

## Circular

**Istanbul, 28 February 2018**

**Circular No: 32**

**Subject: Regulations concerning the tax legislation within the Draft Law submitted to the Turkish Grand National Assembly on 27 February 2018.**

Amendments to certain laws, primarily on the VAT Law are proposed through the Draft Law submitted to the Turkish Grand National Assembly on 27 February 2018. In this circular, amendments planned for the VAT, SCT and Tax Procedures Law within the scope of the “Draft Law Requiring Amendments to the VAT Law and Certain Laws and Statutory Decrees” are summed up in brief as provided below.

### 1. Refund of the deferred VAT (Artcl. 8)

Through the amendment proposed for the clause (2) of Article 29 arranging “tax deduction” within the VAT Law;

- The provision indicating that the difference would not be refunded when the total VAT to be deducted in a taxation period exceeds the total of calculated VAT is proposed to be repealed. Instead, a regulation allowing the refund of the VAT that could not be compensated through deduction for 12 months concerning each taxation period, provided that the taxpayer demands within the following 6 months will be brought.
- Through the clause (5) proposed to be added; the Ministry of Finance is being authorized concerning the refund of the VAT by inspection or through methods other than tax inspection regarding the source of the VAT that could not be compensated through deduction, sectors and business size.

These provisions will be enacted as of 1 January 2019.

### 2. Subsequent costs and reductions concerning the transactions subject to reduced rate (Artcl. 8)

By the amendment to the clause (2) of Article 29 titled as “Tax Deduction” within the VAT Law; a facility to refund the VAT incurred regarding the subsequent costs or reductions arising after the taxation period in which the deliveries and services subject to reduced rate were performed and could not be compensated through deduction will be introduced.

This will be taking effect as of the publication date.

### 3. Implementing calendar year for tax deduction (Artcl. 8)

Through the amendment proposed for the clause (3) of Article 29 arranging “tax deduction” within the VAT Law; it would be possible to use the right for deduction until the end of the calendar year following the calendar year in which the taxable event occurred.

This provision will be enacted as of 1 January 2019.

### 4. VAT concerning bad debt (Artcl. 8)

Pursuant to the amendment proposed for the clause (4) of Article 29 arranging “tax deduction” within the VAT Law; VAT calculated and declared concerning the receivables that turned into

bad debt as per the Article 322 of Tax Procedures Law will be subject to deduction within the taxation period in which the receivable was written off.

The regulation will be enacted as of 1 January 2019.

#### 5. Group VAT liability (Artcl. 2 and 13)

Through the clause provision added to the Article 8 of VAT Law, titled as “Taxpayer”; the Ministry of Finance is proposed to be authorized for assigning group VAT liability to the group companies provided that there is an affiliation of 50 % at least among them.

Regarding the group VAT liability, as well as the whole group members are jointly liable for the payment of tax, the ones that were installed group VAT liability on themselves will be the respondents of possible assignments.

The regulation will be enacted as of the Law’s publication date.

#### 6. Delivery in construction work in return for land share (Artcl. 1)

Through the amendment to Article 2 within the VAT Law, titled as “Delivery”; introduction of a new implementation requiring that the delivery to the contractor by the land owner is performed on the basis of portion of the land corresponding to the residence or workplace to remain for the contractor instead of the entire land; the process handled by the contractor is the delivery of a residence or workplace in return for a land share is proposed.

The aforementioned regulation will be enacted as of the publication date to be applied on deliveries to be made following the publication date.

#### 7. Taxpayer at sales conducted in auction place (Artcl. 2)

Pertaining to the sub-clause added to the Article 8 of the VAT Law, titled as the “Taxpayer”, for the sales conducted by auction, organizers of the auction (enforcement offices, court sales desk, etc.) are considered as VAT taxpayers.

The aforementioned regulation will be enacted as of the Law’s publication date.

#### 8. Unduly and over paid VAT (Artcl. 2)

Through the amendment to the Article 8 of the VAT Law titled as the “Taxpayer”; it’s indicated that to make the refund of the unduly and over paid VAT possible, declarations should be corrected by both the buyer and the seller, unduly and over paid VAT should be repaid to the buyer by the seller; making an arrangement to ensure that the refund to be made by the Administration will be limited to the portion of the unduly and over calculated VAT paid to the related collection office is proposed.

The regulation will be enacted as of the Law’s publication date.

#### 9. VAT and SCT exemption on deliveries to the Customs sales stores (Artcl. 3, 20)

Taking the deliveries to the duty-free shops and their warehouses that are dealing with activities pursuant to the clause (1) within Article 95 of Customs Law into the scope of exports delivery is proposed through the regulation added to Article 12 of the VAT Law titled as “Exports delivery and services performed for clients abroad”.

Also, with the amendment to the Article 5 of Special Consumption Tax (SCT) Law, titled “Exports exemption”; delivery of the goods within the lists no (III) and (IV) to the duty-free shops

and their warehouses that are dealing with activities pursuant to the clause (1) within Article 95 of Customs Law is proposed to be exempted from SCT. On the other side, a regulation is being conducted requiring the refund of the SCT disclosed and declared on purchase invoices and similar documents concerning the goods exported or delivered to the aforementioned duty-free shops or their warehouses to the exporter or the ones handling those deliveries. The authority to identify the procedure and principles has been assigned to the Ministry of Finance.

These regulations will be enacted as of the beginning of the second month following the publication of the Law.

#### 10. Services removed from partial exemption and implicated to the scope of full exemption (Artcl. 4)

The services of storage, warehouse and terminal performed for the goods subject to exports/imports and goods processed within the scope of transit procedure upon the customs warehouses and temporary storages existing in the sub-clause (o) within the Article 17/4 of VAT Law and subject to partial exemption, customs sites in which customs services are provided have been included into the scope of full exemption. Thus, the deduction and refund of the VAT incurred concerning these services has become possible.

This regulation will be enacted as of the beginning of the second month following the publication of the Law.

#### 11. Processes and deliveries taken into the scope of partial exemption (Artcl. 5)

The provision requiring the process of ordinary partnerships' turning into an equity company to be taken into the scope of partial exemption is being added to the sub-clause (c) 17/4 within the VAT Law. Also, through the amendment to the same article's sub-clause (g), the delivery of outfitting wastes featured as scrap and trash will be taken into the scope of partial exemption as well.

This regulation will be enacted as of the beginning of the second month following the publication of the Law.

#### 12. Amendments to the provision on non-deductible VAT (Artcl. 9)

Through the amendment to the Article 30 of the VAT Law titled "Non-deductible VAT", VAT deduction concerning the product delivery and services performed provided below has been introduced.

##### a. Partaking in the sub-clause (b) of the clause (2) within Article 17 of the Law;

- Education and training services supplied free of charge by private schools, universities and academies,
- Dormitory services supplied free of charge by student hostels,
- Deliveries of goods and services performed carried out free of charge required by the laws,
- All sorts of goods delivery and services performed free of charge for the companies and institutions listed within the clause no (1) of Article 17 of the Law,
- Deliveries of food, cleaning material, clothing and fuel donated to the associations and foundations that are dealing with food storage aimed at supporting the poor,

##### b. Partaking in the sub-clause (c) of the clause (2) within Article 17 of the Law;

- Deliveries and services to the diplomatic representations and consulates of other countries in Turkey, foreign charity and aid missions concerning the delivery and services to be performed

free of charge to the companies and institutions listed within the clause no (1) of Article 17 of the Law.

c. Partaking in the sub-clause (d) of the clause (2) within Article 17 of the Law;

- Exclusive to the relief, restoration and restitution projects of the immovable cultural assets, architecture services supplied to those participating in the projects and the deliveries to be made within the scope of project implementation,

d. Partaking in the sub-clause (i) of the clause (4) within Article 17 of the Law

- Services supplied to the free zones and exports purposed cargo transport tasks inwards or outwards from those sites.

The abovementioned regulations will be enacted as of 1 January 2019.

e. A facility of deduction for the whole VAT incurred concerning the depreciable economical assets lost following the accomplishment of their useful life or delivered within the scope of exemption and the portion of VAT incurred corresponding to the available time concerning the depreciable economical assets lost following without accomplishing their useful life or delivered within the scope of exemption is proposed to be introduced.

f. Besides the VAT paid as reverse charge or in imports concerning the disguised profit distribution through transfer pricing, the deduction of VAT paid to the seller for the transactions in Turkey and declared and paid by the seller within the concerning taxation period by the buyer will be made possible.

These provisions will be enacted as of publication date.

### 13. Deduction in exempted transactions (Artcl. 10)

Through the regulation added to the clause (1) within the Article 32 of VAT Law; condition of claiming the VAT incurred for the refundable transactions and could not be compensated through deduction until the end of second calendar year following the period in which the transaction is made. By this arrangement, the period for claiming VAT refund is apparently indicated in the Law.

This provision will be enacted as of 1 January 2019.

### 14. Authorization in the implementation of VAT refund (Artcl. 11)

Through the regulation added to the Article 36 of VAT Law titled "Authorization"; the Council of Ministers will be authorized to ensure the VAT not claimed within its period to be written off during the detection of income and corporate tax bases and setting the minimum amount that could be claimed concerning the refundable transactions.

The Ministry of Finance is being authorized in terms of setting the procedure and principles to facilitate the VAT refund processes for the taxpayers with high tax compliance level, to cut transaction costs of them and handling the control of the refund process for risky taxpayers with lower tax compliance level in a more detailed manner.

These provisions will be enacted as of publication date.

### 15. Revenue based taxation (Artcl. 12)

The repealed Article 38 of VAT Law has been re-arranged with the title "Revenue based taxation". Through the article; the practice of "revenue based taxation" has been formed regarding the small sized liabilities. Pursuant to the regulation, taxpayer groups to be specified by the Council of Ministers among the ones with commercial income detected based on

operation account and the ones whose income is detected as per the self-employment earnings book would be able to declare and pay a certain ratio of their revenue without considering the deductible VAT amount if they prefer. The VAT rate to be applied will be set by the Council of Ministers provided that it should not exceed the highest rate.

The purpose is the simplification of the processes to be handled by small sized companies for easing their compliance to the system.

For the taxpayers preferring this procedure, taxes paid during goods and service purchases will be treated as cost or expense while the VAT that they calculated concerning the deliveries and services performed will be treated as income. Taxpayers preferring this procedure would not be able to retreat from that before two years.

This provision will be enacted as of 1 January 2019.

#### 16. Interest applied on the delayed VAT refund (Artcl. 15)

The repealed Article 60 of VAT Law has been re-arranged under the title “Refund period”. Pursuant to that, in the circumstance that the tax that should be refunded was not released within three months following the date that all information and documents concerning the process had been supplied, an interest at a rate of deferment interest will be calculated on these amounts for the period covering the end of three months and the date that taxpayer was notified of the correction slip. That interest will be paid to the taxpayer with the tax that should have been refunded.

This provision will be enacted as of 1 January 2019.

#### 17. VAT exemption on game software (Artcl. 16)

Through the amendment to the temporary Article 20 of the VAT Law; game softwares developed within the activities conducted in technological development regions and expertise technological development regions will be taken into the scope of VAT exemption as well.

Also, introduction of an opportunity for the deduction of taxes incurred in relation to the transactions exempted from VAT within the scope of aforementioned article is proposed.

These regulations will be enacted as of 1 January 2019.

#### 18. Deferred VAT as of 31.12.2018 (Artcl. 17)

Through the temporary Article 39 added to the VAT Law, regulation is being conducted on;

- VAT that could not be compensated through deduction as of 31.12.2018 by the taxpayers would be monitored through a separate account,
- As of 01.01.2019, for the taxpayers with VAT to be paid and refundable transactions, VAT to be paid or the amount claimed for refund may be deducted from the deferred VAT amount dated 31.12.2018.

However through the article, the Ministry of Finance is being authorized to take action concerning the VAT that could not be compensated through deduction as of 31.12.2018, pertaining to the budget sources and source of the aforementioned VAT;

- To refund in par tor completely,
- To ensure them be deducted from the debts to tax office,
- Allow them to be treated as a cost in the detection of income or corporate tax base,

- To conduct the refund by tax inspection or according to the methods to be set specific to sectors.

Within the third clause of the article, it's indicated that the taxpayers gaining the refund right under the procedure and principles to be set in line with the authorization granted to the Ministry of Finance, however not taking action to claim refund will by no means be able to make those aforementioned amounts subject to a deduction or refund, those amounts would never be considered as an expense or cost item during the detection of income or corporate tax base.

These regulations will be enacted as of 1 January 2019.

#### 19. Inspection period in VAT refunds (Artcl. 18)

Through the regulation in the first clause of Article 140 within the Tax Procedures Law, the inspection period for the reviews on VAT refunds had been set as 3 months. This period may only be extended by 2 months more in mandatory situations just by the relevant department.

This provision will be enacted as of 1 January 2019.

#### 20. Authorization to the Independent Accountant and Financial Advisors to issue VAT refund report (Artcl. 19)

Through the Article 8/A added to the Law for Independent Accountant and Financial Advisors and Sworn-in Certified Public Accountants no.3568, the Ministry of Finance is being authorized for making the independent accountant and financial advisors to issue report to stand as a basis for the refund to be conducted within the scope of VAT Law, limited to the period they signed tax returns and taxpayers and identify the procedure and principles concerning the implementation.

Independent accountant and financial advisors will be liable for the tax loss and possible penalties to stay limited to the scope of report jointly with the taxpayer.

This provision will be enacted as of 1 January 2019.

#### 21. Other arrangements

- a. The Ministry of Finance is being authorized to assign group VAT liability for the commercial enterprises with a 50 % share at least in the name of one of them, following the demand from the ones listed within the sub-paragraph (g) of the sub-clause (3) of first clause in the Law's Article 1. This regulation will be enacted as of publication date. (Artcl. 2)

The aforementioned sub-clause (g) contains the administrations with general and annexed budget, provincial special administrations, municipalities and villages and associations gathered by them, universities, associations and foundations, all sorts of occupational gatherings, institutions and circulating capital enterprises possessed or controlled by them or other institutions possessed and controlled by them.

- b. Services of preventive medicine, diagnosis, treatment and rehabilitation supplied within the medical enterprises provided to the foreign nationality real persons non-resident in Turkey, by the real persons or legal entities permitted by the Ministry of Health are being included into the scope of full exemption. (excluding other deliveries and services such as accommodation, transportation, food, etc.) (Artcl. 4)

- c. The deliveries and services performed to the donators for the construction of schools, health facilities, student hostels with not less than 100 total bed availability and nurseries (50 for regions with priority in development) that will be granted to public administrations with overall and private budget, provincial administrations, municipalities and villages, sheltered housing, day care and rehabilitation centers, sanctuaries under the permit and supervision of local authority, facilities providing common religious education subject to the supervision of the Directorate of Religious Affairs, youth centers and tracking camps for the Ministry of Sports will be taken into the scope of full exemption. (Artcl. 4)
- d. Deliveries of brand new machinery and equipment performed to be used in R&D, innovation and design activities will be taken into the scope of full exemption. (in the circumstance that the machinery and equipment subject to full exemption are used with purposes other than R&D, innovation and design activities or sold out, the tax that is not taken at the beginning will be collected from the buyer with the late fee by applying tax loss penalty on it). (Artcl. 4)
- e. Deliveries of second hand motor vehicles purchased by taxpayers from non-taxpayers (including the ones bought from the taxpayers within exemption) and sold without conducting a significant rectification on it or immovables will be taken into the scope of special assessment implementation. That will be enacted as of the beginning of the second month following the Law's publication. (Artcl. 6)
- f. An arrangement is carried out requiring the consideration of amounts set under cost fee principle regarding the residences and workplaces left to the land owner by the contractor, concerning the value detection of land share or residence and workplace that are delivered within the context of construction work in return for land share as basis. It will be enacted as of the publication date to be applicable on the deliveries performed after the Law's publication date. (Artcl. 7)
- g. The Ministry of Finance will be authorized for extending the payment period of taxpayers keeping books based on operation account principle until the end of second month following the submission of tax return. This will be enacted as of 1 January 2019. (Artcl. 14)

Provisions contained in this part (21. Other arrangements) and introduced through the Draft's Article 4 will be enacted as of the beginning of second month following the Law's publication.

Best Regards,  
Kuzey YMM ve Bağımsız Denetim A.Ş.  
Erdal Çalikoğlu

*Our explanations provided above include general information on the issue. No responsibility can be claimed against EY and Kuzey YMM ve Bağımsız Denetim A.Ş. due to the implications arising from the context of this document or emerging with respect to its context.*

