



# Investment in Turkey

Tax Services

2017

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# Preface



This publication "Investment in Turkey - 2017", compiled by KPMG Turkey's Tax Practice, aims to provide general outline of the Turkish tax environment in which foreign investors consider investing and doing business in Turkey. The set of information contained in this publication is an introduction for the foreign investors that plan to take a look into tax and business environment in Turkey. It reflects developments to March 2017 and the information herein is not exhaustive and should be read as a frame. Therefore, the information should not be perceived as the sole basis for investment decisions in Turkey. Detailed advice in tax, accounting, legal and other matters should be sought from professional advisers. I would like to take this opportunity to thank to KPMG Turkey Tax Professionals as the authors of this booklet.

Abdulkadir Kahraman  
Head of Tax,  
Partner



# 1. Country Profile

## 1.1 General Information

### Geography and Climate

Turkey is situated at the junction of Europe and Asia. The European part of the country is called Thrace (Trakya) and the Asian part is named Anatolia (Anadolu).

The location on two continents has been a central feature of the Turkish history, culture and politics. The country shares borders with Greece and Bulgaria to the northwest, with Georgia and Armenia, and Iran to the east, Iraq and Syria to the south. The Black Sea to the north, the Aegean Sea to the west, and the Mediterranean Sea to the south are connected by the Bosphorus, the Sea of Marmara and the Dardanelles, a water way known as the Turkish Straits.

The climate of coastal regions shows features of a transition between a Mediterranean and Black Sea climate. Summers tend to be hot and dry except for the Black Sea coast. While spring and fall are warm and temperate, winters are cold, but the number of snowy days is few. The inner land is more snowy and colder in winter. The coldest months of the year are January and February, while the hottest are July and August.

### History and Government

The Republic of Turkey was established in 1923. The new Republic looked to the West for industrialization and the establishment of a secular political system under the guidance of the new Republic's first President Mustafa Kemal Atatürk, whose reforms constituted the framework for the development of the modern Turkish Republic. Turkey has enjoyed multi-party politics since 1946. Turkey is a unitary parliamentary republic. The Grand National Assembly has 550 members elected for four years term, by secret ballot.

The executive branch is the Government, headed by the Prime Minister. The President is elected by citizens for a five year term and s/he cannot be elected consecutively more than twice. The Prime Minister, who is appointed by the President, nominates the other members of the cabinet, which is approved by the President, and is subject to a parliamentary vote of confidence. The judiciary is independent of both the legislature and the executive. The legal system is largely based on continental European models. A Constitutional Court is also entitled to cancel legislation passed by the Parliament. It can cancel those laws, or parts of them, which it decides to be incompatible with the Constitution.

### Foreign Relations of Turkey

Turkey is a founding member of the United Nations (UN), the Organization of Islamic Cooperation (OIC), the Organization for Economic Co-operation and Development (OECD) and the Organization for Security and Co-operation in Europe (OSCE), a member state of the Council of Europe and NATO.

Since 2005, Turkey is in accession negotiations with the European Union. The negotiations have been launched with the adoption of the Negotiation Framework by the Council of the European Union. Turkey and European Union's relations cover 3 elements. These are; the application of Copenhagen Criteria's, the application of EU acquis and the strength of civil society dialogue. According to the basis, negotiations are keeping up with European Union<sup>1</sup>.

Turkey is also a member of the G20 industrial nations which brings together the 20 largest economies of the world.

<sup>1</sup> [www.abgs.gov.tr](http://www.abgs.gov.tr)

### Population and Language

#### *The population of Turkey*

According to the Population Services Law No. 5490 acted in 2006, new population registration system, which will be the main data source of population censuses, was established in the country. The results of the latest census states that the population is approximately 79.814.871<sup>2</sup> as of 31.12.2016.

### *The proportion of population living in cities is 92.3%*

The number of people living in Istanbul is 14.804.116. Most populated provinces are Ankara, Izmir, Bursa and Antalya. Tunceli is the least populated province in Turkey, with a population size of 82.193<sup>3</sup>.

### *The half of the population is below age 31 in Turkey*

The median age of the population in Turkey is 31,4 While the median age is 30,8 for males, it is 32 for females<sup>4</sup>.

### *The proportion of the population at ages between 15 and 64 is 68 %*

People between the ages of 15-64 are the working group, which constitute 68% of the total population. The age group 0-14 form the 23,7% of the overall population, while the 8,3% of the population is made up by people at 65 and over<sup>5</sup>.

<sup>2-3-4-5</sup> [www.tuik.gov.tr](http://www.tuik.gov.tr)

## **1.2 Economy and Currency**

### **Economy**

Turkey has marked a remarkable rate of growth after 1980's. This has been attributed to three factors, namely a shift from agriculture towards industry and service activities, the modernization of the existing industry and technology transfer, and the effect of international trade and competition.

Significant improvements in such a short period of time have registered Turkey on the world economic scale as an exceptional emerging economy, being the 18th largest economy in the world and the 6th largest economy when compared with the EU countries, according to GDP figures (at PPP) in 2016<sup>6</sup>.

- Institutionalized economy fueled by USD 151 billion of FDI in the past decade
- 18th largest economy in the world and 6th largest economy compared with EU countries in 2016 (GDP at PPP, IMF-WEO)
- Robust economic growth with an average annual real GDP growth of 4.7 percent during 2002-2015

- GDP reached USD 720 billion in 2015, up from USD 231 billion in 2002
- Sound economic policies with a prudent fiscal discipline
- Strong financial structure resilient to the global financial crisis

Turkey's GDP current prices and growth rates of GDP are as follows:<sup>7</sup>

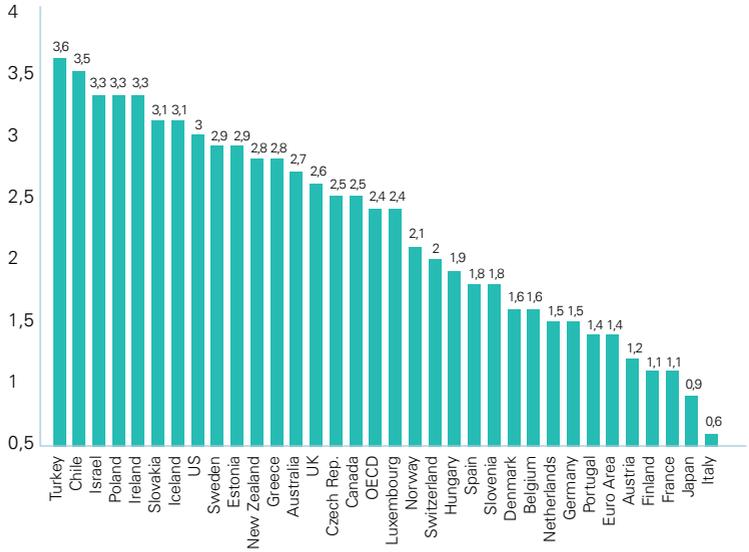
| Years | GDP Current Prices<br>(TRY Million ) | Growth Rate (%) |
|-------|--------------------------------------|-----------------|
| 2006  | 758,391                              | 16.9            |
| 2007  | 843,178                              | 11.2            |
| 2008  | 950,534                              | 12.7            |
| 2009  | 952,559                              | 0.2             |
| 2010  | 1,098.799                            | 15.4            |
| 2011  | 1,297.713                            | 18,1            |
| 2012  | 1,416.798                            | 9.2             |
| 2013  | 1,567.289                            | 10.6            |
| 2014  | 1,747.362                            | 11.5            |
| 2015  | 1,952.638                            | 11.7            |

The liberalization of capital movements and the willingness of foreign creditors to lend to Turkish investors contributed to the high growth rate of private investment.

<sup>6</sup> <http://www.invest.gov.tr>

<sup>7</sup> [www.tuik.gov.tr](http://www.tuik.gov.tr)

## Annual Average Real GDP Growth (%) Forecast in OECD Countries 2014-2016<sup>8</sup>



Turkey attaches a high priority to the encouragement of foreign investment and provides a variety of incentives.

<sup>8</sup> [www.tuik.gov.tr](http://www.tuik.gov.tr)

## Currency

The Turkish currency is called Turkish Lira (TL/TRY), which was introduced, instead of New Turkish Lira as from January 1, 2009. In addition, six digits were dropped from Turkish Lira denominations as from January 1, 2005. On the other hand, together with the (TRY), Kurush (Kr), which is a hundredth of (TRY), has become in use again as from January 1, 2005.

The Turkish Central Bank has issued notes of TRY5, TRY10, TRY20, TRY50, TRY100 and TRY200. There are also coins in circulation in denomination TRY 1, Kr 50, Kr 25, Kr 10, Kr 5 and Kr 1.

The following table shows the Central Bank's exchange rate of Turkish Lira, to other major currencies as of December 31, 2016.

| Country       | Currency         | TRY value <sup>9</sup> |
|---------------|------------------|------------------------|
| US            | 1 USD            | 3.5192                 |
| Euro          | 1 Euro           | 3.7079                 |
| Great Britain | 1 Pound Sterling | 4.3189                 |
| Switzerland   | 1 Swiss Franc    | 3.4454                 |
| Japan         | 100 Japanese Yen | 3.0025                 |

<sup>9</sup> www.tcmb.gov.tr

## Inflation

Turkish economy has experienced high inflation rates for more than a decade, but there has been significant improvement in reducing the inflation rates under the stabilization program run since 2001.

The following table shows the inflation rates of past 5 years<sup>10</sup>:

| Years | Producer Price Index (Annual %) | Consumer Price Index (Annual %) |
|-------|---------------------------------|---------------------------------|
| 2010  | 8.87                            | 6.40                            |
| 2011  | 13.33                           | 10.46                           |
| 2012  | 2.45                            | 6.16                            |
| 2013  | 6.97                            | 7.40                            |
| 2014  | 6.36                            | 8.17                            |
| 2015  | 5.71                            | 8.81                            |
| 2016  | 9.94                            | 8.53                            |

<sup>10</sup> [www.tuik.gov.tr](http://www.tuik.gov.tr)

### 1.3 Employment Conditions

#### Residence and Work Permits

Most foreigners enter Turkey without a Visa and they can stay in the country up to 3 months. In cases where a visa is required, it may be obtained at the airports.

A foreign individual sent by a foreign company to carry out business on its behalf in Turkey has to obtain a work permit from the Ministry of Social Security and Labour Affairs and a work visa from the Turkish consulate. (There is also a website named [www.goc.gov.tr](http://www.goc.gov.tr) available for online application)

However, a work permit is not required for foreigners in Turkey who are temporarily appointed for the following conditions;

- Installation of machinery and equipment imported to Turkey, maintenance and repairing, taking delivery of equipment, training on how to use of the equipment or for the repairing of the failed machinery in Turkey; only if the stay does not exceed three months in a year with effect from the date of entry into Turkey and the condition has to be proved with documents

- Foreigners who visit Turkey for the purpose of training on using of goods and services which are exported from Turkey or imported to Turkey; only if the stay does not exceed three months in a year with effect from the date of entry into Turkey and the condition has to be proved with documents

### **Opening Hours**

Office hours of large scaled companies are from Monday to Friday from 8:30 am to 5:30 pm. Shopping hours are basically from Monday to Saturday from 9:00 am to 7:30 pm. However, on Sunday some have longer shopping hours. Government institutions do not have office hours on weekends. Banks are open till 5:00 pm from Monday to Friday. Automatic teller machines are widespread all over Turkey.

### **Cost of Living and Housing**

Living in Turkey is not expensive for foreigners from EU and the USA. Except for certain locations, housing and the cost of living is cheaper compared to that in their home countries.

