

Solution Recommendations To The Problems That Can Be Faced During The Implementation Of Electronic Notification At Turkish Tax System

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Abstract: With the rapid development of technology, it is seen that in order to render a better service to their citizens the states are entering into e- transformation. Among these, the General Communiqué Circular No.456, in which the procedures and principles related to e-notification that entered into effect in the process of carrying the tax services to electronic environment, is considered as not adequately explanatory. Within this context while the closing conditions of the notification address are designated, the ex officio deletion of the tax payers record which takes place at Tax Procedure Law Article 160 is not taken into consideration and also it is confirmed that an attribution to Article 107/A is required in terms of forming a legal basis for the implementation of the penal clause at Tax Procedure Law Repeated Article 355 which will be applied in the cases when the taxpayer accountant fails to fulfil the undertaken responsibilities. Besides it is understood that the legal characteristic of SMS and/ or e-mail information messages is not explained, and the incomprehensibilities in some articles of the Communiqué may cause significant problems in terms of implementation in the future.

Keywords: Notice, Notification, Electronic Notification, Tax Notification, Turkey.

JEL Code: G28, H20, H29, K34.

1. Introduction

With the increase of science and technology shares that world countries reserve in their budgets, it is regarded that for the sake of providing the best service the states go into the effort of transmitting technology to their citizens and in parallel with this they are performing electronic transformation projects. In Turkey the studies devoted to electronic state goes back to 1977. The electronic notification process that entered into the application in the process of carrying the tax services into electronic environment through internet tax office together with various developed projects especially VEDOP (Tax Offices Automation Project), is a transformation that can be evaluated within this scope. Hence with the electronic notification arrangement, it is seen that lots of problems that the notification process contained within itself had been prevented. Also compared with the other methods, the electronic notification process' rapidity and reliability by means of taking the privacy of the taxpayer under guarantee, forms the basic outstanding sides of electronic notification. Together with these positive sides of the transition process, it is seen that the General Communiqué Circular No. 456 in which the procedures and principles related to the

implementation of electronic notification in taxation take place, is not adequately descriptive and it contains a set of deficiencies within itself. The very first, is the determination of the conditions related to the closure of the electronic notification address without considering the enforcement of direct cancellation in the closing of the electronic notification address, the second one is that the repeated Article 355 attribution made related to the penal clause that will be applied in the case of nonfeasance of the responsibilities imposed to the acceptor is not inclusive and it is seen that at the first paragraph of the article there is no attribution to Article 107/A. Thirdly, it is seen that in the notification regarding the legal nature of the informing message sent to the taxpayer by SMS and / or e-mail or at least in the demand form there is no explanation. Finally, the incomprehensibilities at some of the articles of the notification may cause significant problems with regards to implementation in the future. Within this context the problems that the determined issues may cause and their solutions will be emphasized in our study.

2. Electronic State Transformation Process in Turkey in General

In parallel to the rapid development of science and technology, the internet technology is also developing and rapidly taking its place in every part of our lives. In our country when internet technology started to be used widely in 1998 while 229.885 users were benefiting this opportunity, this figure has reached to 8.849.779 in 2009 and at last to 41.272.940 in 2009 (Turkstat, 2016). In 2016, compared to the previous year, the internet usage showed a ten percent increase and by reaching to 46.28 million people in total, of which 77% of the usage is daily and 16% is at least once a week, has influenced 58% of the population. Besides, again according to the 2016 data, the internet users in Turkey spend 4 hours 14 minutes of their time per day on PC or on tablet and 2 hours 35 minutes at internet environment via mobile phone. (Kemp, 2016, page. 449- 464). Under these circumstances, for de-bureaucratization and instead of face-to-face approach and in order to increase the service quality by giving twenty-four-seven service to the acceptor (Gerçek vd., 2013, p. 22), to reduce the servicing and getting service costs into minimum level, for the satisfaction of the acceptor, to reach the true acceptor of the business and as a result of these to provide much more trust and participation (Seferoğlu vd., 2011, p. 283- 284), the development of the basic electronic state systems had been targeted in the public institutions. On the project basis, in 1997 with "Turkish National Information Main Plan" (Gerçek vd., 2013, p. 38) which was carried out under the guidance of Ministry of Transport and after that the establishment of Electronic Commerce Network and the "Public Net Technical Board" established by the Prime Ministry circular in 1998, the establishment of electronic state office studies have started both with e-Europe and e-Turkey studies (Çarıkçı, 2010, p. 102).

The electronic state can be defined as a system in which the citizen- state relationship is mutually realized in a network notwithstanding to time and place, and where the state realizes majority of its services through this network and in response to this the acceptors perform their civic responsibilities by using this network (ITO, 2003, p. 17). This system is not only meets the acceptors' access to information demand but also is an important application as it gives an access transparency in the sense of obtaining various information among the public institutions

(Demirel, 2006, p. 89). One of the significant examples that can be given to the e-transformation initiative which undertakes the role of a bridge between the acceptor and the public institution is, MERNİS (Central Population Administration System) of which substructure had been established in 1972 and became available in November 2002; the other project is VEDOP (Tax Offices Automation Project) which was established in order to implement the tax services at the electronic environment and afterwards with VEDOP II and VEDOP III projects the attempts to establish an internet tax office (<http://www.gib.gov.tr/en>) in accordance with e-statement, e-tax board applications (Erdem, 2014, p. 739); and the projects such as e-justice project UYAP (National Judiciary Network Project) (Republic of Turkey Ministry of Justice, 2010, p. 1) which provides the inner automation of the Ministry of Justice central and provincial organization related and affiliated institutions, judicial and administrative courts and the conformity with public institutions and organizations; are some of the milestones that the state has taken on the path of e-transformation.

