

Recent Amendments in Tax Laws made with the Law no 6728 Aiming to Stimulate Investments

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TAX

On July 15, 2016, the Law Making Amendments on Certain Laws Aiming to Improve the Investment Environment (Law No.6728) passed in the Turkish Parliament and upon approval of the President, Law No.6728 was published in the official gazette dated 9 August 2016 and numbered 29796. With the Law No.6728 a number of amendments made in different laws including but not limited to tax laws. In this newsletter, we will only cover tax related amendments and the other changes will be subject to another issue.

1. THE PURPOSE OF THE LAW No.6728

Within the scope of the tenth development plan, twenty-five different transition programs aiming to improve the applicability and effectiveness of the tenth development plan and the related action plans, it is considered necessary by the Turkish Parliament to make certain amendments and regulations in the tax laws and other related laws in order to achieve the below objectives;

- Decreasing transaction cost of investments,
- Eliminating differences steaming from the regulations by reviewing incentives intended to stimulate research and development activities,
- Eliminating different applications among financial institutions,
- Extending usage of interest-free financial products (Islamic banking),
- Stimulating international investments,
- Canalization of savings to productive fields by way of tax related regulations,
- Decreasing cost of conformity and increasing predictability in taxation,
- Merging social security return and withholding tax return,
- Decreasing transaction cost in relation to branch openings and company establishments.

In order to achieve the above objectives, certain amendments made in the laws including the Income Tax Law, Corporate Income Tax Law, Tax Procedural Law, Stamp Tax Law, Fees Act, Public Receivables Collection Law, Value Added Tax Law, Expenditure Tax Code, Property Tax Law, and Law on Municipal Revenues. Summary explanations in relation to the amendments made on the tax laws are provided herein below.

2. THE AMENDMENTS MADE IN THE STAMP TAX LAW AND FEES ACT

In order to decrease the transaction cost in investments and improve the investment environment, certain material amendments made by way of enacting new exemptions on the Stamp Tax Law (“STL”) (Law No. 488) (*published in the Official Gazette dated July 11, 1964, No. 11751*) and Fees Act, (Law No. 492) (*published in the Official Gazette dated 17 July 1964, No. 11756*).

2.1. Only one copy of the agreements subject to proportional tax will be subject to stamp tax and fees

With the amendment made by Article 23 of the Law No.6728 on Article 5/para.1 of the STL, only one copy of the agreements subject to proportional tax will be subject to stamp tax.

Before the amendment, the law and its application was in a way that if an agreement is drafted more than one copy, each copy of the agreement shall be separately subject to stamp tax and the stamp tax cap shall be separately applied on each copy of the agreement. Such application of stamp tax has been criticized by taxpayers in two aspects; first, there was an endless dispute between taxpayers and the Revenue Administration whether each copy of the agreements is separately subject to stamp tax cap or only one stamp tax cap covers all copies of the agreements, and second, taxpayers did not understand and accept the rationale that each copy of an agreement is separately subject stamp tax and therefore taxpayers were resisting to pay stamp tax for each copy of the agreements through different ways.

With the referred amendment, above stated issues are solved on behalf taxpayers, and effective from August 9, 2016, if an agreement is drafted more than one copy, only one copy will be subject to stamp tax whether it hits the stamp tax cap which is Turkish Lira 1,797,117.30 for the year of 2016.

In parallel to the above stated amendment made in the STL, Article 38 of the Fees Act is amended by Article 30 of the Law No.6728 and in this regard, fees will be collected on only one copy of the document which is subject to proportional tax.

2.2. Only one of the guarantees and one of the ordinary sureties will be separately subject to stamp tax

Article 6 of the STL regulates how stamp tax shall be assessed if there is more than one agreement or transaction on one document. If a transaction of a third party is also regulated on a document in addition to actual transaction of the parties, each appendant transaction of the third parties shall be separately subject to stamp tax.

In this regard, guarantees and ordinary sureties provided by third parties on behalf of the creditors were separately subject to stamp tax regardless of the number of the guarantors or sureties. Since the guarantees and sureties provided by different persons aim the same purpose and cover the same amount of credit, such rule and application created an additional cost on the parties of agreements.

