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## Türkiye introduces tax amnesty

- *On 31 January 2023, a bill on “the Restructuring of Certain Receivables and the Amendment of Some Laws” (the Bill) was accepted by the Plan and Budget Committee of the Grand National Assembly of Türkiye (the Parliament).*
- *On 9 March 2023, the discussions on the Bill were completed and the Turkish Parliament enacted Law No. 7440 (Law), containing some amendments and additional taxes to cover the 2022 fiscal period.*
- *On 12 March 2023, the Law was published in the Official Gazette and entered into force.*

The Law includes a comprehensive tax amnesty with a tax-base increase covering the years 2018, 2019, 2020, 2021 and specifically 2022, and introduces additional taxes in response to the damage that earthquakes caused in Türkiye’s southeastern region beginning on 6 February 2023.

This Alert summarizes the provisions of the Law with respect to tax amnesty.

### **Restructuring of receivables**

Taxpayers should apply for the restructuring of receivables by 31 May 2023 and the first installments should be paid by 30 June 2023, unless otherwise specifically determined in the Law.

### ***Finalized and non-finalized receivables***

The Law contains the provisions addressing the restructuring of:

- **Finalized tax receivables:** This provision relates to tax receivables that were not paid on time and tax receivables with payment periods that had not expired as of 12 March 2023, the publication date of the Law. If the taxpayer pays the entire tax

principal together with the amount to be calculated based on the domestic producer price index monthly (D-PPI) change rates, the new law will waive the collection of accessory public receivables, such as interest, late fees, and all tax penalties.

### **Tax payable**

- **Receivables that are not finalized or are being litigated:** The Law permits taxpayers to pay the taxes at a certain level of discount, as determined in the Law according to the stage of litigation and any final court decision.
  - - For receivables that could still be litigated or for which litigation had been initiated at the first instance trial level, the taxpayer pays 50% of principal tax plus the amount calculated based on D-PPI monthly change rates, rather than 100% of tax principal plus 100% of the penalties and delay interest and delay surcharge
  - - For disputes against the tax assessments on appeal, the amount the taxpayer pays depends on the latest decision rendered before 12 March 2023, the date the Law was published, as follows:
      - - - If the latest decision rendered was a cancellation of the tax assessment in favor of the taxpayer, the taxpayer pays 10% of the principal tax plus the amount calculated based on D-PPI monthly change rates, rather than 100% of the tax plus 100% of the penalties and delay interest and delay surcharge
      - - - If the latest decision rendered was an approval of tax assessment against the taxpayer or approval with amendment decision, the taxpayer pays 100% of the principal tax (in the cases of approval with amendment decisions 100% of the accepted tax and 10% of the cancelled tax) plus the amount calculated based on D-PPI monthly change rates,

- - If the latest decision rendered was an annulment, the taxpayer pays 50% of principal tax plus an amount to be calculated based on D-PPI monthly change rates

- - - If the latest decision rendered was a partial annulment or partial approval, the taxpayer pays 100% of accepted tax, 10% of canceled tax, plus 50% of tax principal for the annulled part together with the amount to be calculated based on D-PPI monthly change rates

These receivables also include receivables for which the time period for litigation has not expired and (1) a tax settlement application was made, (2) a settlement date has not been assigned or the settlement date is yet to come or (3) a settlement could not be reached. If a taxpayer benefits from the tax amnesty for the receivables that being litigated, those litigations should be terminated. In addition, a taxpayer who benefits from the tax amnesty for specific receivables cannot initiate litigation involving those disputed receivables.

- **Tax receivables under tax inspection or assessment:** Tax inspections and assessments that were started but not completed before the publication date of the Law, 12 March 2023, will continue to be carried out. When a tax assessment has been completed, the taxpayer has 30 days after receiving a tax/penalty notice to submit a written application. The Government will waive liability for the remaining 50% of assessed tax principal, default interest applied to such taxes until 12 March 2023 and all the penalties associated with the tax principal if the taxpayer pays in 12 equal, monthly installments 50% of the assessed taxes plus the amount to be calculated based on D-PPI monthly change rates and whole default interest, calculated from 12 March 2023 until the deadline of filing a lawsuit. Except for the special application periods mentioned above for tax receivables under tax inspection or assessment, taxpayers who request the restructuring of their tax liabilities within the scope of the Law must apply until 31 May 2023.

### **Tax base and tax increase**

If taxpayers increase their taxable bases at the rates specified in the Law and pay the taxes in accordance with the Law, tax inspection and assessments will not be conducted against these taxpayers related to the taxation periods of the years for which they pay the calculated taxes.

A tax base increase will be possible for the calendar years 2018, 2019, 2020, 2021 and 2022.

