

# Taxation of Family Income In Turkey: Reconsidering Distributive Measures

Hakemli Makale

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**ÖZET**

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**Türkiye’de Aile Gelirinin Vergilendirilmesi: Gelir Dağılımı Üzerine Yeniden Düşünmek**

Modern vergi teorisi, optimal vergilendirme öğretisi çerçevesinde gelirin vergilendirilmesini, vergi avantajları, teşvikler ya da aile yardımı gibi para transferlerinden ayrı değerlendirmenin mümkün olmadığını kabul etmektedir. Kamu maliyesinde servet ve harcama dışında ödeme gücünün üç göstergesinden biri olan gelirin vergilendirilmesi bakımından kapsamlı gelir vergisi görüşü, “vergiyi ödeme gücü”nden çok “geliri harcama gücü”ne önem verir. “Geliri harcama gücü” ise “aile” bakımından “bireyler”e oranla farklıdır, çünkü iki zaman noktası arasında birey ile ailenin ekonomik gücündeki “net artış” farklıdır ve bu net artış oranı vergiye tâbi geliri ifade eder. Dolayısıyla “aile” ile “birey” bakımından ödeme gücünden kaynaklanan vergi miktarının farklı olması gerekir. Ailenin vergilendirmesi bakımından devletin vergi politikaları kapsamında ve sosyo-ekonomik değişiklikler sonucunda vergi reformları sürekli olarak gündemdedir. Aile gelirinin vergilendirilmesi bakımından farklı ekonomilerin vergi mevzuatlarının karşılaştırılması bu çalışmanın konusunu oluşturmaktadır.

**Anahtar Kelimeler**

vergilendirme, vergi hukuku, evlilik, çocuklar, aile hukuku  
JEL Kodları: H20, K34, J12, J13, K36

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**ABSTRACT**

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Within the framework of the literature on optimal taxation, modern tax theory rejects an analysis of income taxation separate from tax benefits, incentives or money transfers such as family allowances. In public finance, as one of the three indicators of ability to pay, rather than wealth and expenditures, taxation of income emphasizes on “ability to spend income” more than “ability to pay tax”. “Ability to spend income” is different for “family” as a social and economic unit from “individuals” as the net increase in economic ability between two time points -which legally defines the income subject to taxation- for family and individuals is different. This should be considered in tax implementations for individuals and family. With respect to taxation of families, tax reforms are constantly actual in the scope of tax policies and socio-economic changes. This paper surveys a comparative evaluation of tax legislations of economies in a theoretical aspect.

**Keywords**

taxation, tax law, marriage, children, family and personal law  
JEL Classification Codes: H20, K34, J12, J13, K36

## 1. Introduction

Political governance, economic growth and taxation create mutually a cycle of state-building<sup>1</sup> by means of “a fiscal social contract”: political factors shape tax systems, taxes influence economic growth and the resulting higher tax revenues pay for a more capable public administration<sup>2</sup>. Therefore, a social tax reform may effect this cycle positively especially in developing countries.

As reform is a legislative process, the legal concept of family and the structure of income should firstly be introduced in a comparative view. This will lead us to some discussions about methodology, fairness and effectiveness. Lastly, current observations are going to be evaluated through an income tax reform in Turkey.

## 2. Concept of Family

According to UN, the family nucleus is defined as follows<sup>3</sup>:

- a) a married couple without children,
- b) a married couple with one or more unmarried children,
- c) a father with one or more unmarried children,
- d) a mother with one or more unmarried children,

Couples living in consensual unions should be regarded as married couples.”

In these alternative forms of cohabitation, if two people live together, they may be considered as family and a tax unit if it is recognized by the civil law of the state. Despite having similar circumstances, cohabiting couples are not taxed like spouses as cohabitation is not protected in the same way as marriage in civil laws. For example, according to the Turkish Civil Code, family is accepted as<sup>4</sup>:

- a married couple without children (marriage union),
- a married couple with children (parental union),
- a married couple with/without children and relatives living in the same house (household union)

As the concept of Turkish family requires a married couple, and is different than the UN definition, cohabiting couples or single parents are not considered as a family tax unit in Turkish law.

