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INHERITANCE AND GIFT TAX APPLICATION IN TURKISH TAX SYSTEM

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Abstarct

Purpose– to give explanatory information about Turkish inheritance and gift tax to tax collectors in Azerbaijan.

Design/methodology – the study was carried out on the interpretation of Turkish inheritance and gift law and justifications of articles.

Findings – inheritance and gift tax within Turkish tax system is presented from the theoretical and practical aspect.

Research limitations – no limitation was experienced in our study.

Practical implications – is important guide for those who live in Azerbaijan, and want to get comprehensive information about inheritance and gift tax in Turkey.

Originality/value – theoretical and practical aspects of inheritance and gift tax in Turkey are described.

Keywords: *inheritance and gift tax, the Turkish tax system, Turkey, tax, taxation*

JEL Classification Codes: H20, H27.

1. Introduction

In terms of achieving the solvency of tax theory, revenues, expenses and assets are emphasized. Tax systems aiming at understanding the solvency fully also operate in the direction of separate taxation. Wealth taxes losing importance by the reduction of the share of general budget tax revenues compared with the past, still exist in today's tax system due to the positive contribution to both justice principles in taxation and revenues (*Oncel and others, 2013: 355*).

Tax is collected over income, wealth and expenses in Turkish Tax System. Tax collection is performed under three headings. One of them is Inheritance and Gift tax that forms taxation of transition of wealth and the subject of this research. The other two are Property Tax and Motor Vehicle tax that ground on taxation of property. This research involves general information about Inheritance and Gift Tax implemented in Turkey, and has been written in order to provide practitioners and researchers with knowledge in Azerbaijan.

This study contains general information about Inheritance Tax being applied in Turkey, has been written to provide practitioners and researchers in Azerbaijan with information. This study offers information on issues of identifying place and history of Inheritance and Gift Tax in tax theory, and mainly presents the application of Inheritance and Gift Tax in Turkey in the centerline of related laws and doctrines.

2. Inheritance and gift tax in terms of tax theory

Being an economic concept, income can be defined as a flow in the form of net increase that occurs in the purchasing power within a certain time section. With this definition, despite statistics of wealth, which is another economic concept dynamic nature of the income is brought to the forefront. Taxation of the increase in purchasing power forms the subject of income tax; taxation of accumulative state of purchasing power is the subject of taxation of wealth. Turning of purchasing power into expenditure forms the subject of taxes collected from spendings.

Reasons for increasing the purchasing power are very various. For example, increase of purchasing power originates from the income gained at the result of insertion of production factor that a person owns into production. It may originate from the increase in the value of owned wealth currently or from the unrequired acquisitions such as gambling, lottery, inheritance without joining to any production activities as well. The real problem here is to determine the aforementioned factors that should be included into income concept. Consequently, limits of income concept that may affect the subject of tax and its object must be correctly identified. (*Oncel and others, 2013: 238-239*). There are two basic approaches on this issue. These approaches have been explained through various theories since the classical econo-

mists. They are “source theory” and “net increase theory” (*Erginay, 1975: 96*).

Source theory was put forward by German economist Fon Herman, and was developed by German tax lawyer Fuistin. Income is provided on a regular basis by a certain source and obtained as a result of present production factors in production process (*Saban, 2004: 4*). According to this view, where incomes occurring in the value of production factors are not considered to be income and it may be both cash income and income in kind (*Aksoy, 2010: 150*). According to this approach, self-consumption is also considered as income. In other words, consumption of own productions of production factor owners is also included in the scope of the income. (*Sarili, 2010: 3*). On the other hand, the incomes not offering sustainability, such as increase in value of real property and movable property, lottery prizes, inheritance shares, donations are not considered to be included into income scope because they are of a temporary nature. (*Erginay, 1975: 97*).

Inheritance and gift tax covering inter vivos gratuitously¹ (*unreturned or without charge*) goods transmissions and referral inheritance remains out of the definition of income described by source theory in the format that applied in Turkey. But being continuous of both kinds of transition do not come into question.

In the net increase theory that firstly was prepared by German economist Schanz, income is defined as the sum of all earnings obtained by individuals at a certain period of time. (*Oz, 2006: 18*). Accordingly, actual increase occurred in all types of income and wealth, constitute the income in the framework of net growth theory approach. It means that, the sum of net increase occurred in wealth in the beginning and end of the same period with the values consumed within a certain period by one person constitute the income (*Aksoy, 2010: 151*).

