

## 2012 Legal Alert: Tax

### I. The Law regarding the Amendment of the Law on the Collection of Public Receivables and Certain Other Laws

The “*Law regarding the Amendment of the Law on the Collection of Public Receivables and Certain Other Laws*” (Law No: 6322) (Published in the Official Gazette dated June 15, 2012 and No. 28324) (the “*Amending Law*”) has become a part of the Turkish tax legislation following its enactment on May 31, 2012 and publication in the Official Gazette on the above mentioned date. The law has made principle amendments, *among others*, to the Income Tax Law (Law No. 193) (Published in the Official Gazette dated January 6, 1961 and No. 10700) (the “*IT Law*”), the Law Regarding Fees (Law No. 492) (Published in the Official Gazette dated July 17, 1964 and No. 11756) (the “*LrF*”), the Corporate Income Tax Code (Law No. 5520) (Published in the Official Gazette dated June 21, 2006 and No. 26205) (the “*CIT Code*”), the Tax Procedures Law (Law No. 213) (Published in the Official Gazette dated January 10, 1961 and No. 10703 - 10705), the Stamp Tax Law (Law No. 488) (Published in the Official Gazette dated July 11, 1964 and No. 11751) (the “*STL*”), the Law on the Collection of Public Receivables (Law No. 6183) (Published in the Official Gazette dated July 28, 1953 and No. 8469), (the “*Public Receivables Law*”), the Value Added Tax Law (Law No. 3065) (Published in the Official Gazette dated November 2, 1984 and No. 18563) (the “*VAT Law*”) and the Electricity Market Law (Law No. 4628) (Published in the Official Gazette dated March 3, 2001 and No. 24335 bis) (the “*EM Law*”)

#### 1.1 Amendments to the IT Law:

Pursuant to Article 5 of the Amending Law, Article 21 of the IT Law has been amended and, accordingly, individuals that generate an income of more than TL 88,000 (as indicated under Article 103 of the same law) through wage, return on securities, return on real estate and any other means, shall no longer benefit from the TL 3,000 exception on the income derived from the leasing of real properties in a single calendar year. However, this amendment will apply only to income derived starting from January 1, 2013. Therefore tax payers will hold their exempt status regarding the taxation of a maximum amount of TL 3,000 derived from the leasing of real property.

Pursuant to Article 6 of the Amending Law, Article 41 paragraph 1 sub-clause 9 of the IT Law has been amended and, accordingly, with regards to enterprises that utilise debt more than their equity capital and limited only with the debt amount that exceeds the actual equity capital, up to 10% of the expenses such as the interest, commission, delay interest, dividend, exchange difference related to such excessive amount, may not be deducted from the income of such enterprise. Please note that this amendment will become effective on January 1, 2013.

Pursuant to Article 8 of the Amending Law, an addition has been made to Article 75 of the IT Law. Accordingly, income derived through the issuance of any capital markets instruments in accordance with the terms of the Capital Markets Law (Law No. 2499) (Published in the Official Gazette dated July 30, 1981 and No. 17416) shall be regarded as return on securities.

Pursuant to Article 9 of the Amending Law, two sub-clauses have been added to Article 89 of the IT Law. Accordingly, (i) monies, the portion of which does not exceed 10% of the declared taxable income, set aside as venture capital fund pursuant to Article 325/A of the TPL, and; (ii) 50% of the income derived by enterprises exclusively through architecture, engineering, design software, medical reporting, accounting, call centre and data keeping services provided in Turkey to persons not residing in Turkey and that have legal residence outside Turkey or whose workplace or registered workplace is outside Turkey, provided that such services are benefited from outside Turkey and 50% of the income derived exclusively through provision of education and health services by enterprises providing such services under the supervision of and by the permits issued by the relevant ministry and exclusively to persons not residing in Turkey may be deducted from the yearly income of the relevant enterprises.

According to Article 11 of the Amending Law, an amendment has been made to Provisional Article 67 of the IT Law and, accordingly, the income derived through the sale, purchase and redemption of securities issued outside of Turkey by asset leasing companies and the periodical income gained from such securities shall be subject to taxation in a manner similar to those securities issued outside of Turkey by the Treasury and not be subject to taxation under Provisional Article 67 of the IT Law.

### 1.2 Amendments to LrF:

According to Article 19 of the Amending Law, an amendment has been made to Article 123 of the LrF which aims to clarify uncertainties regarding the implementation of the exemptions granted under the LrF. Pursuant to such amendment, court fees **shall be applicable** to lawsuits initiated in connection with loan facilities and transactions regarding obtainment of securities in connection with and repayment of such loans. Therefore, an exemption shall be applicable only to other fees indicated under the LrF in connection with the above-mentioned transactions.

### 1.3 Amendments to CIT Code:

According to Article 34 of the Amending Law, an amendment has been made to Article 5 of the CIT Code and accordingly the income derived by enterprises through contribution in Turkey resident venture capital funds and capital venture investment partnerships shall be exempt from corporate income tax.

