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Tax Alert 2014/5

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TAX

THE NEW OMNIBUS BILL BECOMES EFFECTIVE AS OF SEPTEMBER 11, 2014

The Law regarding the amendments on Labor Law, Certain Laws and Statutory Decrees and the Restructuring of Certain Receivables **("Omnibus Bill")** (Law No.6552) (*published in the 1. repeating Official Gazette dated September 11 2014, No. 29116)* has been approved by the Grand National Assembly of Turkey on September 10, 2014 and has generally, entered into force on September 11, 2014 upon its publication in the official gazette. Certain articles listed under Article 145 of the Omnibus Bill may enter into force on different dates. However, the tax related regulations, which compose the subject matter of this newsletter, have entered into force as of September 11, 2014. Within the scope of the Omnibus Bill, there are also several tax related regulations, some of which either extends or limits the scope of certain tax exemptions. However, it is noteworthy that, the Omnibus Bill provides the taxpayers with the opportunity to restructure their public debts (including tax debts) in the presence of Turkish tax and other authorities.

I. THE PUBLIC RECEIVABLES SUBJECT TO THE OMNIBUS BILL

- **A. The Public Receivables Collected by the Tax Authorities**
    - **1. Tax receivables included under the Tax Procedural Law**
    - The taxes (including the tax penalties, delay interests and default interests) that are related to the periods before April 30, 2014 (including this date) or that shall be declared until April 30, 2014 such as the income tax (except for the second installment of income tax regarding the year 2013), corporate income tax, value added tax, special consumption tax, income and corporate income withholding tax, stamp tax and all other taxes based on the declaration;
    - The taxes (including the tax penalties, delay interests and default interests) that are accrued before April 30, 2014 (including this date) such as fees, motor

- vehicles tax (except for the second installment of motor vehicles tax regarding the year 2013), and similar taxes;
  - The tax penalties that are not tied to any tax principal and imposed based on the determinations which have been made before April 30, 2014.

- **B. The public receivables collected by the authorities apart from the tax offices**

  - **1. The public receivables collected by the municipalities**
  - The real estate tax, the environment and cleaning tax, the contribution to the protection of cultural properties (calculated over the real estate tax) and the tax penalties, delay interests, default interests that are tied to those tax principals;
  - The receivables (including any kinds of penalties and interests stated under the agreements) arisen from the water usage of the water subscriber of municipalities;
  - The receivables (including any kinds of penalties and interests stated under the agreements) of metropolitan municipalities water and sewerage administrations in relation to the water and wastewater amounts.
  - **2. The Public Receivables collected by the customs authorities**
  - The customs taxes (including their tax penalties, administrative fines, delay interests and default interests) that are collected in accordance with the Law No.6183 and arisen from the customs liabilities within the scope of the Customs Law and the other relevant laws before April 30, 2014.

II. THE REQUIREMENTS IN ORDER TO BENEFIT FROM THE OMNIBUS BILL

- **1. The requirements for tax receivables**

The tax receivables (from the tax receivables which are stated under the section I.A-1) that have become definite but have not been already paid as of September 11, 2014 may be restructured according to the Omnibus Bill. However, within the scope of Omnibus Bill there will be no discount or reduction made on the tax principal and the tax penalty which is tied to the tax principal. The whole amount of tax principal will be collected within the scope of the restructuring. Accordingly, the below stated amounts shall be paid within the scope of the restructuring of tax receivables as per the Omnibus Bill.

- The whole amount of tax principals,
- The whole amount of tax penalties which are tied to tax principals,
- 50% of the tax penalties (irregularity penalties) which are not tied to tax principals,
- The amounts calculated in accordance with (YI-UFE) monthly price index change instead of the delay interests and default interests.

Providing that the abovementioned receivables have been completely paid in their due time as it is stated under the Omnibus Bill, the collection of the following taxes shall be withdrawn by the tax authority:

- 50% of the tax penalties which are not tied to any tax principal and,

- The whole amount of the delay interest, default interest and all other secondary debts.

