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TAXATION OF DONATIONS AND GRANTS FOR THE FINANCING OF EARTHQUAKE EXPENDITURES IN TURKEY

Betul Hayrullahoglu^a

^a Assoc. Prof. Dr., Usak University, Faculty of Economics and Administrative Sciences, Department of Public Finance, Usak- Turkey, betul.hayrullahoglu@usak.edu.tr

Abstract

The paper aims to explain the situation of donations and grants that differ according to the tax legislation depending on the institution they are made. This paper uses a document analysis method to achieve the objectives of the study. In the study, not all organizations, but besides municipalities and AFAD as governmental organizations; AHBAP, Kızılay, and Search and Rescue Association (AKUT) are discussed as non-governmental organizations. Another limitation of the study is that the tax legislation is not examined for all donations and grants, but only for the in-kind and financial aids made during the earthquake. The fact that donations and grants made for the financing of earthquake expenditures are subject to different tax applications depending on the institution they are made, creates a result, especially in favor of aid institutions carried out by the government. This situation creates an unjust result through an indirect intervention in personal preferences and is criticized by society. Since the paper focuses on a current debate, so academic studies on this subject are limited. Although there are reports that deal with the matter in terms of all donations and grants, no academic study focuses directly on the donations and grants made during the earthquake and examines the issue according to the legal status of the donated institutions.

Keywords: earthquake, AFAD, AHBAP, Kızılay, deduction, donations

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1. INTRODUCTION

According to official figures, more than 45 thousand people have lost their lives in earthquake disasters that have been experienced since 2020 in Turkey. In recent years, after the earthquakes in Elazığ and İzmir in 2020, and the fire disasters in Manavgat and Marmaris in the summer of 2021, Turkey has gone through great tests regarding natural disasters.

In this process, governmental organizations such as governorships and municipalities, the Disaster and Emergency Management Presidency (AFAD) affiliated to the Ministry of Interior, and the Kızılay were insufficient in providing coordination and support. So the civilian population also offered assistance through non-governmental organizations such as AKUT and AHBAP and supported their activities.

Finally, after the earthquake disasters in Kahramanmaraş on 06.02.2023, which affected ten provinces, numerous aid campaigns were organized to heal the wounds, and both individuals and institutions made significant donations and grants. Deducting these donations and grants from tax bases is argued in this process.

This paper aims to explain the situation of donations and grants collected to finance the expenditures to heal the wounds of the earthquake. They differ according to the tax legislation depending on the institution they are made in.

This paper uses a document analysis method. After the introductory part, the first part explains the legal status of the governmental and non-governmental organizations. The second part analyzes the situation of donations and grants under the tax legislation according to the organization they are made.

2. LEGAL STATUS OF DONATED ORGANIZATIONS DUE TO EARTHQUAKE DISASTER

Undoubtedly, there are various associations or public administrations to which individuals or institutions can donate and grant after the earthquake disaster. However, in the study, five main governmental and non-governmental organizations stand out in this process and cause differences in deducting donations and grants from the tax base due to their legal status. These are; municipalities, AFAD, AHBAP, AKUT and Kızılay.

Since the statutes of the municipalities are clear and are directly referred to by this name in the articles of the law, it was not deemed necessary to make a separate statement regarding the municipalities. AFAD, which works on disasters in Turkey, is among the general budget administrations included in the attached Table I of Law No. 5018. With the regulation in 2009, the General Directorate of Civil Defense, the General Directorate of Disaster Affairs and the General Directorate of Emergency Management of Turkey, which had previously worked under different ministries, were closed. AFAD, which was affiliated with the Prime Ministry, was established and the authorities and responsibilities were gathered under a single roof. With the

regulation in 2018, this presidency was subordinated to the Ministry of Interior (Disaster and Emergency Management Presidency, 2022).

Duties of AFAD;

“Taking the necessary measures for the effective delivery of services related to disasters and emergencies and civil defense at the country level and ensuring coordination between institutions and organizations that carry out preparation and risk reduction before the occurrence of the incident, the intervention to be made during the incident and the improvement to be carried out after the incident, and abroad, to conduct and coordinate humanitarian aid operations, and to develop and implement policy proposals on these issues”.

AHBAP is an association established in 2017. The purpose of the association is stated in the 2nd article of the association's statute (AHBAP, 2020);

“To provide all kinds of aid to people and animals in need, in kind and in cash, to strengthen the awareness of cooperation in the society, to support all kinds of animals in need of care while developing the love for animals and the environment, to serve the building of good people and good society, to create modern and sustainable networks of cooperation and solidarity with new cooperation models and projects, to contribute to the development of the local culture with today's technological opportunities and to carry it to the future”.

As explained in detail in the second section, it is important whether an association has the status of a public benefit association in terms of taxation. According to Article 27 of the Law on Associations (Associations Law, 2004);

“Public benefit associations are determined by the Presidential Decision. In order for an association to be considered as a public benefit association, it must have been operating for at least one year, and the purpose of the association and the activities it undertakes to achieve this aim must be of a quality and extent that will yield beneficial results to the society”.

