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TAX

Turkish Tax Authority has changed its Opinion on RUSF Application in case of the Extension of FX loans

The Directorate of Revenue Administration changed its previous opinion provided with the letter dated February 13, 2014 and No.17483 on the Resource Utilization Support Fund ("RUSF") application of foreign currency and gold loans extended by foreign residents to Turkish residents other than banks and financial institutions in parallel to our opinion provided under our Tax Alert 2/2014. New opinion of the Revenue Administration issued with the letter dated August 12, 2015 and No.70903105-165.01.03[182]-77912 for the name of the Banks Association of Turkey is as follow:

- With respect to the FX loans granted from offshore, the RUSF shall apply at the rates which are effective on the utilization date of the loan;
- If the FX loan, the term of which is below 3 years, granted from offshore by applying RUSF is extended as being adhered to the original loan agreement, any RUSF shall not apply over the extended loan regardless of whether the average term of the loan together with the extended period is below or above 3 years, and the amount of RUSF which has been already withheld in accordance with the average term on the utilization date of such loan shall not be refunded;
- If the FX loan, the term of which is 3 years or more, granted from offshore from which RUSF was not withheld is extended as being adhered to the original loan agreement, RUSF shall not withheld over the extended loan regardless of whether the extended period is below or above 3 years since the average term of the loan will be above 3 years;
- If the FX loan granted from offshore is repaid before the maturity term (i.e.; for loans which have been extended, the extended term should also be considered), and the time period between the utilization and the repayment date is less than 3 years, the RUSF with a penalty amount shall apply over the loan the average term of which is calculated as between the utilization date and the repayment date.

Privileged Investments which are over 3 billion Turkish Lira are considered as Strategic Investment under the Investment Incentive System

In accordance with the amendment made on Article 8 of the Decree regarding the Investment Incentives (Decree No.2012/3305) by the Decree of the Council of Ministers (Decree No.2015/8050) (published in the Official Gazette dated August 27, 2015 and No.29458); privileged investments of which minimum fixed investment amount is over 3 billion Turkish Liras are accepted as strategic investments. However, the interest support amount to be provided for these investments is limited to seven hundred thousand Turkish Liras.

Electronic notification application will begin as of 1 January 2016.

Under the Tax Procedural Code General Communiqué (Serial No. 456) (published in the Official Gazette dated August 27, 2015 and No.29458) the procedures and principles in relation to the electronic notification of the documents which are issued by tax authorities and which shall be notified to addressees in accordance with the Tax Procedural Code have been determined as follows:

- Under the Communiqué No.456; those who are obliged to use notifiable electronic addresses and those to whom electronic notifications can be made have been determined as follows:
  a) Corporate income taxpayers,
  b) Those who are liable for the income tax in terms of commercial, agricultural and professional income (i.e.; except for those whose incomes are determined through simple procedure and farmers whose incomes are not subject to tax in actual procedure),
  c) Those who discretionally request to be served electronic notifications.
- Electronic notification application will begin as of January 01, 2016. Within the scope of this application, corporate income taxpayers who are required to use electronic notification application must submit the "Electronic Notification Request Notification" until 1 January 2016 to the affiliated tax office in terms of corporate income tax;
- Legal entities who are registered as a corporate income taxpayer after the beginning date of the obligations stated under this Communiqué shall submit the abovementioned notification within 15 days following the commencement of work;
- Taxpayers fulfilling the respective requirements will be provided with internet tax office user codes and password. Thereby, taxpayers will obtain the electronic notification addresses. Electronic notification system will be accessed through the internet tax office.
- Among those who are required to use the electronic notification system, those who do not comply with the above-mentioned liabilities will be subject to the special irregularity penalty (1300 TL for corporate income taxpayers in 2015).

Special Consumption Tax List no. (III) and (IV) Application General Communiqués have become effective as of 1 September

Special Consumption Tax ("SCT") List No. (III) Application General Communiqué including the explanations in relation to the List No. (III) attached to the SCT Code under which tax rates and lump-sum tax amounts as to the alcoholic and non-alcoholic beverages and tobacco products are determined, was published in the Official Gazette dated August 08, 2015 and No.29439.