There are generally two different approaches in order to solve the problem of the different tax treatment of married and unmarried couples<sup>5</sup>: The first is to consider the single person as the tax unit and the problem is solved technically; and the second

1 State-building is defined as “*action to develop the capacity, institutions and legitimacy of the state in relation to an effective political process for negotiating the mutual demands between state and societal groups*” (OECD DAC, 2008).

2 Everest-Phillips, M., “State Building Taxation for Developing Countries: Principles for Reform”, **Development Policy Review**, 28 (1), 2010, p. 76-77.

3 <http://unstats.un.org/unsd/demographic/sconcerns/fam/fammethods.htm>, 22.10.2015.

4 Öztan, B., Aile Hukuku, Ankara 2004, p. 3; Akıntürk, T., **Yeni Medeni Kanun'a Uyarlanmış Aile Hukuku**, Türk Medeni Hukuku, C.II, İstanbul 2002, p. 5.

5 Soler Roch, M. T., “Chapter 1: Introduction”, Family Taxation in Europe, Kluwer Law International, 1999, p. 3.

solution is to have both lower and flat tax rates so marriage would be an irrelevant factor.

Beyond these technical solutions, the perspective of tax law as economic approach -which means to go beyond the form and take the economic aspect as the basis<sup>6</sup> - has another answer to this problem: "Where private law concepts are used in respect to taxation independently of their economic context, efforts to take the economic aspect as the basis for taxation do bring along with them application that go beyond their purpose. So where the terms "marriage" or "divorce" with which taxation consequences are associated, are mentioned in conjunction with the implementation of a tax norm, and where there is no doubt that these concept are used with their civil law meaning, it is not possible to deem cohabiting unmarried couples as married couples in the meaning of tax law or to deem duly married couples who live separately as divorced couples"<sup>7</sup>.

### 3. Principles of Family Tax Law

There are four basic principles for taxing families in the literature<sup>8</sup>: the protection of the family, ability to pay, fair distribution of income and right to human dignity.

#### 3.1. Protection of Family: Protect or Not?

The principle has two different meanings in terms of taxation<sup>9</sup>: in a wider interpretation, it obliges the legislator to provide a specific tax system for families (support rule); in a narrower interpretation, it acts as a limitation, in the sense that the legislator cannot discriminate against individuals because of the family situation (non-discrimination rule)<sup>10</sup>.

Article 41 of the Constitution of Turkish Republic (1982), provides the non-discrimination of spouses as emphasizing "equality" and protects family against single taxpayers by tasking the state for taking the necessary precautions to establish the welfare of the family and to protect children. So both of the support rule and the non-discrimination rule are constitutionally protected in Turkey.

Although the constitutional protection of the family, in some cases family -which is a legal subject- is considered "not good-faithed" and legal precautions are taken against "family" as it is also a social unit and by family relationships persons may use economic situations which is not always reflected by the treatment of the civil law<sup>11</sup>. For example, according to Turkish Income Tax Code Art. 41, which regulates the non-deductible

6 Akkaya, M., "Status of Efforts to Affect the Tax Obligation Under the Constitutional Principles of Taxation", **International Tax Law Conference Series, 2: Preventing Tax Avoidance**, Editor: Prof. Dr. Billur Yaltı, Beta, p. 49.

7 Akkaya, M., **Vergi Hukukunda Ekonomik Yaklaşım**, Turhan Kitabevi, Ankara, 2002, p. 34; "Status of Efforts to Affect the Tax Obligation Under the Constitutional Principles of Taxation", p. 52.

8 Soler Roch, M. T., p. 3, 4; Joachim Lang, "Chapter 4: Germany", **Family Taxation in Europe**, p. 59.

9 Soler Roch, M. T., p. 4.

10 Lang, J., p. 60.

11 Lang, J., p. 67.

expenses, "enterprise owner's wife, ancestors, descendants, third level in laws, directly or indirectly related firms, partners of those firms, other firms under the management, supervision and control by the means if capital are regarded as affiliated. Affiliated parties taxation operation will be corrected if the differences regarded as withdrawn from the enterprise are calculated at the declared tax base for income or corporate tax by the affiliated party."

### 3.2. Ability to Pay

If "right of equality"<sup>12</sup> is under constitutional protection in a country, (as in Constitution of Turkish Republic of 1982, Art. 10) income taxation has to be based on ability to pay principle, which means to levy more taxes on rich income groups than low income groups in a society as taxation should be determined with the taxpayers' economic and personal capacities<sup>13</sup>. The levels of income, wealth and consumption represent ability to pay or tax paying capacity.