With the amendment made by Article 24/para.1-a of the Law no.6728 on Article 6/para.3 of the STL, the above stated regulation and application was changed in the case of guarantees and ordinary sureties, and effective from August 9, 2016, if there is more than one guarantee or ordinary surety regulated on the same agreement under which the principal transaction is also regulated, only one of the guarantees and only one of the ordinary sureties shall be subject to stamp tax. In this regard, if there are both guarantees and sureties on the same document one of the guarantees and one of the sureties will be separately subject to stamp tax.

Even though the law does not state which guarantee or surety shall be subject to stamp tax, considering Article 6/para.2 of the STL, stamp tax may be calculated over the guarantee or surety covering the highest amount.

2.3. Penalties for breach of contracts, Earnest Money, Forfeit Money will not be subject to stamp tax

As it is stated above, Article 6 of the STL regulates how stamp tax shall be assessed if there is more than one agreement or transaction on one document. It is also stated under Article 6/para.2 of the STL that if an agreement and transactions united in the same document be attached to each other and result from a principal transaction, stamp tax shall be calculated on the agreement or transaction which is subject to the highest tax.

In this regard, in the application, if there are Penal Clause, Earnest Money, Forfeit Money et cetera regulated in the same document as appendant to the principal transaction, stamp tax was calculated on either the penal clause or the principal transaction depending on the case that which one results with the higher stamp tax payment.

In practice, for example penal clauses may sometimes be higher than the amount of the principal subject of the agreement, in such cases the above stated rules and application result with the higher stamp tax payment comparing to the agreements where no penal clause is regulated.

With the amendment of Article 6 of the STL by Article 24/para.1-b of the Law No.6728, if there is an undertaking such as penal clause, Earnest Money, Forfeit Money et cetera which are in the nature of a sanction of the agreement and stated on the same agreement, stamp tax will not be collected from such undertakings. However, if such undertakings are subject to separate documents, stamp tax will be collected from such undertakings.

2.4. The increased amount is not subject to stamp tax providing that the agreement initially subject to stamp tax by hitting the stamp tax cap

Article 14 of the STL regulates the tax rates and the stamp tax cap which is the highest amount of stamp tax that a document may be subject to stamp tax. It is also stated under Article 14/para.2 of the STL that if an amount subject to stamp tax stated on an agreement is increased after the referred agreement is executed, the increased amount is also subject to stamp tax. This provision was applied regardless of whether the agreement is initially subject to stamp tax by hitting the stamp tax cap.

The above provision of Article 14/para.2 of the STL is amended through Article 25 of the Law No.6728 in a way that if the amount stated on an agreement, which is initially subject to stamp tax by hitting the stamp tax cap, is increased, such increase is not subject to stamp tax effective from August 9, 2016, on condition that the other provisions of the agreement is not amended. Therefore, if the agreement is amended by different factors, such as the subject, parties, period, which might be considered that a new and different agreement is executed, the increase in the amount of the agreement for which the stamp tax is already paid at stamp tax cap at the time of the initial execution of the same, may be subject to stamp tax.

2.5. REPO transactions made by Banks will be subject to 0% stamp tax

Stamp tax rate of the documents in relation to REPO transactions stipulated by the Capital Market Board with regard to the application of the Capital Market law is reduced to 0% by the Council of Ministers Decree No. 94/6035 ("**Decree No. 94/6035**") dated August 20, 1994 (*published in the official gazette dated October 26, 1994 and numbered 22093*). Council of Ministers used its authority to reduce stamp tax rate down to 0% based on repetitive Article 30 of the STL, and under the repetitive Article 30, the authority given to the Council of Ministers to amend the stamp tax rate for the documents is limited to the ones stipulated by the Capital Market Board with regard to the application of the Capital Market law since REPO was deemed as capital market instrument and regulated under the former Capital Market Law (No.2499).

However, the new Capital Market Law (No.6362) which is currently in effect considers the REPO as money market instrument and does not regulate the REPO transactions. As a result, Capital Market Board, at the end of 2014, decided that banks will be subject to its own regulations (Banking Law and its secondary legislation) and therefore, banks do not anymore execute REPO transaction based on Capital Market Law which means that banks cannot benefit from the 0% stamp tax in the REPO transactions within the scope and limitations of the regulations in force since the Decree No. 94/6035 reducing the stamp tax rate for REPO transactions down to 0% only refers to REPO transactions stipulated by the Capital Market Board with regard to the application of the Capital Market law.

