

ANALYSIS OF THE TAXATION OF PROFESSIONAL SPORTSMEN IN TURKEY: A COMPARISON WITH GERMANY*

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Abstract

In this paper is explained the taxation of the salaried professional sportsmen under the domestic law of Turkey and Germany. There are special regulations in the Turkish income tax law where the professional sportsmen are treated separately. In contrast to the Turkish income tax law, the salaried professional sportsmen in the German income tax law are not treated separately. There are no special tax rates or otherwise tax breaks applied. The tax burden on salaried professional sportsmen in Germany is significantly higher than in Turkey. In this work, you come to the conclusion that the tax rates of the salaried professional sportsmen in Turkey too low is. Although with this regulation the indirect support of sport intended is, there is lack of sufficient social and economic reasons for this application. The fundament of this paper is law.

Key Words: Taxation, Tax Law, Professional sportsmen.

Türkiye’de Profesyonel Sporcuların Vergilendirilmesinin Analizi: Almanya İle Karşılaştırma

Özet

Bu çalışmada, ücretli çalışan profesyonel sporcuların Türk ve Alman hukukuna göre vergilendirilmesi açıklanmaktadır. Türk gelir vergisi hukukunda profesyonel sporculara yönelik ayrıcalık tanıyan özel düzenlemeler bulunmaktadır. Türk gelir vergisi hukukuna karşılık Alman gelir vergisi hukukunda ücretli çalışan

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profesyonel sporculara yönelik ayrıcalık tanıyan düzenlemeler bulunmamaktadır. Özel vergi oranları veya başka türlü vergi indirimleri uygulanmamaktadır. Ücretli çalışan profesyonel sporcuların Almanya'daki vergi yükü belirgin bir şekilde Türkiye'dekinden yüksektir. Bu çalışmada, ücretli çalışan profesyonel sporculara Türkiye'de uygulanan vergi oranlarının çok düşük olduğu sonucuna ulaşılmaktadır. Bu düzenlemeyle sporun dolaylı olarak desteklenmesi amaçlanmış olsa da bu uygulama için yeterli ekonomik ve sosyal neden bulunmamaktadır. Bu çalışmanın temeli hukuktur.

Anahtar Kelimeler: Vergileme, Vergi Hukuku, Profesyonel Sporcular.

1. INTRODUCTION

There is a special arrangement for sportsmen in Turkish Income Tax Law. According to this arrangement, the taxation of professional sportsmen in a separate tariff is applied instead of the normal income tax schedule. Taxing of professional sportsmen in Turkish Income Tax Law and German Income Tax Law is compared in this work. This comparison aims to explore the size of the privilege provided for professional sportsmen in Turkey. Because of this, taxing of professional sportsmen as to the Turkish Law is determined in first part of the work. And taxing of professional sportsmen as to the German Law is determined in second part of the work. The tax burdens of professional sportsmen between these two countries are compared in the last part of the work. The taxing determinations about sportsmen in Turkish Income Tax Law are performed from these last part comparisons.

2. TAXATION OF THE PROFESSIONAL SPORTSMEN UNDER THE TURKISH DOMESTIC LAW

Professional sportsmen are taxable under the Turkish Income Tax Act (Gelir Vergisi Kanunu) with their income referred in this characteristic. The income of salaried professional sportsmen according to § 61 III No 6 ITA-TR (Turkish Income Tax Act) are taxed as wages. The income of the self-employed professional sportsmen are treated as from freelance activities and taxed pursuant to § 65-68 ITA-TR (Başaran and Atay, 2003:367).

