services can be said to hold the characteristics of delay interests and thus can be assessed²³. In this case, a separate exchange rate difference invoice must be drawn by making reference to the invoice drawn on the date when the chargeable event occurs due to the supply of goods and services, and the operation is subjected to VAT²⁴. However, the taxation authorities' assertions in a number of communiqués or tax ruling, which attribute the characteristics of delay interests to exchange rate differences, hold only for the exchange rate differences that fall into this category. For in this process, even though prices are determined in terms of Turkish Liras, they are nevertheless indexed to a foreign currency, and the real or the corporate parties of the operations are also faced with some potential risks and costs.

IV. Conclusion

It is observed that a number of diverse interpretations and applications emerge due to gaps or deficiencies in legal arrangements of exchange rate differences. Taxation authorities' perspective regarding this issue bears fiscal characteristics, and all the legislations and applications are developed and conducted in a similar fashion. On the other hand, the Council of State holds views asserting that exchange rate differences should not be among the aspects that are assessed. Academics, tax payers and implementers, on the other hand, endeavor to make the correct and reasonable decisions in the context of the legal and fiscal chaos in question, despite the ambiguities that face them.

²³ İrfan Sarıkaya, "Yine ve Yeniden Kur Farklarında Katma Değer Vergisi Sorunsalı", pp.18; **Danıştay Vergi Dava Daireleri'nin Kararı**, (Date: 18.10.2006, Decision no: 2006/286), <http://www.danistay.gov.tr/kerisim/container.jsp>; Mehmet Maç, "Kur Farklarının KDV Karşısındaki Durumu", pp.4.

²⁴ Mehmet Koç, "Döviz Cinsinden Belirlenen Bedelin Geç Ödenmesi Nedeniyle Ortaya Çıkan Kur Farklarında KDV", pp.2.

It is our firm opinion that a categorization of exchange rate differences should be made, regarding whether the price is determined in terms of a foreign currency, or indexed to a foreign currency and still determined in terms of Turkish Liras. As a consequence, they can be regulated and evaluated in a legal context, which is a must. It is clear that the existing regulations do not comply with the decisions made by Judiciaries. In the VAT systematic where income is subjected to assessment, it is observed that by only taking collection basis into consideration, exchange rate differences are taxed in the context of the “chargeable event” that occurs during the supply of goods and services.

We consider it an urgency, or rather, a must, that the disagreements, discrepancies, ambiguities and injustice regarding this issue be resolved and prevented. It is also of utmost importance that it be clarified in the legal plane, especially when today’s financial circumstances are taken into consideration.

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