

## *Amendments on the Notification Provisions of Tax Procedure Code under the law no. 7061*

### **I) Introduction**

In general, notification proceedings are conducted according to the Notification Law, law no. 7201 under Turkish legal system. At the same time, notification provisions in the Tax Procedure Code (“TPC”), law no. 213, are primarily applied as special provisions; and in the absence hereof, provisions in the Notification Law are applied. Notification has an importance for conducting parties to exercise their rights not only for taxpayers but for public administration. Even though the application of the Notification Law provisions are limited by the detailed provisions of TPC, there has been a need for new regulations due to adversities on the tax procedure in terms of TPC and Notification Law. In this manner, there has been some substantial amendments on the notification provisions of TPC when “Law on the Amendment of Some Tax Provisions and Some Other Regulations”, law no. 7061 (Omnibus Bill) came into force by its publication

This article has been written to discuss the scope and the results of abovementioned amendments.

### **II) Why the Amendments were needed?**

One of the reasons of the trial process lasts longer than expected is the disruptions that occurs during the notification process.

There are many requisites for a notification to be made accordingly. These requisites are as follows: a legal infrastructure that can met the needs in the practice, a record and data system comprising current and accurate data, the prudence of the notification authorities and the enlightens by the addressee of notifications.

In particular, misinformation of the taxpayers’ current and accurate addresses leads a notification to reach to the addressee in a longer period of time. In this case, negative consequences may occur for both as collecting taxes becomes difficult for the administration and taxpayers may face with late interest/fee .

For this reasons, this Omnibus Bill aimed to meet these defaults in practice.

### **III) What is the General Scope of the Amendments?**

General principles and addressees of notifications are regulated in the Fifth Section (between Art. 93-109) of the Tax Procedure Code. In the scope of the law no. 7061, amendments on the notification provisions of TPC can be summarized under four topics as follows:

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## **a. Art. 101 of the TPC: “Known Addresses”**

As is known that the taxation process involves the assessment, notification, accrual and collection stages following the taxable event. Known addresses come into prominence at the stage of notification. Art. 101 of the TPC titled “Known Addresses” has been amended by the Art. 16 of the law no 7061. With this amendment, the former known address phrase in Art. 101 stating “the addresses at notifications of quit, indicated in the petitions on actions, acknowledged at tax statements, determined at written notification on house and land tax by commissions” has been abolished since the need for this provision is satisfied with new provision. Nevertheless, the phrase that “the address registered to the Central Population Administration System (“CPAS”), which is constituted in accordance with the Code of Population Services, law no. 5409” has been added to this article. Moreover, provisions about in which situations and to whom the notifications are to be made has been amended in order to make notifications accurately.

As can be seen from the wording of the article, if the addressee is not reached accordingly his/her address determined under 1<sup>st</sup> and 2<sup>nd</sup> subparagraphs, addresses registered to the CPAS will be used. Address registered to the CPAS will be used directly for taxpayers without work address. Thus, unlike the former provision, CPAS address would be used for notification.

This regulation enter into force by 01.01.2018.

## **b. Art. 102 of the TPC: “Delivery of the Letter of Notification”**

Art. 102 of the TPC titled “Delivery of the Letter of Notification” has been amended with Art. 17 of the law no. 7061. New regulations on the notification procedure that applies in case of that the addressee taxpayers are not reached at their workplace or resident, has been made with this amendment.

According to new provision, if taxpayer is not reached at their workplace or resident as it is stated in Art. 101 subparagraph 3, the notification will be made at CPAS address. If the taxpayer is also not reached at CPAS address, the notification will be returned after the certification of service is annotated and signed by postal officer; then the notification will be made again. If the notification cannot be made for the second time based on the same reasons, a note indicating that the notified document can be taken from the notifying administration will be attached to door. The notification will be deemed as made when the document is taken from the administration. If the document is not taken within 15 days following the conclusion of the abovementioned process, the notification will be deemed as made at 15<sup>th</sup> day. The former provision stating that “if the notification cannot be made for the second time based on the same reasons, it will be made by publication” has been abolished with new provision. However, situations of notification by publication are determined separately in Art. 3 of the TPC. Likewise, the provision stating that “If the notification cannot be made as it is stated above, this will be established by a written and signed, along with the indication of date, certificate of fulfillment and circumstance which will be prepared before one of the addressee’s neighbor or a local authority or a member of community council. Such certificate of fulfillment and circumstance will also be signed by one of the addressee’s neighbor or a local authority or a member of community council” has been abolished.

It was stated in Art. 102 of the TPC, for taxpayers who avoid the notification or signing the

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document, that *“If the taxpayer avoids to sign, the notification will be returned to the notifying administration after notifying party signs and annotates the document”*. However, this phrase has been changed with new regulation, and now stating that *“If addressee avoids the notification, a note indicating that the notified document can be taken from notifying administration will be attached to the door (it was required in the former provision to left the notification to addressee’s front in this situation). Postal officer will return the notified document to notifying administration after annotating and signing it. In this situation, the notification is deemed to be made when it is attached to door.”*

This regulation enter into force by 01.01.2018

## **c. Art. 103 of the TPC: “ the letter of notifications which are announced ”**

With Art. 18 of the law no. 7061, a new statement which is “If the registered address couldn’t find in registered address system” has been added to Art. 103 of the TPC titled “The Letter of Notifications Which Are Announced”. With this amendment; the registered address system which are registered at CPAS are became more important. According to the new regulations; the letter of notification is done in such as the situations which are listed on below.