Taxpayers who want to increase their tax base must submit their applications for each tax through 31 May 2023.

Tax can be paid in advance or in installments. If the taxpayer chooses to pay in advance, the full liability amount must be paid within the payment period of first installment (until 30 June 2023). In the alternative, the amounts in question can be paid through a maximum of 12 equal, monthly installments.

If the taxes are paid in advance, a 10% additional discount will be provided.

***Income tax base increase for 2018, 2019, 2020 and 2021***

- Taxpayers must increase their declared tax bases by not less than 35% for 2018, 30% for 2019, 25% for 2020, and 20% for 2021 on their annual returns.

2018.	35.
2019.	30.
2020.	25.
2021.	20.

- It is possible for individual and corporate taxpayers to increase their tax bases, at an amount not less than stated by the Law, even if they have not filed any tax returns, declared losses or no tax base in the relevant years.

Minimum tax base increase (TRY)		
	Personal income tax (Balance-sheet based taxpayers and independent professionals)	Corporate tax
2018	94,000	200,000
2019	99,600	215,000
2020	105,800	230,000
2021	112,400	260,000

- The general tax rate applicable for taxpayers that will benefit from the corporate tax base increase is 20%. However, the tax rate will be applied at 15% provided that (1) the annual tax returns related to the year in which the increase was realized are timely submitted, (2) the associated taxes and stamp taxes are timely paid, and (3) the taxpayer does not benefit from articles 2 and 3 of the Law on

finalized receivables and receivables that are not finalized or that are being litigated.

- Taxpayers can increase their tax bases for the fiscal years 2018, 2019, 2020, and 2021 totally or separately. Therefore, a taxpayer may choose to either utilize the tax increase provisions for all years or only for certain years.
- Half (50%) of the tax losses for the years in which the individual and corporate taxpayers increase their tax bases cannot be offset from profits attributed to 2022 and subsequent years.

### ***Corporate tax base increase for 2022***

- Corporate taxpayers will be able to benefit from the corporate tax base increase for 2022, as well, provided they increase their corporate tax bases for 2022 by not less than 25% within the context of additional conditions specified in the Law. Accordingly:
  - - The tax base increase amount cannot be less than TL 500.000
  - - Tax returns for 2022 must be submitted
  - - The tax base declared in the submitted tax return should not be less than the higher amount calculated by increasing the declared tax base of 2021 by 122.93% and the amount calculated by increasing the declared tax base of the advance corporate tax for Q3 2022 by 40%
  - - If taxpayers who want to increase the tax base for 2022 submit a corrected return after 1 January 2023 for the purpose of decreasing the tax base, the bases declared before the correction shall be taken as basis in the comparison
  - - If the 2022 Q3 Advance Corporate Tax Return has not been submitted, the comparison to be made should take into account either (1) the amount found by increasing the declared tax base of the Q2 Advance Corporate Tax Return by 100% or (2) if only the Q1 Advance Corporate Tax Return has been submitted, the amount found by increasing the declared base of the Q1 Advance Corporate Tax Return by 300%

- - If a tax loss has been declared in the Q3 2022 Advance Corporate Tax Return and the 2021 Corporate Tax Return, or there is no tax base due to discounts and exceptions, or no declaration has been made, the tax base increase shall be at least TL 500.000
- - If a corporation benefits from the tax base increase for 2022 where there is tax loss, 100% of the tax loss cannot be carried forward
- - Advance corporate tax amounts that cannot be deducted from the tax calculated on the Annual Corporate Tax Returns of taxpayers that have increased their tax base for 2022 cannot be refunded

Even if taxpayers benefit from tax base increase for 2022, a tax inspection might still be conducted and a tax assessment might be made for additional tax liability.

### ***Value Added Tax (VAT) increase***

- VAT taxpayers can declare the VAT as tax increase as long as it is not less than 3% for 2018 and 2019, 2.5% for 2020, 2% for 2021 and 2% for 2022 based on the annual total VAT calculated on their respective declarations submitted for each taxation period.
- It is possible for taxpayers to increase their VAT, at an amount not less than stated by the Bill, even if they have not filed any tax returns, provided that the taxpayer applies for an income tax base increase.