Although the AHBAP association has these conditions, it is criticized for not having this status. Public benefit associations are determined by the Ministry's proposal and the President's decision based upon the opinion of the Ministry of Treasury and Finance and the relevant ministries, if any (Associations Regulation, 2005). For this reason, Turkish society frequently calls for the AHBAP Association to be given the status of a public benefit association.

Turkey's first search and rescue association, Search and Rescue Association (AKUT), was established in 1995 by a group of mountaineers to carry out accurate and effective search and rescue activities in the mountains and other difficult natural conditions and has become able to assist relevant official institutions in natural disasters, if requested, by taking the necessary

pieces of training quickly. AKUT, which continues to operate on a completely voluntary basis, received the status of public benefit association on January 19, 1999, with the decision of the Council of Ministers, due to its usefulness in the 1998 Adana-Ceyhan earthquake (AKUT, 2013).

Finally, Kızılay is an organization whose history dates back to 1868 and was born out of the desire to help soldiers injured or sick on the battlefield without discrimination. The legal status of the Kızılay has been determined by; The Geneva Convention on the Protection of Civilians in Time of War, dated 12/8/1949 signed by the Government of the Republic of Turkey in 1954, and the legal text regarding the Statute of the International Red Cross-Red Crescent Movement, which was accepted at the 25th International Red Cross-Red Crescent Conference in 1986 and to which the Republic of Turkey is a party. In this context, *“Kızılay is an autonomous, independent and impartial organization operating in our country under the name of Red Crescent, with a central administration that will represent itself in its relations with other elements of the International Red Cross-Red Crescent Movement and operates according to the basic principles of the movement”* (Kızılay Association Statute, 2022). Kızılay has the public benefit association status (General Directorate of Civil Society Relations, n.d.).

3. INVESTIGATION OF DONATED AND GRANTS DUE TO EARTHQUAKE IN TERMS OF TAXATION LEGISLATION

There are various provisions in the Turkish tax legislation that consider donations and grants as expenses in determining the tax base. Therefore, in this part of the study, not all donations and grants, but only in-kind and/or cash aids made by individuals and/or institutions after the earthquake disaster in Turkey on 06.02.2023, and their situation under the tax legislation are analyzed.

3.1. Situation of Donations and Grants in Terms of Income and Corporate Tax Laws

The subject of income tax is a natural person's income (Income Tax Law, 1960). The concept of corporate tax is the corporate earnings of the corporates listed in the law (Corporate Tax Law, 2006).

In the 89th article of the Income Tax Law titled *"Other Discounts"* and the 10th article of the Corporate Tax Law with the same title, the deductions that can be made from the income/earnings to be declared in the tax returns are listed.

The regulations regarding the donations and grants financing for earthquake expenditures in these articles are as follows;

According to the 4th paragraph of the 89th article of the Income Tax Law, up to 5% of the total annual income to be declared (10% for priority regions in development), all donations and grants made to public administrations with general and special budgets, special provincial

administrations, municipalities, villages, public benefits associations, and foundations granted tax exemption by the President, can be deducted.

According to Article 10 of the Corporate Tax Law, corporate taxpayers, in addition to the organizations to which donations and grants can be made to be subject to deduction by income taxpayers, they can also deduct their donations and grants to institutions and organizations engaged in scientific research and development activities within the same scope. On the other hand, a 10% rate of corporate tax is not valid for priority regions in development.

According to the articles, in order to be subject to a deduction of donations and grants (Revenue Administration, 2023);

- must be subject to deduction in a year in which the donor taxpayer has an income/earning to be declared,
- must be shown separately in the income tax and corporate tax returns,
- must deduct only from the income/corporate earnings of the donated period,
- must deduct limited to the declared income/corporate earning, and the part that is not deducted must not be carried over to the following years,
- must be made against a receipt,
- must be outright,
- must donate to the institutions and organizations specified in the legislation.

The point that creates controversy here is that donations and grants are subject to different tax regulations according to the donated organization.

According to the article, it is clear that tax deduction is possible if the donated organization is a municipality. AFAD has the status of a general budget institution. Kızılay and AKUT, on the other hand, are public benefits associations. Due to these statuses, it is possible to benefit from discounts on donations and grants donated to AFAD, AKUT and Kızılay. However, since AHBAP is not a public benefit association, there is no tax deduction for donations and grants to AHBAP. On the other hand, other paragraphs of the article envisage more important privileges in favor of Kızılay and AFAD.

According to the 10th paragraph of the 89th article of the Income Tax Law; all in-kind and cash donations made against receipts to aid campaigns initiated by the President can also be subject to the tax deduction.