Repetitive Article 30 of the STL is amended by Article 26/1-a of the Law No.6728 by extending the authority of the Council of Ministers to also reduce the stamp tax rate of the documents stipulated by Banking Regulatory and Supervisory Agency with regard to the application of the Banking Law. Following this amendment, it is expected that the Council of Ministers to use its authority by issuing a new decree to reduce the stamp tax rate of REPO executed by banks within the scope of the banking law and its secondary regulations.

2.6. Procedures and principles in relation to the application of the exemption on the exportation and foreign exchange earning activities

Procedures and principles in relation to the application of the exemption on the exportation and foreign exchange earning activities is currently determined by the general communiques issued based on the authority given by the supplementary Article 2 of the STL. However, determination and limitation of the foreign exchange earning activities through general communiques and the condition of having a tax exemption certificate in order to benefit from the exemption have been criticized by the courts and decided that such conditions and limitation shall not be stipulated with the general communiques.

Therefore, supplementary Article 2 of the STL and Supplementary Article 1 of the Fees Act were amended by Article 27 and 35 of the Law No.6728 respectively, by regulating procedures and principles in relation to the application of the exemption on the exportation and foreign exchange earning activities at the level of Law instead of communique so that the disputes in relation to the ones stated is eliminated.

2.7. Certain agreements inserted to the Table-1 attached to the STL stipulating the documents subject to stamp tax

Article 1 of the STL determines the subject of stamp tax and gives reference to the Table-1 attached to STL for the determination of the documents subject to stamp tax. According to Table-1 attached to the STL, agreements having a monetary amount stated on it are subject to stamp tax at the rate of 0,948%.

In order to deviate from being subject to 0,948% stamp tax rate for a specific agreement, such agreement may be inserted to the Table-1 attached to the STL and a specific rate may be determined for such agreement by the Council of Ministers based on the authority given through repetitive Article 30 of the STL. Through this way, the Council of Ministers may change the stamp tax rate by increasing or decreasing the rates by issuing Council of Ministers decrees instead of going through legislative way of Parliament which comparatively lengthy and cumbersome.

In order to materialize the above, certain agreements listed under Article 28/para.1-a of the Law No.6728 are added to the Table-1 attached to the STL. For the list of new agreements, please see the Table-1 attached to the STL.

2.8. Stamp tax paid for the cancelled contract award decisions of the official bodies will be refunded

Contract award decisions of the official bodies are subject to stamp tax at the rate of 0,569% according to Table-1 attached to the STL. The stamp tax in relation to contract award decisions of the official bodies shall be paid whether the tender is cancelled or not and if it is paid before the cancelation, such stamp tax was not refunded by the revenue Administration in the past.

Since the refund applications were rejected by the Revenue Administration in the past, taxpayers claimed their rights before the judicial bodies and successfully challenged the Revenue Administration. As a result, with the Law No.6728, the regulation in relation to the stamp tax of the contract award decisions is amended on behalf of the taxpayers.

Article 2 of the "II-Ordinances and Minutes (Certificate of Election)" of the Table-1 attached to the STL is amended by Article 28/para.1-b of the Law No.6728 by inserting a parenthetical provision stating that in the case of cancelation of the tenders upon the complaint to the institutions and organizations within the scope of the Public Procurement Law (No.4734), or appeal to the Public Procurement Authority, or decision of judicial bodies, the stamp tax corresponding to the portion, the provision of which has not been benefited, of the contract award decision is refunded. However, it is also stated in the amendment that if an agreement is executed upon the contract award decision, the stamp tax of the agreement is not refunded even if the tender is canceled.

2.9. New stamp tax and fees exemptions

By the Law No.6728, new stamp tax exemptions were enacted and inserted into Table-2 attached to the STL. Please find below some of those new stamp tax exemptions which are deemed more material in terms of commercial transactions.

2.9.1. Insurance undertakings are exempted from stamp tax

Article 5 of the Section-IV titled as the "Documents in relation to the Commercial and Civil Affairs" of the Table-2 attached to the STL is amended by Article 29/para.1-c-1 of the Law No.6728 and in this regard the undertaking in relation to have something insured stated on the agreements is also exempted from stamp tax.