As it is seen, in the net increase theory, regardless of whether the sources of income is stable or not, increase in the value of holdings that someone owns with the consumption that is done within a certain time period is taken into consideration. Excluding values obtained from stable sources, incidentally obtained values such as inheritance, lottery, gambling or grant are included in the income scope. (*Aksoy, 2010: 151*). In this state, transitions constituting the subject of Inheritance and Gift Tax rank among factors that are within the definition of income according to net increase theory.

3. History of inheritance and gift tax

The history of Inheritance and Gift Tax is very old. It was first applied in VII century B.C. in Egypt, at the period of Ptolemy, and in I century A.D. in Rome, during Emperor Augustus period. (*Aren, 1952: 16*).

Inheritance and Gift Tax in Turkey has been applied in various forms since Ottoman Empire. During the Empire era, it cannot be said that, Inheritance and Gift

Tax was applied in today's context. In that period, Heritage (*tereke*)² Registering Fee was charged in case, when heritage was registered by state official and Transition Fee was charged in case of gratuitous transmissions of properties of real estates (*Aksoy, 2010: 356*).

Inheritance and Gift Tax in Turkey Republic began to be enforced due to Inheritance and Gift Tax Law No. 797 that became valid in 1926. The tax became to be applied in the form of proportional inheritance share that was increasing according to degree of relationship or amount of share. In order not to be in contradiction with Turkish Civil Code that came into force later, it was amended entirely by Law No. 1836 in 17.02.1931 and it started to increase in rate (*Aren, 1952: 22*). According to the amendment made in 1941, tax rates' increase was doubled and increase of state revenues was targeted (*Aksoy, 2010: 357*). Old law that came into force on 15.06.1959 legislated away by Inheritance and Gift Tax Law No. 7338 on 08.06.1959 (*Sarılı, 2010: 518*). Various arrangements were made by laws No. 188, 213, 903, 1318, 2353, 2591, 3219, 3393, 4008, 4369, 4775, 5226, 5234, 5281, 5904 and 6327 to the aforementioned law in the following years. Inheritance Tax Act currently being implemented consists of 5 chapters and 26 articles. (*Aksoy, 2010: 357*).

4. The conceptual framework of inheritance and gift tax

In Article No. 2 of the Inheritance and Gift Tax Act, explanations about concepts covered in law are provided. Accordingly:

Legal and real entities are meant by word Individual, unless there is contrary provision in the law.

All rights and accounts receivable are meant by the term Goods that may be included in the property holdings with movable and real estates that can be subject to property.

The word Inheritance refers to savings related to death such as inheritance contract and testament.

Laws meaning gratuitous acquisitions in the form of grant or in other form is meant by the phrase gratuitous transition, and it has made an exceptional explanation to the topic, indicating that compensations given in return for financial and moral damage will not be considered gratuitous.

5. The subject of inheritance and gift taxes

Subject of Inheritance and Gift Tax: As the result of death or decision of person's absence by the court, his/her property can be handled in the form of gratuitous goods

¹ Tereke (heritage) is a name given to all kinds of rights and liabilities, properties of people who is decided to be dead or absent. It passes to inheritors entirely or automatically.

referral like inter vivos bequest, donation, lottery, draw and a play of chance through descending to his/her inheritors. (*Shenyuz and others, 2013: 347; Aksoy, 2010: 357*). It should be noted immediately that, there are certain conditions of emerging tax liability for inheritor or the person to whom gratuitous transition is transferred. Accordingly, if³ ones inheritance rights are not renounced or if the property subject to transition is movable, it should be given physically to him, in other words, in the form that includes possession of property; if the property that is subject to transition is real estate property or it is a right that is subject to registration, it should be registered in the name of related registered person. (*Arslan, 2007: 322; Sarli, 2010: 519*).

Inheritance and Gift Tax is applied in two different ways such as probate tax (*unshared probate tax*) and distributive share tax (shared probate tax). Before transferring to the heirs, generally increasing rate tax is charged from the whole probate during the application of probate tax, which has objective character. The remaining probate is being distributed in proportion of share of inheritance to heirs. Taxation is carried out taking personal characteristics and closeness degree⁴ of the heir into account after sharing the probate in the distributive share tax, which has subjective character (*Shenyuz and others, 2013: 347*). Tax applications with subjective base that take personal characteristics into account are very widespread in Turkey and general characteristics of Turkish Tax System are applied in this direction, as well. Therefore, Inheritance and Gift Tax adopted in the scope of Turkish Tax System is applied in the form of distributive share of inheritance.

