

A brief on significant legal developments in Turkey

Closing Notarization Dates of Minutes Books and Journals

With Article 78 of the “Law regarding the Amendment on the Customs Law and Certain Other Laws and Decree Laws” No.6455 (Published in the Official Gazette dated April 11, 2013 and No. 28615) (the “**Law No.6455**”), the closing notarization dates of minutes books and journals regulated under the Article 64 of the Turkish Commercial Law No. 6102. (Published in the Official Gazette dated February 14, 2011 and No. 27846) (the “**TCC**”) have been amended as below;

- The closing notarization of minutes book shall be performed by the end of June of the following financial year.
- The closing notarization of journal shall be performed by the end of January of the following financial year.

The provision regarding the closing notarization of the minute will be effective from the beginning of April 2013; the provision regarding the approval of journal will be effective from the beginning of January 2013.

Audit Liability Became Compulsory for All Joint Stock Companies

Article 80 of the Law No. 6455 brings a new audit liability for the joint stock companies regulated under Article 397 of the TCC.

According to the new regulation;

- Joint stock companies which do not fall under Article 397/4 of the TCC and accordingly the Decree No. 2012/4213 (Published in the Official Gazette dated 23 January, 2013 and No. 28537) will also be subject to audit.
- The audit liability will not be enforced on the limited liability companies.
- The procedures and principles of the audit liability will be determined through the regulation which will be drafted by the Ministry of Customs and Trade and issued by the Cabinet.
- If a joint stock company which is liable in accordance with Article 397 of the TCC is not made has not audited itself, the financial statements and annual activity report of such company will be regarded as not issued.

Tax Exemptions on Lease Certificates

The “Law regarding the Amendment to the Public Finance and Debt Management Law No.4749 (the “**Law No.4749**”) and Certain Other Laws and Decrees” No.6456 (the “**Law No.6456**”) has been published in the Official Gazette dated April 18, 2013 and No. 28622. One of the most important amendments is related to the Law No. 4749, which are the exemptions granted to the Asset lease Companies of the Undersecretariat of Treasury and lease certificates issued by such companies. Please find below explanations with regard to the exemptions regulated within the scope of the Law No.6456;

- Asset lease companies that are wholly owned by Undersecretariat of Treasury are not bound by the liabilities imposed by the Tax Procedures Law No.213 (Published in the Official Gazette dated October 01, 1961 and No. 10703) (the “**Law No.213**”) or Turkish Commercial Code No.6102 (Published in the Official Gazette dated February 14, 2011 and No. 27846) (the “**Law No.6102**”) such as bookkeeping obligation and others.
- Transactions to be performed within the scope of Article 7/A of the Law No. 4749, lease certificates to be issued by the asset lease companies that are owned by the Undersecretariat of Treasury and the transactions and documents in relation to the issuance of lease certificates are exempt from stamp tax and fees.
- Real estate subject to the issuance of lease certificates are exempt from property tax.

- Rental incomes derived through the lease certificates by asset lease companies which are currently established and wholly owned by the Undersecretariat of Treasury and the monies collected on the date of maturity will be exempt from Banking Insurance and Transaction Tax.
- The asset lease companies which are currently established and wholly owned by the Undersecretariat of Treasury are exempt from Corporate Income Tax.

The withholding tax rate, regarding the income derived through lease certificates issued in the foreign countries by the Asset Lease Companies established in accordance with the Law No.4779, has been determined at the rate of 0% with the Decree of the Council of Ministers No.2013/4552 (*Published in Official Gazette dated 27 April, 2013 and No. 2013/4552*) (the “**Decree No.2013/4452**”).

The new 0% withholding tax rate has been put into force by The Decree No.2013/4452 by amending the below stated Decrees of the Council of Ministers;

- Decree of the Council of Ministers No. 2009/14952 which regulates the withholding tax rates on income derived by real persons,
- Decree of the Council of Ministers No.2009/14953 which regulates the withholding tax rates on income derived by non-resident corporations,
- Decree of the Council of Ministers No.2009/14954 which regulates the withholding tax rates on income derived by resident corporations.

Tax Inspection Reports

Following the publication of the Tax Procedural Code Communiqué No. 425 with regard to the legally binding characteristic of the advance rulings for assessment committees, further explanations are provided by Tax Procedural Code Circular No. 63 dated April 4, 2013 (the “**Circular**”).

According to the Circular, the advance rulings issued by the commissions, in accordance with Article 413/3 of the Law No.213 will be taken into consideration by the tax inspection report evaluation commissions. In other words, advance rulings, which were not issued by the commission established in accordance with Article 413/3 of the Law No.213, will have no binding effect on the tax inspection report evaluation commissions.