2.9.2. Share transfers are exempted from stamp tax and fees

Article 16 of the Section-IV titled as the "Documents in relation to the Commercial and Civil Affairs" of the Table-2 attached to the STL is amended by Article 29/para.1-c-2 of the Law No.6728 and in this regard the share purchase agreements in relation to the transfer of the shares of the corporations is exempted from stamp tax.

In parallel to the amended stamp tax exemption, Article 123/3 of the Fees Act is amended by Article 33 of the Law No.6728, and in this regard the share transfers of the corporations are exempted from fees.

2.9.3. Derivative transactions of brokerage houses are exempted from stamp tax

Article 19 of the Section-IV titled as the "Documents in relation to the Commercial and Civil Affairs" of the Table-2 attached to the STL is amended by Article 29/para.1-c-3 of the Law No.6728 and in this regard derivative transactions of the brokerage houses are exempted from stamp tax.

2.9.4. Sale/purchase contracts and promise to sell contracts of the real estate investment funds are exempted from stamp tax

Article 21 of the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL is amended by Article 29/para.1-c-4 of the Law No.6728 and in this regard sale/purchase contracts and promise to sell contracts in relation to the real estate portfolio of the real estate investment funds are exempted from stamp tax.

2.9.5. Assignment of the loan agreements and the loan originated receivables are exempted from stamp tax

As it is known, the documents executed in relation to the loans extended by banks, foreign credit institutions and international institutions are exempt from stamp tax according to Article 23 of the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL. However, the referred exemption did not cover the assignment of loan agreements and the loan originated receivables even though there were debates as to whether the assignment of a loan agreement may be considered as the repayment of the loan and how the stamp tax (base) is calculated in the case of assignment of a loan agreement. Revenue Administration has published several advance rulings in the past and expressed its opinion that assignment of loan agreements are not exempted from stamp tax since the stamp tax exemption only covers the agreements executed between the lenders and borrowers.

In order to eliminate the financial burden on the loan agreements originating from the assignment of those, Article 23 of the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL is amended by Article 29/para.1-c-5 of the Law No.6728 and in this regard assignment of loan agreements and the loan originated receivables are exempted from stamp tax.

In parallel to the above amendment, Article 30 of the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL is amended by Article 29/para.1-c-6 of the Law No.6728 and in this regard assignment of loans extended by finance companies are exempted from stamp tax as well.

2.9.6. Stamp tax exemption in relation to the lease certificates is extended

Article 41 of the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL is amended by Article 29/para.1-c-9 of the Law No.6728 and in this regard the documents drafted by considering different lease certificates and ease certificate payments and the documents drafted in relation to their guarantees are exempted from stamp tax.

2.9.7. The agreements the subject of which are the goods listed in the investment incentive certificates are exempted from stamp tax

A new Article 43 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard the below documents are exempted from stamp tax;

- i. The documents executed between the investors having the investment incentive certificates and the producers and providers of the goods subject to investment incentive certificates, and

- ii. The documents, only in the investment period, the subject of which is leasing and purchasing of intangible rights in relation to the investments within the scope of the investment incentive certificate, and
- iii. The agreements, undertakings, guarantees and other documents having the same characteristic of the preceding, the subject of which is the production or construction of the fixed asset investments within the scope of the investment incentive certificates, and the agreements the subject of which is the consultancy and technical consultancy services within the scope of the referred investments.

2.9.8. A new Article 44 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard the documents executed between the producers, of the goods in the industry class of medium-high technology determined by the decrees on state incentives in investments, and their suppliers in relation to the purchase of the service and goods are exempted from stamp tax.

2.9.9. A new Article 45 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard the undertakings executed within the scope of the special consumption tax law and the related regulations are exempted from stamp tax.

2.9.10. A new Article 46 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard one-off payment agreements executed between payment service provider and payment service user within the scope of the Law on the Payment and Securities Settlement Systems, Payment Services and Electronic Money Institutions numbered 6493 are exempted from stamp tax.

2.9.11. A new Article 49 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard documents executed in relation to the construction, renewal, conversion, maintenance and repairmen of all kind of ships, yacht and other water vehicles are exempted from stamp tax.

2.9.12. A new Article 50 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard agreements exclusively executed in relation to venture capital investments of the venture capital investment companies and venture capital investment funds and other documents executed in relation to such agreements are exempted from stamp tax.