The first article of Inheritance and Gift Tax Act regulating gratuitous transmissions that are included in the scope of Inheritance and Gift Tax, in other words, posing problem of Inheritance and Gift Tax accepted both territorial and personality principles directed to implementation of laws as a base for taxation. According to personality principle, the subject of Inheritance and Gift Tax is in the form of gratuitous transmissions through inheritance regardless of whether the property owned by citizens of Turkey Republic is inside or out of Turkey. In terms of the principle of territoriality, the subject of Inheritance and Gift Tax is transferred from one person to the other in the form of gratuitous transition regardless of whether the properties present inside Turkey belong to citizens of the Republic of Turkey.

6. Tax-rising event in the inheritance and gift tax

Tax rising event in the Inheritance and Gift Tax: is transition of heritage by death, or inter vivo gratuitous non-heritage transmissions (*Kirbash, 1998: 100*). Tax rising

³ According to the Turkish Civil Code Article 605 and 606 legal and appointed heirs can renounce heritage within 3 months. The period called "Time for Renouncing the legacy" begins for legal heirs at the time when they learn about the death of the deceased, and if they cannot prove that they knew about deceased persons death late and that they are heirs. In addition, the heritage deemed renounced, if the legator becomes insolvent and it is evident and officially identified.

⁴ Tax rate to be applied is reducing while closeness of the heir to legator increases in Turkish Tax System. So to say, the more tears are wept, the more tax to be paid is reduced.

Table 1. Transactions regarding to inheritance and gift tax in Turkey

	Location of Property	Residence and citizenship of eligible person to whom the heritage is transferred		Property inclusion to tax affairs	
		Citizenship	Residence		
	Turkey	Turkish Citizen	Inside Turkey or Out of Turkey	Included	
		Foreigner			
	Out of	Turkish Citizen	Inside Turkey		
		Foreigner	Out of Turkey		Not included
	Turkey	Turkish Citizen	Inside Turkey or Out of Turkey	Included	
		Foreigner			
	Out of Turkey	Turkish Citizen			Included
		Foreigner			

Resource: Shenyuz and others, 2013: 348.

occasion in property transfers by inheritance is the moment when death occurs in properties transferred due to death. In case, when a personality appears to be over because of disappearance, the tax rising occasion is the moment when the court decides person's absence. Non-heritage transmission of properties imposes tax, in which a movable property relates (*or pertains*) to transmission in terms of delivering it physically. In other words, the transferring the heritage by relieving the possession; the heritage being movable or being registered is to be registered with the compliance of this right (*Sarılı, 2010: 520*).

7. Inheritance and gift tax payer

Inheritance and gift tax payer is a real or legal person, who acquires property gratuitously or by heritage.

Normally probate is divided between the current heirs. Each heir declares the heritage transferred to him/her. But in some cases, before probate is shared, the heir or heirs, whose absence had been decided may appear later. In this case, already present heirs pay extra tax during probate sharing (*Shenyuz and others, 2013: 349*). In this case, necessary corrective actions are made on taxable income that will be determined as a result of administrative investigation by tax authorities or according to declaration provided by the heir or heirs. Aforementioned conditions are valid for deceased as well; a person who is decided to be absent may appear after sharing of property. In this case, deceased has rights to take his/her property back¹. After delet-

¹ This right is given to heirs due to Article 584 of the Turkish Civil Code.

ing death certificate of the absentee, taxes that were charged from taxpayers before are returned upon demand. If there are taxes that haven't been charged because of unexpired deadline are left as well. (*Shenyuz and others 2013: 349*).

If it is sentenced that, the property belongs to someone else than to taxpayer, in other words, the heir is someone other, and if this sentence is confirmed after payment of Inheritance and gift tax, extra paid tax is given back to payer starting from the confirmed decision within a year, if applied to tax authorities and will be charged from the heir who will get the heritage. According to Shanyuz and others, tax regulation to be done should be carried out through taking the principles of absent heirship into account.

8. Limitation (timeout) in inheritance gift tax

Limitation/timeout defined as the removal of tax claim as time passes inures by itself provision without the need of application by relevant taxpayer. The general arrangement existing in Tax Procedure Law states that taxes that are not imputed and levied are prescribed for five years starting from the calendar year when tax lien rose. Despite this arrangement, special arrangement for Inheritance and Gift Tax is a matter in respect of limitation/timeout. According to 20th article of Inheritance and Gift Tax Law, if the declaration is submitted, obligation for the goods indicated in the declaration starts on the date, when the declaration was submitted. Obligation starts at the time, when aforementioned goods are identified by the entity for the goods not indicated in the declaration, consequently, this date is taken into consideration in the account of timeout period. In addition, in the last paragraph of the law, it was determined that, the obligation comes into force, when the court completes the transactions in case of probate registering, bookkeeping and liquidating. Consequently, in this case, the timeout expires at the end of the fifth year that follows the year of the completion of the transaction. Therefore, the start date of the obligation is of great importance for Inheritance and Gift Law. In the Inheritance and gift tax, taxable event occurs in inheritance transmissions when the renunciation of inheritance time is over or death event takes place. In gratuitous transmissions, taxable event occurs at the moment, when the transition takes place, timeout is not attached to a taxable event, and it is attached to the beginning of liability as described above.