## Cost of Living Index for Each Country in 2016<sup>11</sup>

| Country       | Consumer Price Index | Rent Index | Consumer Price Plus Rent Index | Groceries Index | Restaurant Price Index | Local Purchasing Power Index |
|---------------|----------------------|------------|--------------------------------|-----------------|------------------------|------------------------------|
| Switzerland   | 123.10               | 55.14      | 90.44                          | 123.86          | 119.14                 | 178,74                       |
| Germany       | 65.54                | 24.01      | 45.58                          | 53.12           | 60.68                  | 147,61                       |
| Australia     | 78.45                | 40.95      | 60.43                          | 74.68           | 74.85                  | 147,25                       |
| Denmark       | 84.88                | 30.83      | 58.90                          | 69.20           | 97.88                  | 142,14                       |
| United States | 74.08                | 38.39      | 56.93                          | 75.69           | 69.13                  | 139,17                       |
| Canada        | 64.82                | 26.83      | 46.56                          | 65.04           | 60.04                  | 134,81                       |
| Finland       | 75.25                | 26.98      | 52.05                          | 66.59           | 76.85                  | 132,93                       |
| Netherlands   | 72.12                | 31.76      | 52.72                          | 56.11           | 80.73                  | 129,34                       |
| Sweden        | 75.70                | 25.21      | 51.44                          | 67.89           | 79.18                  | 128,22                       |
| South Africa  | 34.75                | 13.18      | 24.38                          | 29.15           | 32.27                  | 126,1                        |
| Norway        | 99.80                | 37.04      | 69.64                          | 93.27           | 110.77                 | 125,75                       |
| South Korea   | 73.18                | 34.41      | 54.55                          | 86.23           | 41.18                  | 120,64                       |
| Austria       | 66.59                | 26.15      | 47.16                          | 61.71           | 62.64                  | 120,46                       |
| U.K.          | 81.03                | 36.29      | 59.53                          | 68.48           | 86.68                  | 120                          |
| France        | 75.30                | 26.22      | 51.72                          | 69.62           | 73.48                  | 118,51                       |
| Japan         | 81.25                | 29.75      | 56.50                          | 86.90           | 47.45                  | 117,55                       |
| Israel        | 75.75                | 26.78      | 52.21                          | 65.71           | 77.27                  | 115,54                       |
| Singapore     | 83.67                | 73.88      | 78.97                          | 75.83           | 53.75                  | 110,5                        |
| Belgium       | 75.44                | 31.42      | 54.28                          | 67.15           | 82.87                  | 106,69                       |
| Italy         | 68.77                | 21.49      | 46.05                          | 58.64           | 75.27                  | 105,67                       |
| Spain         | 56.11                | 18.86      | 38.21                          | 46.02           | 56.99                  | 105,31                       |
| India         | 24.14                | 6.37       | 15.60                          | 24.92           | 15.31                  | 89,65                        |
| Poland        | 38.53                | 13.54      | 26.52                          | 30.76           | 31.71                  | 80,77                        |
| Greece        | 54.40                | 9.51       | 32.82                          | 44.75           | 55.07                  | 79,27                        |
| China         | 48.10                | 23.24      | 36.15                          | 53.27           | 29.28                  | 77,42                        |
| Turkey        | 45.07                | 10.45      | 28.43                          | 39.89           | 31.89                  | 64,12                        |

<sup>11</sup><http://www.numbeo.com/>



# 2. Opportunities for Investors

## 2.1 Incentives for International Investors

Turkey has been restructuring its economy since 1980 along the lines of a more liberal economic policy. In this context, more emphasis is being placed on private sector especially in productive sectors of economy and the role of State is limited to infrastructure development and the provision of public services.

The new economic policy aims to diminish unemployment, to realize technology transfers, to privatize State Economic Enterprises, to overcome the deficit in the balance of payments and especially to increase the integration of the economy with the world economy and to attract more foreign capital to the Country. Turkey also uses the option of fiscal incentives to channelize domestic and foreign investments for industrial development and rural-urban integration.

These incentives or tax expenditures are usually available to investors for the promotion of private investment activities in selected sectors/regions depending on the scale of investment and in the following forms:

## 2.2. Investment Incentive Regime

The Turkish Government has been generous in 2016 and introduced two new incentive packages (“centre of attraction” and “super incentives” which provide comprehensive support to the qualified investments.

The “centre of attraction” programme aims to balance the development level within the regions through increase in employment, production and exports whereas “super incentives”

aim to meet any critically important current or future requirements of Turkey, develop technologic capacity in the fields that technologically Turkey fall behind, reduce dependency on imports/ foreign sources, improve Turkey's competitive power and support R&D focused investments.

The investment incentive regime as a general aims to further accelerate inbound investments over the course of the next few years and contribute to the employment with the new incentive programmes.

### Classification of investments

**General investments:** The investments that are not qualified as a special type of investment are subject to general incentives. These incentives are customs duty and VAT exemption on the purchase of investment goods (i.e. machinery and equipment). For the investments in the 6th region, the general incentives are expanded with income withholding tax. Social security employer premium relief is added to the ship construction investments in the shipyards.

The minimum investment expenditure should be TRY1 million for the first two regions out of six regions and TRY500 thousand for the rest of the regions.

**Regional and sector-based investments:** Turkey is separated into six regions based on the development level of the districts/cities in these regions. The first three zones represent more developed regions, respectively, whereas the last three show relatively less developed zones in Turkey.



**Large scale investments:** Investments in excess of at least TRY50 million are classified as large scale investments. This amount can increase depending on the industry of the investment. The industries include but not limited with production of oil products, port and port services investments, drug manufacturing, production of air and space vehicles and their parts and airport investments.

**Prioritized investments:** This type of investments can benefit from the incentives that are granted to the investment in the 5th region. If the investments are located in the 6th region, investors can be entitled to incentives to be granted to this region. Investments in the below industries can qualify as prioritized investment:

- Investments regarding sea transportation of load and/or passengers
- Railway investments that are to be made by the private sector members for the purpose of domestic load and/or passenger transportation and inner city load transportation
- Automotive, space or defence oriented test centres, wind tunnels and investments in similar nature
- Accommodation investments for tourism purposes that are in the scope of Protection and Development of Culture and Tourism or the accommodation investments for thermal tourism that are entitled to regional incentives
- International fair investments with a minimum closed area of 50 thousand square meters (excluding the accommodation and shopping mall units)
- Investment projects in defence industry to be approved by the Undersecretaries for Defence Industry.
- Mine extraction and/or mine processing investments of investors holding an exploration license issued under Mine Law (excluding certain specific investments)
- Day care centres, kindergartens, and primary, secondary, and high school investments to be made by the private sector members.
- Products developed as a result of R&D projects that are supported by Ministry of Science, Industry and Technology, Small and Medium Sized Enterprises Development Organization and the Scientific and Technological Research Council of Turkey.
- Investments in motor vehicles industry with a minimum investment amount of TRY300 million and auto components

industry (i.e. engine production investments with a minimum investment amount of TRY75 million, investments in components and transmission components of engines and electronics of automotive with a minimum investment amount of TRY20 million)

- Investments in coal based electricity generation power plants (under a mining and prospecting license).
- Except for un-incentivized investments, energy efficiency oriented investments with the below properties pursuant to the approval of Energy and Natural Resources:
  - a) An annual energy consumption of 500 tons of equivalent oil, which will be realized in the manufacturing industry plants;
  - b) Annual minimum of 500 tons of equivalent oil energy consumption,
  - c) Should be held in the existing manufacturing facility
  - d) Energy savings by at least 20% per unit of production
  - e) Return on investment is maximum of 5 years.
- Waste heat based electricity generation investments where the electricity is generated through waste heat recovery facilities. (Except for natural gas-based power generation plants).
- Liquefied natural gas and underground gas storage investments with a minimum investment amount of TRY50 million
- Carbon and fibre production and production of composite materials made of carbon and fibre together with production of carbon and fibre investments
- Production of products in the high technology industries defined based on the OECD Technology Intensity Classification such as aircraft and spacecraft, pharmaceuticals, Office, accounting and computing machinery, Radio, TV and communication equipment and Medical, precision and optical instruments
- Exploration investments of investors holding an exploration license or Certificate issued under Mining Law
- Turbine and generator production investments related to renewable energy generation and rotor production (for wind energy generation)
- Integrated investments for producing aluminium flat goods with special technique identified in incentive legislation

### Strategic investments:

A strategic investment should altogether qualify the below:

- The minimum fixed amount of the investment should exceed at least TRY50 million.
- Total imports related to the investment good should exceed USD50 million in the latest year.
- Expected added value to be provided by the potential investment should be minimum 40%.
- The total domestic production capacity of the final good to be produced should be less than the imports.

Prioritized investments with over TRY3 million of minimum fixed investment amount will be qualified as strategic investment (interest support for such investments is limited to TRY700 thousand).

### Investments entitled to incentives applicable in a successive region:

The investments satisfies one of the below properties can benefit from the incentives granted to a successive region with respect to reduced corporate tax and social security premium.

- Investments made in the Organized Industrial Zones (OIZ) or in industrial zones for manufacturing industry investments,
- Investments that are made by an investor with at least 5 individuals or corporate shareholders and provides an integration of the investments to be made in a common operating area.

If the investment is in the 6<sup>th</sup> region, 2 years to social security employer contribution and 5 points to the investment contribution rate are added to the current incentives applicable in that region.

### Investment incentives:

Investment incentives are available to investors through an "Investment Incentive Certificate" ("IIC"), which is obtained from the General Directorate of Incentive Practices and Foreign Capital under the Ministry of Economy ("Authority").

In order for an investment to be granted an IIC, the minimum investment expenditures should be at least TRY1 million for the first two regions and TRY500 thousand for other regions. It should be noted that the investment projects are still subject to Authority evaluation in order to be granted any incentives.

The incentives under an Investment Incentive Certificate are summarized below for each type of investment:

| Incentives             | Customs duty | VAT | Reduced rate CIT | SS employer | Land allocation | Interest support | Income w/h tax         | SS employee            | VAT refund |
|------------------------|--------------|-----|------------------|-------------|-----------------|------------------|------------------------|------------------------|------------|
| General Investment     | ✓            | ✓   |                  | ⇒ **        |                 |                  | ⇒ *                    |                        | ⇒ ***      |
| 1 <sup>st</sup> region | ✓            | ✓   | ✓                | ✓           | ✓               |                  |                        |                        | ⇒ ***      |
| 2 <sup>nd</sup> region | ✓            | ✓   | ✓                | ✓           | ✓               |                  |                        |                        | ⇒ ***      |
| 3 <sup>rd</sup> region | ✓            | ✓   | ✓                | ✓           | ✓               | ✓                |                        |                        | ⇒ ***      |
| 4 <sup>th</sup> region | ✓            | ✓   | ✓                | ✓           | ✓               | ✓                |                        |                        | ⇒ ***      |
| 5 <sup>th</sup> region | ✓            | ✓   | ✓                | ✓           | ✓               | ✓                |                        |                        | ⇒ ***      |
| 6 <sup>th</sup> region | ✓            | ✓   | ✓                | ✓           | ✓               | ✓                | ✓                      | ✓                      | ⇒ ***      |
| Large scale            | ✓            | ✓   | ✓                | ✓           | ✓               | ✗                | 6 <sup>th</sup> region | 6 <sup>th</sup> region | ⇒ ***      |
| Strategic              | ✓            | ✓   | ✓                | ✓           | ✓               | ✓                | 6 <sup>th</sup> region | 6 <sup>th</sup> region | ⇒ ***      |
| Prioritized            | ✓            | ✓   | ✓                | ✓           | ✓               | ✓                | 6 <sup>th</sup> region | 6 <sup>th</sup> region | ⇒ ***      |

\* For the investments in the 6<sup>th</sup> region,

\*\* For the ship construction investments in the shipyards

\*\*\* Non-recoverable VAT with respect to the construction part of an investment with minimum fixed amount of TRY500 million will be refunded to the investors. This incentive will be granted to the investors until 31 December 2023.

x : Not applicable

## 2.3. Application of Incentives

**Customs duty exemption:** 100% customs duty exemption is available on the imported machinery and equipment (Imports from EU countries can be customs duty free).

**Value Added Tax ("VAT") exemption:** 100% VAT exemption for both domestic purchase of and import of machinery and equipment for the qualified investments (Under the VAT Code, importation of machinery and equipment under an IIC is not subject to VAT, as well as local purchases of machinery and equipment).

**Corporate tax reduction:** Statutory corporate tax rate is 20%. Regional and sector-based, prioritized, large-scale and strategic investments are entitled to benefit from corporate tax reduction limited to the tax savings that reach the investment contribution rate. Government provides a corporate tax reduction from 50% up to 90% depending on the location and the amount of the investment

**Social security employer premium contribution:** Social Security employer premium incentive is granted from 2 years to 10 years, depending on the location of the investment and limited to the premiums applicable to minimum wage ceiling (monthly). The incentive amount is also limited to a percentage of the actual investment amount which should be checked for each investment project eligible for this incentive.

**Social security employee premium contribution:** This incentive is provided only for the investments in the 6<sup>th</sup> region limited to 10 years and to the premium contribution corresponding to the minimum wage amount.

**Allocation of Land:** Land can be provided to the investors as a right of easement or usage right for 49 years by the Ministry of Finance. (Subject to the provisions of Law no. 4706)

**Interest support on financing:** Government contributes also to interest payments on the investment loans with a maturity of at least one year granted in the scope of incentive regime. Interest support is limited to 70% of the total projected investment amount registered on the IIC and granted only to the investments in the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> regions.

Interest support is granted in a range of 3 to 7 points for Turkish Lira denominated loans and up to 2 points for foreign currency and foreign exchange loans. The maximum amount of interest support among investments other than strategic investments is TRY900 thousand which is provided for investments in the 6<sup>th</sup> region. Interest support for strategic investments is the highest with a limitation of 5% of the fixed investment amount but can reach up to TRY50 million.

**Income withholding tax:** This incentive is granted to investors only for the investments in the 6<sup>th</sup> region limited to 10 years.