Another application that the state has developed in the context of electronic transformation is e-notification. Although the issue had been added to the agenda firstly in 2004 at 4th Turkish Economic Congress by the authorities of Ministry of Justice (Tanrikulu, 2009, p. 320), by means of being added to the article 107/A of the Tax Procedure Law no. 6009 on 23.07.2010, and with Law No. 6099 on 11.01.2011 to the Notification Law article 7/a, the e-notification came in to force. For the notifications to be made in accordance with the provision of Tax Procedure Law, Article 107/A, while the Ministry of Finance is the component authority to establish every kind of technical infrastructure or to use the established ones and to arrange the procedures and principles related to electronic notification; Ministry of Justice has been authorized for the electronic notification procedures that will be done within the frame of Notification Law 7/a and in the determination of the procedures and the principles. By means of publishing *Electronic Notification Regulation*, when the Ministry of Justice identified the procedures and principles regarding the electronic notification that will be made according to Notification Law Article 7/a with its authority ; by means of publishing the "General Communiqué of Tax Procedure Law, Circular no 456" the Ministry of Finance determined the procedure and principles

regarding the electronic notification which will be made according to Tax Procedure Law (VUK) Article 107/A.

It is indicated that, in the taxation, the notification shall be made with a suitable electronic address which will be taken as a basis in accordance with Article 107/A and by means of the technical infrastructure formed by the Ministry of Finance; the notification will be accepted to be done at the end of the fifth day following the arrival date of the notification to the acceptors address (VUK Article 107/A). At the same time, it was ensured that the *Regulation on the Procedures and Principles regarding the Electronic Notification System of the Financial Crimes Investigation Board, dated 30.03.2014, which was published by Ministry of Finance on the basis of Article 9/A of the Law Regarding the Prevention of Laundering of Crime Revenue, No 5549 and of which the technical infrastructure will be prepared by Financial Crimes Investigation Board Department will be applied only for the electronic notifications to be made within the scope of the Law Regarding the Prevention of Laundering of Crime Revenue, No 5549 and the Law on Prevention of Financing of Terrorism; therefore will not include electronic notifications to be made under Article 107/A of Tax Procedure Law No: 213.* In the case of the electronic notifications regarding tax procedures, by using its authority about the determination of the procedures and principles and establishing the infrastructure, on the date of 27.08.2015, the Ministry of Finance published the General Communiqué of Tax Procedure Law, Circular 456. While Revenue Administration had been authorized regarding the implementation of electronic notifications which will be made within the frame of Tax Procedure Law (VUK Circular no 456 General Communiqué), for the e-notifications regarding financial crimes the Financial Crimes Investigation Board Department (Regulation no 29311, Article 1), and for the notifications to be made within the frame of Notification Law provisions the General Directorate of Postal and Telegraph Organization (PTT) have been authorized (Law no. 6009; Provisional Article 1).

3. Outstanding Sides Of Electronic Notification in Taxation

With the publication of Communiqué No: 456, through Revenue Administration Department, it is aimed to notify the document, which is arranged by tax offices and that should be notified to the

acceptors according to the provisions of Tax Procedure Law, to the suitable electronic address of the acceptors without sticking to the procedures (... the real and legal entities whose addresses are known are notified as registered, the ones whose addresses are unknown via notice. So, providing the acceptance of relevant person the realization of the notification at the office or commission) at Article 93. In line with this purpose, by means of the realization of the electronic notification regarding taxation subject to Tax Procedure Law, the notification should be realized via Revenue Administration Department instead of PTT as it was separated from the electronic notification transactions subject to Notification Law. In other words, while the Ministry of Finance was authorized by means of establishing the technical infrastructure regarding the electronic notification, Revenue Administration Department was authorized to operate the system. With this application, with the transfer of the tax notification transactions realized through PTT to the control of Revenue Administration, the tax notification procedures are separated from other notifications in terms of the organization that performs the notification process and has prepared a basis for solving many problems arising in the other notification processes (Yüce & Çelik, 2016, p. 621).