Along with this regulation, although Inheritance and Gift Tax substantially prevented from being in danger of lapsing, in case the period is long and if the obligation is not emerged until the transition is declared or identified by management; through the effect of inflation, the tax to be paid may be reduced in real terms. Moreover, answering punishments such as only late payment penalties, default interest, or irregularities at the result of late declaration or determination remains inadequate in terms of government and compensation for damage (*Sarılı, 2010: 520*).

9. Exemptions and exceptions in inheritance and gift tax

People and Corporations exempted from tax were enumerated in the 3rd Article of the Inheritance Tax Act. Accordingly: organizations established for purposes such as sport, development, charity, religion, education, health, culture, research, science established in public interest, political parties, associations for public weal, social insurance institutions, pension and provident funds, public administrations representations of foreign states, except honorary consuls are exempt from Inheritance and Gift tax through pursuing condition of reciprocity.

It is observed that, while exceptions are ranked in the 4th article of Inheritance and Gift Tax, some provisions impose restrictions on the subject; some provisions impose restrictions on person alongside with the subject, as well. In this state, some exceptions specified in the Inheritance and Gift Tax have mixed qualification which includes exemptions (*Shenyuz and others, 2013: 350*) Information about exceptions mentioned in the 4th article of Inheritance and Gift Law is provided below:

- ✓ Household goods, personal belongings and paintings of the deceased, sword, the goods like medals that are kept as a family keepsake are exemption from Inheritance Tax. Things used in commercial enterprises like hotels, dormitories cannot be evaluated within the scope of exception even though they are considered to be household things (*Shenyuz and others, 2013: 350*).
- ✓ As previously stated, purpart is valid in the Inheritance and Gift Tax Law, tax is generally applied with a progressive tax rate, and tax is calculated according to personal status of heirs. Closeness of relationship between heir and the deceased is meant by the phrase personal status. The closer the degree of relationship is, the less is tax to be paid by taxpayer. The reason for this is the factor of exempt amount that increases in the same direction with closeness degree of relationship. Exemptions are applied only to descendants, foster (*adopted children*) and spouses. Exception amounts² that are identified as lump are updated annually by revaluation rate, determined through General Declaration of Inheritance and Gift Tax Law and come into force by being issued in the Official Gazette.
- ✓ Tax assessment is attained through reducing net probate share³ of each heir. The exemption amount is applied separately regardless of the degree of relationship for each heir within the scope of the exception. For example, if a deceased person has two children, and one of them one died before him, and the deceased has three grandchildren from dead child, exemption amount would be applied to both those three grandchildren and to alive child separately. (*Shenyuz and others, 2013: 351*).

² According to General Declaration of Tax and Gift Tax Serial No. 45: exemption amount from 1.1.2014 for heritage share: 146,306 Turkish Lira for spouse and descendants including adopted children. If there is no descendant the amount is 292.791 TL for spouse

³ Residual Value after deduction of debts and expenses of the cost of real estate and movable property that is transferred.

