

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 either:

Fethi Pekin
Managing Partner
Email: fpekin@pekin-pekin.com

Firat Yalçın
Partner, Tax
Email: fyalcin@pekin-pekin.com



TAX

FATCA and Memorandum of Understanding annexed to it is approved by the Council of Ministers

The Agreement between the Government of the Republic of Turkey and the Government of the United States of America to Improve International Tax Compliance Through Enhanced Exchange of Information ("FATCA") which has been signed between the parties July 29, 2015 and the Memorandum of Understanding ("MoU") annexed to it is approved through the Decree of the Council of Ministers (Decree No. 2016/9139 and dated September 19, 2016) (*published in the Official Gazette No.29848 and dated October 05, 2016*).

The VAT which applies at the rate of 18% over the sale of Residences is decreased to 8%

Through the Decree of the Council of Ministers (Decree No. 2016/9153) (*published in the Official Gazette No. 29825 and dated 8 September 2016*) (the "Decree") a provisional article is added to the Decree of the Council of Ministers (Decree No.2007/13033) which determines the VAT rates which are applicable over the sale of residences. Accordingly, the VAT which applies at the rate of 18% over the sale of residences will be calculated at 8 % over the deliveries until March 31, 2017 (including this date).

In accordance with the Decree, the delivery of residences having the following characteristics shall be subject to VAT at the rate of 8% until March 31, 2017:

- i. Residences net area of which are bigger than 150 square meters,
- ii. Residences net area of which are up to 150 square meters, providing that i) those fulfill the conditions stipulated under Decree of the Council of Ministers (Decree No.2012/4116) (i.e.; licensed after January 1, 2013 in the metropolitan municipality, luxurious or first class construction) and ii) their real estate tax value per unit square meter is 1000 TL and over.

New Incentives for Eligible Investments on a Project Basis

The Law on Supporting Investments on Project Basis and Amending Certain Laws and Decree Laws (Law No. 6745) (the "Law") which aims to develop the investment climate of Turkey through a project-based investment incentives package, entered into force upon its publication in the Official Gazette No.29824 and dated September 7, 2016.

Under the Law, the Council of Ministers is entitled to grant tax incentives, supports or donations for the investments which are decided by the Ministry of Economy to be promoted on a project basis and fulfill the qualifications set out below, separately or collectively:

- Addressing Turkey's current and prospective needs in line with its targets set forth in national development plans and annual programs,
- Ensuring the security of supply,
- Reducing foreign dependency,
- Providing technological transformation, and
- Being innovative, R&D focused and with high added value

The Council of Ministers is entitled by the Law to grant one or more of the undermentioned supports and incentives for the eligible investment projects fulfilling the specific conditions regulated under the Law:

- For the investments subject to the investment incentive certificate, corporate income tax rate reduction of up to 100% and an investment contribution rate of 200% maximum,
- Corporate income tax exemption exclusively for the profits derived from an investment up to 10 years as of the date when the investment commences to operate,
- Customs tax exemption,
- Income tax withholding support,
- Social security premium support for employer's share for 10 years
- Free land allocation (i.e.; by providing the right of easement or use on land) for 49 years in cases where the investment is made on a real property owned by the Treasury of Turkish Republic.
- Free transfer of such real properties to investors providing that such investment project is completed and the anticipated employment is provided for 5 years within the scope of the investment project.
- Compensation of up to 50% for energy consumption expenses in relation to the investment for up to 10 years.
- Donation, interest or dividend support for the loans extended in order to finance the fixed investment amount for up to 10 years.
- Salary support for qualified employees for up to five years; eligible support is capped at twenty times the gross monthly minimum wage,
- State partnership of up to 49% providing that an IPO or direct sale to investors will be conducted within 10 years.

Supports within the scope of the Law will be paid through the Ministry of Economy's budget.

Guarantee of purchase for the project-based investment product may be granted, the duration and amount of which will be determined by the Council of Ministers.

In order to ease and accelerate the investment process, exemptions may be granted to investors on certain administrative procedures such as permissions, allocations, licenses, registration processes and other restrictive provisions imposed by other laws for project-based investments.

If the investment project requires and subject to the approval of the Council of Ministers, any and all kinds of infrastructure investments will be reimbursed.

In case of an ownership transfer of the investment, all acquired rights in relation to the investment scheme will be passed to the new investor.