2.1. Justification of the Tax Liability

The personal tax liability is governed by Turkish Law in the Income Tax Act. According to § 3 ITA-TR are the people who reside in Turkey, on their worldwide income unlimited tax liable. In § 4 Income Tax Act-TR explains which persons will be considered as resident. Accordingly, apply to § 4 No. 1 ITA-TR, persons residing in Turkey and according to § 4 No. 2

ITA-TR people who in Turkey more than 6 months in a calendar year reside, as resident. For the latter, short-term breaks are not taken into account. The residence is determined by the Turkish Civil Law (Türk Medeni Kanunu) § 19 and subsequent articles (§ 4 No 1 ITA-TR). In § 5 ITA-TR individuals who are treated as non-resident are listed. Thus, traders, scientists, experts, service providers, correspondents, and the like and people who stay with education, healing, recreation or travel purposes longer than six months in Turkey are not considered a resident. Similarly are persons, who for reasons such as arrest and illness, which are not in his own hand, in Turkey arrested or remained, treated as non-resident even if they more than 6 months have remained in Turkey.

The limited income tax liability is governed by § 6 ITA-TR. Accordingly, persons not resident in Turkey, are income tax liable only with their domestic income. In § 7 ITA-TR describes how these domestic resources are defined. For salaried professional sportsmen (wages), there is a tax liability under § 7 I No.3 letter a) ITA-TR, if the performance is performed or the rights are used in Turkey. For self-employed professional sportsmen (freelance activities) there is a limited tax liability, as well as in wages, under § 7 I No.4 ITA-TR if the performance is performed or the rights are used in Turkey. Accordingly professional sportsmen, who do not reside in Turkey but provide sports performance or they use this in Turkey, are with such income limited income tax liable.

2.2. The Taxation of Salaried Professional Sportsmen

Salaried professional sportsmen are under § 61 III No. 6 ITA-TR with its related income in that capacity, such as wages, transfer payments and other remuneration and benefits, liable to tax. The above income is taxed as wages (Yatkın, 2006:33).

The tax base is the net income from sporting activities. From wages (in this article the incomes of professional sportsmen) are deductible under § 63 ITA-TR certain expenditures such as social security, private insurance, unemployment insurance, cooperative fees (Başaran and Atay, 2003:343).

There is also a disabled free allowance under § 31 ITA-TR which is only for full taxpayers valid. The disabled free allowance is under § 36 II ITA-TR for limited taxpayers not deductible. Otherwise, salaried professional sportsmen, who are not resident in Turkey however provide sporting performance in Turkey or use the rights, are limited taxed on that income, leading to no special regulations.

In the income tax, a progressive tax rate applies under § 103 ITA-TR. Thus, the income tax rate increased from 15% to 35% with increasing income. The tax rate for professional sportsmen is different from the general

rate for income tax. A special provision was added to the income tax with a temporary article which a single rate of 15% was applied (§ 64 Temporary ITA-TR). Since the regulation was valid until 31.12.2007 in force from 06.06.2008 new scheme was introduced. The new scheme in § 72 Temporary ITA-TR is valid until 31.12.2017. Until then the following rates apply:

- a) For Sport branches which belong to a league, the tax rate should be for the top league of 15%, at a lower league 10% and 5% for all other leagues.
- b) For Sport branches which don't belong to a league and payments for international competitions of the National Sportsmen is a 5% tax rate applied.

This regulation is seen as inconsistent with the Turkish constitution (T.C. Anayasası) Art.2, 10 and 73 (Budak, 2010:119-124). The claim is that the regulation contradicts the efficiency principle and violated the equality (equality in taxation) and social justice (Başer, 2008). In fact, this special treatment of professional sportsmen seems not rational. That the purpose of that legislation the indirect promotion of the sport is, needs no discussion. But whether and to what extent a steering tax breaks necessary in this case is open for discussion. Even if tax steering standards are generally accepted constitutional, they throw considerable questions of justice (Birk, 2008:60). If after § 72 Temporary ITA-TR no new scheme is created, the income of professional sportsmen shall taxed on the general progressive tariff.

The debtor has an obligation for tax deduction and for the transfer to the Treasury. For the payments must be filed a tax return until 23th day evening of the following month and the tax be paid to the treasury until the 26th day evening of the following month. According to § 72 Temporary ITA-TR are no further deductions for such payments made pursuant to § 94 ITA-TR, and an assessment is not required. If an assessment is needed for other income, incomes from sporting activities are not involved. It is made only a tax deduction, which is based on the above tariff.

