

Circular

Istanbul, 6 April 2018

Circular No: 43

Subject: Regulations concerning the VAT Law and other tax laws within the Law no.7104 published in the Official Gazette.

Information concerning the amendments to certain laws, primarily on the VAT Law proposed through the Draft Law Requiring Amendments to the VAT Law and Certain Laws and Statutory Decrees, submitted to the Turkish Grand National Assembly on 27 February 2018 had been shared through the Circular no.032 dated 28 February 2018.

The aforementioned draft has been published in the Official Gazette dated 6 April 2018 with number 7104 following its approval within the General Assembly under the name “Law Requiring Amendments to the VAT Law and Certain Laws and Statutory Decree no.178.

In this circular, amendments made through the Law no.7104 on primarily the VAT Law, the Income Tax Law, SCT Law and Tax Procedures Law are summed up in brief as provided below.

A. Regulations removed from the Draft’s text in the General Assembly

1. Refund of the deferred VAT

The regulations regarding the refund of both the deferred VAT amounts accumulated as of 31.12.2018 and the deferred VAT transferred to future periods as of 01.01.2019 that could not be compensated through deduction have been removed from the Draft’s text during the negotiations at the General Assembly. Within that context, the Law no.7104, published in the Official Gazette dated 6 April 2018 does not contain any provisions concerning the refund of the aforementioned VAT.

2. Group VAT liability

Pertaining to the Draft, Ministry of Finance was 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. The concerning regulations have been removed from the Draft’s text during the negotiations at the General Assembly. Within that context, the Law no.7104, published in the Official Gazette dated 6 April 2018 does not contain any provisions concerning the group VAT liability.

3. Charging interest on delays in VAT refund

The Draft was containing a regulation on charging interest on delays in VAT refund. Pursuant to that, in the circumstance that the VAT 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 was proposed to 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. This regulation has been removed from the Draft's text during the negotiations at the General Assembly.

Within that context, the Law no.7104, published in the Official Gazette dated 6 April 2018 does not contain any provisions concerning the State's paying interest for the delays in VAT refunds.

B. Regulations passed into law

1. 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 has been introduced.

This provision was enacted as of the Law's publication date (6 April 2018).

2. Implementing calendar year for tax deduction (Artcl. 8)

The clause (3) of Article 29 within the VAT Law arranging "tax deduction" contains regulation indicating that it would be possible for the taxpayers to deduct the VAT on the documents issued for themselves within the period that they were entered into the books provided that the calendar year in which the taxable event occurred is not exceeded.

By the amendment to this clause through the Law no.7104, a facility has been introduced to use that deduction right 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.

3. VAT concerning bad debt (Artcl. 8 and 9)

Pursuant to the clause (4) added into Article 29 titled as "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.

However, pertaining to the Article 323 of the Tax Procedures Law, so as to be able to make the VAT considered as expense in the detection of income or corporate tax base through setting aside provision subject to deduction within the scope of this clause, it should be considered as income in the detection of income or corporate tax base.

On the other side, during the negotiations at Planning and Budget Commission, a sub-clause (e) was proposed to be added into the Article 30 of the VAT Law titled "Non-deductible VAT". Pursuant to the new sub-clause which was also approved at the General Assembly, concerning the receivables that turned into bad debt as per the Article 322 of Tax Procedures Law, VAT that is not paid by the buyer will not be subject to deduction. In the circumstance that these VAT amounts had been deducted previously, a deduction cancellation is required to be performed by the buyer.

The provision will be enacted as of 1 January 2019.

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

Through the sentence added into the clause (5) of Article 2 within the VAT Law, titled as “Delivery”; 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 launched.

The aforementioned regulation has been enacted as of the publication date (6 April 2018) to be applied on deliveries that will be made following 6 April 2018.

5. 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 has been enacted as of the Law’s publication date (6 April 2018).

6. Refund of the unduly and over paid VAT (Artcl. 2)

Through the amendment to the Article 8 of the VAT Law titled as the “Taxpayer”; arrangement has been made indicating 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.