Amendments made by the Law No. 6745 on Certain Investment Incentives

Value Added Tax Refund

As known, as per Provisional Article 30 of the Value Added Tax Code (Law No. 3065) (*published in the Official Gazette dated 02 November 1984, No. 18563*) (“VAT Code”), the VAT which is undertaken for construction works in relation to strategic investments that are projected to include 500 million TL fixed investment and cannot be deducted, may be refunded to the holder of the investment certificate if requested within the following year.

The Law No.6745 brings two significant amendments to Provisional Article 30 of the VAT Code:

- The requirement of being a strategic investment is removed from the Article. Therefore, Such VAT refunds will no more be limited to strategic investments.
- The Council of Ministers is authorized to decrease the minimum investment amount to 50 million TL.

Reduced Corporate Income Tax Rate

With respect to investments provided through the investment incentive certificate, reduced corporate income tax rate may apply on other profits (i.e.; other than the investment profits) to a certain extent in addition to the profits earned from the investment. In this regard, tax savings amount which is obtained from the investment is defined as the percentage of the investment contribution amount.

Through the amendment made by the Law No.6745 on Article 32/A of the Corporate Income Tax Code (Law No. 5520) (*published in the Official Gazette dated June 21, 2006, No. 26205*) (“CIT Code”); the Council of Minister’s authority to increase the limit on the application of reduced corporate income tax on profits derived from other activities in the investment period is increased from 80% to 100%.

In addition, through the amendment made with the Law No.6745, the Council of Ministers is entitled to use its authority differently for investments (i.e.; regional, large scale, strategic and privileged investments) to be supported based on the project according to its subject, industry, and features.

Regulation determining the Procedure and Principles in relation to the Implementation of R&D Law

Significant amendments have been made within the Law Regarding Support for Research & Development Activities (Law No.5746) (“R&D Law”) and the Law for Technological Development Regions (Law No.4691) through the Law No. 6676 which has been effective as of March 1, 2016. Regulation determining the procedure and principles in relation the implementation and supervision of R&D Law has been published in the Official Gazette No.29797 and dated August 10, 2016.

The regulation includes additional amendments in relation to design activities, time spent outdoors, expenditures on R&D, innovation and designing activities, additional R&D and designing deduction right, implementation of incentives and contributions, order-style R&D, innovation and designing activities, basic scientific support, notification of changes performed within the operation and explanations on implementation of incentives within the scope of the R&D Law.

Capital advances can be considered on the application of deduction in relation to the cash capital increase

The Article 10 of CIT Code titled Other Deductions includes the deductions applicable on the corporation profit considered during the of corporate income tax base. The sub paragraph (I) was added to the paragraph (1) of the abovementioned Article through the Law No.6637 published in the Official Gazette dated 7 April 2015.

As per said Article, over the cash capital increases on the paid in or issued capital amounts of corporations and at newly incorporated corporations' cash compensated portion of the paid in capital, until the end of the relevant accounting period, 50 % of the interest amount calculated on the annual weighted average interest rate applied on TL denominated commercial loans granted by banks could be deducted from the corporate income tax base.

Under the General Communiqué on Corporate Income Tax Law (Series No.10) (*published in the Official Gazette No. 29792 and dated August 05, 2016*); explanations are provided as to whether the capital advances will be considered or not in the implementation of deductions.

As per said Communiqué, in order to use for fulfilling the capital commitments arising from the future capital increases, the amounts deposited (before the resolution on capital increase) into the corporate account as capital advance by shareholders would be used as follows:

- Monitoring such capital advance under the account of "Other Capital Reserves" existing among the equity capital in the balance sheet as of the date it is transferred into a bank account, and
- Using such capital advance in the deduction from corporate income tax base on the date when the capital increase resolution is registered to trade registry providing that such registration is made until the end of the accounting period including the date the capital advance is deposited into the bank account.

This legal newsletter has been prepared for informational purposes only; it has not been prepared for advertising purposes or with the intention of creating an attorney-client relationship. It does not seek to provide information on all legal developments in Turkey with the quarter specified. None of the information contained in this legal newsletter shall constitute legal advice or anything akin thereto. To unsubscribe, email the editor:

newsletter@pekin.pekin.com

© PEKİN & PEKİN 2016

t: +90 212 313 35 00 f: +90 212 313 35 35 e: postmaster@pekin-pekin.com w: www.pekin-pekin.com