For amateur sportsmen, there are two schemes which provide tax advantages. Aimed at promoting awards and bonuses, which the amateur sportsmen are paid, are exempt under § 29 No. 3 ITA-TR. This regulation does not cover the professional sportsmen (Demirel, 2008:145; Başaran and Atay, 2003:353).

A further regulation only for amateur sportsmen is valid under § 23 Nr.15 ITA-TR. At enterprises where one hundred and less than hundred workers are busy, are exempted the wage income of an amateur sportsman (if such a sportsman in the enterprise works). At enterprises where more than hundred workers are busy, are the wage incomes of two amateur sportsmen

exempted. The maximum exemption amount is two times the minimum wage. To benefit from this exemption, must be confirmed each year, that the employee is participating as an amateur sportsmen in the national games.

2.3. The Taxation of the Self-employed Sportsmen

As mentioned previously, the income of the self-employed professional sportsmen, are treated as from freelance activities and taxed pursuant to § 65-68 ITA-TR. The tax base is the net income. The net income arises in a calendar year by that of freelance income, deducted all the related expenses according to § 67 ITA-TR. Thereafter, the progressive tariff pursuant to § 103 ITA-TR is used. A tax return must be filed according § 92 ITA-TR until 25.March the following year. The limited tax liable self-employed professional sportsmen are taxed only with the domestic income by the same rules as the unlimited tax liable sportsmen.

2.4. Avoidance of Double Taxation under Domestic Law

The Turkish income tax law (§ 123 ITA-TR) contains a general unilateral scheme to avoid double taxation for unlimited taxpayers. If unlimited taxpayers with foreign income, in the State from which the income arises, be used for one of the Turkish Income Tax corresponding tax, can the fixed and the tax paid credited to the Turkish Income Tax, payable on the income from this State. If a credit excess is due, this is not considered. The foreign taxes are credited only to the taxes for the tax period in which the income is received (Şenyüz, Gerçek and Yüce, 2008:218-219). This provision is substantially identical to the German Income Tax Act (Einkommensteuergesetz) article 34c I.

3. TAXATION OF THE PROFESSIONAL SPORTSMEN UNDER THE DOMESTIC LAW OF GERMANY

Professional sportsmen who are commercially active or employed are taxable with their income referred in this characteristic. Commercially active professional sportsmen are treated under the Income Tax Act (ITA-DE) § 15 I Nr.1. Salaried professional sportsmen are taxed however under § 19 ITA-DE (Frotscher, 2009:241). The Turkish Income Tax Act makes a distinction between salaried professional sportsmen and self-employed professional sportsmen. In the following these are explained.

3.1. Justification of the Tax Liability

Sportsmen who are resident in Germany or have their normal place of abode there have full income tax liability under § 1 I ITA-DE. All the income earned by the professional sportsmen both at home and abroad is subject to income tax in Germany (principle of world income). The terms residence and normal place of abode are determined according to the Tax Code (Abgabenordnung) § 8 and § 9. According to Tax Code § 8 someone has a residence there, where he under circumstances holds a dwelling, which suggest to maintain and to use it. And according to Tax Code § 9 someone has the normal place of abode there, where he is in circumstances which indicate that he is at that place or in that area not only temporarily. A time-related stay of more than six months should be considered. Short-term breaks are not taken into account. Stays exclusively to visit, recovery, cure or similar private purposes which don't take more than a year do not last justify normal place of abode according to Tax Code § 9. Professional sportsmen who are neither resident of Germany nor have their normal place of abode there, however have domestic income as defined in § 49 ITA-DE, justify relate to this income a limited tax liability under § 1 IV ITA-DE.