**VAT refund:** This incentive is granted to investors for investments with a minimum fixed amount of TRY500 million and limited to the refund of non-recoverable VAT with respect to the construction part of the investment. This incentive will be granted to the investors until 31 December 2023.

## 2.4 “Super incentives”

With the Super Incentives a flexible incentive system has been initiated. The new model is a very important milestone where the development of our investment incentive system is concerned. Through this model, a special incentive system unique to each investment project put forward for support can now be developed.

The programme envisages a project basis support which will enable a flexible and customized incentive mechanism to the qualified investments. The qualification of an investment will be determined based on whether these investments meet the current or future requirements of Turkey in line with the targets set in the development plans and annual programs and/or whether they could ensure continued supply, reduce dependence on foreign sources, achieve technologic transition, be innovative, and add value as well as being R&D focused.

As this incentive mechanism is a part of Incentive Regime, investors are required to obtain an Investment Incentive Certificate from the Ministry of Economy in order to benefit from the incentives.

The incentives granted to the investors in the scope of “super incentives” mechanism can be summarized as follows.

- VAT and customs duty relief
- VAT refund possibility
- Reduced tax rates or tax exemptions (corporate tax)
- Social security employer premium support
- Income withholding tax support
- Qualified personnel salary support
- Interest support or Government grants
- Capital contributions
- Support on energy expenses
- Government purchase guarantee
- Land allocation and free of charge transfer of the land
- Infrastructure support
- Facilitation in bureaucratic process

It should be noted that Ministry of Economy is the authority to evaluate the projects and grant the incentives/supports (all or limited) to the investors for the qualified investments.

## **2.5 “Centre of Attraction” Programme**

Turkish Government recently (November 2016) announced a new incentive programme covering 23 comparatively distressed cities. The programme aims to balance the development level within the regions through increase in employment, production and exports and vitalising the investment environment in relatively less developed regions.

The incentives granted to the investors in the scope of “centre of attraction” mechanism can be summarized as follows.

- Advisory services support,
- Turnkey factory building construction support,
- Interest-free investment loan support,

- Low-interest operational loan support,
- “Production Facility Relocation Support” for investors who wish to relocate their production facilities, which are still in operation, from provinces that are designated by the Council of Ministers, to those provinces that are covered under the Attraction Centres Program
- Supports for call centres and data storage centres,
- Allocation of treasury land for construction of “call centres and data storage centres”,
- Allocation of idle public buildings pertaining to public, local administrations, state economic enterprises and other state institutions and organisations for use as call centre and data storage centre,
- Call centre and data storage centre building construction support,
- “Call centre and data storage centre investment support” covering the supports that will be provided for the telecommunication infrastructure that is required in call centres and data storage centres
- Additional energy support for data storage centres.

Basic conditions to benefit from the supports offered under the program;

Incentives in this group will be offered to over TRY 2 million in investment, which promises to provide at least 30 new jobs.

- For call centres, at least 200 new employment agreements must be signed.
- New data storage centre incentives cover the investments that are no smaller than 5.000 square meters of land, and that meet certain technical criteria/certifications.
- In order to benefit from production facility relocation support, the primary condition is that the facility has been in operation for the last two years. Meeting this condition, on the other hand, would not be sufficient alone. Additionally, relocation must be completed within two years following the date that CMD is in effect, and it must be undertaken that 200 people will be employed after relocation.

Both individuals and corporations can benefit from this programme.

It should also be noted that this programme is still a part of Investment Incentive Regime however, will be implemented through Development Bank of Turkey. To benefit from this programme, the application should be done to Development Bank of Turkey and local development agencies.

## **2.6 Incentives regarding Research, Development and Design Activities**

Basic incentives and supports set forth under the Law No. 5746 pertaining the Support of Research and Development Activities for the R&D investment projects are as follows;

- 100% of all eligible R&D and innovation expenditures made within technology centres, R&D centres (which should employ at least 15 (may increase to 30 for specific sectors) full-time equivalent R&D personnel), R&D and innovation projects supported by governmental institutions, foundations established by law, or international funds and design expenditures made within design centres (which should employ at least 10 full-time equivalent design personnel) and design projects supported by the above institutions can be deducted from the corporate income tax base. 100% deduction can be increased to 150% through satisfaction of certain criteria.
- Salaries of R&D, design and support personnel are exempt from income withholding tax at the different percentages (80%-95%) depending on their doctorate diploma, master's degree and bachelor's degree.
- 50% of the employer's contribution of social security premiums is supported by the Ministry of Finance for each R&D, design and support personnel.
- All documents made out regarding R&D, innovation and design facilities within the scope of the Law No 5746 (R&D Law) are exempt from Stamp Tax.

## 2.7 Incentives for Technology Development Zones

- Income derived from software, design and R&D activities performed in the Technology Development Zones (“TDZ”) by the taxpayers (doing business in these zones) are exempt from income and corporate income tax.
- Salaries of R&D, design and support personnel related to the R&D, design and support activities in these zones and out of the zones (limited to certain personnel and applicable to certain portion of income) are exempt from income tax and stamp tax.
- 50% of the employer’s contribution of social security premiums is supported by the Ministry of Finance for each R&D, design and support personnel provided that their salaries are exempt from income tax.
- Delivery of goods and services which are produced exclusively in these zones and in the form of system management, data management, business applications, industrial, internet, mobile and military command control application software are also exempt from VAT.

## 2.8 Incentives for Free Trade Zones (“FTZ”)

Turkey aims to encourage production and export activities, fasten the foreign capital inflow and technology in Turkey as well as developing the international trading activities through the grant of these incentives to investors.

Investors should obtain a special license to be able operate in the FTZs. These licenses are provided for a period from 15 years to 45 years based on the type of the operator (e.g. lessee, manufacturer, investor, etc.)

The following incentives are granted to investors investing into the Free Trade Zones. These incentives are applicable until the end of the fiscal year in which Turkey fully accesses to the EU:

- The income derived from the sale of goods that are manufactured by license holders in FTZ is exempt from income or corporate income tax (Corporate income tax exemption does not cover the dividend distributions). Moreover, income derived by the license holders having a valid license obtained before February 6, 2004 can also benefit from corporate tax exemption until the expiration date of their licenses.
- The salary payments made by taxpayers operating in FTZ to their employees are exempt from income tax, provided that the taxpayers export at least 85% of annual production (i.e. FOB values). (Council of Ministers is authorized to decrease or increase this rate).
- The documents and transactions regarding operations in FTZ are exempt from stamp tax and charges.
- In addition to the abovementioned incentives, the delivery of goods and performance of services in free trade zones are excluded from VAT under VAT Code without any time limitation.



# 3. Foreign Trade & Customs

## 3.1 Foreign Trade Legislation

Some of the applicable laws that regulate foreign trade activities are:

- Customs Law No: 4458
- Customs Regulation
- Regulation regarding AEO (Regulation Regarding Simplification of Customs Operations)
- Import Regime Decree
- Export Regime Decree
- Law on the Prevention of Unfair Competition in Imports No: 3577
- Law on Regulation of Foreign Trade No: 2976
- Decree on the Regime of Technical Regulations and Standardization
- Free Trade Zone Law No: 3218
- Combating with Smuggling Law No: 5607
- Value Added Tax Law numbered 3065
- Special Consumption Tax Law No: 4760

## 3.2 Customs Regimes and Synopsis of Customs Transactions

In Turkish Customs Legislation, there exist 8 customs regimes which are:

- Release For Free Circulation Regime
- Transit Regime
- Customs Warehousing Regime
- Inward Processing Regime
- Processing Under Customs Control Regime
- Temporary Admission Regime
- Outward Processing Regime
- Exportation Regime

Established companies with a valid tax number can perform importation/exportation. Exporters should also be a member of relevant exporters union. After a customs declaration is submitted by customs broker, computer system evaluates the data and designates a line for the transaction.

Basically, there are four lines:

- Red line (means physical control/inspection and document control)
- Yellow line (means document control)
- Blue line (means deferred control i.e. simplified procedure)
- Green line (means no control)

Depending on the goods, their origin and regime, some documents should be submitted for import customs clearance: commercial invoice, pro forma invoice (when final commercial invoice does not exist at the time of entry); A.TR, EUR.1, Form A or EUR-MED if applicable; depending on the consignment freight and/or insurance invoice, Certificate of Origin if applicable, Value Declaration Form, Packing List, Inspection/ Control/Surveillance Certificate etc. (if importation is subject to certification).

Some of the documents that should be submitted for export customs clearance are: commercial invoice, A.TR if applicable, packing list etc. Customs Code Article 60 and Customs Regulation Article 114 provide more details about documents that should be attached to customs declarations. Specifications related to customs duty, excise duty and documentations such as required certificates are designated according to HS number of product (12-digit code is used in Turkey).

### 3.3 Turkey and the EU

After the EU Turkey Association Agreement of 1963, Turkey signed a Customs Union agreement with the EU in 1995 which seeks to promote trade and economic relations. Turkey is a candidate country to EU since 1999 and an accession country since 2005.

The EU and Turkey have a profound trade relationship. The EU ranks number one in both Turkey's imports and exports, while Turkey ranks 6th in the EU's top import and 4th in export markets. Textiles,

machinery and transport equipment, plastics and rubbers and manufactured goods dominate EU imports from Turkey. Main EU export to Turkey are machinery and transport material, chemical products, plastics and rubbers and manufactured goods. (European Commission Trade, 2015)

The customs union is based on free circulation of goods and preferential treatment is applicable for industrial goods and processed agricultural goods (Customs Union between EU and Turkey doesn't cover agricultural goods, services and ECSC goods). According to Council Decision about Rules of Implementation Customs Union between Turkey and EC numbered 2006/10895, in order to enjoy preferential treatment goods that should be delivered directly to Turkey with an A.TR Certificate (this is a movement certificate rather than a certificate of origin). But, if it is necessary to deliver over 3rd country, goods should be under customs observation of the country and it should be proved to Turkish Customs Authorities that the goods are not further processed in 3rd countries. The information and description of goods on the invoice and customs declaration should correspond with the information on the A.TR certificate (an A.TR certificate should be submitted to customs administration within 4 months and if it is issued retrospectively or it is duplicated, this should be indicated on the remarks section of the certificate).

On the other hand, Turkey has signed Free Trade Agreement with EFTA (Norway, Iceland, Switzerland and Liechtenstein) and other various countries and 18 of these agreements are in force (including those with Republic of Korea, Chili and Georgia). Turkey also has a Preferential Trade Agreement with Iran since 1st January of 2015.

### **3.4 Turkish Import Regime**

The Import Regime reflects both Turkey's international rights and obligations and the country's economic needs. The Import Regime Decree is prepared every year, published in the official journal by December 31 and put into force by January 1. Import Regime Decree indicates the rates of the customs duties separately for countries and country groups and the products are classified under six lists which are:

- Agricultural products (List: I)
- Industrial products (List: II)
- Processed agricultural products (List: III)
- Fish and fishery products (List: IV)
- Suspension list (List: V)
- List of goods used in civil aircraft eligible to relief from customs duties (List: VI)

### **3.5 Customs Valuation**

The customs value of goods is determined to apply ad valorem rates of customs and excise duties. i.e.; VAT, SCT, anti-dumping duties and some other applicable funds. Turkey accepted provisions of the WTO Agreement on Customs Valuation. Customs Valuation is regulated between articles 23 – 31 of Customs Law. The law primarily defines the customs value as the transaction value of imported goods which is the price actually paid or payable for the goods considering necessary adjustments of the import related costs and charges. Other components of customs value; such as TP adjustments and Royalty payments have a complex structure that has to be evaluated carefully regarding customs value.

### **3.6 Anti-Dumping and Anti-Subsidy Practices**

Ministry of Economy carries out dumping and subsidy investigations relating to unfair pricing practices of companies or countries exporting to Turkey. According to results of the investigation an anti-dumping duty or countervailing duty may be set up over goods of such companies or such countries.

### **3.7 Resource Utilization Support Fund (RUSF)**

RUSF on importation depends on the terms of payment. RUSF is applicable on importations which have the defined terms of payments in relevant regulations. There are some applicable exemptions such as importation via an incentive certificate, inward

processing regime or temporary importation regime. According to article 3/d of Council of Minister's Decree of RUSF numbered 88/12944 dated 12 May 1988, imports conducted through acceptance letter of credit, deferred payment letter of credit or cash against goods shall be subject to RUSF which is calculated over the amount of invoice. The current RUSF rate is 6% for importation on credit basis. Furthermore, RUSF is accepted as import duties. Please note that regarding the Ministers' Decree numbered 2015/7511 and dated 10.04.2015, import RUSF rate has been determined as 0% on various products basing on their HS Codes.

