

## Tax-IA Bulletin (English Translated Version)

### Bulletin nr: 2020-20

**To** : The clients and company web site

**From** : Independent Advisors / Accounting & Tax

**Date** : March 5<sup>th</sup>, 2020

**Subject:** Latest Financial/Tax Regulations in Turkey (February 2020 Summary)

Distinguished readers,

February was very busy in terms of financial agenda, lots of expected arrangements were made and we are expecting March to be a very busy month as well in tax agenda. We would like to submit for your attention as a summary the important tax-related and financial issues that occurred within the last month.

Let's briefly start with the headings and then examine the details. We will submit information about;

- Long-awaited Presidential Decree regarding **Transfer Pricing in Turkey** to be in line with OECD standards,
- **Valuable Housing Tax** deferred to 2021, fundamental changes made in this tax,
- Application of **appreciation fee**, which requires taxation of the increasing property value within the scope of land development change for a very long period of time in our country,
- Draft General Communiqués prepared by the Ministry of Treasury & Finance about **accommodation tax**, digital service tax and **vehicle expense restriction** actualized with the Law no 7194 and other issues,
- Application of **Waiver of Legal Remedy**, which came into force with the Law no 7194 and which is for the purpose of reducing the disputes between the taxpayer and the Tax Administration,
- 6-point additional **SSI incentives** have been extended by the end of 2020,
- **VAT and withholding VAT rates**, which will be applied in certain procedures at the city hospitals,
- Application of **VAT exemption & refund** regarding the construction works performed within the scope of the investment incentive certificate for the manufacturing industry,
- Important amendments made in the **Banking and Capital Market Law**,
- Actions to be taken by Turkey with regard to **Brexit** and ongoing agreements between our country and England,
- Maximum service fees and amounts, which the banks can charge to the clients,
- Application of combined withholding tax and premium return, the pilot scope of which is expanded,
- Amendments made in the legislation for facilitating the customs procedures,
- **Environmental recovery fee** arrangements, the application of which is expanded.

We hope that you have taken advantage of and have taken pleasure in our bulletins and we express our respects.

## 1. The **Income Tax Return Period** has started **for the Income Taxpayers**.

- The income taxpayers who are taxed under the real taxation system due to their commercial, agricultural and professional activities shall send their Annual Income Tax Returns for the year of 2019 in electronic environment by the end of 31 March 2020 Tuesday.
- The taxpayers whose income is only composed of rent, salary, marketable security incomes and other incomes or one or several of the other earnings and revenues can easily send their Annual Income Tax Returns via the **Online Ready Tax Return System**.

## 2. Long-awaited Presidential Decree regarding **Transfer Pricing in Turkey** put in force.

- This new piece of legislation covers the amendments on the definition of related parties and the master file and Country by Country Reporting (CbCr) documentation requirements in addition to the current local file reporting.
- In line with the Law Nr. 6728 the %10 rules are needed in order to be considered as “related parties” in transfer pricing rules set.
- Turkey uses the arm’s length principle: Under Article 13(3) of CITL, it is stated that “Arm’s length principle means that the price or consideration charged for the purchase or sale of goods or services between related parties should be the price or consideration which would have been occurred in the absence of such a relationship between them.” The arm’s length principle also applies for intra group services transactions.
- **Local File:** The transfer pricing form attached to the corporate tax return and local filing still exist. Annual Transfer Pricing Report (Local File) which must be prepared by all corporate income taxpayers until the deadline for filing the annual CIT return and, upon request, submitted to Turkish Revenue Administration or other tax authorities entitled to make tax examination.
- **CbCr (Country Report):** Turkish resident ultimate parent company of an MNE group having consolidated revenue exceeding Euro 750 Million is needed to submit this report. This annual report will be uploaded online until the end of a fiscal year.
  - Reporting should include the sales, profits, capital, retained earnings, headcount and other information.
  - The first country file will be submitted for the FY 2019.
  - Considering the fact that the value created, the employment and the export value of Turkey is created by MNE’s, it is strongly advised that the reporting, the structure and analysis of the value chain is so important.
  - The firms obliged to prepare country report should inform the Tax Office about the ultimate firm and reporting firms, and fiscal year of the companies until June of each fiscal year. This information should reported this year until the end of August 2020 as well.
  - Those reports will be shared with other countries reciprocally in line with the international tax treaties. The Ministry of Finance & Treasury of Turkey will update and publish those countries’ list.
  - This new filing requirement has huge effects on Turkey originated multinational firms as well.
- **Master File:** With the amendments in legislation, corporate MNE taxpayers having TRY 500 million in both asset and net sales figures for the previous year need to prepare a master file and submit to the Tax Office and tax auditors upon request.