In addition, Special Consumption Tax List No. (IV) Application General Communiqué including the explanations in relation to the List No. (IV) attached to the SCT Code under which tax rates and lump-sum tax amounts as to various kinds of goods such as cosmetics, peltry, white appliances and etc. are determined, was published in the Official Gazette dated August 08, 2015 and No.29451.

Both communiqués have become effective on September 01, 2015.

As part of the simplification initiative on the secondary legislation of the Special Consumption Tax, the tax authority started to gather, combine and simplify the explanations previously made under 36 different SCT Communiqués. With the publication of the below stated 2 communiqués, the series of 4 Communiqués are now completed and in effect. Therefore, as it is stated under each one of the 4 communiqués, all of the previously published 36 communiqués are abolished.

Electronic Field Inspection has become effective as of 1 September.

Through the Tax Procedural Code General Communiqué (Serial No. 453) (published in the Official Gazette dated June 20, 2015 and No.29392) the procedures and principles in relation to the electronic field inspection application have been determined as follows:

- E-inspection forms will be created in electronic form by authorized persons via mobile devices;
- The issues determined during the field inspection will be demonstrated to the person for whom inspection is performed or to his/her representative through the screen of the mobile device, and if their accuracy is agreed upon and the person performing inspection has an electronic signature tool, an electronic inspection form will be signed by that person or his/her representative through the electronic signature tool;
- If there is no electronic signature tool, the e-inspection signature form which has the summarized information and a unique code on it will be signed mutually by the authorized persons and the person for whom inspection is performed or his/her representative by indicating the date;
- The signature process is completed after the electronic field inspection form signed by the person for whom inspection is performed or his/her representative is approved by the authorized persons in electronic form;
- If the person for whom the field inspection is performed or his/her representative is not present or avoids signing the electronic field inspection form, this will be recorded on the mobile device and the e-inspection signature form. In this case, the inspection form will unilaterally be approved by the authorized officer and a copy of the electronic field inspection signature form will be left to the relevant person;
- Electronic inspection application has become effective as of 1 September 2015.

The Information Exchange Agreement has been signed between Turkey and USA within the scope of Foreign Accounts Tax Compliance Act

It has been announced on the official website of the Directorate of Revenue Administration on July 30, 2015 that the "Agreement on Increasing International Tax Compliance through Extended Information Exchange" was signed in Ankara between Turkey and USA within the scope of Foreign Accounts Tax Compliance Act **("FATCA").**

Under the abovementioned agreement, exchange of certain information becomes possible between two countries in relation to American citizens having an account in the financial institutions operating in Turkey and certain information in relation to Turkey resident account holders in the financial institutions operating in the USA.

The refund principles for the taxes imposed on incomes derived through the activities of independent personal services obtained from Turkey within the scope of Turkey-Germany DTT have been announced.

Under the Double Taxation Treaties **("DTT")** General Communiqué (Serial No. 3) (published in the Official Gazette dated July 15, 2015 and No.29417); it is stated that in cases where the incomes earned by individuals and legal entities resident in Germany through their professional services in Turkey are taxed through withholding and the following explanations should be considered in relation to the refund principle of such taxes in accordance with the DTT signed between Turkey and Germany:

Individuals and legal entities resident in Germany shall apply for the refund of the tax withheld until the end of the fourth year following the calendar year in which the tax has been withheld.

The application shall be made to the tax office which the Turkey resident taxpayer (i.e.; who is liable to declare and pay withholding tax) is affiliated to. The following documents shall be submitted to the tax office for the refund application:

- The form of which the relevant sections to be filled in,
- The original copy of the certificate of residence to be obtained from the authorized institutions of Germany or the Turkish translation of it which will be approved by the Turkish Consulates in Germany,
- A sample of the agreement in relation to professional services activity, if any.

The Deduction Rate of 50% applicable on Capital Increases in Cash has been increased for Companies Publicly held and Investments with Incentive Certificates.