### **3.8 Authorized Economic Operator (AEO)**

As of January 2013, Turkey has launched Authorized Economic Operator (AEO) Program which facilitates foreign trade operations and minimize lead times and costs. The certificate privileges involve local clearance, authorized consignor status, using lump sum guarantees, issue A.TR circulation, issue EUR.MED invoice declaration, submit incomplete declaration& documents, simplified (FAS) declaration, lab report facilitations, blue-line facilitations on FAS declarations, less documentation and physical controls, control priorities.

AEO certificate will be obtained by reliable Turkish resident companies, operating at least 3 years who has adequate traceable documentation, financial solvency and practicing safety and security measures. The AEO program brings recognition and competitive advantage to companies in the long run.



# 4. Company Law Requirements

## 4.1 Available Business Structures

Individuals and legal entity investors intended to conduct business activities in Turkey realize their business activities in various legal forms. While deciding among those commercial structures, factors such as business plan, exit strategy, organizational structure, minimum capital, shareholders' responsibility, liability and responsibility of the executives, audit and penalties prescribed are taken into account.

The commercial structure which investors may prefer shall be determined completely according to their needs. In other words, there is not only single structure applicable and accurate for each private investor, but tailored solutions for each of them.

Most commonly, investors tend to incorporate companies, branches or liaison offices in Turkey to conduct their business activities. For the corporate entities incorporated in Turkey, the Turkish Commercial Code numbered 6102, which is in force as of July 2012, shall be applicable.

## 4.2 Subsidiary Types: Joint Stock Corporations (JSC) and Limited Liability Companies (LLC)

The Joint Stock Company (in Turkish: Anonim Şirket, A.Ş.) and the Limited Liability Company (in Turkish: Limited Şirket, Ltd.) are the most common forms of companies under Turkish Commercial Law.

Although, the investors are free to opt for the business structure they wish to pursue, some of the business are subjected to compulsory establishment types as per the relevant applicable laws and regulations. Some of the businesses that needs to be established as joint stock companies may be listed as follows:

- Banks
- Insurance Companies
- Financial Leasing Companies
- Factoring Companies
- Holding Companies
- Stock exchanges
- Venture Capital Investment Companies

### **4.3 Joint Stock Companies (JSC)**

#### **Number of shareholders**

A joint stock company may be formed by at least one shareholder and such shareholders may be real persons or legal entities as well as residents or non-residents. There is no upper limit to the number of shareholders. However, JSCs with more than 500 shareholders are subjected to Capital Markets Board regulations.

#### **Shareholders' liability**

Liabilities of the shareholders of JSCs are limited with the capital they have contributed.

#### **Articles of association**

Documents of incorporation, mandatory information in the articles of association and incorporation procedures have been regulated under TCC in detail. Primarily, the founders shall prepare the articles of association, which include the provisions on the company's basic structure and bodies in which the unconditional payment of whole capital is undertaken; afterwards, the articles of association is submitted to the system named MERSIS (The Central Registry System) and either the founders' signatures in these articles of association affixed and certified at the notary public or signed in front of the trade registry officer. The company deemed to acquire its legal personality after its registration at the relevant trade registry.

## Share Capital

The minimum capital required for the incorporation of JSC is TL 50.000-. In JSCs adopting the registered capital system where the board of directors is authorized to increase the capital up to the prescribed upper limit, the start-up capital cannot be less than TL 100.000-. Furthermore, for the JSCs which are subjected to a special legislation (banks, insurance companies, power producers etc.), a higher minimum capital amount may be required.

Items that can be contributed as capital: Assets which can be contributed in JSCs as capital are as follows;

- Intellectual property rights
- Movables and all kinds of immovable
- Usufruct rights of movables and real estates
- Commercial enterprises
- Assets used under a right such as transferable electronic media, domains, names and marks
- Mine licenses and other similar rights which have such economic value
- Any kind of asset which can be transferred and evaluated in cash

Properties upon which right in rem, pledge or injunction is established; performances of service; commercial reputation; and undue receivables cannot be contributed to JSCs as capital.

The properties, including, but not limited to intellectual property rights and virtual platforms and media, which can be transferred or assigned in cash, with no limited real rights or attachment or injunction or other encumbrances thereon, may be submitted as capital in kind.

## Payment of the Capital

It is not mandatory to wholly pay the capital of JSC in cash before the registration. At least 25% of the cash capital contributed to the JSC shall be paid to a blocked account to be opened in a bank before the registration at the trade registry. This amount blocked at the bank released only after the JSC's registration is authenticated by a registry letter or if the company is refunded to its owners upon a confirming letter by the registry office (within 3 months) if the company is not incorporated. For the payment of the portion up

to 75% of the cash capital, which is not paid during incorporation, parties may decide on a maximum term of 24 months as of the date company is registered.

### **Bodies of the Company**

Shareholders of the JSC are not involved in the company's daily activities in connection with their shareholding capacity. The board of directors ("BoD") that will manage the JSCs is elected by the general assembly, and the decisions on the JSC's basic structure are also taken by the general assembly.

#### **i. General Assembly**

**Meetings:** JSC's general assembly may convene ordinarily or extraordinarily. Ordinary general assembly meetings are held within 3 months as of the end of each term of activity, and negotiations are conducted and decisions are taken in this meeting for the election and release of the board of directors, financial statements and annual report, how profit is utilized and other necessary issues. Extraordinary meetings on the other hand are held when it is deemed necessary (such as advance dividend distribution, loss of capital, capital increase etc.).

**Attendants:** The primary attendants of these meetings are the shareholders. In addition to the shareholders, representative of the Ministry of Customs and Trade shall also attend the general assembly meetings of banks, financial leasing companies, factoring companies, insurance companies, companies subject to Capital Markets Law (companies that issue capital market instruments, offer them to public, investment companies, portfolio management companies etc.), and to regular JSC general assemblies provided that certain types of decisions will be negotiated (i.e. capital increase etc.).

**Duties and authorities:** There are some inalienable duties and authorities of general assembly, which may be exemplified as follows:

- Amendment of the articles of association
- Appointment of board members, determining their terms, remunerations and rights such as attendance fee, bonus, premium, deciding on their release and dismissing them.

- Termination of the company.
- Wholesale of a substantial amount of company's assets.

## ii. Board of Directors

Management: Board of directors is the main body which ensures the management and representation of the JSCs. The activities which the JSCs will conduct in order to achieve its goals are planned and implemented by the board of directors.

Number of members: Board of directors may consist of one or more members.

Appointment of the members: The members are elected under the articles of association during incorporation and by the general assembly resolution afterwards.

Qualifications: Being a member does not require shareholding. Legal persons may become members as real persons. Industry-specific legislations may require special conditions for membership.

Term of office and termination of membership: Term of office of board members shall not exceed 3 years. The members whose term has expired may be reelected. Membership is terminated due to a reason such as the expiration of the term of office, resignation, discharge or death.

Inalienable duties and authorities: Some of the administrative duties and authorities granted to the JSC's board of directors may not be transferred. The major inalienable duties and authorities may be exemplified follows;

- High-level management of the company and providing the instructions about them
- Determining the management structure of the company.
- Establishing the necessary order for accounting and financial audit, and financial planning to the extent required by the company's management.
- Keeping the share ledger, board of directors' resolution ledger and general assembly's meeting and negotiation ledgers.
- Notifying the court in case of indebtedness.

Transfer of management: All duties and authorities of the board of directors apart from the inalienable duties and authorities stipulated in the TCC may be transferred to one or some of the members or third parties under a board decision to be taken in the framework of an internal directive issued on the basis of a provision in the articles of association that allows transfer.

Meetings: The board of directors may gather at the company's headquarters or any other place when necessary. Board of directors may also meet electronically under an optional arrangement made in the articles of association.

Meeting and decision quorum: Meeting quorum is the majority of members, while decision quorum is the majority of members attending the meeting. These quorums may be increased by the articles of association.

## Liquidation

The TCC regulates the legal framework for the liquidation of the joint stock companies. The companies may resolve to enter into liquidation, if they decided to do so due to economic, financial, managerial, operational, strategic reasons.

Pursuant to the TCC, liquidation shall be conducted by the Board of Directors unless liquidator is appointed by the articles of association or a General Assembly resolution. Liquidator may be a shareholder or any other third party. At least one of the liquidator having the representative authority shall be a Turkish citizen and reside in Turkey.

During the liquidation process, company shall maintain its corporate entity to the extent required by the liquidation activities, however the phrase "under liquidation" shall be added to the trade name of the company until the completion of the liquidation procedure.

The remaining assets of the company, after payment of its debts and the refunding of the share value to the shareholders are completed, shall be divided among the shareholders, in proportion to their contribution to the company's capital and privileges unless otherwise is stipulated under the articles of association. Distribution may only be realized after the six months (6) waiting

period, to be calculated as of the date that the last announcement to the creditors is made at the Turkish Trade Registry Gazette, ends. The completion of liquidation may take between 6 months to 12 months depending on the current structure of the company (i.e. debts, ongoing litigations etc.).

#### **4.4 Limited Liability Company (LLC)**

Relevant explanations under the JSCs shall be taken into account for the matters that are not addressed under this section.

##### **Number of shareholders**

An LLC may be formed by at least one shareholder and such shareholders may be real persons or legal entities as well as residents or non-residents. Number of shareholders are regulated to be maximum 50.

##### **Shareholders' liability**

LLC shareholders are liable to the company only with the amount of subscribed capital and in proportion to their capital contribution with regards to third party receivables. LLC shareholders are jointly and severally liable for public receivables such as taxes with their own/ personal assets. Such liability occurs only if the tax office cannot collect outstanding taxes from the assets of the company.

##### **Articles of association**

The articles of association of LLCs do not have any different characteristic than the JSC's, other than the amount of capital, number of shareholders, and names of corporate bodies.

##### **Share Capital**

The minimum capital required for the incorporation of LLC is TL 10.000-. Items that can be contributed as capital are the same with the JSCs.

##### **Bodies of the Company**

- General Assembly
- Board of Managers: Board of managers is the main body which ensures the management and representation of the LLCs.

## 4.5 Other Forms of Doing Business in Turkey

### Liaison / Representative Offices

A liaison office may be established in Turkey with the permission of the Ministry of Economy Incentive Administration and Foreign Investment Department (FID). Under the present regulations, a liaison office is not allowed to be engaged in any commercial activity. In other words, it cannot be authorized to do business and to conclude contracts. Therefore, for instance, a liaison office cannot issue invoices or proforma invoices. All expenses of the liaison office incurred in relation to running the office (including the salaries) should be met with the import of foreign currency sent by the parent company. Under the present regulations, regardless of nationality, remunerations to the employees of the liaison office shall be exempted from Turkish income tax as long as the payment of the salaries is from a foreign source.

In accordance with the latest amendments in the Communiqué related to Direct Foreign Investment Code, Liaison offices are granted with maximum 3 years permission upon first application.

### Branch

Under Turkish law, a Branch Office acts and operates in the name and on behalf of the head office (headquarters) of the company which they are associated with. Accordingly, rights and obligations stemming from actions and operations belong to the parent company but not the Branch.

The day to day activity of a Branch Office is run by its manager who acts on a power of attorney granted to him/her by the parent company.

In case a Branch Office is requested to be incorporated by a foreign firm, then a person who is residing within Turkey shall be appointed as a representative.

The branch will not have separate articles of association but the parent company's articles of association will be applicable. The Turkish Branch, therefore, will not have a separate legal personality.

At the operational stage, it may be more bureaucratic to run a branch since the change or authorization of the branch representative; increase of capital etc. requires parent's decisions. In other words, the branch will not have a separate shareholders' assembly, which will take the related resolutions for the operations of the company, but these should be executed by the board of the parent company of the Turkish branch.

The branches are subject to official liquidation process. Additionally, there will also be tax and accounting requirements to be fulfilled under the Turkish Law. In terms of corporate tax liability, branch is subject to same rates as a subsidiary company.

## **4.6. General Requirements for Joint Stock and Limited Liability Companies**

### **Company with Sole Shareholder**

Capital companies such as joint stock companies and limited liability companies may be established with a sole shareholder. Furthermore, the aforesaid companies which are already established shall be able to decrease the current number of shareholders to one shareholder through share transfers.

### **Moment of Establishment**

The moment of approval of articles of association by the notary public or signing the articles of association before the trade registry officer by the company founders shall be deemed as the establishment moment of the company. The moment of acquirement of legal personality will be the moment of registration with the Trade Registry.

### **Web Site**

Companies that are subject to independent audit shall be required to establish a website within 3 months as of their registration at the trade registry and to allocate a part of such website for publishing the legally required announcements.

### **Prohibition to Become Indebted to the Company**

The shareholders shall not be indebted to the company unless the following conditions are met.

Shareholders may be indebted to the company provided that they do not have any due debts arising from capital subscription, and the total profit of the company along with the free reserves are adequate to cover the previous year's losses.

### **Group of Companies**

"Group of Companies" and "Controlling Company" concepts are regulated under the TCC.