3.2. The Taxation of Salaried Professional Sportsmen

Salaried professional sportsmen are taxed under § 19 ITA-DE. In according to the wording § 19 I S.1 Nr.1 ITA-DE belong salaries, wages, bonuses, percentages of profits and other purchases and advantages for an occupation in the public or private service to the income from employed work. The collection of income tax on the income from employed work for unlimited taxpayers made under § 38 ITA-DE (also called Lohnsteuer) by deduction from wages. The employee is the debtor of the tax, however the tax is withheld by the employer on behalf of the employee from wages for each wage payment and remitted to the tax office (§ 38 II, III ITA-DE). The emergence of the wage tax is in the time, in which wages flow to the employee (§ 38 II ITA-DE). The height of the wage tax, which fall on an income in one calendar year (annual wage tax) correspond the income tax. This is collected by the ongoing work with the falling wages each pay period of the wage component of the annual wage tax (§ 38a I, II, III ITA-DE). The income is the surplus of the incomes over expenses. This can be decreased by amount of age discharge, other allowances, extra expenses etc. (§ 2 II ITA-DE). The income tax tariff which is to used for wage income is regulated in § 32a ITA-DE. The basic free allowance is at a value of 7834 Euros.

3.3. The Taxation of the Self-employed Professional Sportsmen

The self-employed professional sportsmen are treated differently as in Turkey as commercially active professional sportsmen. Therefore the incomes of the sportsmen in this kind, subordinate to the incomes from business operations (§ 15 ITA-DE). The revenues are in this category of income the profit which varies with the difference between the assets at the end of the marketing year and the assets at the end of the previous marketing year, increases measured by the value of withdrawals and reduced by the value of deposits (§ 2, 4 ITA-DE). Amount of age discharge, other allowances, extra expenses and the like can also reduce the income of the commercially active professional sportsmen. The deduction of tax is not used for the commercially active professional sportsmen who have full income tax liability. According to § 25 ITA-DE an assessment is required. For the income of the commercially active professional sportsmen, like the salaried professional sportsmen the personal income tax tariff is applied with basic allowance in the amount of €7834 (§ 32a ITA-DE).

3.4. Tax Deduction for Limited Tax Liable Professional Sportsmen

Income from business operations subject to § 49 I No. 2 letter a) ITA-DE than domestic income of the limited tax liability, if a domestic permanent establishment situated or a domestic permanent representatives will be achieved.

A special provision includes § 49 I No.2 letter d) ITA-DE on business income from artistic, sporting, entertainment and similar performances. Under that provision, subject to business income of the professional sportsmen of the limited tax liability, even without that there is a domestic permanent establishment or a permanent resident representative is appointed, provided that such activity is exercised or the rights are used in the domestic. The collection will thus professional sportsmen that occur in Germany, but do not maintain a permanent establishment or permanent representative, and exercise sporting events, which are commercial, for example because it organized by a corporation. Without the special elements of § 49 I No. 2 letter d) ITA-DE would in such cases, a tax gap, as these cases are not in accordance with the principle of permanent establishment as a business income could be detected. The extra income of professional sportsmen from entertaining or similar presentations as autograph sessions, interviews, show performances, etc. will be detected (Frotscher, 2009:241-242).

The income and related income of the commercially active professional sportsmen who have limited tax liability are subject to § 50a I

No. 1, 2 ITA-DE to tax deduction of 15% of revenues (Frotscher, 2009:242; OFD Karlsruhe, 2009:1). The operating expenditures which are in direct economic connection with income from business operations can only be invoked for EU-/EWR citizen, who are resident or ordinarily resident in EU-/EWR-room. In these cases, the tax rate for natural persons only doubled to 30% (§ 50a III ITA-DE). In Turkey's case, it is not possible to maintain the operating expenses and a claim for investment does not exist. A tax deduction is not applicable if the revenues do not exceed € 250 per performance (§ 50a II, p.3 ITA-DE).

The salaried professional sportsmen who have limited tax liability with its domestic income in this sense, according to § 49 I No 4 ITA-DE, are also subject to tax deduction. However, the income from employment are subject to wage tax under § 38 I S.1 ITA-DE, if the remuneration is paid by an employer who has a domestic domicile, his habitual residence, its management, its headquarters, a permanent establishment or permanent representative within the meaning of § 8-13 of the Tax Code (domestic employer) or a third party (borrower) employees, commercially to perform work in domestic, leaves without being domestic employer (foreign lenders). This income is excluded from § 50a ITA-DE (§ 50a I, No 1 ITA-DE). In these cases, the implementation of the wage tax deduction of salaried professional sportsmen who have limited tax liability is according to § 39d ITA-DE. If the remuneration is not paid by a domestic employer, is the income tax in accordance with § 50a I, II Income Tax Act to collect (LStR, 2008).