- Master files should include the organizational structure of the multinational company, the activities of the business, IP's, the group wise financial transactions and tax status.
  - The first master file will be submitted for the FY 2019.
  - Reporting full and timely manner save the firms %50 tax penalty if any for all of those 3 reports.
  
  - We are expecting country profile of Turkey will be updated after this new legislation. This link is the old country report for Turkey: <http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-turkey.pdf>
  - These country profiles focus on countries' domestic legislation regarding key transfer pricing principles, including the arm's length principle, transfer pricing methods, comparability analysis, intangible property, intra-group services, cost contribution agreements, transfer pricing documentation, administrative approaches to avoiding and resolving disputes, safe harbours and other implementation measures. The information contained in these profiles is intended to clearly reflect the current state of countries' legislation and to indicate to what extent their rules follow the *OECD Transfer Pricing Guidelines*.
3. **The Valuable Housing Tax** was postponed to 2021 and Fundamental Changes were made in this tax.
- The mentioned new tax regulation stipulated in the Real Estate Tax Law was fundamentally amended with the Law no 7221.
  - It was stipulated that the tax will be deferred to 2021, no tax return will be submitted for the year of 2020 and no accrualment will be made, the real estate tax value will be taken as basis instead of the valuation made by the General Directorate of Land Registry and Cadastre as the tax base and a house with the lowest value of those who have one house and those who have more than one taxable house will be exempted from tax.
  - The progression in tax was maintained and the progression by slice procedure was accepted in place of the progression by class procedure, which causes injustice.
4. The Application of **Appreciation Fee** is being started **in Turkey**.
- The appreciation fee, which is an issue that has been discussed for decades in Turkey, has been enacted.
  - Briefly introduction of so called "appreciation fee", which requires a contribution to the government budget out of the increase (appreciation) of the property value due to the changes in the environmental and construction regulations applicable to that property is passed by the Parliament. This regulation was started with the additional article 8, which was added to the Land Development Law no 3194.
  - The act came into force on 20 February 2020 Thursday, which is the date of publication.
  - **All of the increased value** of the land, the value of which is increased as a result of the change in the land development plan, shall be considered as the appreciation share.

5. **SSI Incentives:** The application was extended by the end of 2020 with the Presidential Decision providing **additional SSI incentive**.
6. **Changes in Banking Law:** The Law Nr. 7222, which requires important amendments in many Laws that make regulations on **banking and monetary issues**, was published in the Official Gazette dated 25 February 2020.
  - In the Law, amendments were made in the Capital Market Law, Central Bank Law, Bank Cards and Credit Cards Law, Financial Leasing, Factoring and Finance Companies Law, Law on the Protection of the Consumer as well as the Banking Law.
  - Briefly, regulations were made about the precaution plan to be prepared by the banks, Wealth Fund (Turkey Wealth Fund), customer secret and personal data, provisions to be applied for the participation banks, penal sanctions stipulated, manipulation and misleading transactions in the financial markets, authorizations passed from BDDK (Banking Regulation and Supervision Board) to TCMB (Central Bank of Turkey), minimum capital amount stipulated for the factoring companies, guarantee management agreement with the board of debt instrument owners stipulated in the capital markets and guarantee manager application, **crowd funding** and project financing and **project-based securities**.
  - The relevant institutions are expected to make secondary regulations after the legal regulations made.
7. **The Presidential Circular on Brexit** was published.
  - At the stage of transition period stipulated until 31.12.2020 with respect to the resignation of the United Kingdom from the European Union membership with the Circular no 2020/1, all Governmental agencies should pay attention to this issue on the matters included in their areas of duty and authorization and should properly inform and direct the public.
  - We currently have a **Double Taxation Agreement** signed with England in terms of taxation and it is still in force.
  - The oldest **Social Security Agreement** signed on 09.09.1959 between England and Turkey in terms of social security is still in force.
  - The **Agreement on Mutual Incentive and Protection of Investments** signed on 15 March 1991 is still in force.
8. **Turkish-Moldovan Social Security Agreement:** The Presidential Decree dated 24 February 2020 was published with regard to the approval of the Social Security Agreement signed between Moldova and Turkey. Thus, the number of **the bilateral social security agreements** of Turkey has reached to 32.
  - These agreements regulate very important issues concerning the insured such as equal treatment of the citizens of the party countries, insurance consolidation, utilization of health, family, old age, death and similar benefits, insurance branches to be applied, calculation of the salaries, service consolidation and settlement of disputes.
9. **VAT Exemption & Refunds:** The General Communiqué on **Value Added Tax** serial no 30 was published. The Communiqué includes the determinations regarding the VAT and withholding rates for the health facilities constructed by the public-private partnership model, the application of **VAT refund** regarding the construction works performed within the scope of the investment incentive certificate for the manufacturing industry and the regulations and

clarifications regarding the new machinery and equipment deliveries for the manufacturing industry extended by the end of 2022.

- **VAT Refund for Manufacturing Industry:** It was decided to apply the refund of the value added tax, which was undertaken by the Presidential Decision no 1950 due to the construction works regarding the investments made within the scope of the investment incentive certificate for the manufacturing industry and which could not be deducted also to the value added tax which will be undertaken within the years of 2020 and 2021 and which cannot be deducted .
- **VAT Exemption in Machinery and Equipment Deliveries:** As the duration of the VAT exemption applied in the new machinery and equipment deliveries to the VAT taxpayers having the industrial registration certificate in order to be used exclusively in the manufacturing industry in accordance with the Industrial Registration Law set forth in the provisional article 39 of the VAT Law was extended until 31.12.2022, the necessary regulations for this issue were made in the VAT Communiqué.

10. **Taxpayer Rights:** A new period is starting in terms of the tax conflict process management with the General Communiqué on Tax Procedural Law serial no 517, which regulates the issue regarding **the Waiver of Legal Remedy**.

- Both reducing the work load of the courts and ensuring the charging of the tax were aimed and discount is stipulated with the regulation in the taxes and penalties to be paid in the case of waiver of legal remedy against the decisions taken by the Tax Court in the capacity of court of first instance or by the District Administrative Court in the capacity of court of appeals in the actions filed against the tax/penalty notifications.

11. **The Draft General Communiqués** regarding the application of **the Law no 7194** were published on the GIB (Revenues Authority of Turkey) website in order to obtain the opinions of the public.

- All of three General Communiqués are in Draft version and you can forward your opinions and suggestions. These draft Communiqués have not officially come into force because they have not been published yet.
- Draft General Communiqué on the Application of **Accommodation Tax**
- Draft General Communiqué on the Application of **Digital Service Tax**
- Draft General Communiqué on **Income Tax** serial no 311
  - This Communiqué explains the changes with the Law No. 7194. One of the changes is expense rules for company cars. Some limitations are imposed on the total amount of the monthly rental fee paid for each of the cars (binek oto) acquired by renting, and the amount of special consumption tax (ÖTV) and value added tax (KDV) that can be considered as an expense over the taxable income, and the amounts that can be calculated as a depreciation for passenger cars;
  - Firstly, up to 5,500 Turkish Liras of the monthly rental value for each of the passenger cars acquired by renting and up to 115,000 Turkish Liras of the total special consumption tax and value added tax on the acquisition of company cars can be considered as expense in the determination of taxable income.

- Add to that, maximum 70% of the expenses related to those cars can be deducted from taxable income.
- In the determination of taxable income, excluding special consumption tax and value added tax, the first acquisition price is 135,000 Turkish liras, in cases where taxes are added to the cost value or if the passenger car is acquired as second hand, each of the passenger cars whose depreciation amount exceeds 250,000 Turkish liras, depreciation can be calculated at the most over this amount.
- With the Tax Procedure Law General Communiqué (Rank No: 512) published in the Official Gazette dated 23/12/2019 and numbered 30987, revaluation rate for 2019 is 22.58% to be effective as of 1.1.2020, in this context;
  - The total amount of special consumption tax and value added tax that can be subject to deduction as an expense is from 115.000 TL to **140.000 TL**,
  - The total amount to be subject to deduction as depreciation; excluding special consumption tax and value added tax, it has been increased from 135.000 TL to **160.000 TL**,
  - In cases where taxes are added to the cost value or if the passenger car is acquired as second hand, from 250.000 TL to **300.000 TL**.
  - Income taxpayers and corporate taxpayers with commercial earnings and self-employment earnings will consider these new amounts increased in the determination of earnings for 2020.
  - However, the rental amount of 5.500 TL, which can be considered as an expense for passenger cars, has not been revaluated, and the monthly rental price that the income taxpayers and corporate taxpayers can consider will be 5,500 TL in 2020.

## 12. Customs Legislation Update: Important amendments were made in the Regulation on Facilitation of Customs Procedures.

- These amendments, which were made by the Ministry of Trade in the first Regulation published in 2014, were published on the Official Gazette dated 21 February 2020 and there are different enforcement dates. (For the articles that came into force on the date of publication, at the beginning of 2021, on 31 March and 30 June, refer to the article 92 of the Regulation.).
- The purpose of this Regulation is to establish the procedures and principles for the conditions necessary for the authorized declarant status, the certificates to be required in the application, granting the certificate, the duration, renewal, replacement, suspension, withdrawal and cancellation of the certificate and the facilitations for authorized sender, authorized receiver, customs clearance on the premises for importation, approved exporter, understatement, partial guarantee, lump sum guarantee application, control of the declaration, which will be taken advantage of within the scope of such certificate, the facilitations for safety and security and suspension, withdrawal and cancellation of the authorizations for taking advantage of such applications and facilitations and other simplified applications arising from the customs legislation.
- This Regulation regulates the requirements necessary for the certificate of Authorized Declarant Status (YYS) in the customs procedures and the issues regarding obtaining the certificate, the conveniences provided, the transaction processes and the withdrawal of the certificate.



- Comprehensive regulations were made in relation to YYS-I and YYS II separation, subsequently being subjected to control, preparation of the activity report, periods regarding on-premise follow-up.
- 7 annexes were added to the list of annexes in the attachment of the Regulation and changes were made in 12 Additional documents.

13. The Application of **Recovery Contribution Fee** was expanded. The period for submitting tax returns was extended for one month.

- The procedures and principles for the declaration and charging of the recovery Contribution Fee to be paid for the other products except for the plastic bags that are included in the list no (1) attached to the Environmental Law were established with the General Communiqué No 2 on the Recovery Contribution Fee Return, which was published on the Official Gazette dated 5/2/2020 and no 31030.
- The Ministry of Environment and Urbanization put into force the Procedures and Principles for the Application of the Regulation dated 7 February 2020 on Recovery Contribution Fee with the Approval of the Minister. In the mentioned Procedures and Principles, declaration and payment, netting, exempted products and circumstances were clarified with detailed examples with regard to;
  - Responsibilities of the environmental official in the companies,
  - Put upon the market, import, supply, point of sale and similar concepts,
  - Products complying with the packaging definition subjecting to the recovery Contribution Fee, packages according to the material, from which they are produced,
  - Primary, secondary and tertiary packaging types,
  - Those who put packages upon the market, those who import packaged products, package suppliers, plastic bags and other bags,
  - Vegetable oils subjecting to recovery,
  - Electrical and electronic goods, rubbers, batteries and accumulators, mineral oils and medications subjecting to recovery.

14. Negotiations for New **International Tax Treaties**

- The first four negotiations for the signature of a Double Taxation Agreement between the Republic of Turkey and the Democratic Socialist Republic of Sri Lanka were made in Ankara between the dates of 21-23 January 2020.

15. **Government Incentives:** A Circular regarding the **Support Management System (DYS)** that is applied in the governmental incentives was issued.

- Within this scope, the components regarding;
  - Supports for good export,
  - Supports for service export,
  - Inward Processing Regime,
  - Outward Processing Regime,
  - Tax, Levy, Charge Exemption and
  - Clean Export Credits shall be carried out within the scope of Support Management System.
- **The new applications** to be forwarded from **31/03/2020** are accepted only via the Support Management System.

16. Changes were made in the **Fees Charged for the Banking Transactions**.

- **TCMB and BDDK** made a regulation regarding the procedures and principles for the fees that will be charged from the financial consumers and the fees that can be charged from the commercial customers by the banks.
- The purpose of the Communiqué is to determine the types and qualities and the maximum amounts or rates of the fees that can be charged in return for the products or services provided and to establish the relevant procedures and principles in order to increase the predictability and transparency in the transactions that the banks will make with their commercial customers, to ensure the unity of concept and term and to prevent surcharging.

17. **Combined Withholding and Premium Return Pilot Application:** Bursa, Eskisehir and Konya were added to the scope of pilot provinces, in which Combined Withholding and Premium Return is applied with the Communiqué no 7 published on the Official Gazette dated 9 February 2020, and the application was postponed to March 2020 for other provinces.

We have summarized our notes on the changes and developments regarding the summary financial / tax legislation in the last one month, in English, in short headings. Please do not hesitate to contact us for further information.

Please send us your comments and suggestions regarding this bulletin format.

Best regards,



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