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Turkiye's Constitutional Court rejects the annulment requests for 'Additional Tax' applied on certain 2022 exempted income

A Constitutional Court decision, published in the *Official Gazette* dated 19 April 2024, concludes that Türkiye's "additional tax" conforms with the Constitutional Law in Türkiye.

Background

To raise tax revenue following a series of earthquakes in February 2023, the Turkish Parliament introduced a rule in March 2023 under Law No. 7440 that imposed a one-time additional 10% tax on certain exemptions and deductions applied for fiscal year 2022. The March 2023 law change generally requires corporate taxpayers to declare a 10% additional tax on their 2022 corporate income tax return, regardless of their corporation tax base, on (1) the amounts they claimed as deductions and exemptions based on the certain provisions of Corporation Tax Code (CTC) and other laws and (2) the tax bases to which a discounted corporation tax rate applied within the scope of Article 32/A of the CTC. (For details, see EY Global Tax Alert, [Türkiye introduces additional tax for 2022](#), dated 23 March 2024.)

For the fiscal year 2022, many taxpayers filed their corporation tax returns with reservation, claiming that the additional tax application was unconstitutional, and filed refund suits for the amount paid plus interest.

One of the tax courts, Istanbul 1st Tax Court (Tax Court), found the claim of unconstitutionality to be substantial and referred the matter to the Constitutional Court for consideration. The application led by the Tax Court seeking the annulment of the additional tax described the rule as unconstitutional on the grounds that it violates the principles of "applicability for all taxpayers," "equality in taxation," "taxation according to ability to pay" and "non-retroactivity of the law."

Constitutional Court decision

In its 19 April 2024 decision, the Constitutional Court concluded that although the rule is retroactive, laws may be applied retroactively due to events that deeply affect society, such as unforeseen natural disasters.

Furthermore, the Court concluded that the rule is not contrary to the Constitution in terms of other principles claimed to be violated. Therefore, the Constitutional Court unanimously rejected the lawsuit seeking annulment of the additional tax. It is now expected that the tax courts will comply with this decision of the Constitutional Court.

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Contact Information

For additional information concerning this Alert, please contact:

Kuzey Yeminli Mali Müsavirlik A.S., Istanbul

- Ates Konca, *International Corporate Tax Advisory Leader* | ates.konca@tr.ey.com
- Irmak Deniz Sugoza | irmak.sugoza@tr.ey.com

Ernst & Young LLP (United States), Turkish Tax Desk, New York

- Gamze Durgun | gamze.durgun1@ey.com

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