New Registration Requirements for Certain Taxpayers

Pursuant to new Article 153/A of the Law No.213 which added by the Law No. 6455 (*Published in the Official Gazette dated April 11, 2013 and No. 28615*), taxpayers, whose registration with the relevant tax office was ex officio cancelled by the revenue administration on the grounds that the taxpayer issued forged documents, are required to pay all of their public debts and to give a guarantee in order to register themselves again as a taxpayer.

Rediscounting of Commercial Checks Allowed by the Revenue Administration

According to the Tax Procedural code Circular No.64, postdated checks are considered as non-expired bond and can be subject to rediscounting in accordance with Article 281 and 285 of the Law No.213.

New Withholding Tax Applicable on Funds Transferred s into Turkish Private Pension System

The committed funds by foundation, trust, pension funds or by a similar institutions on behalf of their workers or members as part of a retirement plan, could be transferred into private pension system in Turkey; such funds are also exempt from income tax according to Temporary Article 1 of the Law No. 4632 (*Published in the Official Gazette dated March 28, 2001 and No. 24366*). However, a withholding tax provision has been inserted into the above stated Article in order to prevent early exits from the private pension system. Pursuant to Article 35 of the Law No. 6456, withholding tax at the rate of 3,75% on the transferred amount will be applicable if a beneficiary leaves the system within three years following the transfer of the fund into the private pension system in Turkey on any ground other than death or disability.

The New Exchange of Information Rule, the Turkey and Malaysia DDT

Article 25, *Exchange of Information*, of the Double Tax Treaty between Turkey and Malaysia, signed in September 27, 1994, has been amended by the protocol dated February 17, 2010 (the “**Protocol**”) signed between the respective countries. The Law No. 6469 regarding the approval of the confirmation of the Protocol by the Council of Ministers has been published in the Official Gazette dated May 22, 2013 and No. 28654. The legal procedures regarding the Protocol will be completed with the confirmation of the Council of Ministers in terms of Turkey to make the protocol effective and the new Exchange of Information provision will come to effect with the ratification of the Protocol by the Parliament of Malaysia.

Procedures on the Implementation of the Turkey-Australia DDT

Pursuant to Council of Ministers Decree No. 2013/4640 (published in the Repeated Official Gazette dated May 21, 2013 and No. 28653), procedures regarding the implementation of the Double Tax Treaty between Turkey and Australia have been completed in terms of Turkey. The Double Tax Treaty will come into effect with the ratification of the Parliament of Australia.

New Exchange of Information Rule, Turkey—Singapore DDT

Article 26, *Exchange of Information*, of the Double Tax Treaty between Turkey and Singapore, signed in July 9, 1999, has been amended by the protocol dated March 5, 2012 (the “**Protocol**”) signed between the respective countries. The Law No. 6419 regarding the approval of confirmation of the Protocol by the Council of Ministers has been published in the Official Gazette dated March 01, 2013 and No. 28547. The Protocol has been confirmed with the Decree of Council of Ministers No. 2013%4757 (*published in the Official Gazette dated June 05, 2013 and No. 28668*) With the confirmation of the Protocol, Turkey has completed the legal procedures on its end to make the protocol effective and the new Exchange of Information provision will come to effect with the ratification of the Protocol by the Parliament of Singapore.

Incentive System Amended

Pursuant to Article 1/B-6 of Appendix 4, “*Subjects of Investment not Supported or Supported conditionally*”, of the Decree No. 2012/3305 (the “**Decree**”) (*published in the Official Gazette dated June 19, 2012 and No. 28328*), coal mining/extraction investments are excluded from investments that could benefit from the incentives. Article 1/B-6 of Appendix 4 of the Decree was revoked Decree No. 2013/4763, and therefore such investments are currently considered under the scope of the Decree on State Incentives in Investments.

New Regulation on the Payment of Court Fees

As announced in our tax alert No. 1/2013, the statement “...starting from the rendering the court judgment.” under Article 28 of the Law Regarding Fees (Law No. 492) (published in the Official Gazette dated July 17, 1964 and No. 11756) has been cancelled by the Constitutional Court. , The cancelled statement is amended through Law No. 6487 (published in the Official Gazette dated May 24, 2013 and No. 28674). Pursuant to the new provision, the payable amount of the court charges shall be paid in the month following the notification of the judgment.

R&D Personnel Withholding Tax Exemption Term Extended

According to Provisional Article 75 of the ITL, income derived by R&D personnel falls under Article 3/2 of the law regarding the Promotion of Research and Development Activities No.5746 (Published in the Official Gazette dated March 12, 2008 and No. 26814) and are exempt from income withholding tax until December 31, 2013. The utilization term of the exemption was **extended to December 31, 2023** by Article 7 of the Law. No. 6487.

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