- ✓ 3.371.-TL⁴ of gratuitous transmission that occurs inter vivos is exemption from Inheritance and Gift Tax.
- ✓ Exemption amount to be applied in gratuitous transmissions differs due to date of transfer, number of transfer and forming of sides of more than one person. Additionally, in case when gratuitous transfer is carried out on different dates in favor of the same person by the same person, exception is applied separately for each transition, while in case, when various people make gratuitous transfer in favor the same person - even on the same date - then the exception is applied separately for each transition. (*Shenyuz and others, 2013: 352*).
- ✓ Exemption amount applied to gratuitous transmissions inter vivos is implemented for the lottery prize won in gambling games identified in the Law about Regulating Shares, Funds and Tax Collected over Revenue from Games of Chance No. 5602 with organized contest and lotteries according to giving money and goods.
- ✓ According to Law on Organization of the National Lottery No 3670, prizes and paying offs gained from the lottery are exemption for all kinds of tax and duties. Consequently, Inheritance and Gift Tax is not collected over aforementioned prize and paying off.
- ✓ According to 242nd article of Law of Obligations, in grants carried out through recourse terms, in case if grantee dies before grantor, due to the feature of contract, the property that returns to the grantee has been considered exception from Inheritance and Gift Tax.
- ✓ Bare Ownership Transfers carried out through inheritance are exempt from Inheritance Tax as long as bare ownership continues. As soon as bare ownership combines with the right of usufruct subordination to Inheritance and Gift tax will come into questions (*Shenyuz and others, 2013: 353*). Transfers of bare ownership that is carried out inter vivos are subject to Inheritance and Gift Tax.
- ✓ With the exception of real estates, with some part⁵ of properties transferred by those who died in the line of duty, pensioners, widows and orphans pensions and gratifications, charities, dowers with price for seeing the bride's face after wedding, dowry⁶, and gifts given for traditions and customs, aid that is done by some institutions that is identified in the law are exempt from Inheritance and Gift Tax.

⁴ According to General Declaration of Inheritance and Gift Tax with serial number 45: Amount of Exemption applied to gratuitous transmissions starting from the date 1.1.2014.

⁵ Paragraph (b) of th same law indicates that, exemption amount applied to spouses and descendants including adopted children is applied in the same way to the relatives of the deceased who died in the line of duty.

⁶ According to General Turkish dictionary of Turkish Language Association "Drahoma" (dowry) refers to money or property that is given to groom by Christians and Jews.

10. Basis of inheritance and gift tax

10.1. Determination of tax base

You first need to determine tax base for tax assessment Base in the Inheritance and Gift tax is net amount of the part that falls on taxpayer's share whether through inheritance or in the form of gratuitous transfer. Net amount is the amount obtained from the gross value of the transferred property after deduction of debts and expenses stated in the Article No 12 of Inheritance Tax Law. In addition, if the taxpayer is subject to exception, exemption amount will be deducted while calculating the tax base (*Sarılı, 2010: 522*). Basis of Inheritance and Gift tax, which is on ad valorem base, are available values of transferred properties according to the Tax Procedure Law. Despite this general provision, a number of measures have been identified enumerating type of evaluation of legislator goods one by one on the 10th Article of Law (*Aksoy, 2010: 360*). Reference is made in Inheritance and Gift Tax only for some goods. (*Aslan, 2007: 325*).

Two-staged assessment is mentioned in Inheritance and Gift Tax. In the first stage called first or preliminary assessment, evaluation measures identified in the Inheritance and Gift Tax Law are applied according to nature of transferred goods in the form that will differ. The assessment is carried out over obtained value by reference to the measurements of Tax Procedure Law for the present properties and goods not covered by the law.⁷ (*Aksoy, 2010: 360; Shenyuz and others, 2013: 354*). Later, the administration makes the second assessment taking into account the valuation methods of Tax Procedure Law over declared wealth elements. It is also called definitive or final assessment and valuation to be taken as basis in terms of Inheritance and Gift Tax is the second assessment made by tax administration.

For providing authenticity of taxpayer's declaration first assessment is made. Later, in case if difference between the declared and weighted and the actual tax-basis occurs in the assessment made by the administration, the legislator ensured charging half of tax penalty together with the tax over this difference. However the relevant law article keeps real estates out of the scope. In addition, in naval valuation with the movable properties for the difference up to 50 % punishment will not be concerned. Valuation criterions identified on the 10th Article of Inheritance and Gift Tax Law are stated on the table below (*Shenyuz and others, 2013: 354-355*).

10.2. Debts and expenses in determining of tax assessment to be reduced

In the 12th Article of Inheritance and Gift Tax Law, debts and expenses to be reduced from total value of acquired goods are determined under the condition that will be indicated in the declaration. Hereunder:

⁷As well as in Income, Corporate and Property Tax first assessment is based on taxpayers declaration in Income and Gift Tax..