As explained in our Newsletter (No.Q2/2015); through the amendment made on Article 10 of the Corporate Income Tax Law by the Law No. 6637, companies were enabled to deduct 50% of the interest calculated over capital increases made in cash from the corporate income tax base. Based on the authority provided to the Council Of Ministers under the legal regulation, the Council of Ministers amended this rate with Decree No.2015/7910 (published in the Official Gazette dated June 30, 2015 and No. 29402). Accordingly, the deduction applies as follows;

- For publicly held companies whose shares are traded in the stock exchange, 50 points will be added to 50% deduction rate if the rate of the nominal value of the shares traded in the stock exchange registered in the Central Securities Depository ("Merkezi Kayıt Kuruluşu A.Ş.") comparing to the paid–in capital or issued capital registered with trade registry of those is more than 50%; 25 points will be added to 50% deduction rate if the above stated ratio is less than 50%.

a) If the capital increased in cash is used in production and industry plants with investment incentive certificates and investments of machines and equipment in relation to these plants and/or investments of lands and plots allocated to construction of these plants, the deduction in question shall apply by adding 25 points to the 50% rate stated above, as limited to the fixed investment amount in the investment incentive certificate.

On the other hand, as per the Decree, such deduction shall apply at the rate of 0%:

a) for companies 25% or more of whose income comprises passive incomes such as interest, dividend, rental, license fee, marketable security sales etc. apart from commercial, agricultural or independent professional activities conducted through capital, organization and personnel employment parallel to the activities of the company,
b) for companies 50% or more of whose total assets comprise of long-term securities, participation shares, and subsidiaries,
c) for the portion of the increased capital which is used in the capital increase in other companies or extended as loan to other companies,
d) for companies investing in lands and plots, as limited to the amount corresponding to the land or plot investment,
e) for the decreased capital amount, if capital has been decreased in the period between March 08, 2015 and July 01, 2015.

The above mentioned rates have become effective as of 1 July 2015 in parallel with the effective date of the respective provision of law.

The Principles of the VAT Exemption in relation to the Modernization and Construction of Transit Petroleum Pipeline Projects have been determined.

As known, under our Newsletter (No.Q2/2015) it was explained that according to temporary Article 34 of the Value Added Tax ("VAT") Code, deliveries and services provided as of 1 January 2014 to those who perform construction

and modernization works for transit petroleum pipe line projects exempted from VAT within the framework of the international agreement provisions will be evaluated as exempt from VAT. The exemption and refund principles in relation to the construction and modernization of transit petroleum pipeline projects stated in the temporary Article 34 of the VAT Code were determined by the tax authority through the Communiqué on Amendment to the VAT General Application Communiqué (Serial No.3) (published in the Official Gazette dated June 27, 2015 and No.29399). Accordingly, in order for the exemption to be applied;

- There must be an international agreement put into effect in accordance with the procedures before April 07, 2015 when the temporary article 34 of the VAT Code became effective,
- This agreement must fall under the scope of the Law no. 4586 on Transit Passes of Petroleum through Pipelines,
- The international agreement must contain a provision regarding the transit petroleum pipelines to be constructed and modernized are exempt from VAT.

Deliveries and services which are provided to those performing construction and modernization of transit petroleum pipelines fulfilling the abovementioned conditions and in relation to the construction and modernization are exempt from VAT as of 1 January 2014.

The Ministry of Energy and Natural Resources provides a certificate stating that the transit petroleum pipeline project is within the scope of this exemption. Only those who have this certificate could benefit from the exemption. In order to perform transactions within the scope of the exemption, the exemption certificate must be submitted to the seller taxpayer who will perform the delivery or service.

Purchases of goods and services and furniture, soft furnishing and similar fixtures, and passenger cars, minibuses, buses and similar vehicles which are in relation to administrative activities of the certificate owners and construction, installment and operation of the administrative buildings, plants and equipment could not be evaluated within the scope of the exemption.

Regarding the goods and services which are within the scope of the exemption between January 1 2014 and the date of exemption certificate but obtained through paying VAT by taxpayers holding certificates, necessary corrections will be made within the framework of the explanations made under the section "I/C-1.1 Excessive or Unjust Taxes" of the VAT Application Communiqué.

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