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## TAX

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### The Double Tax Treaty Signed Between Turkey and Vietnam

The Convention between the Socialist Republic of Vietnam and the Republic of Turkey for the Avoidance of Double Taxation with respect to the Taxes on Income and the Prevention of Fiscal Evasion (the **“Treaty”**) was signed in Ankara on July 8, 2014. The Treaty will be effective upon ratification by the parliaments of both States. Upon signing of the Treaty, the number of double tax treaties signed by Turkey has reached 85 and 80 of those have become effective.

According to the Treaty, in principle, the taxation right is given to the country of residence of the taxpayer and the taxation right of the country where the income is generated is limited in terms of the dividend, interest and royalty payments. Service procurements including the projects of building, construction, assembling, installation lasting less than 6 months, and the supervision activities in relation to the same will not be subject to tax in the country in which those are performed. Consultancy services lasting not more than 6 months will also not be taxed in the country where they are performed.

The countries will be able to effectively mitigate tax loss and tax evasion through the Article of Exchange of Information. In addition, the Treaty includes cooperation provisions for the collection of taxes.

### Turkey Agrees in Principle on FATCA Model Agreement 1-A

The Foreign Account Tax Compliance Act (**“FATCA”**) is a U.S. federal law that requires U.S. persons, including individuals who live outside the United States, to report their financial accounts held outside of the United States, and requires foreign financial institutions to report to the Internal Revenue Service (**“IRS”**) about their U.S. clients.

As it is known, FATCA regulations could be applicable to Turkish financial institutions only in cases where Turkey signs an agreement with US to that effect and negotiations on FATCA Model Agreement 1-A (**“FATCA Agreement”**) have been continuing between Turkey and United States for a while. However, such agreement has not been signed yet between the parties, and therefore the provisions of FATCA are not applicable for Turkish financial institutions currently.

In the meantime, as of June 3, 2014, Turkey has been included under the list of countries which have reached an agreement in substance on the FATCA Agreement with United States. In other words, Turkey becomes one of the countries which agree in principle on the FATCA Agreement.

Moreover, the FATCA Agreement is based on the information exchange between the governments of contracting states. A FATCA Agreement is formed on the principle of reciprocity (the United States shall provide information to

the Turkish Government as well). On the other hand, July 1, 2014 is the deadline for the implementation of certain requirements of foreign financial institutions and certain non-financial foreign entities under the FATCA. Therefore, since Turkey is listed under the countries which have reached agreements in substance on the FATCA, financial institutions operating in Turkey will be considered as financial institutions that are “consistent” with FATCA as of July 01, 2014.

After the FATCA Agreement is signed by Turkey and United States, financial institutions operating in Turkey and introduced after the FATCA Agreement will be obliged to report the information specified within the scope of the FATCA Agreement to the Turkish Ministry of Finance Revenue Administration in certain periods in order to perform the aforementioned information exchange. The Revenue Administration will share this information with the IRS in accordance with the FATCA Agreement.

### **The Draft Code regarding the Restructuring of Certain Public Receivables has been submitted to the Grand National Assembly of Turkey**

The Draft Code regarding the Restructuring of Certain Public Receivables and Amendments on Certain Laws and Decrees Having Force of Law (the “**Draft Code**”) was submitted to the Presidency of the Grand National Assembly of Turkey on June 2, 2014. In brief, the Draft Code includes the following significant opportunities for taxpayers in terms of the restructuring of certain public receivables;

- The restructuring of tax principals, tax penalties and delay interests which are related to the taxation periods before April 30, 2014;
- The restructuring of social security premiums, penalties and delay interests which are related to the taxation periods before April 2014 (including April) and which have not been already paid even though they accrued before the publication of the Draft Code;
- The opportunity for installment payments over 18 months regarding the restructured public receivables.

### **Amendments on the Implementation of Investment Incentives**

Through publication of “the Communique No. 2014/2 regarding the Application of the Council of Minister’s Decree on Government Subsidies for Investments” (the “**Communique**”) (*published in the Official Gazette dated May 08, 2014, No. 28994*) and the Council of Minister’s Decree No. 2014/6058 (the “**Decree**”) (*published in the Official Gazette dated May 09, 2014, No. 28995*), several amendments have been made to the implementation of the current investment incentive system.

In this respect, the amendments which are made to “the Communique No.2014/1 regarding the Application of the Council of Minister’s Decree on Government Subsidies for Investments” and “the Council of Minister’s Decree No. 2012/3305” through the abovementioned Communique and Decree would be stated as follows;

The implementation which provides i) a higher rate of contribution to the investment ii) a reduced rate of corporate income tax, and iii) social security premium support (employer’s support) with respect to investments that have been started before December 31, 2013 within the scope of regional and large scale investments become also applicable for the investments that will be started before December 31, 2014. Within the scope of this amendment;

- The investments which have started in the 1<sup>st</sup> and 2<sup>nd</sup> regions in 2014 ( up until December 31, 2014) could benefit from the social security premium support (employer’s support). In the meantime, the investments which have started in 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> regions in 2014 (up until December 31, 2014) could also benefit from the abovementioned support respectively for 5, 6, 7 and 10 years.
- In case of an investment starts before December 31, 2014; the contributions rates to the investments in the 1<sup>st</sup> to 6<sup>th</sup> regions will apply respectively within the scope of i) the regional investments at rates of 15%, 20%, 25%, 30%, 40% and 50% ii) the large scale investments at rates of 25%, 30%, 35%, 40%, 50% and 60%. The

corporate income tax reduction rates will apply both for regional investments and large scale investments respectively at rates of 50%, 55%, 60%, 70%, 80% and 90%.