The realization of both the tax notifications subject to Tax Procedure Law and other notifications subject to Notification Law through PTT cause irregular notification transactions because of carelessness or lack of information of the PTT administration and/ or postal officer during the transaction as sometimes they apply the procedures and principles of the other notification processes to the tax notifications. The irregular or a late notification causes a delay at the public receivables and also the notification sourced cases carried to jurisdiction cause a workload in the justice. When this is reviewed with regard to taxpayers, besides the cost of applying to judicial remedy to prove an irregular notification, being engaged in a lawsuit with public creates a destructive effect on the taxpayer by means of taxpayer psychology and citizenship. With electronic notification application by delivering a considerable solution to irregular notification problem, a progress can be made both in preventing the timeout of the public receivables and providing the transition to the treasury without delay by decreasing the Olivera-Tanzi effect as far as possible, and relieving the workload of the jurisdiction, on the other hand and in the

adaption of the taxpayer to the issueless taxes that completed an easy phase. Thus, the Revenue Administration Department emphasized that transition to electronic notification in the tax notification procedures has significant benefits in the sense of providing the information security and protection of personal data, increasing the quality of service, ensuring that the contents of the document cannot be changed by others, realization of the notification procedure in seconds which lasts for weeks in the physical environment, considering the notification as made within a very short time like 5 days following its transfer to the electronic address of the taxpayer, not falling into dispute as the time, sender, receiver, the notification and its annexes can be viewed in the electronic notification system, its contribution to the budget as it has no expense while the other notifications in the physical environment have fee, and also the notifications made by e-notification system provide paper, time and energy saving (RA, <http://www.gib.gov.tr/node/104452/pdf>).

4. Evaluation Of The Electronic Notification in Taxation With Regard To Its Convenience To Written Principle

The basic rule in the execution of this administrative procedure is the realization of the form and methods in the way as explained in regulations such as law and regulation. Indeed the administrative procedure term includes all kinds of and unilateral legal proceedings which are established by the administrative authorities, such as statutory regulations and regulations, and the administration of the laws and regulations, as well as the enforcement of these laws and regulations and administrative purposes under other names (Council of state 6.C. D. 03.10.1984, C. 1984/230, D.1984 / 2766). However, as a rule in the administrative law, the administrative process must be written, and the operations must be carried out according to the writing principle (Council of state, 6 C, D. 24.04.2012, C. 2011/8290, D. 2012/1937). Also, the Constitution which is at the top of the hierarchy norms, accepted the time limit to file a lawsuit against an administrative act begins from the date of written notification of the act (Constitution, Article 125).

Signs, name of the accountant, date and place of the transaction, legal basis etc. are included in the scope of the writing rule (Gözler, 2010, p. 328). Here the figure is the explanation of an

administrative act on a piece of paper and signed by the competent authority by hand, i.e. with a wet signature. An exception to the method of writing on paper, which is the general principle, and manual wet signature can only be brought about by law (Gözler & Kaplan, 2014, p. 141). In this regard the most important regulation in Turkey is the Electronic Signature Law No. 5070. As a matter of fact, in Article 5 with the legal result of the secure electronic signature and its application field subtitled of this law, it was stated that the secure electronic signature gives the same legal result as the handwritten signature. Also in the signature subtitled Article 15 of the Turkish Code of Obligations, it was clearly stated that a secure electronic signature can arise all the legal results of the handwritten signature. In this context, with the Electronic Signature Law No5070 and the legal basis for secure electronic signing, in the realization of a notification procedure by the help of electronic address as electronic notification the written principle occurs and in regard to constitute a legal result it will not have a difference from the notification that has a wet signature. Also regarding the notifications in Article 21 of the Tax Procedure Law which is an administrative procedure, an emphasize has been made to the written principle that the notifications concerning taxation and normative issues should be notified in written to the tax payer or the penal responsible by competent authorities. In this context, when the Communiqué No. 456, which determines the principles and procedures regarding electronic notifications in tax transactions is examined, it is seen that the electronic notifications' realization with electronic signature is emphasized and that the legal basis for electronic signature is determined by referring to the definition of Electronic Signature Law No. 5070. In this case, as stated in Tax Procedure Law Article 21 the electronic notification about the tax is subject to secure electronic signature and has become a procedure which results in legal consequences and burdens with debt.

5. Identification of Tax Confidentiality Responsibility By Means of Electronic Notification on Taxation

Confidential which is used in the sense of " hidden, secret" and the privacy derived from the word private (Yılmaz, 2010, p. 472), is used in the meaning of "confidentiality, identity" as a concept (Tekin, 2007, p. 200). Those who are listed with the

subtitle "Tax Confidentiality" at Article 5 of the Tax Procedure Law , such as the officials dealing with the taxing procedures and research, tax courts, regional administrative courts and Council of State employees, those who participate to the commissions established according to the tax laws, experts in tax procedures cannot reveal the secrets that they learn concerning the individuality of the taxpayer and the person related to the taxpayer, procedure and account conditions, their fortune or professionality and the other issues that must be confidential and cannot use these information in their own or third persons' favour. As it can be understood from the subtitle of the law article, the tax privacy expression is not only the secrecy of tax but also the secrecy of the taxpayer's personality, business, and the related provisions regarding the professionality and fortune. For this reason, it is possible to reach the conclusion that the officers responsible for confidentiality which are counted as four items in the law are responsible not only for tax confidentiality but also for the privacy of the private life and commercial life of the taxpayer (Edizdoğan & Taş, 1993, p. 144).