The ability to pay principle favors for distributional function, generally accomplished with progressive taxation<sup>14</sup>. According to the Law of Decreasing Marginal Utility, marginal utility declines as the tax base increases. Higher marginal utility is received from a small amount of income is more for the poor than the rich taxpayers. Thus, progressive taxation equates the marginal disabilities of the taxpayers after paying taxes<sup>15</sup>.

In a case of the same increment amount, the tax sacrifices of a family is higher than of a single taxpayer if the tax bases are only the net increments<sup>16</sup>. So, is this about horizontal equity or vertical equity? To be more clear, are families and single taxpayers equal subjects of income tax? The question may be answered in an economic or a legal aspect which both have the same answer: No.

As an economic aspect, taxation of income emphasizes on "ability to spend income" more than "ability to pay tax"<sup>17</sup>. "Ability to spend income" is different for "family" as a social and economic unit from "individuals" as the net increase in economic ability between two time points -which legally defines the income subject to taxation<sup>18</sup>- for family and individuals is different. So, the answer of the question is there is vertical equity between

12 Ateş, L., **Vergilendirmede Eşitlik**, Derin Yayınları, İstanbul 2006.

13 *Başaran Yavaşlar, F., Gelir Vergilendirmesinin Temelleri*, Seçkin, 2011, p. 44.

14 See, Çağan N., "Demokratik Sosyal Hukuk Devletinde Vergilendirme", **Ankara Üniversitesi Hukuk Fakültesi Dergisi**, Cilt: XXXVII, S. 1-4, Y. 1980, s. 129-151; Başaran Yavaşlar, F., "Artan Oranlı Vergi Tarifesi Verginin Mali Güçle Orantılı Olması İlkesinin Zorunlu Bir Sonucu Mudur?", Tezel'e Armağan, İstanbul 2000; Karakoç, Y., "Anayasal Vergilendirme İlkeleri Üzerine Bir Değerlendirme", **Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi**, C. 15, Özel Sayı 2013, Prof. Dr. M. Polat Soyer'e Armağan, C. II, İzmir 2014; Budak, T., **Türk Vergi Hukukunda Anayasal Ölçüt: Mali Güç**, XII Levha Yayınları, İstanbul 2010.

15 Şener, O., **Modern Public Finance**, Revised 2nd Edition, Beta, İstanbul 2014, p. 119.

16 *Lang, J.*, p. 56.

17 *Saban, N.*, p. 272.

18 *Herber*, p. 2.

these two units and they should be subject to different tax implementations. Thus, deductions, exemptions, allowances or benefits are justified in tax law for family income.

From a legal view, as "tax justice is not the only supreme justice in a law state, tax justice which is measured by the ability to pay principle may be put backwards in case it conflicts with the other justice norms of law"<sup>19</sup>. Family taxation norms are social norms related with the social state principle in which some cases may have priority from the ability to pay principle<sup>20</sup>.

### 3.3. Social State and Fair Distribution of Income

Social state function of the state aims to achieve social justice, social security and social welfare which involves the fair distribution of wealth among the members of the society<sup>21</sup>. As redistribution from high income groups to low income groups is the central aim for the social state principle, existence of inequality in a society calls for governmental intervention<sup>22</sup> to correct income distribution. Governments may use state economic enterprises to improve the income distribution in a society by providing health and education to the society for free of charge or at low price. Scandinavian countries increase the welfare of the society by imposing high level of marginal tax rates on high income groups to provide social services – such as health, education, mass transportation, social housing and social security- to low income groups. This is an efficient policy to increase the income of low income groups<sup>23</sup>.

### 3.4. Right to Human Dignity

This right maintains one's physical, mental and social integrity to be respected. In a welfare state, physical and social integrity are not only ensured at the subsistence level. The right to human dignity guarantees a minimum civilized standard of living<sup>24</sup>.

Since Article 1 of the German Constitution (Grundgesetz) protects human dignity, in 1992 the German Federal Constitutional Court (Bundesverfassungsgericht) ruled that taxpayers have the constitutional right to a basic personal exemption equal to the subsistence amount which welfare services have to guarantee constitutionally to people without income as a minimum civilized standard of living<sup>25</sup>.