- In relation to the investment incentive certificates that will be issued as a result of the applications made for the strategic investments up until December 31, 2014; such investment incentive certificates could benefit from the interest support.

On the other hand, the following investment subjects are added to the primary investment subjects determined under the scope of the Council of Minister's Decree No. 2012/3305;

- Investments aimed at energy efficiency i) which are realized in existing manufacturing industry plants having a minimum 500 TEP (ton equivalent petroleum) energy consumption and provide a minimum 20% energy saving per unit, and ii) the investment return of which is a maximum of 5 years.
- Investments aimed at electricity production (apart from the generating plants based on natural gas), and which are generated through recovery of waste heat in an energy plant.
- Liquefied natural gas ("LNG") investments and natural gas impounding area investments in the amount of a minimum of TL 50,000,000.

### **The Value Added Tax ("VAT") Implementation General Communiqué repealing all of the VAT Communiqués becomes effective as of May 1, 2014.**

As it is known, the Value Added Tax Code (the "**VAT Code**") (Law No. 3065) (*published in the Official Gazette dated 02 November 1984, No. 18563*) has been effective as of January 1, 1985 and a total of 123 VAT Communiqués have been published up to this date with regard to the implementation of the VAT Code. Upon publication of the VAT Implementation General Communiqué ("**Communiqué**") (*published in the Official Gazette dated 02 November 1984, No. 18563*), all principles regarding the implementation of the VAT Code are gathered under this Communiqué.

In addition, under the Communiqué there are significant amendments in favor of taxpayers on the implementation of "*private principals*" which was regulated for the prevention of VAT refunds based on forged documents. In this respect, the Communiqué provides an opportunity for taxpayers to prove the veracity of their transactions with any and all kinds of evidence before they are subject to the application of "*private principals*". On the other hand, the Communiqué includes clear specifications with respect to an exit from the "*private principals*".

Moreover, through application of the Communiqué, the "*VAT Refund Tracking System*" becomes effective as of May 2014 in order to reply to taxpayers' refund requests faster. Additionally, the utilization conditions from the "*Accelerated Refund Tracking System*" are moderated for taxpayers through the Communiqué.

### **The "Protocol Amending the Double Tax Treaty between Turkey and Malaysia" Enters into Force**

As it was announced in our Tax Newsletter dated November 28, 2013 and No.2013/3; Article 25 "Exchange of Information" of the Double Tax Treaty between Turkey and Malaysia was amended through the Protocol signed on February 17, 2010 (the "**Protocol**"). Accordingly, the Protocol has been approved with the Decree of Council of Ministers No. 2013/5040 (*published in the Repetitive Official Gazette dated July 25, 2013 and No. 28718*). Under the Decree of Council of Ministers No. 2014/6035 (*published in the Official Gazette dated April 29, 2014 and No. 28986*), the effective date of the Protocol is determined as December 25, 2013. Therefore, the Protocol becomes retroactively effective as of December 25, 2013.

### **The Communiqué introducing the Withholding Tax Application for Special Consumption Tax Enters into Force**

Under the Special Consumption Tax General Communiqué No.34 ("**Communiqué**") (*published in the Official Gazette dated April 19, 2014, No. 28977*); the Ministry of Finance brings withholding tax application based on its authority provided in accordance with Article 4 of the Special Consumption Tax Code ("**SCT Code**") (Law No.4760) (*published in*

the Official Gazette dated June 12, 2002, No. 24783) for the supplies of goods stated under the GTIP No. 38.11 of Schedule B of List No. (I) attached to the SCT Code by special consumption taxpayers (apart from the refineries introduced under the Petroleum Market Law No.5015).

In this respect, withholding tax application is limited with the supply of the abovementioned goods by special consumption taxpayers, except for the refineries, to the VAT taxpayer manufacturers who have an industrial registry certificate. It should be noted that the withholding tax liability is not a voluntary application, it is mandatory for the manufacturers. The goods introduced under the GTIP No.38.11 would be stated as follows; “antiknock preparations, antioxidant agents, liquidity regulators, abrasive agents, mineral oils (including fuel) or the other preparations for the other oils that are used for the same purposes such as mineral oils”.