As per Article 195 of the TCC, if a company directly or indirectly;

- a) controls the majority of voting rights,
- b) is entitled to appoint number of members, which would suffice to establish a majority in the management body,
- c) has the capacity to exercise majority voting rights on its own or with other shareholders arising out of a contractual relationship entered into with the same; or
- d) controls another corporation via a contract or in any other manner,

it qualifies as a "Controlling Company" whereas the other company is "Affiliate".

If the principal place of business of one of these companies is located in Turkey, these companies form a "Group" and the TCC puts special responsibilities upon the Controlling Companies (i.e. illegal use of control).

The BoD of the Affiliate must prepare an affiliate report within the first three months of the year regarding the transactions conducted with the Controlling Company. This report shall be presented at the annual ordinary general assembly of the company.

### **Independent Auditor**

Under the TCC, companies are not obliged to have an internal auditor as a statutory organ. Companies to be subject to independent audit are determined by the Council of Ministers.

Independent audit involves the inspection to ensure the compliance with the Turkish Accounting Standards, Law and provisions of the Articles of Association regarding the financial statements. Financial statements and annual activity reports of the Board of Directors that are subject to audit however failed to be audited are considered to be non-existent. The auditor shall be appointed by the general assembly whereas the group auditor shall be appointed by the general assembly of the parent company. The requirement to appoint auditor has been in force since January 2013 in accordance with the implementation of the new TCC.

### **Independent Audit Requirement under the New Commercial Code**

As per the Amendment to the Council of Ministers Decision Regarding the Determination of Companies Being Subject to Independent Audit numbered 2016/8549 published in the Official Gazette dated 09.03.2016 to be effective as of 01.01.2016, companies must fulfill two of the following three criteria in two consecutive financial year, in order to be subject to independent audit:

- Total assets of TL 40.000.000 and above
- Annual net sales revenue of TL 80.000.000 and above
- 200 employees and above

Companies operating in specific fields are also subject to independent audit without considering the abovementioned general criterion. Those companies are mainly the ones operating in regulated markets such as Energy Market, Electricity Market, Petroleum Market, Insurance, CMB, BRSA etc.



# 5. Corporate Taxation

New Corporate Income Tax Code (Law Nr: 5520) has been announced in the Official Gazette dated 21 June 2006 and enforced as of 1 January 2006. The former Corporate Income Tax Code (Law Nr: 5422) dated 3 June 1949 and its annexes were abolished through enforcement of New Corporate Income Tax Code.

New Corporate Income Tax Code brought significant changes in the existing tax implementations and also introduced some new concepts into Turkish tax legislation. By virtue of the provisions of the new Code, Turkish corporate tax legislation has become more clear and objective with respect to particular anti-avoidance regulations, such as “thin capitalization” and “transfer pricing” in line with the international tax literature. On the other hand, the new Code introduced some new concepts into Turkish tax legislation such as “Controlled Foreign Corporation”, “Tax Heavens”.

## 5.1 Taxes on Corporate Income

### Companies Subject to Tax

The following entities are subject to taxes on income levied under the Corporate Income Tax Code, No. 5520

- (i) Companies with Share Capital: Joint stock companies (JSC), limited liability companies (LLC) and limited partnerships divided into shares and similar foreign companies incorporated under Turkish Commercial Code are considered as capital companies. Funds which are subject to regulation and supervision of Capital Markets Board and similar foreign funds are also included here.

- (ii)** Co-operatives: Co-operatives founded under Co-operatives Law or under its special regulations and similar foreign co-operatives
- (iii)** State Economic Enterprises: Commercial, industrial and agricultural organizations other than (i) and (ii) above, which are involved in continuous business activity and owned by or affiliated to central and local administrations, municipalities, and other public organizations.
- (iv)** Commercial, industrial and agricultural organizations other than (i) and (ii) above owned by or affiliated to foreign states, foreign state administrations and organizations are also treated as state economic enterprises.
- (v)** Economic entities owned by associations and charities: Commercial, industrial and agricultural organizations other than (i) and (ii) above, which are involved in continuous business activity and owned by or affiliated to associations and charities and similar foreign enterprises are economic entities run by foundations or associations. Unions are treated as association and congregations are treated as foundation.
- (vi)** Joint Ventures (JV) established between entities or individuals to render work with the objective of sharing profits under the joint responsibility are subject to corporate income tax.

State economic enterprises and economic entities run by foundations and associations, whether or not they have a) legal personality, b) independent accounting systems, or c) share capital or d) own business places and regardless of whether they are formed for the purposes of profit, are subject to taxes on income.

### **Territoriality**

Taxpayers whose legal or business seats are located in Turkey, are subject to corporate income tax on their worldwide income. In cases where both of the legal and business seats are not located in Turkey, the entity is qualified as non-resident in Turkey and will be subject to tax only on Turkish-sourced income.

The legal seat is determined in the Articles of Association and the business seat is the place, where business activities are concentrated.

### Taxable Income

Corporate income tax is computed through multiplication of corporate income tax rate and the fiscal profits generated within a fiscal year. Fiscal profits (i.e. corporate income tax base) is calculated by addition of non-deductible items to net business profits and application of exemptions and carried-forward loss figures to the business profits.

## 5.2 Allowable Deductions

The net business income is determined through deduction of business-related expenses from the gross income generated within a fiscal year. As a principal rule, the expenses incurred for the purpose of generating and maintaining business income are treated as deductible for tax purposes. Apart from this, other particular deductible expenses are listed, but not limited to below,:

- Management fee charges (in compliance with Turkish transfer pricing regulations) to Turkish companies by related parties (Please refer to section 7 for detailed information).
- Taxes imposed on goods, such as real estate tax, stamp tax, registration duties and municipal fees
- Royalty payments for the use of patents, copyrights, know-how and trademarks provided that they are determined on an arm's length basis
- A specific bad debt reserve is allowed, where:
  - (a)** The dispute on the receivable is under review by the Courts, or
  - (b)** The receivable has not been paid after a formal notarized or written request to pay,
  - (c)** Special reserve requirements for non-performing loans defined in the Banking Law and related regulations.

- Business-related representation and entertainment expenses
- Travel expenses (including meals and lodging) are deductible if they are incurred for business purposes and are reasonable as compared with the importance of business.
- Donations to governmental institutions, municipalities, villages, associations that pursue the public interest and foundations under the Civil Code with a tax exempt status granted by the Government, and organizations engaged with scientific research and development are deductible, up to 5% of taxable income of the relevant year
- All expenses and donations made for the construction of schools, health premises, dormitories, nursery schools, rest homes, rehabilitation centers, and all kind of donations and gifts made to these corporations for the construction of the mentioned premises or for the continuance of the activities of the existing premises
- Donations made in cash or in-kind via Prime Ministry upon receipt for the natural disasters decided to be helped by Board of Ministers
- Sponsorship expenses for amateur sport activities determined by the relevant laws and 50% of sponsorship expenses for the professional sport activities
- Employee salaries and payment to the chairman, directors and auditors are deductible. Payments may be in the form of allowances, fees, premiums and bonuses. Payments in kind are also tax deductible but are deemed as salary and taxed as such.
- Interest costs; either as a direct charge or as depreciation expense, when capitalized
- Undocumented expenses up to 0.5 % of the gross income realized in foreign currency related to export, construction and maintenance services performed outside of Turkey, and international transportations

- Fees paid to the Employer's Union are deductible with the condition that monthly fees paid should not exceed the daily total payment of salaries

### **Deduction of the Venture Capital Fund**

The amounts allocated as a venture capital fund will be deducted from taxable income starting from 01.01.2013.

Conditions for the deduction;

- The amount of funds allocated for the venture capital should not exceed 10% of the declared income, and the total amount of the fund should not exceed 20% of the paid in capital. (Both conditions must be satisfied)
- Investment should be made into venture capital investment funds or partnerships which are established or will be established in Turkey and subject to regulation and supervision of Capital Market Board until the end of the year of funds are allocated.
- The amount of allocated funds should be shown on the corporate tax return of the relevant year separately.

### **Deduction for services provided from Turkey to non-resident corporations and individuals**

The income derived from the services rendered in Turkey to non-residents which are solely benefited out of Turkey may be subject to a 50% deduction from corporate tax base. In case there is no sufficient corporate tax base for the deduction, the amount which is not deducted from the corporate income tax base cannot be carried forward.

The services within the context of this deduction are:

- Architectural, engineering, design, software, medical reporting, bookkeeping, data storage services and call center services
- Education and health services which are subject to relevant ministry's permission and supervision.

### Incentive for cash capital increases

Effective from 01.07.2015, stock corporations (except for those operate in finance, banking and insurance sectors) will be able to deduct 50% of the interest to be calculated over the cash capital increases registered in Trade Registry from their taxable income. The deductible interest amount will be calculated by using the latest “annual weighted average interest rate applied over the “TRY” denominated commercial loans granted by banks” to be announced by Turkish Central Bank and for the period from the capital increase to the last day of the financial year.

## 5.3 Disallowable Deductions

The non-deductible expenses are also separately determined in the tax laws, but not limited to below:

### Disguised Profit Distributions through Transfer Pricing

If a taxpayer entity conducts transactions with related parties, where the prices are not set in accordance with arm’s length principle, the related profits are considered to be distributed in a disguised manner through transfer pricing. Such disguised profit distributions through transfer pricing are not treated as tax deductible for corporate income tax purposes. (Please refer to section 7 for further information).

### Cost Allocation

Interest, commissions etc. paid to a parent company or branches outside Turkey for purchases and sales carried out on behalf of a non-resident company in Turkey and amounts allocated to meet the expenses and losses of the parent company and its branches outside Turkey, are not tax deductible with the exceptions of;

- amounts related to the generation and continuation of income in Turkey and allocated in line with the cost allocation keys determined in accordance with the arm’s length principle, and
- travel expenses incurred by authorized persons sent from foreign countries in connection with the auditing and supervision of a branch in Turkey.

### Thin Capital

Interest, foreign exchange losses and other similar expenses related to the borrowings from related parties which are regarded as thin capital are treated as non-deductible expenses for corporate income tax purposes.

The Corporate Tax Law imposes a specific debt/equity ratio of 3:1 for consideration of thin capital. If the borrowing obtained directly or indirectly from shareholders or persons related to shareholders exceed three times the shareholders' equity of the company at any time during the relevant year, the exceeding portion of the borrowing will be treated as thin capital.

If the shareholder (or related party) providing the loan is qualified as a bank or a financial institution which operates in line with its own field of activity, then the 50% of the borrowings obtained from these will be taken into consideration in the calculation of debt/equity ratio - hence the allowable debt/equity ratio will be increased to 6:1.

However, borrowings obtained from the intra-group credit companies which are only financing the relevant group companies cannot be taken into consideration as 50% in the calculation of debt/equity ratio.

Loans mentioned below (but not limited to) will not be qualified as thin capital;

- Loans obtained from 3<sup>rd</sup> parties against non-cash guarantees provided by shareholders or the persons related to shareholders,
- Loans obtained by companies' subsidiaries, shareholders or related persons from the banks and financial institutions or from the stock markets that are transferred wholly or partially to the company with the same term and conditions.

Excluding foreign exchange differences, the interests paid or calculated and other similar expenses over the thin capital (that exceeds the 3:1 debt equity ratio) is treated as dividend distributed to shareholders as of the last day of the accounting period in which thin capital conditions are satisfied.

### Financial Expense Restriction

Effective from 01.01.2013, a certain percentage of the financial expenses (i.e. interest, commission) incurred over the borrowings from external sources exceeding the shareholder's equity of a Turkish company may be regarded as disallowable expense. The Council of Ministers is authorized to determine the percentage up to 10% and re-determine the rate per sectors. The credit institutions, financial institutions, leasing, factoring and finance companies are excluded from this application. Since no rate has been determined by the Council, the legislation is not applicable yet.

## 5.4 Exemptions

Exemptions are separately determined in the tax laws, but not limited to below:

### Dividends – domestic participation exemption

Dividends received by a Turkish company and venture capital investment funds/ partnerships from a resident corporate taxpayer are not subject to corporate income tax. The exemption is also available for non-resident companies to the extent that the dividends are attributable to a Turkish permanent establishment or branch. Dividends received by the companies from founder's shares that give a participation right to the profit of another resident company and from other redeemed shares are also exempt from corporate taxation. Capital gains are not covered under this exemption.

### Dividends – foreign participation exemption

Dividends received from non-resident subsidiaries are exempt from corporate tax upon provision of below conditions together.

- (i) the participation rate should be at least 10 %,
- (ii) the participation should have been held at least for 1 year,
- (iii) overall tax burden over these dividends must be at least 15 %, and
- (iv) gain should be transferred to Turkey until the date of filing of corporate tax return of the fiscal year in which the relevant gain is obtained.

Capital gains upon disposal of shares in foreign participations are not covered under this exemption. Under the same conditions, foreign branch profits may also be eligible for this exemption.