3.5. Avoidance of Double Taxation under Domestic Law

For fully taxable professional sportsmen it can lead to double taxation if they receive income within the meaning of the § 34d ITA-DE. The foreign-related income may be taxed in accordance with the principle of world income as a foreign income in Germany and in accordance with the territoriality principle (principle of origin) as domestic income abroad. Without further ado would result in double taxation since the tax claim of the two states on the same income source overlap (Birk, 2008:388).

Income from business operations are, according to § 34d No.2 letter a) ITA-DE foreign earnings if they are related by a foreign state situated permanent establishment or activities of permanent representatives. Income from employment is according to § 34d No.5 ITA-DE foreign income if carried on in the foreign state or the rights are used there (Frotscher, 2009:241).

Double taxation is avoided domestically according § 34C ITA-DE in whole or in part. In the § 34c I ITA-DE credit method applies. Accordingly,

the fixed and charged tax in a foreign country and German income tax corresponding it will count, so far (maximum amount of crediting), against the German income tax of full tax liable professional sportsmen, as it is attributable to the related foreign income in the tax year from that foreign state. For the purposes of calculating the maximum amount of crediting, the German income tax is divided in proportion to the foreign income to the total income.

According to § 34c II ITA-DE at the request instead of direct credit can also deduct the foreign tax on income will be possible. If the foreign tax not equal to the income tax or not collected in the State from which the income arises, or there are no foreign income is, then the foreign tax, paid amount, will deducted from its own motion from the total taxable income according to § 34c III ITA-DE.

In § 34c V ITA-DE, the lump-sum method and the cancellation is discussed. The German tax which is attributable to foreign income can be forgiven in whole or in part. Fixing a lump sum is also possible. Condition for the latter two methods is that for economic reasons this is desirable or the application of the credit method is particularly difficult. In all cases must be proved with the appropriate documents to the foreign income abroad fixed and paid taxes. § 34c V ITA-DE is to be considered in conjunction with the corresponding circulars.

4. COMPARISON OF TAX BURDEN ON PROFESSIONAL SPORTSMEN

The legal frame of these two countries is determined for taxing of sportsmen on above. Tax burdens of the professional sportsmen are compared in this part. It is known that professional sportsmen get a high income. Because of this, an assessment is performed on conditions of the salaried sportsmen to compare the tax burden of the professional sportsmen between two countries. The comparison is restricted to professional sportsmen, so salaried sportsmen who achieve a high income and represent the most common situation.

The annually tax burdens are accounted for the comparison between a sportsman example whose annually income is €20.000 and a sportsman example whose annually income is €200.000. A sportsman example whose annually income is €20.000 represents more the low income and a sportsman example whose annually income is €200.000 represents more the high income in this comparison.

For aim of the work, the details of complex calculations which based on progressive tax tariff of German Income Tax Act are not included. The

Church Tax and Solidarity Surcharge (Solidaritätszuschlag) are added to the income tax because of their important effects for calculation of tax burden of sportsmen in Germany. The tax burden calculations were performed according to 2009.

Table 1. Tax Burden For selected Income in Germany

Annual Income	Payable Tax*	Tax Burden*
€20.000	€2.169,77	10,85%
€200.000	€81.848,03	40,92%

* Calculations were been performed by us.

As in the above table, the progressive tax tariff that is applied in Germany also is valid for sportsmen and sportsmen who get high income expose to high tax burden. For example a sportsman who gets €20.000 annually income pays 10.85% of it as the tax. 40,92% of €200.000 income that is given as example for high income sportsmen is paid as the tax. In this condition an important part of income of sportsman so salaried sportsman who achieve a high income and who most frequent situation constitute, is paid as tax.

Because of Minimum Living Allowance and Stamp Duty are low as unimportant degree, these are not considered for calculating the tax burden of sportsmen in Turkey. The incomes that correspond to the incomes in Germany example are evaluated as Turkish Liras (TL) for calculating the tax burden of sportsmen in Turkey. And the foreign exchange is accepted as 1€ = 2TL. As to this, in this example the sportsman who gets TL40.000 income represents more the low income, and the sportsman who gets TL400.000 income represents more the high income.

Table 2. Tax Burden For selected Income in Turkey*

Annual Income	Top League		Lower League		Other Leagues**	
	Payable Tax	Tax Burden	Payable Tax	Tax Burden	Payable Tax	Tax Burden
TL40.000	TL6.000	15%	TL4.000	10%	TL2.000	5%
TL400.000	TL60.000	15%	TL40.000	10%	TL20.000	5%

* The table were been performed by us.

** Included the sport branches which don't belong to a league and payments for international competitions of the National Sportsmen.

As in the above table, a tax rate is applied, which is independent of the level of income (Flat Tax). The tax rates are differentiated only by the criteria that have been evaluated in the second part of the work. These rates are 5%, 10% and 15%. It is clear that sportsmen who have the high income are included to 15% part as mainly and 10% as partly; and sportsmen who have the low income are included to 5% part. These tax rates also show the tax burden in this case.

It may be said that sportsmen who get low income in Turkey are advantageous as to Germany as mostly. The sportsmen who are included in 5% part supply minimum 5,85% tax advantage. Also the sportsmen who are in 10% part supply minimum 0,85% tax advantage because of increased rate tariff that is applied in Germany. If it is considered that sportsmen who get high income are mostly taxed as 15%, it will be seem that these sportsmen supply an advantage as 25.92% as to sportsmen who have equal income in Germany. In other words, if a sportsman who get €200.000 income in Germany, got this income in Turkey instead of Germany, the sportsman would have provided a €51.848,03 [$€81.848,03 - €30.000$ (TL60.000) = €51.848,03] valued tax advantage.

If the tax tariff was applied as to § 103 ITA-TR, TL8.825 tax would be fallen due for a sportsman who get TL40.000 income. When the general tax tariff is applied for TL400.000 that is exemplified for sportsman who gets the high income, a TL134.025 valued tax would be fallen due. The tax burden is about 22,06% for the first and about 33,51% for the second according to this. When this situation in this shape is compared with Germany, the sportsmen who get low income is disadvantage in Turkey. But the sportsmen who get high income in Turkey keep their advantages even when the general tariff is applied in § 103 ITA-TR.

5. CONCLUSION

In this study, the first and second part represented the national systems of taxation of professional sportsmen. As it has been shown, the difference in qualification of the income of the independent professional sportsmen is a basic difference. In Germany, incomes derived from such activities are classified as business income and in Turkey they are classified as income from self-employment. In the case of salaried professional sportsmen the respective qualifications coincide.

The general progressive tax tariff in Germany is valid for taxing of sportsmen who get income as salaried. Compared to other salaried workers there are no special tax rates or other tax breaks for sportsmen applied. A tax burden between 10,85% and 40,92% arises by the amount of the tax.

Because of a fixed rated tax is applied in Turkey, the tax burden doesn't change as to amount of the income. The tax burden for professional sportsmen in Turkey is 5%, 10% or 15% as to the league degree in the sport.

When sportsmen in Turkey are compared with sportsmen in Germany and other salaried workers in Turkey for taxing, it is seem that they are quite advantaged. But to find an excuse reason of providing of this advantage is difficult. It is clear that this special arrangement in Turkish Tax Law that for sportsmen who pay low tax as ability to pay tax, the tax justice may damage. It is difficult to expect that this application contributes to the development and growth of the sport in Turkey, when even in this way the encouragement of sport selected is.

The tax amount advantage of the sportsmen in Turkey taxed according to § 72 Temporary ITA-TR is provided in this work. It is a matter open to debate how fair the advantage for the sportsmen is. After this work, a different work about perceiving by the community of the tax advantage of the sportsmen in Turkey may be done. This can show us, whether this § 72 Temporary ITA-TR arrangement an acceptable regulation by the community considered is or not.

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