In developed countries' constitutions such as the Japanese Constitution of 1946 in Article 25, human dignity is a clear target: "All people have the right to maintain the minimum standards of wholesome and cultured living."

19 Başaran Yavaşlar, F., **Gelir Vergilendirmesinin Temelleri**, p. 58.

20 Başaran Yavaşlar, F., **Gelir Vergilendirmesinin Temelleri**, p. 60, 69.

21 Öncel/Kumrulu/Çağan, **Vergi Hukuku**, Gözden Geçirilmiş ve Değişiklikler İşlenmiş 22. Baskı, Turhan Kitabevi, Ankara 2013, p. 53.

22 See Çelik Tüzün, B., **Vergilemede Müdahale İlkesi, Anayasa ve Gelir Vergisi Hükümleri Açısından İncelenmesi**, Ankara 2001.

23 Şener, O., p. 22, 23, 83.

24 Lang, J., p. 59.

25 Lang, J., p. 59, BVerfG of 25 Sept. 1992.

On the contrary with that, Turkish Constitution of 1982 in Article 17 says: "All people have the right to live, protect and develop his physical and mental being." This article has a missing part of the puzzle: social integrity. In Turkey, a cost of living allowance - which is far from subsistence level - is only implemented for wage income, not sufficient to develop one's being.

#### 4. Concept of Income Tax

Taxable income is usually defined as adjusted gross income minus personal deductions. The adjusted gross income defines the net increment. The net increment should be considered with the consumption of income to measure the ability to pay taxes<sup>26</sup>. Economic income, defined by Henry Simon as the sum of a person's consumption plus the positive and negative change in net wealth<sup>27</sup>. So the consumption should be involved in personal deductions. But the question is if the amount of personal consumption is going to be taken as an assumed amount as subsistence amount or a minimum standard of living, or it is going to be maintained by the real cost of expenditures.

As German Personal Income Tax Code (Einkommensteuergesetz § 2(3)), Turkish Personal Income Tax Code lists seven items of income: commercial business, farming and forestry, freelance, employment, capital gains, real estate earnings and other income which are based on the source theory. In both countries a combination of net increment model and source theory, which leads to market-income (full earning potential) theory, is implemented<sup>28</sup>. For family income taxation, "a dualism of a capital-based factor defined by the adjusted gross income and a consumption-based factor defined by personal deductions and splitting rules"<sup>29</sup> is regulated.

As the main legal structure of these two systems are the same, in implementation, they differ in terms of "non-disposable income" which is also called as "deduction of inevitable personal expenditure" or "safeguarding subsistence level" in literature<sup>30</sup> and "the taxable income" in jurisprudence<sup>31</sup> in line with Tipke's emphasizes on the difference between the terms "economic capacity" and "taxable capacity" in means of "ability to pay"<sup>32</sup>. According to the writer, "economic capacity" is about the total income whereas "taxable capacity" is about the income above the subsistence level; so the ability to pay principle determines "the taxable income". In German tax law, it is accepted that the expenses for private consumption which are "unavoidable"

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<sup>26</sup> Lang, J., p. 56.

<sup>27</sup> Şener, O., p. 128.

<sup>28</sup> Lang, J., p. 58: "The market-income theory aims to tax all earned income in contrast to unearned income like gifts, inheritances and social benefits provided by the government."

<sup>29</sup> Lang, J., p. 57.

<sup>30</sup> Tipke, K., **Die Steuerrechtsordnung**, Cologne, 1993, vol. I, p. 672-692; K. Tipke and J. Lang, **Steuerrecht**, 15th edn., Cologne 1996, p. 73.

<sup>31</sup> BverfG of 3 Nov. 1982.

<sup>32</sup> Tipke, K., p. 480, 481.

for the taxpayer decrease the ability to pay<sup>33</sup> so “income taxation has to release a minimum subsistence amount to the family; only the income above this amount may be taxed.<sup>34</sup>”

In contrary with this, in Turkish tax law, “the taxable income” is found at the end of various deductions mostly in commercial business and freelance incomes but a few with the wage income. So, the capital income includes more “non-disposable income” than the labor income in Turkey; which is against the principles of ability pay and fair distribution of income. Cost-of-living allowance<sup>35</sup> is implemented on wage earners but it is under subsistence level. According to this implementation, the amount of the allowance increases if the wife does not work and have more children, so it may be criticized for it keeps women in the household.