### Capital gains exemption on the disposal of participation shares Foreign participation shares

The capital gains derived by a resident company from the disposal of the shares of participations/subsidiaries whose legal and business centers are located out of Turkey (i.e. shares of the foreign subsidiaries) are exempted from corporate tax, where all the following conditions are satisfied all together;

- At least 75% of total assets of the Turkish company, other than cash equivalents, should be composed of participation in foreign subsidiaries shares at least for an uninterrupted period of 1 year as of the date of the gain obtained,
- A Turkish joint stock company must hold at least 10% of shares of these foreign subsidiaries,
- The foreign subsidiary must be a company in the status/nature of a joint stock or a limited liability company,
- The shares of the foreign subsidiary must be held by the resident joint stock company at least for 2 full years.

### Domestic participation shares

75% of capital gains arising from the disposal of immovable properties and participation shares, founder's shares, pre-emptive rights and redeemed shares in other companies are exempt from the corporate tax. Major requirements are (i) assets sold should have been held at least for two years; (ii) the exemption is applied in the year in which sale occurred and capital gain benefit from the exemption should be kept in a special reserve account at least for five years (iii) sales revenue should be collected until the end of second calendar year following sale year (iv) exempted amount cannot be transferred to another account (other than paid-up capital) or withdrawn from company within five years. In the case that company is liquidated within these 5 years' time, the exempted amount should be subjected to corporate tax.

### **Exemption for the gains derived from non-resident place of business and legal representative**

Gains derived by the companies through the place of business or legal representatives abroad are exempted from corporate tax upon fulfillment of certain conditions. These are, generally, among others, (i) gains should be subject to at least 15% tax burden in accordance with the tax legislation of the relevant countries, (ii) gains should be transferred to Turkey until the date of the filing of the corporate tax return of the fiscal year in which the relevant gain is obtained.

### **Exemption on Emission Premiums**

New share issue premiums (Agio), which represent the difference between the nominal and sale values of shares issued by joint-stock companies, are exempt from corporation tax.

### **Exemption on Off-shore Construction and Technical Services Income**

Offshore income from construction, repair, maintenance and technical services is exempt from corporate tax.

### **Exemption on Portfolio Management Income**

Portfolio management income by securities investment funds and companies, the profits of real estate investment funds and companies; venture capital investment funds and companies; pension, housing and wealth financing funds; and the portfolio management profits obtained by investment funds or companies which have portfolio based on the gold and precious metals dealing in exchange markets founded in Turkey are exempt from corporate tax.

### **Exemption on Education Services Income**

Profits derived from education and rehabilitation services are exempt from corporate tax for a period of 5 years starting from commencement of such businesses under certain conditions.

### **Investment Incentive Allowance**

Investment Incentive Allowance is a mechanism which enables taxpayers to deduct some of their eligible investment expenditures against their fiscal profits. In the absence of any fiscal profits, the

carried forward investment allowance was being allowed to be carried forward for utilization against the future fiscal profits without any time limitation.

#### **Exemption for the income derived from industrial property**

50% of the income derived from the leasing, transfer, sale, mass production in Turkey and marketing of the inventions of the corporate taxpayers, which have patent or utility model registration, and which result from research, development, innovation and software activities carried out in Turkey is exempted from corporate tax as from 01.01.2015, provided that certain conditions are satisfied. If the invention is used in the manufacturing of a product, 50% of the income derived from the sale of this product (limited to the portion of income attributable to the patented innovation) can also be tax exempt.

#### **Regional Headquarters**

The income of the Regional Headquarters, established upon the approval obtained from Ministry of Finance, fulfilling the conditions below are not subject to Corporate Income Tax in Turkey:

- The expenses of the Headquarter shall be covered by the non-resident corporations
- The expenses shall not be reflected into the accounts of an entity resides in Turkey

## **5.5 Corporate Taxation**

#### **Computation of Corporate Income Tax**

The corporate income tax rate is 20 %. Corporate income tax is calculated over annual fiscal profits of the taxpayer and each taxpayer is taxed on stand-alone basis. Tax grouping is not allowed in Turkey.

#### **Advance Corporate Income Tax**

All resident and non-resident companies, who generate commercial or professional income and who are obliged to file annual corporate income tax return, are also required to file advance corporate income tax return and be subjected to corporate tax at 20 % on the basis of their actual quarterly profits.

Advance corporate income tax return is paid during the year is imputable against the final taxes calculated on the annual corporate income tax return. Any excess payment may be offset against other tax liabilities, and in the absence of such liabilities it is refundable upon the claim within one year.

### **Tax losses**

A loss incurred in any financial year can be carried-forward for 5 years against future profits for purposes of corporation tax. Tax losses cannot be carried back.

### **Tax Returns and Payments**

The normal fiscal year-end is December 31st. Where the calendar year is not appropriate due to the nature of business, taxpayers may opt an alternative period to determine their fiscal year upon the permission to be obtained from the Ministry of Finance.

Annual corporate income tax returns must be filed, within the period from 1st to 25th days of the fourth month following the end of the fiscal year and corporate income tax is payable (after the offset of ACIT and other available tax credits) until the end of the month in which the tax return is filed.

Advance corporate income tax return must be filed by the 14th of the second month following the quarter end and is payable on the 17th of the same month.

Withholding tax on dividends must be filed by the 23rd of the month following the dividend payments to shareholders and paid on 26th of the same month.

### **Advance Profit Distribution**

Limited liability and joint stock companies incorporated in accordance with the Turkish Commercial Code may distribute profits reported in their interim/quarterly financial statements as per New Turkish Commercial Code.

In order to distribute advance profits during the year, companies should report profits during first, second and third advance tax periods and take a decision in the general assembly. It is envisaged

that up to 50% of the related periods' profits can be subject to distribution after the offset of taxes and previous years' losses and provisions for legal reserves.

In case the advance profit which is distributed during advance corporate tax quarters exceeds the final distributable dividend amount, the exceeding amounts will be settled from the legal reserves, if any. Also, in case the amount of legal reserves is not enough to offset the distributed advance dividend amount, the overpaid amounts will be rendered to the company by shareholders. Companies are obliged to offset the distributed advance profits to the relevant year-end profit before making any further dividend distribution.

### **Withholding tax on dividends**

When dividends are paid out, the company is required to make a withholding from the dividends. The rate for dividend withholding tax is 15 %. Dividends paid to a Turkish resident entity (i.e. Turkish holding company) or a Turkish branch of a foreign company is not subject to the withholding tax. Although the local rate for dividend repatriation is determined as 15%, the rate can be reduced through tax treaty provisions.

### **Withholding tax on branch profits**

There will be a withholding on the branch profits of non-resident companies upon remittance of such profits to the headquarters. The rate of withholding tax is 15 % which is applied on the distributable branch profits after the deduction of corporate income tax.

### **Controlled Foreign Corporation (CFC)**

The profits of foreign companies controlled by tax resident companies or persons by means of the direct or indirect and separate or joint ownership of at least 50% of the capital, dividends or voting rights are subject to corporate income tax in Turkey irrespective of whether distributed or not, if all of the following conditions are met:

- At least 25% of the gross revenue of CFC must be composed of passive income such as interest, dividend, rent, license fee, security sales gain etc.,

- The CFC should be subject to a tax burden lower than 10 % over its commercial income in its country,
- The CFC's total gross revenue in the relevant year should exceed the foreign currency equivalent of TRY 100,000.

The highest rate owned at any time within the relevant fiscal year should be taken into consideration as "Control Rate". If CFC distributes dividend over its profit, dividends that has already been taxed in Turkey will not be subject to any additional tax in Turkey. However, profits which has not been previously taxed in Turkey will be subject to corporate tax when distributed. Taxes paid by CFC over its related profit in foreign countries will be offset against the corporate income tax calculated over this profit in Turkey.

### Foreign Tax Credit

Taxes paid abroad on profits transferred back to Turkey may be credited against corporate income tax, but only to the extent that they do not exceed local corporate income tax calculated thereon.

### Withholding Taxes Applicable on Certain Payments

In general, the Turkish Taxation System has the following types of withholding taxes applicable to corporations.

### Multi-year Construction or Repair works

Progress payments for the construction and repair works lasting more than one year are subject to 3% withholding. Such construction works is taxed on completed project basis, and the amount of withholding taxes paid on progress payments are deducted from the tax due at the end of the construction.

### Payments to Non-resident Entities

The following payments to non-resident companies are subject to withholding tax;

- Progress payments for the construction and repair works lasting more than one calendar year at 3%
- Professional fees at 20%,
- Rentals and royalties at 20%,
- Dividends and interests at 15%,
- Sales proceeds of copyrights, patents, trademarks etc. at 20%.

The rates applicable for payments to non-residents can be seen in Appendix IV in detail.

Withholding tax will not be applied to principal, interest and dividend payments for the borrowings obtained from foreign financial institutions and also insurance and reinsurance payments.

Withholding taxes over payments made to CFCs in line with the above regulation can be offset against the corporate income tax calculated over CFC's profit included in the tax return in Turkey.

### Payments to Tax Heavens

All sorts of payments made to the entities (including business places of resident companies in the relevant countries) that are established or operating in the countries which are announced by the Council of Ministers by taking into consideration whether there is an unfair tax competition or not and the exchange of information, would be subject to withholding tax at a rate of 30 % until a new rate is determined by the Council of Ministers irrespective of the fact that;

- The said payments are in the scope of tax or not or,
- The entity that receives the payments is a taxpayer or not.

On the other hand, the Council of Ministers has authority to amend the above mentioned rate within certain limits and might use its authority for each sort of payments or for each line of activities and sectors separately.

### Payments to Resident Companies

The following payments to resident companies are subject to withholding tax:

- Interest on all types of bonds and bills
- Capital gains derived from the sale of bonds and bills issued on or after 1.1.2006 and from the sale of stocks quoted in Istanbul Stock Exchange (ISE) that are purchased on or after 1.1.2006 and held less than 1 year.
- Interest on bank deposits and repo income..

### Alternate Tax Basis

A non-resident company which does not have commercial income generated from a business in Turkey and pays withholding tax at source may file a corporate income tax return showing gross revenue and expenses and calculating the taxes payable on net income. If the tax computed is less than the tax deducted by withholding, then a claim may be made to refund the excess taxes paid. Otherwise, withholding taxes represent the final taxation for the non-resident companies.

### Statute of Limitation

A tax return is not subject to question or additional assessment after the end of the fifth year following the year the tax liability was incurred. This period cannot be prolonged. However, the time taken for an administrative or court proceeding is not counted in the five years.

## 5.6 Bookkeeping Requirements

Based on Turkish Tax Procedural Code, Companies who keep their records per to the balance sheet method should maintain below legal books:

- Journal ledger
- General ledger
- Inventory ledger

Below are the certain critical issues for legal books that mentioned in the tax laws:

- Above legal books are subjected to public notary certification procedure.
- Legal books must be kept in Turkish (dual language can also be used), in terms of the Turkish Lira, and in line with the Turkish Uniform Chart of Account.
- Legal books should be printed as hardcopies if the company is not registered with e-invoicing/e-ledger systems.

E-invoice, e-ledger and e-archive systems has recently been introduced by the Turkish Revenue Administration to adopt the electronic transformation into tax environment. Through these systems, companies have the opportunity to create, store and submit their invoices, journals and ledgers electronically. Implementation of e-invoice, e-ledger and e-archive are obligated for certain taxpayers:

- E- archive: Taxpayers which sell products and services over internet and having a gross sales revenue of 5 million TL and higher in 2014 and onwards are obliged to implement e-archive application.
- E- invoice and e-ledger: Lube oil licensed firms within the scope of Petroleum Market Law, producers, constructors and importers of the products (cola drinks, alcoholic drinks and tobacco products) included the (III) numbered list attached to the Special Consumption Tax Law, taxpayers having a gross sales revenue of 10 million TL and higher in 2014 and onwards are obliged to implement e-invoice and e-ledger application.



# 6. Settlement and Tax Case

Legal remedies, which taxpayers may resort to concerning the taxes and penalties assessed against them, are regulated under the Tax Procedures Code No. 213.

Remedies that may be restored by the taxpayers against the tax/penalty assessments are as follows;

- Settlement
- Direct legal action (Tax Case)
- Legal action in case no settlement is reached.

## 6.1 Settlement

Tax payers may apply to settlement against the tax/penalty notifications within 30 days following the notice of the tax/penalty assessment.

Settlement applications should be addressed to authorized settlement committee which would be determined in accordance with the tax amount assessed by the tax office.

Settlement application would be evaluated by the authorized commission and the settlement date would be notified to the tax payer before 15 days from the settlement date.

In the settlement meeting, the signature authority of tax payer, its attorney and its Sworn Fiscal Advisor may attend with the proxy showing that they have the right to attend settlement meeting, accept/reject the proposed amounts and sign the settlement minute.

