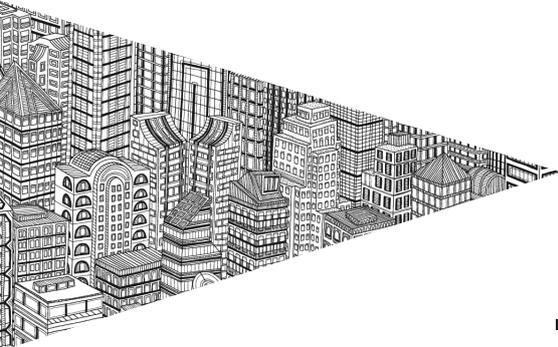


International Tax Alert



Turkey takes action to strengthen formal economy

New law aims to bring in certain unrecorded assets and exempt qualifying foreign sourced income from taxation

Executive summary

Turkey has enacted a new Law which aims to facilitate bringing in of certain unrecorded assets, either located in or outside of Turkey and owned by Turkish resident real and legal persons, by introducing beneficial tax provisions for transferring these assets into Turkey or having these assets recorded in the formal sector. As the second significant measure, the Law also regulates the exemption of qualifying foreign sourced income of Turkish residents, provided that conditions stated in the Law are met.

The major intention of the Government for proclaiming both of these measures is to make additional liquidity available to the economy during the economic downturn, as well as overcoming the duality between formal and informal sectors in the Turkish economy.

Detailed discussion

The Law numbered 5811, with the name of The Law on Bringing in Certain Assets to the Domestic Economy was published in the Official Gazette on 22 November 2008 and came into force on the same date.

Provisions on bringing in certain assets to the Turkish domestic economy

As the basic principle, the Law foresees recording of some unrecorded assets in the legal books of companies by payment of taxes to be levied at certain rates on the value of these assets. In return for declaration of such assets,

the Law brings a protection for the taxpayers from possible tax inspections and tax reassessments related with the declared assets, for financial periods before the date of 1 January 2008. The Law stipulates that:

- ▶ The unrecorded assets, located either in or outside of Turkey, which are owned by real or legal persons as of 1 October 2008, and which are in the form of cash, gold, foreign currency, securities, other capital market instruments and immovable property, will be permitted to be registered and declared from their market values in Turkish Lira until the date of 2 March 2009.
- ▶ Tax will be levied at the rate of 2% on the value of declared assets which are outside of Turkey and as 5% on the value of the assets in Turkey. The amount of tax will be obliged to be paid until the end of the month following the month the tax is levied.
- ▶ Paid taxes will be considered as non-deductible and will not be allowed to be credited from other tax liabilities.
- ▶ Qualifying assets which are found outside of Turkey should be registered through a bank or a financial institution or may be declared to the tax offices. On the other hand, assets which are located in Turkey can only be declared to the tax offices.
- ▶ Companies will be obliged to book the value of the declared assets in a special reserve account in

their balance sheets. For the declared assets which are located in Turkey, it is mandatory to contribute the amount of the value of the assets to the share capital in six months.

- ▶ For the assets registered and declared according to the procedures explained above, no tax inspections or tax reassessments will be executed related with the periods before the date of 1 January 2008. Values of assets declared in scope of this Law's provisions will be permitted to be credited against the reassessed additions to tax bases of companies which are computed by tax inspectors in the tax inspections started after 22 November 2008 for reasons other than declaration of these assets.
- ▶ No restriction, procedure or documentation obligations have been stipulated in the Law for the purpose of determining the market value of the assets. The Law only states that market value is the sale price of the concerned assets on the date of declaration and it is expected that this amount will reflect the real value of the assets.
- ▶ The only constraint which should be taken into account is the requirement to prove the existence of foreign unrecorded assets as of 1 October 2008. Although no documentation will be requested at the date of the declaration (except for immovable property), if

existence of these assets cannot be documented as of this date in case of a future tax inspection, taxpayers will lose the benefit of protection from tax inspections and reassessments, which has been explained above.

Provisions on exemption on the foreign sourced income

Qualifying foreign sourced income of Turkish residents is exempted from corporate tax and income tax by this Law, provided that the income is transferred into Turkey until certain dates.

For the purposes of this exemption, the term "qualifying income" includes;

- ▶ Capital gains of Turkish residents arising from the sale of shares of foreign (non-resident) corporations
- ▶ Dividend income received by Turkish residents from non-resident corporations
- ▶ Business profits derived by Turkish residents through their permanent establishments or permanent representatives outside of Turkey.

The exemption can be applied to the above mentioned income derived from 22 November 2008 until 30 April 2009 and transferred into Turkey until 31 May 2009. Furthermore, liquidation proceeds derived by Turkish residents from a non-resident entity from 22 November 2008 until 31 October 2009 and transferred into Turkey until 31 October 2009 are also in the scope of this exemption.

For the mentioned income to be exempted in scope of this Law, the only requirement is to transfer them into Turkey until the specified dates. No minimum holding thresholds of the share capital, minimum holding periods or minimum taxation rates for the non-resident corporations are requested.

For additional information with respect to this alert, please contact the following:

Kuzey Y.M.M.A.S., Istanbul

- ▶ A. Feridun Güngör +90 212 368 52 04
feridun.gungor@tr.ey.com
- ▶ Egemen Karaduman +90 212 368 52 29
egemen.karaduman@tr.ey.com
- ▶ Can Gökçe +90 212 368 53 14
can.gokce@tr.ey.com



International Tax Services

- ▶ **Global ITS**, Jim Tobin, *New York*
- ▶ **Americas**, Scott Hill, *New York*
- ▶ **Europe, Middle East, India and Africa**, Alex Postma, *London*
- ▶ **Far East**, Andy Baik, *Singapore*
- ▶ **Japan**, Stuart Ison, *Tokyo*
- ▶ **Latin America**, Manuel Solano, *New York*
- ▶ **Oceania**, Ian Scott, *Sydney*

▶ Argentina	Carlos Casanovas	<i>Buenos Aires</i>
▶ Australia	Ian Scott	<i>Sydney</i>
▶ Austria	Roland Rief	<i>Vienna</i>
▶ Belgium	Herwig Joosten	<i>Brussels</i>
▶ Brazil	Carlos Romero	<i>Sao Paulo</i>
▶ Canada	Greg Boehmer	<i>Toronto</i>
▶ Central America	Rafael Sayagues	<i>San José</i>
▶ Chile	Sergio Sapag	<i>Santiago</i>
▶ China	Chris Finnerty	<i>Shanghai</i>
▶ Colombia	Luz Jaramillo	<i>Bogota</i>
▶ Czech Republic	Libor Fryžek	<i>Prague</i>
▶ Denmark	Niels Josephsen	<i>Copenhagen</i>
▶ Finland	Timo Kanervo	<i>Helsinki</i>
▶ France	Eric Fourel	<i>Paris</i>
	Régis Houriez	<i>Paris</i>
▶ Germany	Stefan Koehler	<i>Frankfurt</i>
▶ Hong Kong	Grace Tang	<i>Hong Kong</i>
▶ Hungary	Botond Rencz	<i>Budapest</i>
	Balazs Szolgyemy	<i>Budapest</i>
▶ India	Srinivasa Rao	<i>Bangalore</i>
▶ Ireland	Kevin McLoughlin	<i>Dublin</i>
▶ Israel	Sharon Shulman	<i>Tel Aviv</i>
▶ Italy	Gérard Prinsen	<i>Milan</i>
▶ Japan	Stuart Ison	<i>Tokyo</i>
▶ Korea	Andy Baik	<i>Seoul</i>
▶ Luxembourg	Frank Muntendam	<i>Luxembourg</i>
▶ Malaysia	Hock Khoon Lee	<i>Kuala Lumpur</i>
▶ Mexico	Koen van 't Hek	<i>Mexico City</i>
▶ Middle East	Howard Hull	<i>Dubai</i>
▶ Netherlands	Johan van den Bos	<i>Amsterdam</i>
▶ Norway	Oyvind Hovland	<i>Oslo</i>
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▶ Philippines	Romulo Danao	<i>Makati City</i>
▶ Poland	Lukasz Ziolk	<i>Warsaw</i>
▶ Portugal	Antonio Neves	<i>Lisbon</i>
▶ Russia	Stephan Beck	<i>Moscow</i>
▶ Singapore	Jesper Solgaard	<i>Singapore</i>
▶ South Africa	Rendani Neluvhalani	<i>Johannesburg</i>
▶ Spain	Federico Linares	<i>Madrid</i>
▶ Sweden	Rikard Ström	<i>Stockholm</i>
▶ Switzerland	Markus F. Huber	<i>Zurich</i>
▶ Taiwan	George Chou	<i>Taipei</i>
	Alice Chan	<i>Taipei</i>
▶ Turkey	Feridun Gungor	<i>Istanbul</i>
▶ United Kingdom	Matthew Mealey	<i>London</i>
	Jason Lester	<i>Birmingham</i>
▶ United States	Scott Hill	<i>New York</i>
▶ Venezuela	Jose Velazquez	<i>Caracas</i>

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