## 5. Comparative Family Taxation Models

There are three methods in general used for family taxation: aggregation of income, marital income splitting and separate income taxation.

### 5.1. Aggregation of Income

In this method, married couples are accepted as a tax unit: the income of the spouses is aggregated and the aggregated amount is taxed at the same progressive tax as that applied to single taxpayers. As married couples has to pay more income tax than two unmarried individuals and breaks the rule of individual taxation<sup>36</sup>, which is a basic rule for ability to pay principle, countries left this system. This method was used in Germany until 1957 and Italy<sup>37</sup> until 1977.

Australia had a tax reform in 2005 towards joint taxation with family-income-targeted child payments and by lowering tax rates on higher incomes. As the new system shifted the burden of taxation to two-earner families on low and average wages, for reasons of fairness the reform is criticized<sup>38</sup>.

### 5.2. Marital Income Splitting

In this case, the amount of the aggregated income is divided into half and then taxed twice, like two separate incomes with the same amount. So the distribution of income in

33 BverfG of 3 Nov. 1982.

34 BverfG of 29 May 1990.

35 Ateş, L.; “Bir Başka Açından Asgari Geçim İndirimi”, **Vergi Sorunları Dergisi**, S. 232, p. 2008.

36 BVerfG of 17 Jan., 1957.

37 F. Mosschetti and R. Schiavolin, “Chapter-6: Italy”, **Family Taxation in Europe**, p. 87: “The aggregation of income was declared unconstitutional by Decision No. 179 of 15 July 1976 of the Italian Constitutional Court. According to this finding, it violated the principle of equality of every citizen before the law and the principle of legal equality of the marriage partners because tax law, without reasonable justification, treated a husband and his wife differently and discriminated against married taxpayers whose tax burden was heavier than that levied upon unmarried couples with the same income.”

38 P. Apps and R. Rees, “Australian Family Tax Reform and the Targeting Fallacy,” **The Australian Economic Review**, vol. 43, no.2, June 2010, p. 153-175.



the family is fully respected<sup>39</sup>. This system is criticized for creating the effect of keeping women at household in case of married couples if the husband has a high income and the wife works in the household. So this method would not fit for Turkey, as mostly the outdoor working part of the spouses is the husband and generally the wife is the one who has lower income.

This system is used by dividing family taxable basis into fractions in France. The system in France recognizes the existence of the family and divides the whole family's taxable basis into several parts, corresponding to the number of consumption units in the family as *quotient conjugal* (between spouses) or *quotient familial* (between children and other members of the household)<sup>40</sup>.

Income tax splitting between spouses (*quotient conjugal*) can be explained as follows<sup>41</sup>:

- the total income of the household is divided by two,
- the progressive tax rate is applied separately to each of the fractions and,
- the total tax is the sum of the two.

In income tax splitting between children and other members of the household (*quotient familial*), the number of fractions composing the family is increased by the children who are taken one half per member into account<sup>42</sup>.

### 5.3. Separate Income Taxation and A Step Further: Social Welfare Approach

In this form of taxation, the taxable unit is the individual. Progressive rates grow in relation to the single taxpayer's income. Separate income taxation is criticized for it needs corrective rules as income splitting between spouses or the French *quotient familial*<sup>43</sup>. Sweden, with completely separate taxation, gives an answer to the criticizes by family support, leaving the taxable capacity approach and taking social welfare approach for family income taxation<sup>44</sup>.

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39 Lang, J., p. 62.

40 Cyrille D., "Chapter: 3, France", **Family Taxation in Europe**, p. 38-40.

41 David, C., p. 39.

42 David, C., p. 40.

43 F. Mosschetti and R. Schiavolin, p. 88, 89: "In Decision No. 179 of 1976, the Constitutional Court voiced the wish that, in a system of separate taxation, different tax relief systems would be provided to assist the formation and development of the family and to consider the position of the woman either as housewife or as worker."