According to Article 35 of the Amending Law, a new Article has been added to the CIT Code. Accordingly, in the event that there exists income derived by foreign funds with the intermediation of a duly licensed portfolio manager who is a Turkish resident, through capital markets instruments and securities (whether publicly traded or not in a stock exchange), futures and options agreements, futures and options agreements based on warrant, foreign currency, loans and similar financial assets and commodities trading in valuable stone exchanges, the portfolio manager intermediaries will not be deemed as the permanent establishment of such foreign funds and the workplaces of such intermediaries shall not be deemed as the workplace or the registered workplace of the foreign funds, provided that:

- (i) The transactions realised by the intermediary portfolio manager on behalf of the foreign fund is a customary transaction for such portfolio manager;
- (ii) The relationship between the foreign fund and the portfolio manager must have an independent nature and be at arm's length;
- (iii) The portfolio management company must receive fees, at arm's length, in consideration of the services it has provided and the transfer pricing report must be submitted to the Ministry of Finance Revenue Administration in the period during which the corporate income tax declaration must be submitted; and
- (iv) The portfolio manager and the persons related to it must have no more than a 20% entitlement over the income of the foreign fund after the deduction of the fees charged for the services provided to the foreign fund.

According to Article 36 of the Amending Law, 50% of the income derived by enterprises exclusively through architecture, engineering, design software, medical reporting, accounting, call center and data keeping services provided in Turkey exclusively to persons not residing in Turkey and that have legal residence outside Turkey or whose workplace or registered workplace is outside Turkey, provided that such services are benefited from outside Turkey and 50% of the income derived exclusively through provision of education and health services by enterprises providing such services under the supervision of and by the permits issued by the relevant ministry and exclusively to persons not residing in Turkey may be deducted from the yearly income of the relevant enterprises.

According to Article 37 of the Amending Law, an amendment has been made to Article 11 of the CIT Code with regards to enterprises, *excluding credit institutions, financial institutions, financial leasing, factoring and finance companies*, that utilise debt more than their equity capital and limited only with the debt amount that exceeds the actual equity capital, up to 10% of the expenses such as the interest, commission, delay interest, dividend, exchange difference related to such excessive amount, may not be deducted from the income of such enterprise. Please note that this amendment will become effective on January 1, 2013.

### 1.4 Amendments to TPL:

According to Article 15 of the Amending Law, a new article has been added to the TPL and, accordingly, venture capital funds not exceeding 10% of the declared income and 20% of the equity capital may be set aside for injection as capital in the venture capital investment partnerships or venture capital investment funds, which are to be established under the supervision of the Capital Markets Board, or to acquire shareholding in the same.

## 1.5 Amendments to STL:

According to Article 17 of the Amending Law, an amendment has been made to Table 2 of the Stamp Tax Law which aims to clarify uncertainties regarding the implementation of the exemptions granted under the Stamp Tax Law. Pursuant to such amendment, documents related to the facilitation and repayment of a loan **as well as** documents related to **obtainment of securities** regarding such loan facilities shall be exempt from Stamp Tax.

## 1.6 Amendments to the VAT Law:

According to Article 25 of the Amending Law, with regards to the investments incentivised, as further detailed on pages 7 to 12 of this newsletter, the value added tax ("**VAT**") burden assumed due to construction activities and not recovered by the tax payer at the end of the calendar year by means of deduction, may be refunded in the financial year following the year that such VAT burden was assumed, provided that an investment incentive certificate for at least TL 500,000,000.00 (five hundred million Turkish Liras) has been issued.

## 1.7 Amendments to the EM Law:

According to Article 28 of the Amending Law, a new Provisional Article has been added to the EM Law pursuant to which the income derived from the tax-free merger, full spin-off and partial spin-off transactions between the electricity distribution companies and the electricity production facilities and/or companies is exempt from corporate income tax and VAT.

## II. New Incentive System

Further to the information provided under the previous newsletter issued by Pekin & Pekin, the details of the incentive package (the “**New Package**”), previously announced by the Ministry of Economy, have become definitive and set out under the Cabinet Decree regarding the Public Support of Investments (the “**Decree**”) (Published in the Official Gazette dated June 19, 2012 and No. 28328). The principle changes brought by the New Package are, *inter alia*, the change of regions where a certain investment is granted benefits and the nature of such benefits (e.g. Turkey shall be divided into 6 (six) regions instead of 4 (four)).

The New Package introduces four different incentive types. These incentive types are as below:

- i. General incentives,
- ii. Regional incentives,
- iii. Incentives regarding large-scale investments, and
- iv. Incentives regarding strategic investments.

In order to benefit from any of the incentives listed above, two general conditions must be met:

- i. The investment project shall be approved by the Ministry; **and**
- ii. An investment incentive certificate provided by the Ministry must be obtained.