Table 2. Estimation Measures accepted by Tax Code

Transaction Type	First Assessment	Final/Net Assessment
Commercial capital (1) for those who keep account on a balance sheet basis:	Capital stock is taken as a basis.	Capital stock is taken as a basis.
Commercial capital (2) for those who keep account according to business account:	Trading assets declaration is taken as a basis.	Trading assets declaration is taken as a basis.
Real Estate	Estimated with tax value ⁸ .	Estimated with tax value ⁹ .
Movable goods and Ships	Estimated with current value	Estimated with equivalence value.
Stock Certificates	<ul style="list-style-type: none"> - estimated with last treatment value within 3 years before date of death if registered in stock market - estimated with the nominal value if it is not treated within the last three years in addition to being registered in the stock market. - estimated with the nominal value if not registered on the stock exchange. 	<ul style="list-style-type: none"> - estimated with market value if registered in the stock - estimated with equivalence value, if it is not registered in stock exchange.
Bonds (Private Sector and Public Sector Bonds)	Estimated with nominal value	<ul style="list-style-type: none"> - Estimated with market value if registered in the stock. - estimated with equivalence value, if not registered in stock exchange
Remittance	<ul style="list-style-type: none"> - Estimated with stock exchange price - Estimated according to quotation determined by The Ministry of Finance if stock market lacks. 	<ul style="list-style-type: none"> - Estimated with stock exchange price - Estimated according to quotation determined by The Ministry of Finance if stock market lacks.

⁸ Making no difference if registered for operating or not.

⁹ Making no difference if registered for operating or not

Rights	- All rights subject to registration during establishment are estimated with the value recorded in the registration of title. - Rights of which value are not shown in the registration of the title, and rights apart from those are not estimated by the taxpayer and cannot be considered in the first assessment.	- All rights subject to registration during establishment are estimated with the value recorded in the registration of title. - Rights of which value are not shown in the registration of the title, and rights apart from those are estimated with the equivalence value.
Cheques Received	estimated with carrying value	Estimated with carrying value.
Affiliates	- is estimated with carrying value if not represented with stock document. - is estimated with stock exchange price if represented with stock document.	- is estimated with carrying value if not represented with stock document. - is estimated with stock exchange price if represented with stock document.
Stock Impairment	Not taken into account in the estimation	Not taken into account in the estimation
Raw Material and Auxiliary Materials	Estimated with cost value	Estimated with equivalence value
plant Machinery and Equipment	Estimated with current market value	Estimated with equivalence value.

Resource: Tax Procedural Law

- Debts and tax liabilities based on righteous documents of the deceased can be reduced in the transfers through inheritance
- In other ways of acquisitions debts and tax liabilities of transferred property can be reduced. But if the granter undertakes debts of donated goods, and pledged this way, aforementioned debts are not taken into account.
- Inheritance and Gift Tax collected over the goods that belong to Turkish citizens with debts belonging to those who are in foreign countries can be reduced. However, to make reduction, the debts must be based on documents. Moreover, total sum of Inheritance and Gift Taxes paid for goods with debts cannot exceed the value of the goods.
- Expenses carried out for equipment of burial and funeral of the deceased can make reduction in determining the tax assessment.

According to 13th Article entitled “Disputable Debts” of the Inheritance and Gift Tax Law, debt and receivables of deceased transferred to court or office of execution and which was being followed while he/she was alive must be clearly indicated in the declaration. Taxes of these receivables and debts are actualized. However, collection is suspended, until the decision of the authorities which they are related to. Suspension operation cannot exceed ten years no matter what happens. Taxpayers are obliged to inform the tax office of the executive and case status every six months. Otherwise suspended tax is immediately charged. In case if the case results after the suspension period, the overcharged taxes are returned with the appeal of taxpayers. Before death, based on the law or authorization given by the law, according to the public order established by legislation, taxes on real estates that already started to transactions on free transfer to partially or fully relevant institutions are suspended likewise. Tax addition is applied fifty percent missing in case of collection of tax

11. Declaration time in inheritance and gift tax

In the Inheritance and Gift Tax levied with a statement by the taxpayer, there are two tax assessments, as is known. One of them is tax assessment declared by the taxpayer firstly. The other one is the tax assessment determined by tax administration side. Levy carried out over the declaration of taxpayers’ tax assessment is called preliminary or first assessment. Levy carried out through taking wealth factors declared by the taxpayer into account by the administration is called final or net assessment.

In the 9th Article of Inheritance and Gift Tax Law the duration for submitting declaration to transfers through inheritance is determined. Therefore, duration for submitting declaration can be seen in the table below:

Table 3. Duration for submitting declaration of inheritance and gift tax in death case

Place of death	Taxpayers location on death date	Time for submitting declaration
Turkey	Turkey	Within 4 months following the date of death
	Foreign Country	Within 6 months following the date of death
Foreign Country	Turkey	Within 6 months following the date of death
	Foreign country where the death occurred	Within 4 months following the date of death
	A foreign country other than the foreign country where the death occurred	Within 8 months following the date of death

Resource: Inheritance and Gift Tax Law

In transfers out of the transfers through inheritance:

- ❖ The declaration is submitted within a month that follows the date that the goods were legally acquired. If the goods subject to acquisition are real estate, they are recorded in the official title register; if they are movable property, they are legally acquired with the delivery of the property (*Sarılı, 2010: 531*).
- ❖ In mutual betting about horse racing, football competitions with contests or sweepstakes held by real or legal people, The declaration is submitted in the 20th day of the following months of the date that the contest, sweepstakes or competition was held. In such contests, sweepstakes and regulations taxation is carried out based on withholding and the one who arranged aforementioned contest, sweepstakes and competition is responsible for tax and will submit the declaration. Jackpot winner is not responsible for submitting declaration. (*Shenyuz and others, 2013: 357*).