### ***Withholding tax increase on certain payments***

- Individual and corporate taxpayers will be able to increase their withholding taxes for certain payments that are within the scope of withholding tax (*Article 94 of Income Tax Code, Articles 15 and 30 of Corporation Tax Code*), including dividends and earnings transferred to the head office.
- Below is a list of payments that will be within the scope of the withholding tax increase:

- - **Article 94 of the Income Tax Code**
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- - Wages paid to employees
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- - Payments made to independent professionals for their independent professional services
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- - Remuneration of multi-year construction works
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- - Rental payments as stated in Article 94/1-5 of Income Tax Code
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- - Dividend payments as stated in Article 94/1-6 of Income Tax Code
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- - Payments made for the agricultural products and services bought from farmers
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- - Payments made to those benefiting from exemption of tradesman
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- **Articles 15 and 30 of Corporate Tax Code**
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- Progress payments made to resident and nonresident corporations for the multi-year construction and repair work

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- Rent payments for properties that are leased from cooperatives

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- Dividend payments made to residents and nonresidents

Below is a list of tax rates to be increased for each of the payments that were declared in the relevant years under a withholding tax return.

<b>Year</b>	<b>Tax rate to be increased on the gross amount of wages/rentals/professional services and dividends related tax declared annually (%)</b>	<b>Tax rate to be increased on the gross amount of multi-year construction works declared annually (%)</b>	<b>Tax rate to be increased on the gross amount of payments made to farmers and tax-exempt tradesmen</b>
<b>2018</b>	6	1	25% of the applicable withholding tax rate
<b>2019</b>	5	1	25% of the applicable withholding tax rate
<b>2020</b>	4	1	25% of the applicable withholding tax rate
<b>2021</b>	3	1	25% of the applicable withholding tax rate
<b>2022</b>	2	1	25% of the applicable withholding tax rate



- If a taxpayer has not applied any withholding tax for withholding tax payments in their withholding tax returns or have not submitted any withholding tax returns on these payments, a tax-rate increase ranging from 2% to 15% will be applied on the minimum personal income or corporate tax bases.
- To benefit from the withholding tax base increase for dividends, taxpayers must also apply for a corporate tax base increase.
- If there is not any tax base declared for dividends in the related fiscal period, an 80% increased corporate tax base amount will be considered to be the tax base for dividends. The applicable tax rate will be 15% for this tax base.

Below is a summary table for corporate taxpayers that have not declared any corporate tax base and dividend withholding tax in the relevant years.

Year	Minimum tax base (TRY)	Tax rate	Tax payable	Dividend withholding tax base	Tax rate	Tax payable
2018	200.000	20-15%	40.000	160.000	15%	24.000
2019	215.000		43.000	172.000		25.800
2020	230.000		46.000	184.000		27.600
2021	260.000		52.000	208.000		31.200

### ***Adjustments in account entries***

- The inventory items, machinery and equipment and certain fixtures that are not present in the records, despite being present in the enterprise, can still be recorded in the legal books at market value by providing an inventory list to the tax authority, as long as VAT has been paid at the half of the applicable rate.
- The law also allows a taxpayer to declare certain fixtures and commodities that are deemed to be present in the records, despite not being present in the enterprise, as long as the taxpayer issues an invoice for the goods and fixtures and pays all related tax liabilities associated with the goods and fixtures (there would be no penalty or delay interest retrospectively).
- Corporations can also correct their receivables from shareholders and or cash accounts, as long as the taxpayers pay an additional 3% tax on the receivables received from shareholders and cash balances as of 31 December 2022.

### ***New era for “debt push-down”***

- The Law adds a new provision into the Turkish Corporate Tax Code (CTC) that would enable taxpayers to deduct the financing expenses incurred while acquiring shares in a Turkish company, after a “debt push-down” by way of merger conducted as per article 19 of the CTC.

- Foreign investors usually acquire the shares of Turkish operating companies by either directly investing in a Turkish operating company or establishing an acquiring entity. In cases where a Turkish acquiring entity is established to finance the acquisition of the Turkish operating company, financing expenses were treated as nondeductible once the acquiring entity is merged into the Turkish operating company (debt-push down).
- There have been controversies with respect to deductibility of the financing expenses once the debt is pushed down in a merger of the acquiring entity into the operating entity or vice versa.
- The Law allows a merged entity to deduct financing expenses, including expenses incurred after the time of merger.
- We suggest that a thorough analysis to be made by considering the other related laws.
- This provision will be applicable to income and earnings derived after 1 January 2023.

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

**Kuzey Yeminli Mali Müsavirlik A.S., Istanbul**

- Ates Konca, *International Corporate Tax Advisory Leader* | [ates.konca@tr.ey.com](mailto:ates.konca@tr.ey.com)

**Kuzey Yeminli Mali Müsavirlik A.S., Ankara**

- Nurdan Sesenoglu | [nurdan.sesenoglu@tr.ey.com](mailto:nurdan.sesenoglu@tr.ey.com)

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

- Gamze Durgun | [gamze.durgun1@ey.com](mailto:gamze.durgun1@ey.com)

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