



## Tax Alert 2015/2

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The award winning Pekin & Pekin Tax practice team leaves regular compliance support to accounting firms and instead focuses on more complex cases, giving clients direct practical and innovative advice.

To discuss how these developments affect your business interests please contact Fethi Pekin, Managing Partner. Email: [fpekin@pekin-pekin.com](mailto:fpekin@pekin-pekin.com)



## TAX NEWSLETTER

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### **Double Taxation Agreement between United Mexican States and Turkey has been approved by the Council of Ministers**

The Council of Ministers through its Decree (**Decree No.2015/7628**) (*published in the Official Gazette dated June 06, 2015 and No. 29378*) has approved the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has been signed between the United Mexican States and Turkey. The Agreement and its protocols will become effective after the reciprocal notifications of the parties.

### **Communique in relation to the Corporate Income Tax Exemption on the Transfer, Sale or Rental of Inventions**

Upon the publication of the Omnibus Bill (**Law No. 6518**) (*published in the Official Gazette dated February 19, 2014 and No. 28918*), the following incomes derived through inventions arising from research, development, innovation and software activities performed by corporate income taxpayers in Turkey have an exemption of 50% from the corporate income tax as of January 01, 2015. This exemption applies to:

- Income derived through the rental of such inventions;
- Income derived through the transfer or sale of inventions;
- Income derived through the marketing of such inventions after the mass production process;
- The part in relation to the patent or beneficial model certificate of income derived through the sale of products manufactured after using the inventions in the manufacturing process executed in Turkey.

With the publication of the Corporate Income Tax Code Communique (Serial No: 8) (*published in the Official Gazette dated April 21, 2015, No. 29333*), amendments are made to certain provisions of the Corporate Income Tax Code Communique (Serial No:1), which mainly

regulates the principles and requirements for tax exemption provisions as stated above. According to the Communiqué, in order to benefit from the abovementioned exemptions, the following is required:

- The research, development and innovation activities and software activities in relation to the inventions must be performed in Turkey;
- In relation to the inventions, a patent must be obtained with an examination system registered by TPE or a beneficial model certificate must be obtained as a result of a positive research report;
- The applicant must be among the persons that could benefit from exemption application,
- A special license in the nature of sole trade over patent or beneficial model certificate must be held;
- A valuation report must be issued;
- The protection period provided for the patent or the beneficial model certificate should not be exceeded.

## **Tax Regulations in relation to the Turkish Red Crescent and its commercial enterprises**

The Law No.6639 (*published in the Official Gazette dated March 27, 2015 and No. 6639*) on the tax regulations in relation to Turkish Red Crescent and its commercial enterprises has become effective. The main impacts of the Law are listed below:

- It has been clarified that withholding tax shall apply over the incomes of associations and institutions regulated under Law No. 1606 (i.e.; Turkish Red Crescent, Turkish Aeronautical Association, Child Protection Institute and etc.) and which are subject to the Income and Corporate Income Tax Code;
- A VAT exemption has been introduced to deliveries and services performed by the Turkish Red Crescent within the scope of its duties to be performed in accordance with the regulation;
- The Law has also introduced the VAT exemption for deliveries and services within the scope of humanitarian charity activities conducted by Turkish Red Crescent together with national and international charity organizations;
- Transfer and delivery of immovable property which has been nationalized through exchange within the scope of urban transformation projects and which are conducted within the scope of the Council of Ministers Decision No. 2011/2266 to the Treasury until 31.12.2018 are exempted from value added tax, stamp tax and title deed fees;

An exclusion ground has been introduced to the Turkish Red Crescent in relation to the corporate income tax and withholding tax on dividends.