2.9.13. A new Article 51 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard agreements executed between investors and brokerage houses in relation to margin trading, short selling, borrowing and lending of securities are exempted from stamp tax.

2.9.14. A new Article 52 is added to the Section-IV titled as the “Documents in relation to the Commercial and Civil Affairs” of the Table-2 attached to the STL by Article 29/para.1-c-10 of the Law No.6728 and in this regard documents executed in relation to the purchase of the foreign companies having an advanced technology and able to transfer such technology and the documents executed in relation to the purchase of legal and fiscal advisory services towards the purchase of the above stated companies are exempted from stamp tax.

2.10. The burden of fees is reduced on the documents having an increased amount on it and subject to re-notarization

A new sub-article is added to Article 47 of the Fees Act with Article 31 of the Law No.6728, and effective from August 9, 2016 if amounts stated on the documents which were already subject to fees in public notaries is increased and such documents re-notarized in public notaries, only the difference between the initial amount and the increased amount shall be subject to fees at the same rate.

2.11. Transfer of real estates within the scope of financial leasing transactions is exempted from fees

The transfer of the rented residences to the lessees within the scope of the financial leasing transactions which are supposed to be performed for housing finance purpose which is defined under Article 38/A of the Capital Market Law (Law No. 6362) (*published in the Official Gazette dated December 30, 2012, No. 28513*) (“Capital Market Law”) was exempted from fees pursuant to Article 59/1-p of the Fees Act.

As it is stated above, in the past, only the residences were covered by the above stated exemption. However, effective from August 9, 2016, Article 59/1-p of the Fees Act is amended by Article 32 of the Law No.6728, and not only residences but also all real estates are covered by the amended exemption and the reference given to the Capital Market Law is changed and the new reference is given to the real estates subject to financial leasing transactions within the scope of the Financial Leasing, Factoring and Financing Companies Law (Law No.6361) (*published in the Official Gazette dated 13 December, 2012 and No. 28496*).

2.12. Article 123/4 of the Fees Act is amended by Article 33 of the Law No.6728, and in this scope, transfer, sale, purchase, lease, management by proxy of all kind of assets and rights which are used as underlying assets for the issuance of lease certificates, being partner in a joint venture with the purpose issuance of lease certificates, having a work done, sale or lease of the same work, and all kind of guarantee, mortgages and similar transactions are exempted from fees.

2.13. Article 7 of the Tariff No.4 titled as “The Fees to be Collected on Land Registry and Cadastre Transactions” attached to the Fees Act is amended by Article 38 of the Law No.6728 and in this scope, 50% reduced rates will be applied in the calculation of the fees in relation to the mortgages between merchants.

3. THE AMENDMENTS MADE IN THE VALUE ADDED TAX CODE

3.1 With the amendment made by Article 43/1-a of the Law No.6728 in Article 14/4-g of the Value Added Tax Code (“VAT Code”) (Law No. 3065) (*published in the Official Gazette dated 02 November, 1984, No. 18563*), It is cleared that the financing services performed through purchasing of bonds limited with the interest income is also exempt from value added tax.

3.2 According to Article 14/4-r of the VAT Code, the sale of real estates and participation shares which have been held for at least 2 years by corporations are exempt from VAT. With the amendment made by Article 43/1-b of the Law No.6728 in the referred Article 14/4-r of the VAT Code, it is stated that the holding period elapsed at the level of asset lease companies within the scope of lease certificate transactions and at the level of financial leasing companies, participation banks and development and investment banks within the scope of financial leasing transactions shall also be taken into consideration in the calculation of the 2 years holding period in the case of the sales made by source companies or lessees to the third party buyers.

3.3 The transfer of the movable and immovable properties and intangible assets to the asset lease companies, the lease of the same by the asset lease companies, re-transfers of the same by the asset lease companies to the transferor were exempted from VAT according to Article 14/4-u of the VAT Code. With the amendment made by Article 43/1-c of the Law No.6728 in the Article 14/4-u of the VAT Code, the scope of the underlying assets used in the issuance of the lease certificates is extended. In this regard, all kinds of underlying assets and rights are included in the scope of the exemption.