## **6.2 Tax Case**

Taxpayers may directly apply to the tax court against tax/penalty assessments following the assessment in the first instance. In this case, litigation should be initiated before the Tax Court within thirty (30) days following the delivery date of the tax penalty notice to the taxpayer and/or addressee of the penalty unless otherwise is provided under legislation.

Besides, in case no settlement is achieved at the end of the settlement meeting and relevant minutes are prepared concerning the result, litigation should be initiated before the Tax Court against the taxes/penalty notification within 15 days as of the notification date of the settlement minutes to the taxpayer.

Initiation of a tax case will suspend the collection procedures of tax/penalty assessments until the end of the first instance tax court process (notification of the first instance tax court decision). And the payment should be made within 30 days following the notification of 2nd tax/penalty notification to be issued upon the unfavorable decision of the first instance tax court.

First instance tax court decisions will be final decisions for the tax cases, full remedy actions and litigations initiated against administrative acts of which the litigated amount is under TRY 5.000. It is not possible to object to/appeal these decisions. Accordingly, the decisions held by first instance tax courts will be final decisions.

Even otherwise is provided under other laws, the decisions of first instance tax court for the tax cases, full remedy actions and litigations initiated against administrative acts of which the litigated

amount is higher than TRY 5.000 can be appealed before the Regional Administrative Court (BİM).

BİM decisions will be final for the litigations initiated against administrative acts of which the litigated amount is between TRY 5.000 and TRY 100.000.

For the litigations which the litigated amount is higher than 100.000, tax payers have the right to appeal the BİM decisions before Council of State. Depending on the decision of the Council of State, this decision would be final.



# 7. Transfer Pricing Regulations

In Turkey, transfer pricing provisions have been stated under the Article 13 of Corporate Tax Law with the heading of “disguised profit distribution via transfer pricing”. The Transfer Pricing Communiqué No. 1 on disguised profit distribution via Transfer Pricing, dated November 18, 2007 sets details about implementation of the rules. Transfer Pricing Communiqué No. 2 was released as a supplementary document to the first communiqué on April 22, 2008. The transfer pricing regulations in Turkey are created in line with the principles established by the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations. With the 6728 numbered law which is in effective as of 09 August 2016; new regulations related to transfer pricing rules have been enacted. With the amendments made to article 13 of corporate tax law numbered 5520; Turkish transfer pricing rules have been more converged to OECD transfer pricing guidelines.

If a taxpayer enters into transactions regarding sale or purchase of goods and services with related parties, where the prices are not set in accordance with arm’s length principle, then related profits are considered to be distributed in a disguised manner through transfer pricing. Such disguised profit distributions through transfer pricing are not accepted as tax deductible for corporate income tax purposes.

The new law stipulates 10 % threshold to “related party” definition, it removes the strict hierarchy amongst transfer pricing methods, it allows certain type of “roll back” for APA agreements and removes 50 percent of tax penalties for taxpayers who fulfill timely and

proper documentation requirements. Transfer pricing related new regulations are in force as of 09 August 2016.

In addition, On 16 March 2016, The Turkish Revenue Administration have released a draft General Communiqué on Disguised Profit Distribution through Transfer Pricing Serial No: 3 which introduces certain significant changes and amendments to General Communiqué on Disguised Profit Distribution through Transfer Pricing Serial No: 1.

The draft Communiqué includes new requirements which constitute an enlargement of the current legal requirements. In addition, the new draft Communiqué introduces additional Transfer Pricing Documentation requirements in line with BEPS Action 13. This draft contains instructions for the further elaboration of the additional documentation requirements for multinational enterprises, including Country-by-Country Reporting (CbC Report), Master File and Local File.

Also in the draft Communiqué; location savings, assembled workforce and Multi-National Enterprise (MNE) Group Synergies as new comparability factors as well as description and general information regarding Cost Contribution Arrangements (CCA) and treasury loss are included as significant parts.

## **7.1 Arm's Length Principle**

Arm's length principle is defined as setting prices or amounts for the purchase or the sale of the goods or services between the related persons as the prices or amounts would be charged for the same transactions carried out with unrelated parties/ third parties.

The transfer pricing regulations state that taxpayers should select the best suitable transfer pricing methodology for setting the arm's length prices and amounts for the transactions with related persons. The selection of a transfer pricing methodology serves to find the most appropriate method for the nature of the intercompany transactions under consideration. Taxpayers will set the arm's length prices or amounts for their intercompany transactions by choosing one of the following methods stated in the article.

- **Comparable uncontrolled price method:** This method means that arm's length selling price applied by a taxpayer is determined by comparing with the market price stated for the comparable purchase or sale of the goods or the services between the unrelated parties.
- **Cost plus:** Arm's length price is calculated / determined by increasing the costs of the relevant goods or services with a reasonable rate of gross profit margin.
- **Resale price method:** Arm's length price is calculated/determined by deducting a reasonable rate of gross sale profit margin from the price which will be applied for the resale of the relevant goods or services to the unrelated parties,

Transactional profit methods: Refers to the methods based on profits arising from the transactions between related parties in designation of arm's length price or return. These methods consist of transactional net margin method and profit split method. Transactional net margin method is based on the examination of an established net profit margin realized by the taxpayer resulting from a controlled transaction on certain relevant and appropriate basis such as costs, sales or assets. Profit split method refers to the arm's length split of total operating margin or loss between related parties realized from one or more related party transactions with regards to the functions performed and risks borne by each party.

In circumstances where an arm's length price or remuneration could not be identified via one of the methods mentioned above, another method which is consistent with the nature of the related party transaction and defined by the taxpayer can be utilized.

The related profit regarded as distributed wholly or partially in a disguised way via transfer pricing is treated either as dividend distributed or amount transferred to the headquarters for the non-resident entities as of the last day of the accounting period in which the conditions specified under the Article 13 of Corporate Tax Law 13 Article occur. Previous taxations will be adjusted for the parties involved. In order to make this adjustment, taxes assessed for the companies distributing the profit in a disguised way should be finalized and paid.

For intra-country group transactions, disguised profit distribution via transfer pricing would be applicable if treasury loss results from the domestic intercompany transactions of the corporate taxpayers. The treasury loss is defined as under declaration or late declaration of all type of taxes as a result of the prices or the amounts which are not in line with the arm's length principle.

## **7.2. Documentation Requirements**

According to government decree and the Transfer Pricing Communiqué No. 1 taxpayers have two different documentation requirements; preparation of transfer pricing form and yearly transfer pricing report.

Also in 2014, a new guidance issued by Capital Markets Board of Turkey (SPK) requires additional information reporting about controlled transactions of listed companies and thus may affect the transfer pricing disclosures by these companies. The communiqué (Communiqué of Corporate Governance) dated January 3 ,2014 concerns corporate governance and directs listed companies to submit an additional board decision and an explanatory report regarding certain controlled transactions (i.e., those controlled transactions having a value above certain limits as set forth in the communiqué).

With the amendments made by the Article 59 of law numbered 6728, in circumstances where transfer pricing documentation obligations are fulfilled completely and in due time, tax penalty arising from under assessed or past due taxes by reason of disguised profit distribution will be imposed with a 50 percent discount (excluding the states which give rise to loss of tax through acts worded in 359th clause of Tax Procedure Law).

### **Transfer Pricing Form**

According to the regulations, all taxpayers are obliged to complete a form called "transfer pricing, controlled foreign company and thin capitalization form" attached to the company's annual corporate tax return. In this form, taxpayers are required to present all intra-group transactions that take place during the year and indicate the

selected transfer pricing methods to test the arm's-length nature of the intra-group transactions. Taxpayers are also required to complete the 'controlled foreign company' and 'thin capitalization' sections.

### Annual Transfer Pricing Report

Corporate taxpayers registered with the Large Taxpayer Tax Office are required to document their international and domestic related party transactions in the annual transfer pricing reports. Companies registered with the Large Taxpayer Tax Office are typically the largest companies determined by reference to their turnover, payable taxes, and asset size and location being in Istanbul. All banks and insurance companies are also among the members of the Large Taxpayer Tax Office regardless of their location and size. Corporate taxpayers who are not registered with Large Taxpayer Tax Office are required to prepare the transfer pricing annual reports including only their international transactions with related parties.

Additionally, Transfer Pricing Communiqué No. 2 requires that all corporate taxpayers should document their transactions with their related entities and/or their branches that operate in Free Trade Zone in Turkey.

Transfer Pricing Communiqué No. 1 sets forth details of the information that needs to be included in the transfer pricing documentation. According to the communiqué, transfer pricing reports should be prepared covering the following information and documents.

- Description of activities of the company, organizational structure, definition of the related parties (i.e., tax id number, addresses, phone number, etc.) and ownership information of these parties,
- All functions are performed and risks taken,
- Pricing lists of the products of the year,
- Details of cost of goods,
- The amount and invoice information about all transactions with related and unrelated parties within the year,
- All agreements signed with the related parties,
- Financial statements of related parties,

- Intra-group pricing policies,
- Intra-group accounting standards and policy differences if they exist,
- Ownership of intangible assets,
- Transfer pricing method selected by the company (comparability analysis, selected comparables whether external or internal),
- Calculations and assumption for reaching the arm's-length price,
- Calculations for reaching the arm's-length range, if applicable.

Corporate taxpayers who do not have international related party transactions and individual taxpayers are not required to prepare a yearly transfer pricing report. However, the above mentioned documents and information should also be submitted if requested by the tax authorities by corporate taxpayers other than those registered at Large Taxpayer Tax Office for their domestic operations performed with related parties and by the payers of income tax for their domestic and foreign operations performed with related parties during a calendar year.

The Government Decree and the General Communiqué state that documentation should be prepared by the tax return submission date, which is 25th of April for normal calendar year, and it should be submitted to the Tax Authority upon request. The decree and general communiqué state that if the transfer pricing documentation is prepared in a foreign language, Turkish translations also have to be submitted to the tax authorities.

### **New Documentation Requirements Introduced by Transfer Pricing Communiqué No. 3**

On 16 March 2016, The Turkish Revenue Administration have released a draft General Communiqué on Disguised Profit Distribution through Transfer Pricing Serial No: 3 which introduces certain significant changes and amendments to General Communiqué on Disguised Profit Distribution through Transfer Pricing Serial No: 1 which regulates transfer pricing rules effective from 01.01.2007.

The draft Communiqué includes new requirements which constitute an enlargement of the current legal requirements. In

addition, the new draft Communiqué introduces additional Transfer Pricing Documentation requirements in line with BEPS Action 13. The application of BEPS 13 Action Plan is also guaranteed by the clause in Article 59 of law numbered 6728 which states that Council of Ministers is entitled to impose documentation obligations and inclusion of information regarding the activities of cross border related parties within the scope of mentioned obligations, sharing of these information with other countries within the context of international agreements and determine and specify other transfer pricing procedure and fundamentals.

This draft contains instructions for the further elaboration of the additional documentation requirements for multinational enterprises, including Country-by-Country Reporting (CbC Report), Master File and Local File.

- **Country by Country Reporting:** Ultimate parent companies, which are tax residents in Turkey and with a minimum consolidated turnover of TRY 2.037 billion (EUR 750 million) are obligated to prepare and provide a Country by Country report. The first reporting period will be 2016 and will be reported as of 31 December 2017 which is in line with OECD practice.
- **Masterfile:** As stated in the new draft Communiqué, Companies that are part of a multinational group with a minimum of 250 million TL asset value as of end of previous fiscal year and turnover of 250 million TL and over are required to prepare the “Master File” until the end of the second month following the submittal of Corporate Income Tax Return and provide it to the Tax Authorities in case of a query. The Master File will consist of 5 main categories; organization structure, definition of business operations, intellectual property, intra group financial transactions and Tax and Financial position of all group companies.
- **Local File:** Furthermore, all group entities that are tax resident in Turkey and which have intercompany transactions will continue to prepare transfer pricing report and annual transfer pricing form which are explained above. According to the draft Communiqué, the Free Trade Zone tax payers are required to document their international and domestic related party transactions in the annual transfer pricing reports.

The annual form (EK 2 ) will be filled for transactions exceeding TRY 30 thousand. On the other hand, companies with a minimum asset value at the end of previous fiscal year and turnover of TRY 100 million, are required to submit a form (EK 4) which requires detailed information regarding their related parties and related party transactions.

### **7.3 Advance Pricing Agreements (APA)**

The methods determining the arm's length price or value for the related party transactions can also be agreed on with the Ministry of Finance upon the request of the taxpayer. The method determined via such agreement will be certain in the conditions and periods stated in the agreement, not exceeding three years.

A taxpayer can agree upon the methods to be used for determining the transfer prices for his intercompany transactions with the Ministry of Finance. The methods that are determined within the terms and conditions of the agreement could be used by the taxpayer for a maximum period of three years.

If the agreement is entered into between one tax authority and a taxpayer, then it is called unilateral APA; and as transfer prices affect related enterprises that are located in other countries, there can be bilateral or multilateral APAs. In this respect, unless local laws and regulations provide guidance for tax authority and taxpayers, the mutual agreement procedure of applicable double tax treaties can be used to conclude bilateral or multilateral APAs.