- 1- If the addressee does not have a known address as per Article 101 of this Law
- 2- If the notification couldn’t done as per in the first paragraph in Article 101 of this Law, clauses (1) and (2) as listed; addressee does not have a known address in CPAS.
- 3- If it is not possible to notify those in foreign countries
- 4- If it is not possible to notify because of other reasons

This regulation came into force by 01.01.2018.

## **d. Art. 157 of the TPC: “ notification of address changes”**

Although the amendment made by Article 20 of the law no. 7061 is not related to the notification articles of the TPC , the CPAS is included in the scope of “known addresses”. The residence statement which is in the first clause of Art.157 of the TPC has been removed of scope of article. The old version of Art. was “ The taxpayers which are changed their known home or work addresses; have to notify their new addresses to the Tax Office. The obligation of notifying the change of residence to tax offices has been removed with new amendment. Because taxpayers’ residence addresses are now can be found via CPAS.

This regulation came into force by 5<sup>th</sup> of December 2018, as the same publish day as of the Omnibus Bill.

## **e. BONUS: Art. 107/A of the TPC: “ Notification on Electronic Environment”**

Based on the relevance of our subject and the importance of technological developments; Art.107/A has been added to Art.107 of TPC with the Omnibus Bills. The Omnibus Bills dated in 23<sup>rd</sup> of July 2010 with the number of 6009(Art. 7) and on 27<sup>th</sup> of March 2015 with the number of 6637(Art.5) regulate “the letter of notification on Electronic Environment.”

According to the regulations in Art.107/A, “ A person who is to be notified may be notified in electronic environment by means of an electronic address which is suitable for the notification,

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*without being bound by the procedures mentioned in Article 93. This notification creates the same result as the notification made in physical environment. Electronic notification is deemed to have been made at the end of the fifth day following the date on which the addressee reaches the electronic address. Ministry of Finance is authorized to establish all kinds of technical infrastructure related to the notification to be made in electronic environment or to use the ones established, to make obligatory use of electronic address suitable for the notification and to determine the other principles and procedures related to the electronic communication.”* The Ministry of Finance has used its authority with the General Communiqués numbered 456 and 467.

Electronic notification regulation entered into force on April 1, 2016. Besides, within the scope of the Art. 148. and 149. of TPC, the notifications regarding the information and documents requested by the Ministry of Finance or tax inspection officers can also be made through this method. The Ministry of Finance has established technical infrastructure on the subject and the electronic notification address suitable for the notification has been established by the Revenue Administration within the framework of the Internet Tax Office.

According to this, electronic signature documents which are required to be notified can be communicated to the address of the electronic notification by using electronic notification system. The obligation to use electronic mail in accordance with the notification and the ones that can be communicated to him in electronic environment are as follows:

- a) Corporate Taxpayer's
- b) Those who have income tax liability in terms of commercial, agricultural and professional earnings (except farmers whose earnings are determined in simple form and who are not subject to real taxation system)),
- c) Those who demand electronic notification upon request.

Those who may be notified in electronic form shall be obliged to obtain an electronic notification address and use the electronic notification system by notifying them within the time period specified by the notification. When an e-mail application is made and e-notification is sent, the e-mail address specified in the electronic notification request notification will be notified via SMS and/or via e-mail to the notified e-mail address.

## **IV) Evaluation of New Regulations**

As a result, it is very important that the taxes and penalties imposed are duly communicated to the addressees in order to accrue the taxes and penalties related to the taxes levied and payable by the obliged parties or their responsible persons.

With these changes made in the notification system, it is aimed to prevent any disruptions that may occur during the notification process and significant measures have been taken. In particular, both the simplification and clarification of known addresses, as well as the reduction of the use of the notified notification procedure, will create a much more practical and efficient environment in practice.

However, it should be noted that; Article 102 of the TPC which was amended by the Article 17 of the Law no.7061; provides that the taxpayers will be notified in the workplaces or settlements if the taxpayers are not present in the workplaces or in the settlements.

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The fact that the Certificate of Notification drops or disappears through the door for any reason may cause notification to be made without the knowledge of the taxpayer. A review of this change and consideration of possible drawbacks will create a more healthy practice.

In general, we can say that due to the electronic notification practices and the improvements made in the Law no.7061, which has been widespread since April 1, 2016, the communication has become more accessible to the addressee and the Administration's ability to collect has been strengthened.

Thus, it will play an important role in ensuring that the administration complies with the provisions related to the procedures of notification, including the application of e-notification provided by the developing technology, and that the taxpayers know these, and minimize the disputes between the taxpayer and the tax administration and ensure that the taxpayers comply with the law.

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