Notification procedure is included within the scope of tax procedure in the "officers dealing with tax procedures and examinations" expression at the first paragraph of the Article 5 with subtitle "Tax confidentiality". During this procedure, the officers charged with the realization of the notification are evaluated within this law paragraph and depend on the confidentiality principle (Şenyüz, 1997, p. 21). In this regard as the electronic notification is ultimately a notification and a tax procedure, people performing the electronic notification procedure at Revenue Administrative Department are among the officers dealing with this procedure. The law article considers responsible not only the officer who realizes the notification procedure but also the ones who are responsible from the process of the procedure up to electronic notification and the ones who help them. It is seen that following the determination regarding the tax confidentiality, referring to Article 239 of Turkish Penal Code, the penalty that will be given to the officer who violates the confidentiality is defined in article 362. In accordance with this provision of article the penalty is accepted as "a prison sentence from one year up to three years and judicial fine up to five thousand says".

6. Identification of The Institutions and Organizations Authorized To Make Electronic Notification

The authorized institutions and organizations to make tax notification procedure by using the electronic notification application are general budget administrations, provincial special administrations and municipalities that are listed at Article 1 of Tax Procedure Law and which are also authorized to make the other tax notifications. The authority of these institutions and institutions to issue electronic notifications regarding the taxation is based on two reasons. First reason is their tax collecting authorities granted to them by the TBMM (Grand National assembly of Turkey) on tax, levies and charges. The second reason is the restrictions that the procedures of these institutions cover at Article 1 of the Law in which the scope of the Tax Procedure Law is explained. Therefore, within the framework of these restrictions, although they are the related institution and organizations, in the case of performing a procedure regarding the tax, levies and charges they can use electronic notification related to tax and defined with Article 107/A of Tax Procedure Law. In this context, the Revenue Administration, a subsidiary of the Ministry of Finance, which is within the scope of general budget administrations, and other organs of the organization under it, can realize the notifications related to taxation through electronic notifications. However, as explained in Article 2 of the Tax Procedure Law, as the taxes and levies taken by the Customs administrations are excluded from the related Law and because they are subjected to the provisions of Article 242 of the Customs Code No. 4458, it is clear that they cannot make tax notification by using the electronic notification application related to the tax defined in in Article 107/A.

Although the local administrations have the authority to make electronic notification on the basis of Article 107/A regarding tax, when we examine the Communiqué Circular no.456, it is understood that the arrangements related to electronic notification is a regulation towards the taxation procedures that take place within the scope of central administration. When we evaluate in this regard, in terms of the procedure and principles in this communique concluding that an electronic notification cannot be made for the taxes belong to local administrations will be a correct approach.

7. Acceptors Who Have The Obligation To Obtain Electronic Notification Address

Besides the importance of determining the authorized institution and organizations that will make the electronic notification, the other important issue is to determine the selection of the acceptors to whom the notification will be made. This issue is significantly important by means of preventing the loss of rights of the acceptors and the realization of the administrative procedure in the right way. Another important issue is that the peremptory explanation of the legal characteristics of the procedures during the notification which will be made to the acceptor.

7.1. Identification the acceptors who are obliged to acquire an electronic notification address

People who are obliged to use a suitable electronic address and will be notified in an electronic environment in accordance with the Communiqué No: 456 in which the procedure related to the application of the electronic notifications related to the tax procedures subject to the Tax Procedures Law No: 213 is determined as follows;

Corporate tax payers

Those who are entitled to income tax due to commercial, agricultural and professional income (except farmers whose incomes are determined in simple manner and not subject to taxation in actual manner)

Those who request to be notified by electronic means

Those people who are obliged to use electronic notification address, have to get an electronic notification address until 01.04.2016 (Tax Procedure Law, General Communiqué, Circular no 467) when the electronic notification application will start and have to use the electronic notification system. However those who made claim before this date can make electronic notification after 01.10.2015. However, the provisions of Communiqué Circular No: 456 are not valid for the taxpayers affiliated tax office directorates (directorates of property) as the electronic notification infrastructure has not yet been completed in these directorates (VUK General Communiqué No. 456, Article 10). Therefore, the obligation to participate in the electronic notifications system will not be communicated to

these taxpayers as they will not be included in the system voluntarily at the same time, so this taxpayer will continue to be notified in the normal way. The important issue that should be considered regarding the notification address is that the Registered Electronic Mail System (PEP) which was put into effect prior to the electronic notifications application regarding taxation is not a system oriented to the applications within the scope of the Law No. 213, and is about Article 7/a of Notification Law regarding the electronic notification in accordance with Article 18/3 of Turkish Commerce Law No 6102. In this context, taxpayers will not be able to use the electronic addresses they have in the PEP system and will need to provide an electronic address to use the electronic notification process for the tax subject to the Tax Procedures Code (Arslan & Biniş. 2016, p. 313).