44 Messere, K., "Tax Policy in OECD Countries: Choices and Conflicts", **IBFD Publications BU**, Amsterdam, 1993, p. 258-260; Gunnarsson, A., "Chapter: 8, Sweden", **Family Taxation in Europe**, p. 118, 119: "For the modern welfare state, there are two approaches towards the tax and benefit systems: 1- The taxable capacity approach which emphasizes on horizontal equity, rather than vertical equity and redistribution, in income tax systems based on ability to pay principle. The taxable capacity of parents is considered to be lower than taxpayers without children, because of the additional expenditure. According to this approach, the most appropriate tax relief is tax allowances. 2- The social welfare approach emphasizes on vertical equity and redistribution, rather than horizontal equity, regards cash subsidies as a better means of social support to parents rather than tax allowances or tax credits."

In the Swedish tax reform (1991), a through structural change of the income tax was undertaken<sup>45</sup>:

- the introduction of a comprehensive tax base, splitting the income tax between earned income and income from capital.
- switching the tax burden from income tax towards consumption tax,
- flattening of the income tax rate schedules and a reduction in the number of tax brackets.
- as a means of redistributive equity, taking family support out of the tax system into the social system by benefits.

Sweden is a good example for coordination of the tax and welfare legislation where social assistance is a negative income concept<sup>46</sup>. This structure which combines progressive taxation of labor and transfer income with proportional taxation of income from capital at a lower level equal to the corporate income tax rate is called dual income taxation<sup>47</sup>.

This tide beginning in Nordic countries soon effected many European countries -not all in the pure form but to a certain degree- including Germany. In 2009, capital income was excluded from the German income tax tariff and since then, it is taxed at a lower final withholding tax rate. In German tax system, personal income tax base is different for single and married. Married couples may choose to be assessed either jointly or separately. As an option, if the taxpayer is married, the income of the taxpayer can be combined with the income of the spouse. Then the tax on 50 % of the combined income is doubled correspondingly. This is an optional implementation of marital income splitting.

In 2016, Germany has progressive tax rates for single and married taxpayers ranging as follows<sup>48</sup>:

Taxable income range for single taxpayers (EUR)		Taxable income range for married taxpayers (EUR)		Tax rate (%)
Over	Not over	Over	Not over	
0	8,652	0	17,304	0
8,653	53,665	17,305	107,330	14
53,666	254,446	107,331	508,892	42
254,447	and above	508,893	and above	45

45 Gunnarsson, A., p. 119, 120.

46 Gunnarsson, A., p. 124.

47 A. S. Kristjansson & P. J. Lambert, **Structural Progression Measures For Dual Income Tax Systems**, J Econ Inequal (13), 2015, p. 2.

48 <http://taxsummaries.pwc.com/uk/taxsummaries/wwts.nsf/ID/Germany-Individual-Taxes-on-personal-income>, 04.05.2016.

According to the table above, it can clearly be seen that families are protected economically, by taxing from higher bracket amounts. This implementation accepts a lower “taxable income” for families than single taxpayers and leaving a zero bracket amount for all taxpayers, it appears to be a social norm. Moving a step further than structural progression, reconsidering distributive measures is the natural evolution of the tax system that Turkey codified from German Income Tax Code.

## 6. The Income Tax Reform in Turkey

Taxation is regulated in the 73th Article of Constitution of 1982 in Turkey. Although ability to pay principle is clearly maintained in this article, The Turkish Constitutional Court<sup>49</sup> and literature<sup>50</sup> mostly explains this principle with social state principle (Art. 2) but not with right to equality as in German tax law<sup>51</sup>. Right to equality may occur as horizontal equity by taxing the taxpayers who have the same ability to pay equally or vertical equity by taxing the taxpayers who do not have the same ability to pay differently. Progressive taxation is a method for achieving vertical equity but cannot represent social state principle solely, without considering effective rates and a zero bracket amount which leaves a subsistence level in taxable income.

Article no. 41 of the Constitution of Turkish Republic (1982), provides the non-discrimination of spouses as emphasizing “equality” and protects family by tasking the state for taking the necessary precautions to establish the welfare of the family and to protect children. Before the rule of the Code No. 4369 in Turkey, the family was a taxable unit in which the taxpayer was the head of the family and the basis of assessment was the total income of the spouses and the children. This aggregation of income method was criticized in literature for breaching ability to pay principle and making a gender discrimination against women because the increasing tax burden as a result at aggregation effects women mostly as secondary earners with lower incomes<sup>52</sup>. After the Code in question, separate taxation of the family was introduced. Since then (29.07.1998), the taxable unit has been the individual and progressive tax rates grow in line with the single taxpayer’s income.

