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Turkey enacts new tax Law

Executive summary

The Turkish Government published Law No. 7338 Amending Certain Provisions in the Tax Procedure Law and Some Other Laws in the Turkish Official Gazette on 26 October 2021. The Law entered into force on the same date.

The Law was passed with few amendments to the proposed Bill. For background on the proposed Bill, see EY Global Tax Alert, *Turkey proposes new tax bill*, dated 4 October 2021.

This Alert summarizes the key provisions of the Law and some provisions that were not covered in the previous tax alert.

Detailed discussion

Income Tax and Value Added Tax (VAT) Exemption for social media content producers and app developers

Income, derived by individual social media content producers who share content such as written text, audio, visual or video content over social network providers and those who develop apps for mobile devices such as smart phones and tablets, that does not exceed the fourth income bracket set forth in Article 103 of the Income Tax Code (TL 650.000 for 2021) will be exempt from income taxation and there will be no obligation to submit a tax return for such income.

To benefit from this tax exemption, it will be mandatory to open a Turkish bank account and collect all revenues related to such activities only through this account. Banks operating in Turkey will be required to withhold 15% tax on the amount of revenue transferred to such accounts.

The President of Turkey will be authorized to reduce the withholding rate to zero and to redetermine it by increasing it by one-fold for each type of activity.

The Law also provides VAT exemption for deliveries and services subject to content sharing and app development provided by those individuals.

These provisions will be applicable on income obtained as of 1 January 2022.

Conditions for 5% tax deduction for compliant taxpayers

According to the provision, which was effective as of 1 January 2018, under Income Tax Code No. 193; a tax deduction of 5% was introduced for income tax taxpayers who conduct commercial, agricultural and self-employment activities, and for corporation taxpayers (excluding those operating in the finance and banking sectors, insurance, and retirement companies and retirement investment funds).

One of the conditions to be a compliant taxpayer was that there should be no additional ex officio or administrative tax assessments conducted against the taxpayers in terms of tax types subject to declaration, in the year in which the deduction is to be calculated, and in the last two years before this year.

The Law changes this condition and states that the reduction can be applicable if the tax assessments are not finalized in said period. In the event that the finalized assessments within said period are less than 1% of the discount amount limit, the conditions for benefiting from the tax deduction will not be deemed as violated.

The amendment to the reduction for tax compliant taxpayers will come into effect on 26 October 2021 and will become applicable for annual income and corporate tax returns filed as of 1 February 2022.

Notional Interest Deduction (NID) rate on cash capital contributions

The Law increases the NID rate for cash capital contributions made from abroad to 75%. It was previously set at 50%.

Including the Mutual Agreement Procedure (MAP) in the Tax Procedure Law

The Law introduces some additional provisions regarding the MAP i.e., application procedures, finalization procedures, its impact on lawsuits that are already filed before the MAP application and the filing of lawsuits after the MAP.

Taxpayers may apply to the Turkish Revenue Administration (TRA) in accordance with the MAP provisions of the double tax treaties with the allegation that they have been taxed in violation of the provisions of the double tax treaties or that there are strong indications that they will be.

It is also regulated in the Law that the application should be made in due time and in line with the procedure that is stipulated in the double taxation agreements.

However, when there is no time limit in the double taxation agreement or reference is made to the provisions of the domestic legislation, it is explained that the application must be made within three years from the date that the taxpayer first became aware of a taxation transaction alleged to be in violation of the provisions of the double taxation agreement.

The Law provides that applying for MAP will cease the period of filing a lawsuit. The result of the agreement reached between the TRA and the competent authority of the other Contracting State will be notified to the taxpayer by letter. The taxpayer will notify the TRA of the acceptance of the decision within 30 days from the date of notification of the letter.

Adjustments will be made in taxes and penalties accordingly in the case of the taxpayer's acceptance of the agreement result in due time.

The Law provides that courts will not be able to decide on the conflict if there is a MAP underway. However, in the event that the court examines and decides on the conflict, the result of the MAP will be taken into consideration and the result will be notified to the judicial authorities by the administration.

Other Key Amendments

Tax return filing and tax payment periods are not changed

The Law does not change the tax return filing and tax payment dates as proposed by the Bill. The corporation tax and personal income tax filing and payment dates in Turkey remain the same.

The fourth advance corporate tax return filed by corporate taxpayers and income taxpayers, commercial profit holders (except those taxed in the simple entry) and self-employed persons has been abolished to be effective for the returns to be filed as to 2022.