In respect to obtaining electronic notification address, with relation to the address demand of the Corporation tax payers as is in the income tax payers, they are not authorized to make a claim by filling the Electronic Notification Claims at the General Communiqué No 456 and by means of delivering it by hand to the tax offices they are subjected to; for a valid they have to make a personal application with a legal representative or people who have special authorities. However for the income tax payers, as an alternative, a right to make their declarations to their tax offices is given and in the case of making an application with a warrant of attorney and together with an authorized person a valid claim will be realized. Another issue is that, while the right of making a claim via internet tax office is given to the income tax payers, it is seen that this right is not given to the corporate tax payers. Lastly, for the tax payers who established payers after 01.04.2016 there is a difference in durations with regard to the corporate tax and income tax payers who are obliged to make an address declaration. Thus making a notification address claim within a 15 days of period from the commencement day is accepted as a condition for the corporate tax payers, for income tax payers this condition is the establishment time of the obligation (VUK General Communiqué No. 456, Article 5).

An acceptor, who has an electronic notification address obtained according to the 107/A of the Tax Procedure Law and the Communiqué No 456 published as a result of this law, has come to a status ready to receive the electronic notifications

for the tax. After this point, according to the provisions of Tax Procedure Law the document required to be notified will be signed with an electronic signature and will be notified by Revenue Administration on behalf of the tax office and be forwarded to the electronic notification address of the tax payer. Also, as it can be understood from "Notification Claims" after the arrival of the notification with electronic signature to the notification addresses of the acceptors, an informing will be made to their phone number specified in the Electronic Notification Claims via SMS and or an e-mail to their e-mail addresses. The electronic notification document will be considered as notified at the end of the fifth day following its arrival to the address at the electronic environment. Within this concept the duration that will start following the acceptance of the notified document is not the date that the acceptor is informed but the arrival date of the document to the electronic notification address of the acceptor (VUK General Communiqué No. 456 Article 6).

7.2. Non-disclosing the Legal Characteristic of Acceptor Informing Methods

An informing is made via SMS to the phone number and/ or via e-mail to the e-mail address that was specified in the Electronic Notification Claims. However, the acceptor is either informed about the notification via SMS and / or e-mail or not, he will be able to reach to the notification through the electronic notification address over the internet tax office network. For this reason in order to be included to the legal process that was given to him without wasting time , the acceptor is obliged to control his electronic notification address over internet tax office frequently. Because of the late arrival or not arrival of the SMS and/ or e-mail, an additional time will not be given and the process will start following the arrival of the notification to the address of the acceptor. It is seen that, regarding the legal characteristic of the notification made via SMS and e-mail, neither in the Electronic Notification Claims nor in the Communiqué No 456 explanatory information was given to the acceptor. As there is no clarity about this issue in the tax procedure law no.213 and in the Communiqué no 456,; in the cases where there is insufficient clarity in the implementation of Tax Procedure Law in accordance with the provision of Notification Law Article 51 when we make an evaluation on the basis of application of the general provisions that take place at the Articles 1-33 of Notification Law

it will be seen that the provision takes place in the general provisions of Article 7/a of the Notification Law. If so, the provision at Article 10/3 of the Electronic Notification Regulation which was prepared depending on this law article can be considered as valid for the SMS and/ or e-mail services to be performed for the tax procedures subjected to Tax Procedure Law.

As a result of this provision, it is not possible to initiate any legal proceedings due to the fact that the acceptor has not been notified of the electronic notification or has been informed about it late by SMS and / or via e-mail, and it will be accepted as a service offered to the acceptor only with the purpose of reminding. We believe that such an important issue should be added to the Communiqué No. 456 in order to avoid the acceptors being a victim or at least it should be included as an information note in the Electronic Notification Claims Notification Form.

8. Identification Of The Criminal Sentence Related To Electronic Notificatin In Taxation

With providing the security of the application related to electronic notification in taxation, it is seen that although the regular implementation of the procedure is the responsibility of the administration some responsibilities are also given to the acceptor. In this respect identification of counterparts facing these responsibilities is important to prevent the emergence of various right losses. However, in the event that these responsibilities are not fulfilled, the determination of the legal basis of the penal sanction to be implemented will prevent the process from becoming a disruption and will prevent conflicts between the administration and the acceptor.

8.1. Identification of the Acceptors Supposed to the Responsibilities Related to Electronic Notifications in Taxation

In the process of fulfilling the electronic notification procedures, it seems that some responsibilities have been given to the acceptors about the registry to the electronic notification system together with the Revenue Administration and the fulfilment of these responsibilities after the registration. In addition, a penal sanction has been imposed for these responsibilities. In this context, it is possible to list the responsibilities of

the acceptor (VUK General Communiqué No. 456, Article 8);

- Full and correct tax declaration in the process of Electronic Notification Claim Notice,
- To inform the tax office of any changes in the information declared before or at the latest date of change,
- To comply with all requirements set forth in the Electronic Notification Claim Notice,
- To protect the information such as user code, password and password given to him in relation to the use of the system, and not to share with third parties and not to give it to others,
- Immediately inform the tax office when the information such as the user code, password and password given to him in relation to the system usage is detected undesirably by the third parties,

The acceptor is held responsible for the legal consequences that would arise if the acceptor do not comply with these obligations. One of these legal consequences is the application of a special irregularity penalty at fixed amounts differentiating according to the acceptor groups and determined every year according to revaluation rate in accordance with the Tax Procedure Law Articles 148, 149 and Repeated 257 and with the provisions of Article 355 of the Law and 456 VUK General Communiqué Article 9.