According to a general provision of the Communiqué; special consumption tax payers (seller party) shall declare their supplies which are subject to the withholding tax under the withholding section of the Special Consumption Tax Return No (I) within the taxation period in which the abovementioned supplies are made. On the other hand, the manufacturers (buyer party) are obliged to declare and pay withholding tax over the goods they purchase under the Special Consumption Tax Return No (VI) which shall be electronically submitted to the tax office where the buyer party is registered in terms of value added tax. The Special Consumption Tax Return No (VI) shall be submitted within the taxation period in which the purchases subject to the withholding tax are made.

#### **The Issuance of Receipt Becomes Mandatory for Financial Institutions in Relation to Their Activities Which are Subject to Banking and Insurance Transaction Tax**

Financial institutions that are incorporated in Turkey carry out their activities in accordance with the Financial Leasing, Factoring and Financing Companies Law (Law No.6361) (published in the Official Gazette dated December 13, 2012 and No.28496). Such financial institutions are subject to the Banking and Insurance Transaction Tax (“**BITT**”) over the activities stated under the Article 28 of the Expenditure Tax Code (“**ETC**”) (Law No.6802) (published in the Official Gazette dated July 23, 1956, No. 9362). Apart from the activities specified under the ETC, financial institutions are subject to the Value Added Tax (“**VAT**”).

According to Tax Procedural Code General Communiqué No.435 (published in the Official Gazette dated April 3, 2014 and No.28961) (“**Communiqué**”); financial institutions incorporated in Turkey are obliged to issue a receipt instead of an invoice with regard to activities which are subject to the BITT. However, such financial institutions shall issue an invoice for their supplies and activities which are subject to the VAT. Under the Communiqué, the following principles are stated in relation to the issuance of the receipts;

- Receipts shall be issued as two copies at least. If more than two copies are issued, the number of each copy shall be stated on the receipt.
- In respect of each branch or unit which is entitled to issue a receipt, a consecutive serial number shall be given for each receipt starting with no.1 in accordance with the turn of the receipt’s issuance as from the beginning of each fiscal period.
- With regard to the activities and sales that are subject to the BITT, a receipt shall be issued at the time when the BITT liability arises. The receipt which has not been issued in accordance with the abovementioned principle shall be considered as null and void.
- Financial institutions are not obliged to issue receipts in the contractual printing houses and also are not obliged to notarize those before the public notary.
- In case the receipts are not issued or not used or those are issued in an incorrect amount, a special irregularity penalty in the amount of TL 190 shall be imposed for each receipt.
- The information as to the receipts that have been issued within a month shall be sent to the internet tax office via the official website of Turkish Ministry of Finance Revenue Administration ([www.gib.gov.tr](http://www.gib.gov.tr)) by the end of 15<sup>th</sup> day of the following month.

- In case the abovementioned declaration has not been duly made to the internet tax office (i.e.; the information has not been sent or it has not been sent in due time or incorrect/missing information has been sent), a special irregularity penalty in the amount of TL 1,200 shall be imposed for each declaration.

### **The Important Issues that shall be Considered in the Application of E-Invoice**

As it is known, the e-invoice application was regulated under the Tax Procedural Code (“TPC”) General Communiqué No.397 (published in the Official Gazette dated 5 March 2010, No. 27512). The e-invoice application was designed as an application which could be chosen and used voluntarily by taxpayers. However, it has become mandatory for certain taxpayers through the TPC General Communiqué No. 421 (published in the repetitive Official Gazette dated 14 December 2012, No. 28497). However, under the TPC General Communiqué No. 433 (published in the repetitive Official Gazette dated 30 December 2013, No. 28867); the starting date has been determined as April 1, 2014 with regard to the mandatory use of the e-invoice system for taxpayers registered therein.

In this respect, the issues which should be considered in the course of using the e-invoice system have been announced by the Turkish Ministry of Finance Revenue Administration on the date of April 1, 2014. The taxpayers who are obliged to use e-invoice system should consider the following explanations of Finance Revenue Administration;

- Taxpayers who are registered to the e-invoice system shall issue electronic invoices after April 1, 2014 for transactions carried out between two registered users. Thereafter, such taxpayers shall not issue an invoice to each other in paper form.
- Electronic invoices shall not be kept in paper form. Therefore, taxpayers shall keep the e-invoices that they have issued or received within the legal period; in their electronic, magnetic and optic environments in a way that such e-invoices shall contain the fiscal seal on it. In addition, they shall produce such e-invoices for later reference through the electronic, magnetic and optic tools, if required.
- E-invoices which are issued or received via the portal shall be kept by taxpayers in their data processing system or shall be kept within the body of corporations entitled by the Finance Revenue Administration to carry out custodian activity.
- If a taxpayer registered to the e-invoice system changes its legal form or commercial title, such taxpayer shall inform the Finance Revenue Administration within 15 days through the copy of Trade Registry Gazette as to the transaction and through the petition explaining the situation. Such taxpayer shall also apply to Public Certification Centre for obtaining a fiscal seal regarding its new commercial title.
- In order to send and receive e-invoices the taxpayers who are going to use the e-invoice application through Finance Revenue Administration Portal shall download the relevant programs in a way which is explained within the scope of E-invoice Application Guide published in [www.efatura.gov.tr](http://www.efatura.gov.tr).

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