As the Turkish Personal Income Tax Code was codified from the German Personal Income Tax Code, concept of income tax is mostly alike. But there are differences of interpretations: as the ability to pay principle derives from “principle of equality” in German tax law, “income taxation has to release a minimum subsistence amount to

49 See *Yalti, B.*, “Vergi Adaleti Kavramında Soyuttan Somuta; Türk Anayasa Mahkemesi Kararlarını Eşitlik, Özgürlük ve Sosyal Devlet Kavramları ile Okumak”, **13. Maliye Sempozyumu**, 14-16 Mayıs 1998, İstanbul.

50 Öncel/Kumrulu/Çağan, p. 280; Şanver, S., **Vergi Ödevi, Çağdaş Anayasalarda Ekonomik ve Sosyal Haklar ve Ödevler**, İstanbul 1982, p. 399-401.

51 *Başaran Yavaşlar, F.*, *Gelir Vergilendirmesinin Temelleri*, p. 62, 63.

52 See *Yalti, B.*, “Gelir Vergisinde Tartışmalı Bir Vergi Statüsü: Aile Vergilendirmesi-I (Kadının Konumu Açısından Bir Değerlendirme)”, **Vergi Sorunları Dergisi**, Sayı: 81, 1998; *Yalti, B.*, “Gelir Vergisinde Tartışmalı Bir Vergi Statüsü: Aile Vergilendirmesi-II (Kadının Konumu Açısından Bir Değerlendirme)”, **Vergi Sorunları Dergisi**, Sayı: 82, 1998.

the family and only the income above this amount may be taxed.<sup>53</sup> Therefore, in the 66th Article of German Personal Income Tax Code, child benefit (Kindergelt) and child allowance (Kinderfreibetrag) is regulated. Taxpayer may choose the implementation according to his favor.

Although the principles of social state (Art. no. 2) and ability to pay principle (Art. no. 73) are clearly maintained and fair distribution of income is a constitutional target, "a minimum subsistence amount" is not implemented for the families in Turkish tax law. It is because of the limited sense of "ability to pay" principle. In a wider perception, this principle determines "the taxable income" above the subsistence level. From this aspect, for example, the minimum wage should not be taxed, as it is also a duty of the social state<sup>54</sup>.

Considering the Turkish Personal Income Tax Code with the family tax law principles, it can be observed that the current progressive income tax range does not reflect these principles:

- The so-called progressivity of the income slices cannot be rationalized with ability to pay and fair distribution of income principles while the insufficient cost-of-living allowance disturbs human dignity. Taxation by withholding in all items of income, especially for wages, in a certain but wide extent, antagonizes with the progressive income taxation. According to the policy of taxation, there should either be an effective progressive taxation or flat taxation with effective social benefits as compensation. The current system is neither progressive nor proportionate.
- Also protection of family principle is not implemented financially by taking consumption of the family into account as a deduction or by a differentiated income tax range.

The New Income Tax Draft Code designed in 2013 is still actual in Turkey. As observed, the separate income taxation and progressive tax rates continue their existence but "minimum standard of living" is not in the Draft. However, the current cost-of-living allowance for wages system which does not constitute a "standard of living", continues its existence in the Draft. This allowance may be criticized as insufficient for it can only be used for wage income in a minimum amount and increases its amount as the wife does not work and has more children. The New Income Tax Draft Code also does not constitute family tax law principles.

## 7. Conclusion

For an income tax reform in general and for family income in respect, the right discussion should be about which welfare state approach is going to be maintained for design. Also, there should be the discussion of flat rates or progressive rates: A progressive

53 BverfG of 29 May 1990.

54 Güneş, G., **Verginin Yasallığı İlkesi**, İstanbul 1998, p. 101.

rate with tax allowances and a minimum standard of living or a flat rate with effective family and child benefits?

As Turkey already has constitutional and legal background and has systems of separate taxation and progressive tax rates; regulation of minimum standard of living with family and child benefits and different taxable income ranges for singles and families would be operational.

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