## **Recent Resource Utilization Support Fund Changes**

Upon the publication of the Decree of Council of Ministers No. 2015/7511 (*published in the Official Gazette dated April 10, 2015 and No. 29322*), the [Resource Utilization Support Fund \(the "RUSF"\)](#) shall apply at the rate of 0% for future imports of certain goods. Those goods are determined based on customs tariffs without distinguishing any company, sector or condition. Please find below examples of goods of which the future imports and will be subject to 0%

## RUSF.

- Organic Chemicals
- Fertilizers
- Mineral Fuels, Mineral Oils and Products which are made up of their distillation, Ozocerites
- Inorganic Chemicals, Organic or Inorganic Compounds of Radioactive Elements, Rare Earth Metals, and Isotopes.
- Silk
- Cotton
- Glass and Glassware
- Iron and Steel
- Copper , Nickel, Aluminium, Tin, Zinc and their Goods
- Other Base Metals, Cermet and Their Goods
- Nuclear Reactors, Boilers, Machines
- Electrical Machines
- Railway Vehicles and Their Parts
- Ad Hoc Motor Vehicles ( Ex: Cement Mixer)
- Aeroplanes, Space Vehicles and Their Parts
- Crafts

### **Incentive for Capital Increase in Cash and Other Tax Regulations**

Upon the amendment made by Law No.6637 (*published in the Official Gazette dated April 07, 2015 and No. 29319*) on Article 10 (titled "**Other Deductions**") of the Corporate Income Tax Code (Law No.5520), 50% of the interest amount (*i.e.; Turkish Republic Central Bank's most recent interest rate which applies to commercial TRY loans extended by Banks for the year in which the deduction is made shall be taken as a basis*) calculated over the capital increases in cash made in a corporation and the part of capital which is invested in cash to a newly established company can be deducted from the corporate income tax base. However, state economic enterprises and companies operating in the fields of finance, banking and insurance sectors do not have such deduction right. This right of deduction will become effective as of July 01, 2015.

Through the amendment made by Law No.6337 on provisions of Value Added Tax ("**VAT**") Code and Special Consumption Tax ("**SCT**") Code, the scope of VAT and SCT exemptions which are applicable for international institutions and their members have been extended. In that regard, international institutions operating in Turkey and members of their executive teams who are not Turkish citizens can benefit from the VAT and SCT exemptions within the scope of the host government treaties or other treaties of which Turkey is a party.

Furthermore, by amendment made on the temporary Article 34 of the VAT Code, deliveries and services provided as of January 01, 2014 to those who perform construction and modernization works for transit petroleum pipeline projects and which are exempted from the VAT in accordance with provisions of international treaties will accordingly be exempt from the VAT.

As a result of the amendment made on the Tax Procedural Code; notifications sent to taxpayers in electronic form will be accepted as those have been sent at the end of the 5th day following

the date when it reaches the electronic address of the taxpayer.

## **The Cancellation Decision of Constitutional Court on the Joint Liability of Legal Representatives from the Legal Entity's public debts**

Prior to the Constitutional Court's decision on the cancellation of paragraphs 5 and 6 of the Repeating Article 35 of the Law on Collection Procedure for Public Receivables (**Law No.6183**) (*published in the Official Gazette dated July 28, 1953 and No. 8649*); articles which were subjected to the cancellation were regulated as below;

- Under paragraph 5 it was stated that in cases where public receivables are incurred and become payable and where the legal representative and the person managing the legal entity are different persons, these persons will be jointly liable for the payment of public receivable,
- Under paragraph 6 it was stated that the provisions regulated under the Tax Procedures Code in relation to the liabilities of legal representatives cannot abolish this liability.

The Constitutional Court rendered a judgement (*dated March 19, 2015 and numbered File No. 2014/144 E. Judgement No.2015/29 K.*) in which it concluded that the abovementioned provisions of Law No.6183 constitute a violation of the Turkish Constitution and accordingly are void. This judgement was published in the Official Gazette dated April 3, 2015.

In this regard, through the abovementioned judgement, paragraph 5 of Article 35 has been cancelled based on the ground that holding someone liable for the act or negligence of another person does not comply with the principles of justice and fairness.

Paragraph 6 of Article 35 has been cancelled on the ground that since Article 10 of the Tax Procedural Code applies to the same case, an uncertainty is created as to which regulation should be applied. Accordingly, Article 35 of the Public Receivables Law does not comply with the principle of the state of law.

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