In addition to the foregoing requirements, the taxpayers restructuring their tax debts within the scope of the Omnibus Bill shall not sue any lawsuit for the cancellation of such tax debts. If taxpayers have sued any lawsuit against their tax debts (subject to the restructuring) before the enforcement of the Omnibus Bill, they must withdraw from such lawsuits by submitting a petition to the relevant tax office. The date on which a taxpayer submits the withdraw petition to the relevant tax office is considered as the date regarding the submission of the withdraw petition to the authorized tax court.

On the other hand, in order to benefit from the restructuring of definite tax receivables, taxpayers shall apply to the relevant tax office until the end of the second month following the publication of the Omnibus Bill. Therefore, the last date to apply for the restructuring of tax receivables is December 1, 2014.

- **2. The requirements for customs tax receivables**

The customs tax receivables (from the customs tax receivables which are stated under the section I.A-2) that have become definite but have not been already paid as of September 11, 2014 may be restructured according to the Omnibus Bill. However, within the scope of Omnibus Bill there will be no discount or reduction made on the customs tax principal and the customs tax penalty which is tied to the customs tax principal. The whole amount of customs tax principal will be collected within the scope of the restructuring. Accordingly, the below stated amounts shall be paid within the scope of the restructuring of customs tax receivables as per the Omnibus Bill.

- The whole amount of customs tax principals,
- The whole amount of customs tax penalties which are tied to customs tax principals,
- 50% of the customs tax penalties which are not tied to customs tax principals,
- The whole amount of administrative penalties and the customs taxes collected in accordance with the Law No.6183,
- The amounts calculated in accordance with (YI-UFE) monthly price index change instead of the delay interests and default interests.

Providing that the abovementioned receivables have been completely paid in their due time as it is stated under the Omnibus Bill, the collection of the following taxes shall be withdrawn by the customs authority:

- 50% of the tax penalties which are not tied to any tax principal and,
- The whole amount of the delay interest, default interest and all other secondary debts.

The other requirements mentioned above (under the section II-1) for the tax receivables collected by tax authorities are also applicable for the customs tax receivables.

III. THE PAYMENT PROCEDURES WITHIN THE SCOPE OF OMNIBUS BILL

The tax amounts that are calculated within the scope of restructuring of tax debts would be paid in advance or by installments at debtor's sole discretion. In this regard, the following payment procedures may be applied for the debtors who are able to restructure their public debts within the scope of restructuring.

- Any ratio or interest will not be applied for the public receivables paid in advance
- The public receivables may be paid by 6, 9, 12 or 18 equal installments if the debtor prefers to restructure his debts by installments
- For the payments made by installments, a certain ratio will be applied depending on the payback period.

The below stated ratio amounts will be applied to the payments depending on the number of installments:

- For the payments made by 6 installments, 1,05
- For the payments made by 9 installments, 1,07
- For the payments made by 12 installments, 1,10
- For the payments made by 18 installments, 1,15

If the taxpayer prefers to restructure his debts through advance payment, the payment to the relevant tax office shall be made until December 31, 2014. In case the taxpayer restructures his tax debts through installments, the payment regarding the first installment shall be made until December 31, 2014. The payments regarding the other installments (up to 18 installments) shall be made in 2-month periods. The abovementioned requirements are also applicable for the customs tax receivables.

IV. THE OTHER TAX RELATED REGULATIONS UNDER THE OMNIBUS BILL

- **1.The Correction of Cash Accounts and Receivables from Shareholder Accounts**

In accordance with Article 74 of the Omnibus Bill, the corporate income taxpayers may correct their records in relation to the cash amounts and the net amount corresponding to the difference between the receivables from the shareholders and the owed to the shareholders shown on their balance sheet as of December 31, 2013 which are not actually exist under the assets of the business enterprise, by declaring those, to the relevant tax office until December 2014.

The corporate income taxpayers will calculate 3% corporate income tax over the declared amount and pay the tax within the period of corporate income tax declaration. The taxes declared and paid within the scope of the correction could not be set-off from the income tax or corporate income tax and could not be considered as a deductible expense in the calculation of corporate income tax base.