Amendment in the effective date of the accommodation tax

The accommodation tax imposes 2% tax on accommodation services, those rendered by hotels, motels, holiday resorts, guesthouses etc. With the amendment, the effective date of the accommodation tax which was expected to enter into force on 1 January 2022 is postponed to 1 January 2023.

Irregularity/special irregularity fines will also be covered through the tax settlement process

Taxpayers will be able to apply for tax settlement procedures for the irregularity and special irregularity fines exceeding TRY5,000.

Non-compliance with the recording order in electronic record and ledger applications

In case of non-compliance with the recording order in electronic record and ledger applications, a first-degree irregularity penalty will be imposed.

Tax return submissions under voluntary disclosure

Taxpayers will be able to file tax returns under voluntary disclosure for the other types of taxes which are not subject to ongoing tax inspection.

Permanent exemption on Resource Utilization Support Fund (RUSF) and dues for asset management companies

Asset management companies will be permanently exempt from stamp tax, RUSF and dues. The banking and insurance transaction tax exemption will be removed for these companies.

Revaluation practice

The Law introduces additional provisions into Repeated Article 298 of the Turkish Tax Procedural Code No. 231 regulating the inflation adjustments and revaluation rates.

Taxpayers who would like to increase the value of their assets, they will have the ability to re-valuate their immovables and other economic assets subject to depreciation that are recoded in the balance sheet, under certain conditions, by the end of fiscal period prior to the fiscal period in which they will be revalued for the first time.

New arrangement for the investment contribution

On the basis of an investment incentive certificate, 10% of the amount determined by applying the investment contribution rate to investment expenditure, will be used by corporation taxpayers, provided that the deduction from other accrued tax liabilities excluding special consumption tax and VAT is requested by the end of the second month of the following month in which the corporation tax return should be submitted.

Exemption for small business tradesmen

Income of tradesmen whose income is determined on a small business taxation basis will be exempt from income tax.

They will not submit annual tax returns for the exempted income and if they submit a tax return for their other income, they will not include the said exempted income into their tax returns.

This provision will be applicable on income generated starting from 1 January 2021.

Withholding tax on agricultural support payments

Support payments which are made by public institutions for supporting the agriculture industry and farmers will be exempted from income taxation and there will be no withholding tax on these payments. According to provision added through a resolution in General Assembly, taxes levied on agricultural support payments made before 26 October 2021 shall be refunded based on requirements mentioned in Law with respect to applications of farmers.

Expenses to be included in the cost price

Items to be compulsorily or optionally included into the cost price are regulated in detail by the Law.

The Law also indicates that taxpayers can choose to include the special consumption tax, non-deductible VAT, banking and insurance transactions tax and resource utilization support fund related to the acquisition or increase in value of economic assets (excluding commodities) to the cost price; or book them as general expenses.

60-day deadline for the taxpayers without certification report

The Law provides a 60-day additional time for taxpayers whose certification reports are not submitted within the required time. If the certification report is submitted within the 60-day extra timeframe, it will be deemed that the certification report is submitted on time. Otherwise, taxpayers cannot benefit from the rights subject to certification.

New economic assets can be depreciated as of the date they are ready for use

Except for passenger cars subject to pro-rata depreciation, taxpayers are given the opportunity to depreciate on a daily basis from the date they are ready for use, for depreciable economic assets that will be newly recorded in operating assets.

Depreciation practice for newly acquired machines and equipment under certain conditions

The Law provides depreciation rates and periods for certain newly acquired machines and equipment to be as half of the useful life of such equipment until 31 December 2023. (e.g., to be used for research and development, innovation and design activities mentioned in Temporary Article 30 of Tax Procedural Law). It will be applicable between its date of entry into force and 31 December 2023.

Extensions on depreciation periods

It is possible for the taxpayers to extend the depreciation periods, provided that the useful life period determined by the Ministry of Treasury and Finance does not exceed 2 times and 50 years and the same ratio is applied for each year.

Threshold for doubtful receivables

Receivables that do not exceed TRY3,000 (for the year 2021) that have not been paid by the debtor despite the protest or written request more than once, may be considered as doubtful receivables without resorting to lawsuits and enforcement.

Papers to be exempted from Stamp Tax

- Within the scope of Article 31/B of the Capital Markets Law, a stamp duty exemption is introduced for the receipts and papers issued in relation to the collateral subject to this issuance, including the collateral manager.
- Papers issued between the relevant administration and the donors regarding the donations to be made to general and special budget administrations, special provincial administrations, investment monitoring and coordination departments, municipalities and villages are included in the stamp tax exemption.

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