

## Law Bulletin

Dispute Resolution | March 2025

### ELIMINATING DIFFERENCES IN JURISPRUDENCE REGARDING TAX DIFFERENCE REFUNDS FOR GOODS SUBJECT TO SURVEILLANCE

The customs authority may subject the prices of certain goods imported by taxpayers from abroad to surveillance in order to shape policies for the protection of domestic producers. The goods subject to surveillance are determined through the Communiqués on the Implementation of Import Surveillance ("**Communiqués**") and the Communiqués also set certain prices for the goods subject to surveillance. If the taxpayer imports a product below the prices specified in the Communiqués, they are obliged to submit a surveillance certificate.

Surveillance is not a commercial policy measure that imposes measures, restrictions, or additional financial obligations. Therefore, in practice, even if the actual sale prices of the goods imported by taxpayers are lower, they submit customs declarations based on the values specified in the Communiqués to avoid the obligation to submit a surveillance certificate. Subsequently, they utilize the refund mechanism outlined in Article 210 and the following provisions of the Customs Law to reclaim the tax difference arising from the declared customs value being higher than the actual sale price of the goods. However, with the amendment made to the Customs Law in 2021, it has become a topic of discussion whether this practice will continue.

#### **1. Amendment Regarding the Non-Application of Article 211 of the Customs Law in Case of High Declaration of Customs Value by the Taxpayer for Goods Subject to Commercial Policy Measures**

On 18 July 2021, an amendment was made to Article 211 of the Customs Law, stipulating that the refund provisions will not apply to customs duties that were paid or assessed because the taxpayer voluntarily increased the customs value of goods subject to trade policy measures. A lawsuit was filed before the Constitutional Court to annul this provision; however, the court rejected the lawsuit.<sup>1</sup> Consequently, taxpayers no longer have the option to obtain a refund for the taxes arising from the difference between the actual sale price and the value specified in the Communiqués through the refund mechanism.

---

<sup>1</sup> Decision of the Constitutional Court, dated 25.1.2023 and numbered 2022/136 E., 2023/16 K.

## 2. Discussion on Whether Taxes Arising from the Difference Between the Sale Price and the Declared Value Can Be Refunded Through the Ordinary Objection Procedure under Article 242 of the Customs Law

Following the amendment to Article 211 of the Customs Law, judicial decisions have debated whether taxpayers can reclaim these taxes through the objection mechanism regulated under Article 242 and subsequent provisions of the Customs Law, which is considered a more ordinary remedy compared to the refund mechanism. Taxpayers have begun to declare the customs value of their imported goods based on the values specified in the Communiqués with a reservation, even if the actual sale price is lower. After the goods were cleared through customs, they started filing objections with the Regional Customs Directorates under Article 242 of the Customs Law and subsequently initiated annulment lawsuits against the Regional Customs Directorates' decisions.

Some courts have ruled that taxpayers intentionally declared a higher customs value for their imported goods to avoid the obligation to submit a surveillance certificate despite knowing that the actual sale price was lower. Consequently, these courts have decided that the excess taxes paid could not be refunded.

On the other hand, other courts have determined that surveillance is not a commercial policy measure that imposes restrictions, limitations, or additional financial obligations and that the amendment to Article 211 of the Customs Law does not eliminate taxpayers' right to appeal through the ordinary objection mechanism. Considering the clear provision in Article 24 of the Customs Law, which states that the customs value of imported goods is the sale price of the goods, these courts have concluded that taxes arising from the difference between the declared customs value and the actual sale price such as customs duties, additional customs tax, value added tax, should be refunded.

This difference in judicial interpretations was brought before the Council of State Tax Litigation Chambers. The Council of State resolved the contradiction between these decisions in favor of the taxpayers, ruling that taxes such as customs duty, additional customs duty, and value-added tax arising from the difference between the sale price and the declared value of the goods should be refunded.<sup>2</sup>

As a result, in cases where taxpayers engaged in imports declare the customs value of the goods higher than the actual sale price with a reservation, in order to avoid the surveillance obligation and to release the goods from customs as soon as possible, the possibility of refunding the taxes arising from the positive difference between the sale price of the goods and the declared value has emerged.

## CONTACT



Begüm Biçer İlikay

[bbicer@kolcuoglu.av.tr](mailto:bbicer@kolcuoglu.av.tr)



Orhun Yavaş

[oyavas@kolcuoglu.av.tr](mailto:oyavas@kolcuoglu.av.tr)

---

<sup>2</sup> Council of State Tax Litigation Chambers' decision dated 24 January 2025 and numbered 2023/6 E., 2024/1 K.