

New Tax Amnesty in Turkey

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A detailed new amnesty law entitled “The Law Relating to Restructuring of Tax and Some Other Receivables and Amendments to Various Laws” (the “Law”) which offers taxpayers a broad amnesty for most types of unpaid taxes and for unpaid social security insurance premiums relating to the period up to March 31, 2018 was published in the official Gazette on May 18, 2018.

The Law addresses restructuring of certain public receivables, repatriation to Turkey of assets held abroad by individual and corporate Turkish taxpayers without risk of any inspection or tax penalty, adjustment of unrecorded assets and adjustment of recorded assets that do not exist or are not available.

1. Public Receivables Covered by the Law

All direct and indirect taxes, customs duties, social security premiums, taxes collected by municipalities, charges, penalties, fines, delay interest and any other additions relating to tax periods prior to March 31, 2018 are covered by the Law.

As we explain below, depending on the type of the tax or other public receivable (the “Receivables”), the Law offers full or partial amnesty for the principal amount, penalties and/or interest provided that the taxpayer satisfies the conditions described in the Law.

2. Restructuring of Receivables Payable to the Ministry of Finance or to Municipalities and Which are Undisputed or No Longer in Dispute and Therefore Overdue

The Law also addresses the treatment of Receivables which are payable to the Ministry of Finance or to Municipalities and which are undisputed or no longer in dispute. In other words, these are Receivables which the taxpayer has challenged but for which it has exhausted the legal process and which are therefore considered overdue as a matter of law.

If the taxpayer pays the principal of these Receivables increased by the producer price index, then the penalties and interest on these amounts will be forgiven. Where the Receivable is a penalty only (with no underlying tax or other principal), then 50% of the penalty amount and all of the default interest relating to the penalty will be forgiven.

For administrative fines that are charged on the customs value of imported goods, 30 % of the fine amount will be increased by the producer price index is paid, and then the remaining 70% of the fine and interest payables will be forgiven. For administrative fines that are not linked to the customs value of the goods imported, 50% of the fines will be forgiven.

3. Disputed Receivables or Receivables Still on Lawsuit Process

The Law also addresses taxes and customs taxes which are still being disputed through legal process.

If the statute of limitations to challenge a Receivable has still not run, or if there is an existing challenge against the Receivable in the first degree courts, then the taxpayer may benefit from the amnesty by paying only 50% of the principal amount increased by the producer price index, after which the balance of the principal and penalties and interest will be forgiven.

If the taxpayer has won a challenge in respect of the Receivable in the first degree court, and the challenge is subject to an appeal (of which there are several kinds), then the taxpayer may benefit from the amnesty by paying only 20% of the principal amount increased by the producer price index, after which the remaining 80% of the principal, penalties and interest will be forgiven.

4. Transactions at the Inspection and Assessment Stage

Taxpayers may also benefit from the law if they are under tax inspection before the effective date of the Law. Transactions that are under investigation or assessment will be finalized by the authority and the assessment will benefit from the same provisions as those which are being litigated in the first degree courts (see above).

5. Tax Base and Tax Boost

The Law gives taxpayers the opportunity to get immunity on tax assessment for previous taxation periods for which they failed to declare income if they make an additional payment for income tax, corporate income tax, VAT or withholding tax for past years.

The Law provides that if taxpayers voluntarily increase their tax base at the declaration rates specified in the Law for each type of tax and pay the applicable tax (which, as explained below is 20% for corporate income tax), then for such tax, they will no longer be subject to a further tax assessment. In other words, it will be possible for them to avoid previous period tax risks by making this additional payment.

Taking corporate income tax as an example; taxpayers must pay corporate income tax at the rate of 20% on the increased tax base by increasing their declared corporate income tax base for the period between 2013 and 2017, at the rates prescribed in the Law. If the taxpayer declared losses for the relevant years, the tax base will be increased at the minimum declaration rates specified in the Law.

Taxpayers may decrease this tax rate from 20% to 15% if: (i) the taxpayer has timely submitted its tax return for those years; and (ii) has not made an application to benefit from the provisions described under Sections 2 or 3 above.

The taxes paid by the taxpayer on the increased tax base must be recorded as disallowable expense items in the corporate tax calculations for corporate taxpayers. Additionally, 50% of the tax losses carried forward by the taxpayer relating to the periods for which the income or corporate taxpayers have made a tax base increase cannot be deducted from the profits of 2018 or of upcoming years. In other words, the taxpayer loses the right to use 50% of its carried-forward losses if it benefits from these particular provisions of the Law.

For withholding taxes and value added taxes, the Law provides that previous taxes paid must be increased (as opposed to any tax base increase) and tax must be paid on such increase in order to benefit from amnesty on these amounts at a certain rate.

6. Unrecorded Assets

Taxpayers who have goods, machinery, equipment or fixtures which are used in their business but which are unrecorded can benefit from the Law to regularize the status of such assets. For these assets to be recorded, the taxpayer must pay 10% value added tax (for assets to which the standard 18% value added tax applies) on the declared value of the assets. The taxpayer may deduct only the value added tax payments made to record commercial inventory in its value added tax declaration. For assets subject to lower value added tax rates, half of the applicable value added tax rate will apply.

The taxpayer will not pay tax penalties or interest for the off record assets it declares through this process.

7. Recorded Assets, Cash Receivables And Receivables from Shareholders Which do not Exist but Which are Included in the Records

Taxpayers who have assets, cash receivables or receivables from shareholders which are recorded in their books but which are not available to the business or which do not exist can benefit from the Law to regularize the status of such receivables.

For assets other than cash and receivables from shareholders, the taxpayer must issue an invoice for such asset and record the transaction in its records. No tax penalty or delay charge will apply to such transaction; however it will form part of the taxpayer's revenue. In order to benefit from such provisions, a taxpayer should issue a sales invoice as if the sale is made in the current period and fulfil all tax obligations relating to sales invoice.

Cash and receivables from shareholders which are included in the records but which are not available to the business (for example, because the shareholder withdrew cash) can be deleted from the taxpayer's accounting records if 3% of the relevant amount is paid as tax.

8. Cash Repatriation - Transfer of Assets Abroad to Turkey

The Law provides that real persons and legal entity taxpayers who declare their money, gold, foreign exchange, securities and other capital market instruments that are abroad until the end of November 2018 and repatriate these assets within three months following the declaration to Turkey can dispose of such assets freely. Provided that 2% tax is paid over the cash and assets, no further tax investigation or tax assessment will be made on these assets.

The Law also contains tax exemption provisions regarding transfer of capital gains obtained from sale of foreign subsidiaries, dividend income obtained from foreign subsidiaries and income obtained through permanent establishments abroad. Provided that such gains and income obtained or will be obtained until the end of October 2018 is transferred to Turkey until the end of 2018, income tax and corporate income tax exemption will be applied.

9. Installment Payment of Receivables

Taxpayers are provided with an opportunity to pay the amounts due under the Law in instalments at interest rates lower than those otherwise provided by law by following the procedure provided. Taxpayers may choose to pay relevant amount in 18 bi-monthly instalments (for a total payment period of 36 months). In such case, rather than attracting interest, the Receivable amount will be multiplied by the following coefficients depending on the payment plan chosen by the taxpayer: 1.045 for 6 equal installments; 1.083 for 9 equal installments; 1.105 for 12 equal installments and 1.15 for 18 equal installments.

The Law is quite detailed and will be followed by secondary legislation. The information in this client alert only aims to provide certain useful general information about the Law and should not be relied upon as legal advice.

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