The regulation has been enacted as of the Law’s publication date (6 April 2018).

7. VAT and SCT exemption on deliveries to the Customs sales stores (Artcl. 3, 24)

Through the provision added to Article 12 of the VAT Law titled as “Exports delivery and services performed for clients abroad”, 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 has been included into the scope of exports delivery.

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 have been exempted from SCT.

On the other side, a regulation 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 duty-free shops 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 (1 June 2018) following the publication of the Law.

8. VAT deduction on certain deliveries and services within the scope of partial exemption (Artcl. 9)

Through the parenthetical provision added into the Article 30 of the VAT Law titled as “Non-deductible VAT”, deduction of VAT incurred concerning the product delivery and services performed within the scope of partial exemption provided below has been enabled.

However, in the circumstance that taxes incurred concerning the aforementioned exempted transactions and subject to deduction could not be compensated through deduction, it would not be possible for them to be subject to refund.

a. Partaking in the sub-clause (b) of the clause (2) within Article 17 of the VAT 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. Deliveries and services to the diplomatic representations and consulates of other countries in Turkey, foreign charity and aid missions existing under the sub-clause (c) of clause (2) within Article 17 of the VAT Law, 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 VAT 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 VAT Law; services supplied to the free zones and exports purposed cargo transport tasks inwards or outwards from those sites,

e. 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.

Regulations provided above will be effective from 1 January 2019.

9. VAT deduction in lost goods (Artcl. 9)

The sub-clause (c) of the first clause in Article 30 of the VAT Law titled as “Non-deductible VAT” contains a regulation indicating that the VAT regarding the lost goods cannot be deducted except the ones lost following earthquakes, floods and fires occurred in places that the Ministry of Finance declared force major.

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 without accomplishing their useful life or delivered within the scope of exemption has been introduced through the parenthetical provision added into the aforementioned sub-clause with the Law no.7104.

They have been enacted as of the Law’s publication date (6 April 2018).

10. VAT deduction on transfer pricing (Artcl. 9)

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 has been made possible.

This provision has been enacted as of the publication date (6 April 2018).

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 added to the sub-clause (c) of Article 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 has been taken into the scope of partial exemption as well.

This regulation will be enacted as of the beginning of the second month (1 June 2018) following the publication of the Law.

12. Time limit on claims for VAT refund (Artcl. 10)

Through the provision added into the clause (1) within the Article 32 of VAT Law; VAT incurred for the refundable transactions and could not be compensated through deduction may be refunded on the condition that it is claimed 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 effective from 1 January 2019.

13. Inspection period in VAT refunds (Artcl. 19)

Inspection periods are defined in the sub-clause (6) of the first clause of Article 140 within the Tax Procedures Law. Pertaining to that, it’s essential to finalize the inspection within 1 year for the full inspection whereas 6 months for limited inspection.

Through the Law no.7104, the required period for VAT refund inspections has been added to that sub-clause as well and the inspection period for the reviews on VAT refunds had been set as 3 months. In the circumstance that the inspection could not be finalized within 3 months, it would be possible to claim for additional time. The claim for period extension will be assessed by the relevant department comprising the ones authorized for tax inspection and an additional period may be assigned as long as it does not exceed 2 months.

This provision will be enacted as of 1 January 2019 to be applicable on the inspections handled concerning the taxation periods following 1 January 2019.

14. 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 taxpayers 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.

15. 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 have been taken into the scope of VAT exemption as well.

Also, an opportunity for the deduction of taxes incurred in relation to the transactions exempted from VAT within the scope of aforementioned article has been introduced.

These regulations will be enacted as of 1 January 2019.

16. Authorization to the Independent Accountant and Financial Advisors to issue VAT refund report (Artcl. 23 and 20)

Article 8/A titled as “Authorization and responsibility to the independent accountant and financial advisors to issue report” has been added to the Law for Independent Accountant and Financial Advisors and Sworn-in Certified Public Accountants no.3568.

Through this article, the Ministry of Finance is authorized for the actions indicated below related to the independent accountant and financial advisors (SMMM) provided that it's limited to the period that they signed tax returns and taxpayers;

- Issuance of reports that stand as basis to the refund handled within the scope of the VAT Law,
- To identify the qualifications and requirements to be sought in SMMMs and to determine the refund types and maximum refund amounts that would be subject to a report,
- Set conditions such as attending the trainings held in line with procedures and principles set by the Ministry and succeed in them for issuing reports,
- Set the other procedure and principles concerning the implementation.

SMMMs are liable for the accurateness of the reports. In the circumstance that the report comes out inaccurate, they will be jointly and severally be liable for tax loss and possible penalties together with the taxpayer.

Through the Article 20 of the Law no.7104, the required arrangements in parallel to the amendment above have been made on the Article 256 of the Tax Procedures Law titled as “Obligation for submission of books, documents and other records”.

The aforementioned regulations have been enacted as of the Law's publication date (6 April 2018).

17. Provisions for the transfer of vehicle registration plates of taxi, shared taxi and minibuses (Artcl. 15, 21 and 18)

Through the amendment on the repetitive Article 80 of Income Tax Law; the whole income derived from the sale of vehicle registration plates of taxi, shared taxi, minibüs and public transportation vehicles is exempted from income tax without searching for a requirement of retaining period of plates.

On the other side, pursuant to the new paragraph inserted to the tariff no.2 within the Act of Fees, during the transfer transactions of those vehicle registration plates, a fee at a rate of 30 per thousand (3%) regardless of an upper limit, will be paid over the transaction value.

An implementation in the nature of an amnesty is introduced concerning the commercial vehicle registration plate sales prior to the Law's publication date by adding a temporary article to the Income Tax Law through the Article 18 of the Law no.7104.

Accordingly, concerning the income and transactions arising from the sale of vehicle registration plates of taxi, shared taxi, minibüs and public transportation vehicles prior to 6 April 2018, any tax assessment will not be handled, tax penalty will not be assigned regarding the tax inspections or assessment procedures; previous assessments, penalties,

lawsuits if any will be remitted through disclaim. The accrued amounts will be cancelled, however the collected amount will neither be refused nor refunded.

These provisions have been enacted as of the Law's publication date (6 April 2018).

18. Other arrangements

a) 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 have been taken into the scope of full exemption. (Artcl. 4)

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 included into the scope of full exemption. (excluding other deliveries and services such as accommodation, transportation, food, etc.) (Artcl. 4)

c) 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)

Time lapse regarding the delayed taxes and tax penalties will be starting as of the calendar year following the date in which the situation requiring the tax assessment or penalty occurred.

d) 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 has been taken into the scope of special assessment implementation. (Artcl. 6)

The regulations above will be enacted as of the beginning of the second month following the Law's publication (1 June 2018).

e) Concerning the value detection in construction works based on land share, "the amount set under cost fee principle" existing in the second line of the 2nd clause within Tax Procedure's Law's Article 267 will be considered for the residences and workplaces left to the land owner by the contractor. (Artcl. 7)

This provision has been enacted as of the Law's publication date to be applicable for the deliveries following that date (6 April 2018).

Within Article 267 of the Tax Procedures Law, cost fee principle is defined as “Concerning the property of which the imputed cost will be made apparent, if the cost fee is known or possible to be set, on that occasion, through the taxpayer’s adding 5 % on wholesale, 10 % on retail sale to that cost fee, the imputed cost is made apparent.

f)The Ministry of Finance is authorized for extending the payment period of the taxpayer entering records based on the operation account method until the end of the second month following the submission of the tax return. (Artcl. 13)

This will be effective as of 1 January 2019.

g)The Ministry of Finance is authorized for presenting an opportunity of allowing to write off the deferred VAT that is not claimed as refund within its period and transferred to other periods to be compensated through deduction during the detection of income or corporate tax base. (Artcl. 11)

This provision has been enacted as of the Law’s publication date (6 April 2018).

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.

Best Regards,

KUZEY YMM VE BAĞIMSIZ DENETİM A.Ş.