3.4 The exemption stated under Article 14/4-u of the VAT Code is called partial exemption. If taxpayers supply goods or services the delivery of which are subject to partial exemption, the deduction of input VAT shown on the purchase invoices of such goods or included in the cost of such goods or services is not allowed. This was an obstacle in the mechanics of the issuance lease certificates. This problem is also solved by the above stated amendment and the deduction of the input VAT in relation to the underlying assets which was already set off to the output VAT at the time of the transfer of the same to asset lease companies shall not be corrected anymore.

If there is any input VAT which was not set off to the output VAT at the time of the transfer of the underlying assets, it shall be treated as expense in the calculation of the income tax or corporate income tax base.

- 3.5 Article 14/4-y of the VAT Code regulates the VAT exemption in the financial leasing transactions in the type of sale and lease back. Only immovable properties were covered under the exemption before the amendment and the exemption was only applicable in the transactions where the lessor is financial leasing company. However, other than financial leasing companies, participation banks and development and investment banks may also engage in the financial leasing activities. The previous version of the stated exemption was creating unfair competition between financial leasing companies and the above stated types of banks.
- 3.6 With the amendment made by Article 43/1-ç of the Law No.6728 in Article 14/4-y of the VAT Code, the scope of the VAT exemption is extended by covering the movable properties as the assets the delivery of which will also be exempt from VAT. The participation banks and development and investment banks are also covered as lessors in the stated exemption so that the sale and lease back transactions performed by such banks will also enjoy with the VAT exemption.
- 3.7 Article 30 of the VAT Code regulates the situations where the deduction of VAT (input VAT) is not possible. One of the situations listed under Article 30/1-d of the VAT Code is that the deduction of the input VAT is not allowed if such input VAT is related to the expenses of which the deduction from income or corporate income tax base is rejected. In this scope, if a transaction is criticized within the scope of transfer pricing regulations and if any expense is treated as non-deductible expense in the calculation of income or corporate income tax base, the deduction of the corresponding VAT is rejected by the tax authority. However, with the amendment made by Article 44 of the Law No.6728 in the Article 30/1-d of the VAT Code, taxpayers do not have to correct the deduction of the input VAT paid in the importation stage of the goods or the VAT paid through reverse charge mechanism (VAT return No.2) if such VAT is correspond to the non-deductible expense within the scope of the transfer pricing regulations.

4. THE AMENDMENTS MADE IN THE EXPENDITURE TAXES CODE

- 4.1 Through the amendment made in Article 29/t of the Expenditure Taxes Code (“ETC”) (Law No. 6802) (Published in the Official Gazette dated July 23, 1956, No. 9362); monies collected by venture capital investment funds and venture capital investment trusts due to the capital market transactions they carry out are held exempted from the Banking and Insurance Transaction Tax (“BITT”) which ranges from 1% to 5%.
- 4.2 Through the amendment made in Article 31/5 of the ETC, banks and financial institutions are being allowed to deduct the applicable BITT from taxes in relation to the collected fees, commissions and other amounts which are returned to consumers within the scope of the Consumer Protection Law (Law No.6502), from the BITT of the period during which such returns are made. Insurance companies may also deduct cancelled parts of the taxes with regard to the cancelled policies of the BITT within the period during which such cancellations are made.