12. The place where the declaration of inheritance and gift tax will be paid

According to the 8th article of Inheritance and Gift Tax Law, the declaration of Inheritance and Gift Tax is submitted to the tax administration, where the residence of deceased is situated. In case, when the transition is carried out in other ways, the declaration is submitted to tax administration, where the residence of the one who retrenches is situated. In case of legal people and other institutions, it is submitted to tax administration, where their centre is located. If the deceased or retrencher has never resided in Turkey, or last place of residence has not been determined, the declaration is submitted to the Ministry of Finance and is levied by the authorities appointed by the ministry. Taxpayers in foreign countries submit the declaration to Turkey consulate. The legislator deems suitable declaration to be submitted separately for each taxpayer. According to the 161st article of Tax Procedure Law, alongside with delivering the declaration by hands, sending it via mail is also possible. In this case, if it is registered mail, the date of submitting the declaration is accepted as date of receipt, if it is ordinary mail, the date of submitting the declaration is the date, when the mail is received by the administration. (*Sarılı, 2010: s. 530*).

13. Tax tariff, tax assessment and tax accrual

In the 16th article of Inheritance and Tax Law, a tariff was adopted, in which different rates are applied to inheritance transfers and gratuitous transfers. As the rates of tariffs become different according to periods and transfer types, tariff gains double proportionality-increasing feature (*Shenyuz and others, 2013: 358*).

Amounts in the tariff period are detected again by the addition of the revaluation rate determined in accordance with the Tax Procedure Law to time periods prevalent

Table 4. Inheritance and gift tax tariff in 2014

Tax Assessment (periods)	Transfers through Inheritance (%)	Non-heritage Gratuitous Transfers	
		Transfers from mother, father, spouse, children, excluding adopted children	Transfers from other people
For the first 190.000 TL	1	5	10
For the latter 430.000 TL	3	7,5	15
For the latter 940.000 TL	5	10	20
For the latter 1.800.000 TL	7	12,5	25
For the part exceeding 3.360.000 TL	10	15	30

Resource: General Communiqué of Tax Procedure Law, serial No 430

in the previous year, usually annually. General Communiqué of Inheritance and Gift Tax explains the direction of the application.

In addition, with the games of chance defined in the Law on the Regulation of Funds and Shares imported from Chance Games Revenue No 5602 the rate is applied in 10% in prizes in the contests and lotteries held by legal or real people regardless the bonus amount. Invoice value is based on, in case if the prize is paid in kind.

Therefore, in Inheritance and Gift Tax preliminary assessment is implemented within 15 days following the date the declaration is submitted over the declared wealth values. Accrual is of difference for the type of submitting the declaration. If the declaration is delivered by hand, occurring of tax assessment and tax accrual must be accepted on the moment when the accrual voucher is given. If it is certified mail, occurring of tax assessment and tax accrual must be accepted on the date it was sent, or if it is ordinary mail, occurring of tax assessment and tax accrual must be accepted in 15-days after the date of registering the mail or from the date it reached to tax office (*Shenyuz and others, 2013: 359*)

14. Payment of inheritance and gift tax

Inheritance and Gift Tax is paid in 6 installments totally in May and November of each year, every 3 years since its realization. The amenities provided in the payment and the length of the payment period derives tax from being a real wealth tax.

As mentioned before, the Tax collected over Revenue of Chance Games No 5602 with the prizes gained because of lotteries and contests arranged by real and legal people are paid within the period of submitting the declaration. The taxes deducted from prizes distributed due to chance games that are defined in the Law on the Re-

gulation of Shares and Funds are paid within the period of submitting the declaration. Those who arranged contest, sweepstakes or competitions are responsible for submit the declaration until the evening of 20th day of the month that follows the month when the contest, sweepstakes or competition was held.