- **2. Amendment on the Value Added Tax Exemption of the Delivery of Precious Gemstones**

The delivery of precious gemstones (diamond, brilliant, ruby, emerald, topaz, sapphire, chrysolite, pearl, isometric zirconia) is exempted from Value Added Tax ("**VAT**") under Article 17/4-g of the Value Added Tax Code (Law no. 3065) (the "**VAT Code**") (*published in the Official Gazette dated November 02, 1984, No. 18563*). This exemption was substantially amended by Article 26 of the Omnibus Bill by excluding the supply of the isometric zirconia from the exemption, and modifying the marketplace of the supply. Starting from September 11, 2014, the referred exemption only applies in cases of i) the importation of precious gemstones for the purpose of being traded at the stock exchanges established in Turkey under the Capital Market Law (Law No. 6362) ii) delivery to the stock exchange and iii) deliveries between the members of stock exchange. Accordingly, the sale of precious gemstones to the final customers and the purchase and sale of such precious gemstones by the persons except for the members of stock exchange will be subject to the VAT.

- **3. Amendment on the Special Consumption Application of the Pearls and Precious Gemstones**

The following goods which are included under the list numbered (IV) attached to the Special Consumption Tax Code (**"SCT Code"**) (Law No.4760) (*published in the Official Gazette dated June 12, 2002, No. 24783)* are removed from the list by Article 116 of the Omnibus Bill. Accordingly, the below stated goods will not be subject to special consumption tax starting from September 11, 2014.

HS CODE	**The Good**	**Tax Rate (%)**
71.01	Natural pearl or cultivated pearl (whether those are machined, sorted or not) (however not being stringed, nailed or mounted); Natural pearl or cultivated pearl (temporarily stringed for the purpose of being easily carried)	20
71.02	Diamonds (whether those are machined or not but not being nailed or mounted) (Except for the ones used in the industry)	20
71.03	Precious gemstones (except for diamonds) or semi-precious gemstones (whether those are machined, sorted or not) (however not being stringed, nailed or mounted); Precious gemstones (except for diamonds) or semi-precious gemstones (not being sorted) (temporarily stringed for the purpose of being easily carried)	20
7104.90.00.00.19	(The precious gemstones or semi-precious gemstones which are made by way of synthetic or composition and not being used in the industry) Others	20
71.05	Natural or synthetic, dusts or powders of the precious gemstones or semi-precious gemstones (Except for the ones used in the industry)	20

71.16	The goods made from the natural or cultivated pearl or made from the precious gemstones or semi-precious gemstones (made by way of natural, synthetic or combination)	20

- **4. The Fee Exemption on the Residence Permits of the Foreign Persons who obtained an Indefinite Work Permit**

Through amendment made on Article 88/1 of the Fees Code (Law No. 492) *(published in the Official Gazette dated July 17, 1964, No. 11756)* by Article 23 of the Omnibus Bill; the residence permits of the foreign persons having an indefinite work permit in Turkey from the Ministry of Labor and Social Security are exempt from fees.

- **5. The amendment on the deductibility of the donations made for the natural disasters**

According to the previous version of Article 10 of the Corporate Income Tax Code (**"CIT Code")** (Law No. 5520) *(published in the Official Gazette dated June 21, 2006, No. 26205)* and Article 89 of the Income Tax Code **("IT Code"**) (Law No.193) *(published in the Official Gazette dated January 6, 1961, No. 10700);* individuals and corporations could deduct from their annual profits the donations they made for the aid campaigns organized by the Prime Ministry due to the natural disasters. Article 10 of the CIT Code and the Article 89 of the IT Code were amended through Article 92 of the Omnibus Bill, and the scope of the deduction was extended. Pursuant to the amended versions of the abovementioned articles, taxpayers may deduct the donations they made in cash or in kind for the aid campaigns organized by the Prime Ministry or Council of Ministers regardless of whether the aid campaigns are initiated due to the natural disasters.

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