Since the transfer pricing regulations went into effect on January 1, 2007, Turkish taxpayers have been entitled to enter into APAs with the Ministry of Finance for the determination of methods in relation to setting fees and prices for their transactions with foreign related parties (i.e., non-resident related parties) upon their request.

According to press releases from the Turkish Revenue Administration (TRA) on July 15, 2011, December 26, 2012, June 19, 2014, April 30, 2015 and December 25, 2015 the first six

unilateral APAs have been concluded and signed between the TRA and taxpayers. In December 2016, first bilateral APA has been signed between the TRA and taxpayer.

The main purpose of the application of APAs is to prevent potential tax related disputes and controversies in relation to transfer prices applied by taxpayers for their transactions with related parties. Concluding an agreement with the TRA, taxpayers will be protected against potential tax risks and penalties that may be imposed by the tax authorities.

With the first six unilateral and first bilateral APAs signed in Turkey, we expect that there would be more unilateral APA applications from now on and this will pave the way for bilateral and multilateral APAs in the future. In addition, Article 59 of law numbered 6728 provides a certain roll back for APA for the prior years.



# 8. Indirect Taxation

## 8.1 Value Added Tax

### Taxable Transactions

VAT applies to the following transactions:

- The supply of goods or services in the course of performing commercial, industrial, agricultural, or independent professional activities made in Turkey by a taxable person.
- Goods and services imported into Turkey
- Deliveries and services arising from other activities specifically stated in law.

### VAT Taxpayer

A taxable person is any person or legal entity that has VAT liability in Turkey. Any entity that has a fixed place of business or regularly carries out commercial or professional activities in Turkey must register in Turkey.

VAT registration is granted automatically by the tax office when a business registers for corporate income tax purposes.

**Group registration:** VAT grouping is not permitted under Turkish VAT law. Legal entities that are closely connected must register for VAT individually.

**Non-established businesses:** A non-established business may not register for only VAT. If a Turkish taxable person receives services from an entity that does not have a fixed place in Turkey, VAT is accounted for using the reverse-charge mechanism.

**Reverse charge:** The reverse charge applies if certain supplies subject to Turkish VAT are made by a person that is not resident in Turkey or that does not have a permanent establishment or headquarters in Turkey. It is a form of self-assessment for VAT through which the recipient of a supply of services accounts for the tax.

The reverse charge applies to the following services performed by non-residents without a fixed place of business in Turkey:

- Services of independent professionals, such as engineering, consulting, data processing and provision of information
- Transfers of copyrights, patents, licenses, trademarks, know-how, and similar rights
- Import commissions
- Interest payments made to foreign entities other than banks and financial institutions
- Rent payments
- Transfer or assignment of the right to use capacity for the transmission, emission, or reception of signals, writings, images, sounds, or information of any nature by wire, radio, optical or other electromagnetic systems
- Other services not specified in this list but utilized in Turkey

### VAT rates

In Turkey, the following VAT rates are applied:

- Standard rate: 18%
- Reduced rates: 1% and 8%

The standard VAT rate applies to all supplies of goods or services, unless a specific measure provides for a reduced rate or exemption.

### Examples of goods and services taxable at 1%

- Newspapers and magazines
- Certain foods and beverages
- Used passenger cars
- Financial leasing services (with certain conditions)

### Examples of goods and services taxable at 8%

- Certain foods and beverages
- Books
- Pharmaceuticals and medical products
- Some construction equipment
- Ready-wear products, garments and textile products
- Admission charges for cinemas, theaters, and operas

### VAT Exemptions

Exemptions are classified in two different groups:

- The term “fully exempt” supplies refers to supplies of goods and services not subject to VAT and recovery or refund of the input VAT is possible (exempt with credit).
- “Partially exempt” supplies refer to supply of goods and services not subject to VAT but no right of input tax deduction.

### Examples of fully exempt with credit supplies of goods and services are;

- Exports of goods and services
- Services rendered at marines and airports for marine and air conveyances
- Supplies to persons engaged in petroleum exploration
- Supplies of goods to investment certificate holders
- Sales to the Directorate of the Defense Industry
- Sales to diplomats or diplomatic entities based on reciprocity principle
- International transport
- Delivery of fertilizer and bait/feed

### Examples of partially exempt supplies of goods and services are;

- Leasing immovable property by an individual
- Financial transactions
- Supplies to certain cultural bodies
- Supplies by and to certain governmental bodies
- Water for agriculture

- The supply of unprocessed gold, foreign exchange money, stocks and bonds, duty stamps, scrap metal, plastic etc.
- Storage services performed at bonded warehouses or temporary storage places
- Delivery of goods or performance of services in free-trade zones and transportation to or from free-trade zones for export purposes.

### Time of supply or service

Time of supply for goods takes place when they are delivered and for services it takes place when they are performed. However, if the supplier issues an invoice before the time of supply, VAT applies to the extent that the supply is covered by the invoice. A prepayment or deposit does not result in a taxable transaction.

The time of supply for imported goods is either the date of importation, or the date on which the goods leave a duty suspension regime.

### Taxable Base

The taxable base of a transaction is generally the total value of the consideration received, not including the VAT itself. The VAT Law deals with the taxable base under four headings, namely the taxable base on deliveries and services, on importation, on international transportation, and special types of taxable base.

In case a consideration does not exist, is unknown or is in a form other than money, the taxable base is the market value. Market value is the average price payable in the market for similar goods and services and is determined with reference to the Tax Procedural Law.

### Recovery of input VAT

A taxable person may recover input VAT, which is charged on goods and services received for business purposes and related with taxable or fully exempt transactions.

Input tax includes VAT charged on goods and services supplied in Turkey, VAT paid on imports of goods, and VAT self-assessed on reverse-charge services.

A valid invoice or customs document must accompany to recover input tax.

The right of deduction may be exercised in the tax period in which the purchase documents are entered into the recipient's books of account, but only during the calendar year in which the taxable event takes place.

*Non-deductible input tax:* Input tax is not recoverable if it is charged on purchases of goods and services that are not used for business purposes and are considered to be non-deductible expenses for corporate tax purposes. In addition, input tax may not be recovered for partially exempt transactions (input VAT associated with passenger cars is recoverable only if they are rented or operated for a usage fee).

*Partial exemption:* An input tax deduction is granted for taxable supplies and for supplies that are VAT exempt with credit. An input tax deduction is not granted for partially exempt supplies. If a taxable person makes both taxable and partially exempt supplies, it may recover only input tax allocated to supplies that are taxable or fully exempt.

*Refunds:* If the amount of input VAT recoverable in a period exceeds the amount of output VAT payable in the same period the excess amount is carried forward to following periods without any limitation. It is possible to refund such carried forward VAT only in the below cases:

- Delivery of goods and services subject to reduced rate VAT
- Delivery of goods and services that are full exempt from VAT
- Delivery of goods and services that are subject to partial VAT withholding

The amount of the VAT refund can be claimed either in the form of offsetting to other tax liabilities or cash refund.

## Invoicing

Delivery of goods or performance of services should be invoiced within 7 days. Moreover, recipients of the supplies must retain copies of the invoices.

*Foreign-currency invoices:* An invoice issued for a domestic sale must be issued in Turkish lira (TRY). The invoice may also show the invoiced amount in a foreign currency if the TRY equivalents are stated. However, an invoice issued for an export sale may be issued in a foreign currency.

### VAT returns and payment

Returns are filed on monthly basis and must be submitted by the 24th day of the following month.

Payment in full must be made by the 26th day of the same month and in TRY.

## 8.2 Special Consumption Tax

Special Consumption Tax is an excise tax and it is imposed on the import, manufacture and first acquisition of a range of goods.

Special Consumption Tax was implemented in August 2002 by abolishing 16 different indirect taxes and funds in order to make the indirect taxation system harmonized. Unlike VAT, which is applied on each delivery, Special Consumption Tax is charged only once. There are mainly 4 different product groups that are subject to Special Consumption Tax at different tax rates.

### Scope of Tax

Goods in the Lists attached to the Special Consumption Tax Law are the subject of the tax.

There are mainly 4 different product groups that are subject to special consumption tax at different tax rates;

- List I is related to petroleum products, natural gas, lubricating oil, solvents and derivatives of solvents.
- List II is related to automobiles and other vehicles, motorcycles, planes, helicopters, yachts.

- List III is related to tobacco and tobacco products, alcoholic beverages and cola.
- List IV is related to luxury products (durable white goods, cellular phones, diamonds etc.).

### Taxpayers of the Special Consumption Tax

Taxpayers of special consumption tax changes based on the lists. They are;

- For List I; manufacturers (including refineries) and importers of the petroleum products,
- For List II; Motor vehicle dealers, importers for special purpose or motor vehicle sellers through auction.
- For List III; manufacturers, importers or sellers through auction of tobacco, alcoholic beverages and cola.
- For List IV; manufacturers, importers or sellers through auction of luxury products.



# 9. Income Tax on Individuals

Income tax is unitary in nature. The source of income is defined in 7 categories: Business profits, agricultural profits, employment income, professional income, rental income, interest & dividends, and other income.

The category of “other income” covers income, which do not fall under the first 6 categories, mainly being capital gains and income from certain incidental transactions.

There are two main types of tax statutes: resident taxpayers, and non-resident taxpayers. Residents are taxed on their worldwide income, whereas, non-residents are taxed only on their Turkish source income.

Turkish citizens, who work abroad, even if employed by companies with headquarters situated in Turkey or by the Turkish Government, are not subject to Turkish taxation in respect of income obtained and taxed outside Turkey.

A foreigner who spends less than a continuous period of six months in Turkey during a calendar year and whose centre of vital interest is not concentrated in Turkey or who, although stays in Turkey for more than six months but has come to Turkey for a specific and temporary assignment (e.g. businessman, expert, press or radio correspondent), is regarded as non-resident and is taxed accordingly.

## 9.1 Taxable Income

### Gross Income

Taxable gross income includes amounts received from the following sources:

- Income from commercial activities,
- Income from agriculture,
- Income from professional services,
- Income from employment services (wages and salaries),
- Income from movable properties (interest and dividends),
- Income from immovable assets and rights (rental income), and
- Other income and earnings (capital gains, etc.).

With some exceptions, income (or losses) from the above categories is combined.

### Exclusions and Exemptions

Certain amounts received by individuals need not to be reported for tax purposes. The followings are specifically exempt:

- Annual rental income up to TRY 3.900
- Employment income wholly consisting of salaries derived from one resident employer, provided that all payments are taxed by withholding mechanism on payroll,
- Interest income which has been subjected to withholding tax at source,
- Half of dividend income received by a resident taxpayer from a resident corporation,
- Income derived by authors, sculptors, painters and composers, etc. and their heirs from copyrights and patent rights,
- Pensions and other social security compensations received up to certain levels,
- Reimbursement (made by the employer) of travelling expenses incurred by employees for business purposes,
- Salaries paid in foreign currency by the representative/liaison offices of foreign companies,
- Retirement and termination indemnity payments (maximum; TRY 4.426,16 for the first half of 2017)

- Capital gains from the disposal of Turkish corporation shares held for more than two years,
- Capital gains from the disposal of real estates retained by individuals for more than five years.

### **Deductions and Allowances**

Turkish income tax law provides various deductions and allowances for each category of income. Some important deductions and allowances are explained below:

- Business expense deductions set out for companies are also applicable to individuals, to the extent that they relate to an individual's business income, and
- Compulsory pension contributions and social security premiums,

### ***The following benefits are not taxable from the employee standpoint:***

- Insurance premiums paid for the taxpayer and his family for death, sickness, disability, birth and education are deductible from the taxable salary. However, the insurance company should be established in Turkey and monthly insurance premiums should not exceed those established by law,
- If meals are provided at the business premises, total payment made by the employer is tax exempted. Otherwise, only certain amount is exempted.
- Transportation provided by the employer,
- Accommodation provided by the employer, to the employees working in mining, factory and those whom the employee should provide accommodation in accordance with the special legislation. (which should be owned by the employer and not be more than 100 square meters),
- Children allowance up to the amount received by a government employee, for maximum two children,
- Indemnity and assistance payments for reasons of death, disability, illness and unemployment,
- Assistance paid to employees because of marriage and birth, limited to two months' salary.

- Donations to government offices, municipalities, villages, associations in the public interest and foundations under the Civil Code of up to 5 % of taxable income, and
- 50% of the life insurance premiums paid to the insurance companies established in Turkey and 100% of the premiums for death, sickness, disability, motherhood, etc. up to 15% of declared income and with a maximum of the minimum wage/ salary for each member of the family. This deduction is not applicable for non - residents.
- Annual expenses incurred on education and health up to 10% of the income declared on the annual tax return are deductible,
- Effective from January 1, 2007, minimum subsistence allowance entered into force. