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Pillar I: A solution to address the tax challenges of digitalisation

With globalization, multinational enterprises ("MNE") have become one of the basic building blocks of the economy. MNEs, whose portion in the world economy is increasing day by day, are trying to continue their activities subject to the tax legislation of more than one country, and in order to manage the tax costs that arise in this process, they bring up alternatives to invest in countries with lower tax burden. Tax problems such as the tax competition in the international arena caused by MNEs and the impossibility of the fair distribution of portions in the taxation of global incomes have led OECD and G20 countries to come together and develop some solution proposals.

OECD and G20 countries developed an Action Plan within the scope of the BEPS ("Base Erosion and Profit Shifting") project in 2013 to struggle with tax planning strategies in which companies artificially shift their profits to low-tax or tax-free countries and take advantage of gaps and mismatches in tax rules to erode their tax bases. Later, 141 countries working together in the OECD/G20 Inclusive Framework started to implement the Action Plan consisting of 15 Article to effectively struggle with tax avoidance, increase the consistency of international tax rules, and provide a more transparent international tax environment. Although the implementation of the BEPS project is changing the international tax environment positively, tax problems arising from the digitalization of the economy continued until 2021. On October 8, 2021, OECD and G20 countries published the BEPS 2.0 statement, which includes a two-pillar solution proposal in addition to the BEPS Action Plan, with the acceptance of 137 member countries.

Pillar I, the first one of the two-pillar solution proposal, aimed to combine the insufficient unilateral efforts of countries (digital services tax, etc.) under a consensus to help prevent double taxation in the digitalized world. Pillar II, on the other hand, aims to ensure that MNEs are subject to fair taxation in all market countries where they operate, by introducing a global minimum corporation tax rate that countries can use to protect their taxation rights.

It is a fact that Pillar I is expected to replace some of the existing regulations on the taxation of multinational companies, as well as some unilateral policies that countries have implemented in recent years to tax digital companies. The most common example is the digital services tax ("DST"), which is a tax on the income of large digital companies. As Pillar I focuses on fairly identifying countries where profits are taxed, including many large digital companies, DSTs enacted by the respective countries are expected to be repealed after a transition period expected to be completed by the end of 2023.

A joint statement from Austria, France, Italy, Spain, the United Kingdom, and the United States on October 21, 2021, set forth a scheme for deducting digital service taxes and taxes collected in the transitional period prior to the enactment of the solution, following the entry into force of the Pillar I rules. On November 22, 2021, the Ministry of Treasury and Finance of Turkey announced the joint statement of Turkey and the USA, in which Turkey also accepted the same conditions as other countries. With this joint statement, the DST payable in the transition period in Turkey will be compared with the tax payable in the first year under Pillar I using the proportional method, and the excess DST amount allocated during the transition period will be offset against the taxes payable under Pillar I. Because, in the taxation to be carried out within the scope of Pillar I, it is envisaged to use the "exemption" and/or "offset" methods in the country where MNEs are located in order to

avoid double taxation. This will be necessary for the transition process that is expected to occur with minimal double taxation for both Pillar I and companies that will be liable under existing DSTs.

The OECD's proposed solution, Pillar I and Pillar II, represents significant changes to the global international tax framework considered necessary to address the challenges associated with the taxation of digital and digitizing businesses and BEPS. OECD Pillar I aims to adapt the international tax system to new business models through consistent and simultaneous examination of profit distribution and nexus rules, by preventing unilateral taxes such as digital service tax from digital transactions or end-user transactions by acting on their own. In addition, with the implementation of the aforementioned two-pillar solution proposal, it is expected to create additional tax revenue and reduce profit transfer all over the world.

Nowadays, when the digital economy is globalizing and crossing the borders of the country, we can say that the tax measures taken by the countries unilaterally are insufficient to solve the problems related to the tax collection effectiveness. However, requesting countries to remove unilateral tax measures such as digital service tax and subjecting this to a certain schedule will not be easy and will not result in a short time. In addition, it is really important to prepare the necessary action plans by taking into account the Pillar I and II rules determined by the OECD, and this situation will have undeniable tax effects for the companies residing in Turkey, which have already directed their company structures to tax-effective countries.

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