After the earthquake in Elazığ on 24.01.2020, a humanitarian aid campaign was started with Presidential Decision No. 2093 published on 12.02.2023 and AFAD was assigned to coordinate this campaign. Later, after the earthquake that occurred in İzmir on 30.10.2020, AFAD was authorized for aid campaigns to be made for the disaster victims who suffered from earthquakes that may occur in our country as of this date, with Presidential Decision No. 3483 published on 03.02.2021.

According to the 11th paragraph of the 89th Income Tax Law article, all cash donations and grants to the Kızılay and the Yeşilay associations, except their economic enterprises, can be deducted. Therefore, all of the cash donations and grants to the Kızılay can be deducted as an expense in determining the tax base. The point to be noted here is that only all cash donations and grants can be deducted entirely. If the donation is made in kind, only part of the donation amount, up to 5% of the income, can be deducted.

These provisions are also included in other paragraphs of Article 10 of the Corporate Tax Law. Therefore, the same deductions are in question in terms of corporate tax.

3.2. Situation of Donations and Grants in Terms of Value-Added Tax Law

The subject of value-added tax; deliveries and services made within the framework of commercial, industrial, agricultural and self-employment activities in Turkey, imports of all kinds of goods and services, and deliveries and services arising from other activities listed in the law.

Exceptions are regulated in Article 17 of the Law. According to the article, all kinds of goods deliveries and services are rendered free of charge to general and special budget administrations, special provincial administrations, municipalities, villages, their unions, universities, organizations with revolving funds, public institutions and organizations established by law and Presidential Decree, professional organizations like public institutions, political parties and trade unions, pension and welfare funds established by law or having legal personality, public benefits associations agricultural cooperatives and foundations granted tax exemption by the President are exempted from VAT.

This exception is applied without any lower or upper limit regarding the delivery and service fee. In addition, VAT incurred for transactions made within the scope of this exception can be deducted, but VAT that cannot be recovered through a discount is not refundable (Revenue Administration, 2023).

According to this regulation, the value-added tax is not paid for donations and grants to municipalities, Kızılay, AKUT and AFAD. However, paying VAT separately for donations and grants to the AHBAP is necessary.

3.3. Situation of Donations and Grants in Terms of Special Consumption Tax Law

The subject of the special consumption tax is the import, manufacture, delivery, and sale of the goods included in the four lists attached to the law or the first acquisition of those subject to registration and registration.

Exceptions are included in Article 7 of the Special Consumption Tax Law. Among these exceptions, the exception foreseen for the goods in List IV is important in terms of the donations made for earthquakes. According to this article, free delivery of goods such as washing

machines, dishwashers, and refrigerators included in list IV to general and special budget administrations, special provincial administrations, municipalities, villages, and their unions or their importation free of charge are exempted from special consumption tax. Therefore, donations to AFAD are exempt from special consumption tax.

On the other hand, since there are no exceptions for associations, it is necessary to pay special consumption tax for the goods on the list, which are received within the scope of aid to the Red Crescent, together with AHBAP and AKUT.

Since donations and grants made for earthquakes are gratuitous, the situation of these donations and aids in terms of inheritance and gift tax is essential.

3.4. Situation of Donations and Grants in Terms of Inheritance and Gift Tax Law

The subject of inheritance and gift tax is the transfer of the goods belonging to the citizens of the Republic of Turkey and the goods in Turkey by inheritance or donation. Donation refers to gratuitous acquisitions by grant or in any form (Revenue Administration, 2023).

According to Article 3 of the Inheritance and Gift Tax Law, public administrations, pension and welfare funds, social insurance institutions, public benefits associations, political parties and those that belong to them or the establishments they have established among them, which are not subject to corporate tax, are exempt from this tax. Accordingly, AFAD, AKUT and Kızılay are exempt from inheritance and gift tax due to the donations to them.

On the other hand, since the continuation of the article includes organizations other than those listed, which belong to legal persons and are established for the benefit of the general public, such as science, research, culture, art, health, education, religion, charity, public works, and sports, they are also exempted. Therefore, AHBAP can also benefit from this exemption.

4. CONCLUSION

The last earthquake disaster in Turkey in recent years took place in February 2023 and caused the loss of life and property of tens of thousands of people. In addition to public resources, donations and grants made to organizations are also important sources of financing for healing these wounds.

Since Turkish tax legislation does not allow donations and grants made to governmental organizations such as general budget institutions and municipalities or non-governmental organizations such as public benefits associations and foundations granted tax exemption by the President to be discounted, the disadvantageous situation of AHBAP, where citizens make significant donations and aids, is criticized. In addition, tax regulations in favor of AFAD have started to attract reactions, mainly due to the donations made to AFAD by business people known to be close to the government.

As a result, it would be correct to take the AHBAP Association to the status of a public benefit association. In addition, it would be fair and beneficial that the tax advantages stipulated in the laws for donations and aid made in extraordinary situations such as earthquakes and fires are valid for all aid organizations, regardless of organization and public benefit association status.

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