It should be recalled here that although in the Article 9 titled "Penal Provisions", the sentence starts with the sentence it seems that acceptors obliged to be included in the electronic notification system and only these acceptors are taken under the provisions of the penalties, are the ones who demand an electronic notification but in fact it is seen that the ones who are obliged to use the electronic notification address in Article 4 are the persons who demand to receive an electronic notification optionally as it is specified in paragraph (c).

In this context the acceptors who are not obliged to use electronic notification address, will be responsible from the provisions that take place in the Communiqué No 456 after being included voluntarily to the system and so in the face of the provision at Article 9, titled criminal sentence, they will be equally responsible with the acceptors who are obliged to be included to the notification system.

8.2. Insufficient Explanation of Legal Standing in the Identification of Criminal Sentence

The criminal sentence that will be applied to the acceptors in the case of not fulfilling their responsibilities, given in accordance with the Communiqué No 456, regarding the electronic notification is an irregularity fine that takes place at Articles 148, 149 and repeated Article 355 of the Tax Procedure Law. When the counted articles are handled together it is seen that "Giving Information" subtitled Article 148 is a general regulatory article that the acceptors are obliged to give the information that the Ministry of Finance or the authorities making a tax examination request. "Informing Continuously" subtitled Article 149, which is another article, can be considered as an article that has a general regulatory characteristic and connected with the demand condition about regulating the *written information* on taxation asked by the Ministry of Finance and tax offices from the real and legal entities and public administration/ institutes. Lastly, in the repeated Article 257 with "Authorization" subtitle, the regulation of the information related to the forms about record and documents, the issues regarding tax declaration and notifications, and identification of the responsibilities related to the electrical and electronic devices can be seen. In this article while the meaning of the document is receipt, invoice, dispatch order, expense compendium, or various general communiqués; prescription, admission and Ba-Bs forms, which were considered between VUK Articles 227 -252; the intention is the notifications such as starting a job, leaving a job, changing a job, notification of Ba-Bs forms, which take place between VUK 153- 168. As a matter of fact, the repeated is included in the second book of the Article 257 Law under the heading "taxpayers assignments" and it will be necessary to understand the documents and declaration expressions which are firstly assigned to taxpayers'. For this reason, we believe that the electronic notification prepared in Article 107/A is in the form of documents and notices in addition to taxpayers' assignments, and that the Electronic Notification Claim Notice should be evaluated accordingly.

In the light of these explanations, we can see that the articles we can put in the responsibilities of the acceptor in the electronic notifications can be 148 and 149 due to the general consideration of giving information. However, we do not believe that it

would be legally inappropriate to apply the penalties laid down in Article 355 by giving precedence to the related items because these items are not so widely interpretable to meet the obligations of the acceptor related to electronic notification. Furthermore, it is seen that in the first paragraph of Article 355, by means of counting the results of the repeated article as individual items for which the actions are effective (with the obligations laid down in Articles 86, 148, 149, 150, 256 and 257 of the Tax Procedure Law, And Article 98/A of the Income Tax Law). In this context, it is not sufficient for the penal provision of the electronic notification application to be satisfactory only by referring to the Communiqué No. 456, 148, 149 and 257, because of the fact that the facts of the actions affected by the results of the repeated article are specifically mentioned, Article A will also be based on the legal basis of this sentence and it will be important in order to prevent the disputes between the administration and the taxpayers depending on the appeal in the future (TÜRMOB, 2015).

9. Insufficiency Of The Criterion Taken As A Basis In The Exclusion Of The Acceptor From Electronic Notification System

Closing the electronic notification address of the acceptors, when required, is a very important way for the functionality of the system and to prevent the loss of rights. However, another important aspect here is related to the precise determination of the criteria that will be taken as a basis in the closing the address. However, although the address is closed providing the possibility of accessing previous notifications at the address for a certain period of time will be a more appropriate way to the logic of electronic notification.

9.1. Considering the cancellation of the taxpayer's registry by approximation in the exclusion of the acceptor from electronic notification system

Acceptors who are compulsorily or voluntarily included in the electronic notification system may exit the electronic notification system in the case of certain conditions. On legal entities, the electronic notification address will be closed as of the date on which the trade registry is deleted (including kind changes and merger cases). In the case of real persons, in cases where the administration has decided to the death or

disappearance of the related person, the electronic notification address of the concerned person will be closed as of the date of the death or the date on which the disappearance decision was made. At the same time, if the heirs apply to the connected tax office, the electronic notification address of the deceased person is closed (VUK, General Communiqué No 456, Article 7). The conditions set out here for the exclusion from the system may not produce an effective result in all cases. When the additional paragraph with the Article 6 of the Law no 5228 to the Article 160 of the Law No 213, dated 16.07.2004, which gives an authority to the tax office to delete the acceptors registry by approximation, is examined in the determination of a taxpayers quitting the job without making a notification and as a result of the enquiries the tax payers who cannot be found in the given addresses and not being able to get an information about his activity at another address , or with a report prepared by the authorities if it is discovered that by drawing up a false report he established a liability although he doesn't have any other commercial, agricultural and professional activities and if it is specified in the report that the continuity of his taxpayer registry is not required , the taxpayer is deemed as walked-out (including the ones who have tax liability and who don't) and the tax payer will be abandoned by the tax registration duties. Also when the first paragraph of Article 160 is examined, it is seen that it refers to those who are obliged to notify the starting to employment report as considered in Article 153 and no distinction is made between the legal person and natural person both in Article 153 and also in the statement made in the related Additional Paragraph, the desertion of the tax payer registry of the tax office by approximation is valid for the other taxpayers. In this case according to the conditions within the scope of Article 7 of the Communiqué No 456, in process of closing the electronic address, an enterprise which do not have a tax liability may still have an active electronic notification address. As a matter of fact, except the conditions stated in the same article of the communiqué it is stated that it is not possible to exit from the system. In such a case, it is inevitable that various rights losses and delays will emerge. For this reason, a new regulation regarding the closing of the electronic notification address will take place considering this point. Thus, it will prepare the basis for resolving problems that may arise before they arise (TÜRMOB, 2015). In this context, obligations originating from the

electronic notification address of the acceptors whose addresses are closed will also be terminated.

9.2. Recognition of Duration to the Acceptor to Access His Previous Notifications of Closed Account

With the exit of the acceptor from the electronic notification system, access to the electronic notification is closed. By a request to the Revenue Administration, the taxpayer himself or the competent authorities will be able to reach the notifications made to him / herself at the address of the electronic notification which has been closed. The records will be stored in archives for thirty years (VUK General Communiqué 456, Article 6) by adding transaction time information. If an assessment is made on this issue, the acceptor can access the previous notifications at the electronic notification address by a request or with the request of the competent authorities, however for the taxpayer or for the competent authorities this it will lead to waste of time and extra costs in carrying out the transactions. For example, while the proceedings are in progress if there is a need for the taxpayer's related information, the demand process and their access to the judicial authority will slow down the trial and damage the superior aspects of the electronic notification which are reducing the time and cost. Whereas in a similar case, that takes place in Article 6 of the Communiqué No 456, enables the information share to the authorized people or to the acceptor with a legal way for 30 years and although the same regulation also enables to the taxpayers subjected to Article 7/a Notification Law (E. Not. Regulation Article 9/6) it is seen that even if the electronic notification addresses are closed, they are given a 3 months of period to access their previous notification information. We believe that, the period that is given in the case of the closure of the notification address at the Notification Law of which has basically the same purpose or at least at the time of the taxation of the tax treatments together with the notification, the application of the electronic notification address in the event of the taxation of the tax payer as much as the period of use will be beneficial to the taxpayer or the administration at least in terms of time and stationery expenses.

10. Identification Of The Method That Will Be Followed In Failing To Make A Notification To The Acceptors Electronic Notification Address

The method to be used in the notices to be made to the taxpayers who are obliged to obtain an electronic notification address is an important matter in terms of the validity of the notification.

It is especially important to emphasize that electronic notification must be preferred in notifications to be made to these taxpayers in the Law or in the Communiqué. Another important issue is how to make notification to the acceptors whose electronic addresses cannot be reached. Both subjects have a specific importance for a valid notification and to transfer the public to the treasury soon.

10.1. Emphasizing the requirement of an electronic declaration to the ones who obtain an electronic notification address

As stated in Article 107/A of the Tax Procedures Code, the person to be notified in accordance with the provisions of this Law may be notified in electronic environment by means of an electronic address that is suitable for the notification, without being bound by the procedures listed in Article 93, and the Communiqué No: 456 "The notifications required to be made in accordance with the provisions of the Law may be notified to the acceptors by the electronic notification system or may be notified in accordance with the provisions of the other notices provided in the Law." If it comes out from these explanations, the impression is that the electronic notation seems to be an elective method as well as other notifications. It is seen that there is no explanatory regulation in the Law and Communiqué on this issue. However, when Article 4 of the Communiqué No: 456 is examined, it is seen that the acceptors are obliged to use an electronic address. In this case, it is possible to reach the conclusion that the electronic notification procedure should be used as a compulsory priority in the notifications to be made to the counterparts within the scope of the obligation.

However, there is no obligation to use an electronic notification address, but electronic correspondence will necessarily be made to the acceptors as long as they get included in the system. In order to prevent misunderstandings in

this matter, it is stated in the Article 7/1 of the Electronic Notification Regulation which regulates the procedures and principles of the notifications made in accordance with the Notification Law 7/a that "... the electronic notification is obligatory". It will be better to make such an explanation in the Law or Communiqué which is the subject of electronic notifications concerning the taxation.

10.2. Identification of how an Acceptor whose Electronic Notification Address was closed will be Notified

However, in the event that these acceptors who are obliged to use the electronic notification address cannot be notified, what kind of a method should be followed. In this regard, according to Communiqué No: 456, an official notification is not provided in the Communiqué, but the regular notices as explained in VUK article 93, which is also applied to those who do not obtain an electronic notification address and do not obtain an electronic notification address, are required to obtain an electronic notification address with those who cannot obtain an electronic notification address (taxpayers of the property directorates) We need to follow the procedure. In the case of a new notification to be made, the notification should be made at the address of the electronic notification first. Although VUK can be a solution to this issue by means of VUK 93, if the electronic notification cannot be made for obligatory reasons to the addressees who must be notified by electronic means as stated in Article 7/3 of the Electronic Notification Regulation in order not to experience a malfunction in practice, And we also believe that a statement to the effect that the subsequent notifications should be made electronically should also be included in the electronic notification of the tax evasion.

11. Conclusion

Notification is the process of informing and documenting the dates of the birth and termination of the rights as well as making the legal proceedings in accordance with the procedures and principles specified by the authorities and the authorities related to this procedure in accordance with the law. As a matter of its qualification, as well as it regulates the communication of the state within itself, it is a procedure that finds a place to itself between the public law and private law that provide the communication with the individuals.

For this reason, it has a structure that everyone can benefit such as either electronic notifications, notices and notifications sent by the notary or the public, trial, public tender and social security, tax, customs procedures. In this context, we see that this process, which has an important place in terms of administrative functioning, keeps up with the conditions of the period and finally has an electronic structure with taxation with the Communiqué No. 456 with the e-government transformation.

With the publication of the procedures and principles related to the electronic notification transaction, the Communiqué No 456 within the frame of Tax Procedure Law 107/A provisions by Ministry of Finance, the electronic notification application which came into effect after 01.04.2016, with lots of components it contains in itself, reveals that it has a superior place compared with the notifications made with other methods. Because of the use of electronic signature and compliance with the electronic signature law are the main reasons for notifying the issue in terms of compliance with the written protocol which is the basis of the administrative process and superior security measures in practice and privacy. Also its being efficient and economical, its delivery to the client in a short period of time like five days, and getting ahead of the bureaucracy being and being unique to the client with its encryption system and informing the acceptor about the arrival of the notification to the address by means of SMS and/or e-mail are appearing before us as the other significant characteristics.

It would be appropriate to look at this issue that we consider to be very important from another point, which we regard as the superior aspects of electronic communication. It is seen that with the electronic notification system the authority to conduct the notification is taken from the PTT and transferred to the Revenue Administration department.

This is a proper arrangement and is considered that the notification made by a notifying authority which has mastered the relevant laws in cases of taxation has completely eliminated the problems caused by the PTT administration and/or the postal officer.

On the other hand, it is seen that the published Communiqué No. 456 is not clear enough and some parts are left in shortage. As this Communiqué is a fundamental source determining

the principles and procedures of electronic notification, it can be seen that the deficiencies can lead to disputes reaching to the jurisdiction in practice and delay publicity with various loss of rights. In the event that the first of these problems is that there is no explanation in the Communiqué regarding the legal characteristic of informing the acceptor via SMS and / or e-mail that were specified in Electronic Notification Request Notification Form, about the notification that the electronic notification was made to his electronic notification address. Herein, which is required to be made is, by considering the Article 51 of the Notification Law, compared to the result taken from Electronic Notification Regulation based on the Notification Law, an explanation or at least an information note should be added to the Communiqué and form that informing the acceptor via SMS and/or e-mail does not legally bind the administration and as it is an elective right it will not give damage to the notification.

The second problem lies in the detection of penalties resulting from the acceptor's responsibility during the electronic notification process. We see here that Article 8 of the Communiqué refers to Article 355 of the Turkish Commercial Code and that it does not fulfil its obligations with respect to electronic correspondence. However, when Article 355 is examined repeatedly, it appears that the legal area of the property is restricted by the provision of the law. In the restricted articles, there is no article 107/A. In this case, although Article 355 is cited repeatedly, it is obvious that this article does not cover the criminal liability arising from the responsibilities of the acceptor in electronic notifications. Otherwise, the actual procedure will be cancelled on the way to the judiciary. In this context, it would be possible to avoid the problems that may arise in the future by adding Article 107/A to Article 355 of the VUK for the establishment of a proper procedure.

Another problem that may arise in practice is related to the removal of the acceptor from the electronic notification system. In the event that the address of the electronic notification addresses determined for real persons and legal entities is insufficient and the related notification is not issued in any other case and the address is not closed due to the preference of a restrictive provision by this address, there is no doubt that losses will occur.

On the other hand, it is seen that with VUK 160 the right to delete the tax obligatory record has been granted in various cases. In order to prevent the loss of rights that may arise in this context, it will be better to bring a new regulation into the relevant article by taking into consideration the situation of the administration to delete the record of obligations. The fourth issue, which is highly advisory, concerns the fact that the notification address can no longer be accessed from the electronic address of the notification previously made by the acceptor. The preferred method here is that the acceptor or the competent authority can access the notices on request from the administrative authorities. However, such an application means that the application of electronic notification which is far from the procedure, compromised economical, and fast. In this context, the method which can be preferred in this context should be applied in case the electronic notification addresses of taxpayers who are subject to the Notification Law are closed and the electronic notification addresses related to the taxation of the taxable transactions as much as the period of use.

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