5. THE AMENDMENTS MADE IN THE INCOME TAX CODE

- 5.1 Through the amendment made in Article 23/14 of the Income Tax Code (Law No. 193) (published in the Official Gazette dated January 6, 1961 and No. 10700) (the "IT Code"); salaries paid to the employees hired in regional administrative centres established by non-resident corporations duly authorised by the Turkish Ministry of Economy are being exempted from income tax, provided that such salaries are paid in foreign currency from the income generated outside Turkey.
- 5.2 The repealed Article 33 of the IT Code is revised with a new title "*Deductions in Corporations Providing Services Overseas*". The new article brings a deduction from the income tax declared and paid over employees' salary incomes by the employers carrying out services in the fields of activities which fall under the scope of the deduction regulated in Article 89/1-13 of the IT Code and Article 10/ğ of the Corporate Income Tax Code (Law No. 5520) (*Published in the Official Gazette dated June 21, 2006 and No. 26205*) (the "**CIT Code**").
- 5.3 Article 89/1-13 of the IT Code and Article 10/ğ of the CIT Code regulates the deduction of the income by income and corporate income tax payers derived through i) the services provided in Turkey to non-resident individuals and non-resident corporations whom the place of business, legal and business headquarters situated abroad and being benefited abroad such as architecture, engineering, design, software, medical reporting, book keeping, call centre and data centre and ii) the services provided by the entities operating through the approval and supervision of the relevant Ministry in education and healthcare sectors and providing services only to non-resident persons. In this regard, with the Article 33 of the IT Code, employers are able to deduct the income tax paid over the salaries of their employees which have been hired only to work for services specified under the above-mentioned articles.
- 5.4 It should also be noted that deduction does not include the employees working in support services and only applies to employees working for the services falling under the scope of deduction. In this regard, employers will firstly deduct the minimum living allowance from the salaries paid to such employees who benefit from the deduction and then will calculate the income tax payable over the remaining amount. After this, employers may deduct from such payable income tax the amount which is calculated by multiplying gross minimum salary of January of the operating year with the rate stated under Article 103 of the IT Code for the first bracket of the income tax tariff. On the other hand, this deduction will be applicable providing that the following conditions are also fulfilled: ii) 85% of the revenue from these activities must be obtained from abroad, and ii) invoice and similar documents must be issued in the name of customer abroad.
- 5.5 Council of Ministers is authorized to decrease the rate specified in this Article from 85% to 50% or to increase up to 100% depending on the fields of activity or income amounts, separately or jointly. Ministry of Finance is also being authorized to determine the rules and principles in relation to the application of this article.

6. THE AMENDMENTS MADE IN THE TAX PROCEDURAL CODE

6.1 The “*Invitation to Explanation*” as a new application in Turkish Tax Law is introduced under Article 370 of the Tax Procedural Code (“**TPC**”) (Law No. 213) (*published in the Official Gazette dated January 10, 1961 and No. 10703-10705*).

As per Article 370 of the TPC; in relation to preliminary determinations which were made by relevant authorities prior to the commencement of a tax inspection or assignment to the valuation commission in order to determine whether any tax loss has been suffered, taxpayers may be invited to provide explanation on the condition that there was no denunciation until the date of determination.

Taxpayers who have been called for the “*Invitation to Explanation*” are not able to benefit from the repentance provisions regulated under the TPC providing that it is limited to the determination which is subject of the invitation.

In cases where the explanation is provided by the taxpayer within 15 days following the notification date of the invitation to the explanation:

- Such taxpayers will not be subject to the tax inspection in relation to the relevant determination or they will not be despatched to the valuation commission providing that it is understood by the Tax Authority that a tax loss was not caused due to the explanation made by a taxpayer.
- The tax loss penalty is imposed at a rate of 20% over the tax that has suffered a loss, providing that, within 15 days following the explanations of the taxpayers, the non-declared tax returns are declared, the incomplete or faulty tax returns are completed or corrected, and the taxes which are overdue are paid with a raise at the rate of a late fee to be applied to the extent that specified in Article 51 of the Law no 6183 for each late month and its fraction. This situation does not prevent the conduct of a tax inspection, and an additional tax assessment if any.

In cases where the preliminary determinations made by the Tax Authority as per this Article are in relation to the “*Tax Fraud and Its Penalties*” which is regulated under Article 359 the TPC, the invitation to explanation provisions shall not apply. However providing that the amount of forged documents does not exceed i) 50.000 TL per document and ii) 5% of the total purchase of goods and services of such taxpayer within the relevant year, such taxpayers can be invited to explanation.

The Ministry of Finance is authorized to determine the characteristic of the preliminary determination, the form and scope of the invitation to explanation, the authority that will send the invitation, the invitees, information and documents to be used during the explanation, as well as the procedures and principles regarding the application.

7. THE AMENDMENTS MADE IN THE CORPORATE INCOME TAX CODE

7.1 Through the amendment made on Article 4.1 of the CIT Code titled “*Exemptions*”, regional management centres established with the approval of the Ministry of Economy are held exempted from corporate income tax providing that all their expenses are covered by non-resident corporations and the expenses in question are not transferred to accounts of any resident or non-resident tax payer in Turkey or are not separated from its profit.

7.2 Through the revision made on Article 5/1 subsection (e) of the CIT Code titled “*Exemptions*”, the provision stated in the parentheses in the first paragraph of Article is deleted, and the fifth paragraph is amended.