Please find below the specific incentives provided in each incentive type before the explanations related to the incentive packages:

General Incentives	Regional incentives	Incentive of large-scale investments	Incentive of strategic investments
VAT Exemption	VAT Exemption	VAT Exemption	VAT Exemption
Customs Tax Exemption	Customs Tax Exemption	Customs Tax Exemption	Customs Tax Exemption
Corporate Income Tax with lower rate (only for the investment in Zone VI)	Corporate Income Tax with lower rate	Corporate Income Tax with lower rate	Corporate Income Tax with lower rate
Social security premium support (for the employer's share) (only for the construction of the ships in ship-building yard )	Social security premium support (for the employer's share)	Social security premium support (for the employer's share)	Social security premium support (for the employer's share)
-	Land allocation	Land allocation	Land allocation
-	Interest support	-	Interest support
-	-	-	VAT refund

-	-	-	The withholding tax on income tax support (only for the investment in Zone VI)
			Social security premium support (for the employee's share) (only for the investment in Zone VI)

## 2.1 General Incentives:

Zone I	Zone II	Zone III	Zone IV	Zone V	Zone VI
Ankara	Adana	Balıkesir	Afyonkarahisar	Adıyaman	Ağrı
Antalya	Aydın	Bilecik	Amasya	Aksaray	Ardahan
Bursa	Bolu	Burdur	Artvin	Bayburt	Batman
Eskişehir	Çanakkale	Gaziantep	Bartın	Çankırı	Bingöl
İstanbul	Denizli	Karabük	Çorum	Erzurum	Bitlis
İzmir	Edirne	Karaman	Düzce	Giresun	Diyarbakır
Kocaeli	Isparta	Manisa	Elazığ	Gümüşhane	Hakkari
Muğla	Kayseri	Mersin	Erzincan	Kahramanmaraş	Iğdır
-	Kırklareli	Samsun	Hatay	Kilis	Kars
-	Konya	Trabzon	Kastamonu	Niğde	Mardin
-	Sakarya	Uşak	Kırıkkale	Ordu	Muş
-	Tekirdağ	Zonguldak	Kırşehir	Osmaniye	Siirt
-	Yalova	-	Kütahya	Sinop	Şanlıurfa
-	-	-	Malatya	Tokat	Şırnak
-	-	-	Nevşehir	Tunceli	Van
-	-	-	Rize	Yozgat	-
-	-	-	Sivas	-	-

Regardless of which region an investment is made in, all projects which meet conditions of specific capacity and the following minimum fixed investment amount will be supported within the framework of the General Investment Incentives. The incentives under the general incentives package would be provided for the investments which are not classified as the investment which would not be stimulated. The minimum investment amount to be supported shall be at least TL 1,000,000.00 (one million Turkish Lira) in Region 1 and Region 2 and TL 500,000.00 (five hundred thousand Turkish Lira) in Regions 3, 4, 5 and 6.

## 2.2 Regional incentives:

Firstly, in order to benefit from regional investment supports, the investment shall be made in the related region since the aim of the incentive package is to eliminate the inter-regional imbalance of the level of development by means of incentivisation of certain sectors. Rates of support measures have been differentiated according to the level of development of each region.

Within the scope of regional investment, minimum investment amounts are determined for certain investment subjects in each region separately and these thresholds are provided with the Annex - 3 of the Decree. For any investment, the Annex should be referred to, to determine whether the investment is over the threshold amount.

Under the new incentive system, regions are separated into 6 (six) different zones. Please find below the cities under each zone:

Please also refer to the below map to see where the cities are located in Turkey:



## 2.3 Incentive of Large-Scale Investments:

The investments stated below with the minimum threshold, which is determined under Annex-3 of the Decree, will benefit from the incentives to be provided for the large-scale investments.

No.	Investment Subjects	Minimum Investment Amount ("Million")
1	Refined Petroleum Products	1000
2	Chemical Products	200
3	Harbours and Harbour Services	200
4	Automotive OEM and Side Suppliers	
4-a	Automotive OEM Investments	200
4-b	Automotive Side Suppliers Investments	50
5	Railway and Tram Locomotives and/or Railway Cars	50
6	Transit Pipe Line Transportation Services	50
7	Electronics	50
8	Medical, High Precision and Optical Equipment	50
9	Pharmaceuticals	50
10	Aircraft and Space Vehicles and/or Parts	50
11	Machinery (including Electrical Machines and Equipment)	50
12	Integrated Metal Production	50

## 2.4 Strategic Investments:

The investments which would meet the below stated criteria altogether are considered as Strategic Investments according to Article 8 of the Decree.

1. The total inbound production capacity shall be less than the total importation of the goods regarding the area of investment;
2. A fixed investment threshold of TL 50,000,000.00 (fifty million Turkish Lira);
3. A minimum added value of 40%; and
4. The importation of the goods to be subject to investment shall be over USD 50,000,000.00 (fifty million American Dollars) in the last one year period. (This condition is not required for goods with no domestic production.).

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