15. Tax Security Measures

15.1. Measures Relating to Payment of Accrued Taxes

In accordance with Article 17 of the Law on Inheritance and Gift Tax, public administrations and enterprises, banks, bankers, safe lessors, insurance companies, including other companies and organizations, courts and enforcement offices should request submission of certificate arranged by the tax office on tax payment from the related party prior to making any payment within a tax object. These persons shall be obliged to pay the rest after deduction (*cutoff*) of tax reserves amounting 15% in donations; 5% in the descendible; out of payments to be made to claimants not submitting a certificate.

Cash means to be deducted from money and loan brokers shall be withheld from those not transferring to subdivision of treasury within the period laid down by the law (*excluding arbitrators*), and money to be deposited shall be collected by imposing a late fee as per the Law No. 6183 on Collection Procedure of Assets. Moreover, those not discharging the responsibility in due time shall be deducted by related withholding bodies, and a fine amounting to 10% of money to be deposited shall be imposed on.

The arrested amount shall be appropriated from the taxes calculated on the basis of written statement given by taxpayers. The remaining part shall be split into installments as per tax payment period (*Shenyuz and others, 2013: 362*).

10% of tax shall be deducted from prizes won by natural and legal persons arranging draw and competitions together with those organizing pari-mutual betting for horse racing and football matches.

By all means, this ratio shall be applied to the pieces exceeding the aforesaid premiums-exempt amount. For sums remained in exceptional limits, no deduction shall come in question. In case if a premium falls to more than one ticket, a bonus paid per ticket shall be considered as a separate descent, and the exempt amount, therefore, shall be applied respectively. Furthermore, it needs to be noted that a lawmaker restricted an application of deduction related to pari-mutuel betting by football matches and horse-racings. The pari-mutuel betting apart from these is taxed in accordance with general principles (*Shenyuz and others, 2013: 361-362*).

Yet another security countermeasure is subject to real estates. As follows, unless a tax relating to inherited real estates is paid, the alienable shall not be carried out, and any real right thereof shall not be established. For being able to realize alienable

transactions, the deed officers shall be obliged to require submission of disengagement document presented by the office. The alienable transactions shall not be allowed to perform without availability of the document. If not, they shall be held to account severally (*chaining*) with respect to tax payment together with the taxpayer. However, in that case if collateral is provided in accordance to the Law No. 6183 on Collection Procedure of Assets, real estate shall partly or wholly be alienated (*Aslan, x2007: 330*).

15.2. Measures related to accurate calculation of tax assessment

According to Article 18 of the Law on Inheritance and Gift Tax, in the presence of presumptions about smuggling of goods to be involved in tax assessment, the administration may necessitate to produce an estate registry with reference to Paragraph 3 of Article 590 of the Turkish Civil Code. The aforesaid Article of the Turkish Civil Code specifies that heritors alongside with the interested may raise a claim. With regard to recovery of public receivables, an administration is deemed quite normal to be an integral part of the interested (*Oncel and others, 2013: 390*).

A law-maker, with regard to Article 23 of Inheritance and Gift Tax, laid a private assignment on banks for accurate calculation of tax assessment (*Oncel and others, 2013: 390*). Therefore, in case of death of safe-deposit box owners, the safe will not be opened unless presence of an officer authorized by tax authority but with the exception of determination to be performed by justice of the peace, and heritors, legal representatives or attorneys shall not be allowed to obtain those in safe-deposit unless determined by the above mentioned officer.

References

1. Aksoy, Sh. (2010). Tax legislation and Turkish taxation system. İstanbul. Filiz Publishing House.
2. Aren, S. (1952). An essay on inheritance tax., Ankara. “Güney” typography and journalism Turkish anonymous corporation publishing.
3. Arslan, M. (2007), Turkish taxation system. Ankara. “Nobel” publication distribution.
4. Bilici, N. (2013). Turkish Taxation System, Ankara, Sechkin Publication.
5. Erginay, A. (1975). Public Finance, Ankara, Sevinch Printing House.
6. Kırbash, S. (1998). Tax Legislation, Ankara, “Siyasal” Bookstore.
7. Oncel, M. & A. Kumrulu & N. Chaghan. (2013). Tax legislation. Ankara. Turhan bookstore.
8. Oz, S. (2006). Obtaining taxable event in income tax. Ankara. Finance and law publications.
9. Saban, N. (2004). Special section tax law. İstanbul. Der publishing.
10. Sarılı, M.A. (2010). Turkish tax system and application. Ankara. Umit offset printing .
11. Shenyuz, D. & M. Yuce & A. Gerçek. (2013). Turkish tax system. Bursa. Ekin publishing house.