According to such amendment, during the calculation of the holding period of real properties, shares, founder's shares, jouissance shares and pre-emptive rights acquired through ordinary sale or spin-off in case of a sale of transaction, the transferor or splitting company's holding period shall also be considered. Under the Law on Leasing, Factoring and Finance Companies (Law No. 6361), on the condition that those are acquired back at the end of the term of the agreement with the purpose of lease back, when the real properties that are transferred by corporations to leasing companies, participation banks, development and investment banks or to asset leasing companies for the purpose of the issuance of a lease certificate under Capital Markets Code (Law No.6362), are sold to third parties by the source institution, when calculating holding periods of such real properties, financial leasing companies, participation banks, asset leasing companies, development and investment banks' holding periods shall also be considered.

7.3 Furthermore, through the amendment made on Article 5/1 of the CIT Code, new subsections (j) and (k) are added to such Article as new corporate income tax exemptions.

According to Article 5/1-j of the CIT Code; on the condition that any and all kinds of movable and immovable properties are acquired back at the end of the term of the agreement with the purpose of lease back, i) profits arising from the sale of such assets by corporations to financial leasing companies, participation and investment banks ii) as well as profits arising from the transfer of such assets by financial leasing companies, participation and investment banks back to the transferor corporations are exempt from corporate income tax. In order to apply this exemption, specific requirements stipulated under Article 5/1-j of the CIT Code are fulfilled.

According to Article 5/1-k of the CIT Code, i) profits arising from the sale of any and all kinds of assets and rights by corporations to asset leasing companies on the condition that those assets will be acquired back and ii) profits arising from the sale of such assets by asset leasing companies back to the transferor corporation are exempt from corporate income tax. In order to apply this exemption, specific requirements stipulated under Article 5/1-k of the CIT Code are fulfilled

7.4 The "related party" definition specified under Article 13 of the CIT Code is revised. In this regard, at least 10% of shareholding, voting or dividend rights are required for a transaction to be considered as a disguised profit distribution. If at least 10% of voting or dividend rights are granted without establishing a partnership relationship, the parties shall also be considered as related parties.

On the other hand, the following new methods in order to determine the price or fee applicable to transactions between related parties, which is defined as "transactional profit methods" is added to Article 13 of the CIT Code:

- Transactional net profit margin method: A method based on the analysis of the net profit margin determined by the taxpayer on an appropriate basis that takes into account the costs, sales or assets.
- Profit share method: A method based on the distribution of total business profit or loss in relation to the transactions performed by the related parties on a pro rata basis of the functions and risks undertaken by such related parties in accordance with the arm's length principle.

In addition, through the revision made under Article 13/5 of the CIT Code, taxpayer and Ministry may ensure the application of the determined method to previous taxation periods which have not time barred by including the periods in the scope of the agreement provided that it is possible to apply the penalty and correction provisions of the TPC and the conditions of the agreement are also effective in

those periods. In this case, the agreement shall be considered as the petition on notification mentioned in the relevant provisions, and declaration and payment transactions shall be consummated accordingly. The taxes paid previously shall not be rejected and refunded due to the application of the agreement for the previous taxation periods.

This amendment allows the application of the method determined under the agreement to be applied to the taxation periods that have not time barred in the case of agreement between the taxpayer and Ministry of Finance.

Accordingly taxpayers are allowed to retroactively apply the relevant Advance Pricing Agreement (roll-back) and eliminate tax risks providing that they retroactively pay the tax principal and delay interest.

The Council of Ministers has been authorized to increase the current three-year term for APAs up to five years.

Through the revision made on Article 13/8 of the CIT Code, the tax loss penalty which shall apply to late or incomplete accrual of taxes due to disguised profit distribution is reduced to 50% for taxpayers complying in due course with the documentation requirements in relation to transfer pricing.

Lastly, Article 13/9 of the CIT Code is revised. According to such revision, the Council of Ministers have the additional authority to execute the following procedures in transfer pricing matters.

- Decrease the rates used in determining related parties down to 1% or increase them up to 25%, jointly or separately;
- Cancel such requirement entirely;
- Extend the scope of documentation requirements by requesting information regarding the activities of related parties abroad in accordance with international treaties;
- Determine the procedures with regard to the exchange of this information with tax authorities of other countries, in line with international agreements; and
- Determine further principles and procedures with respect to transfer pricing.

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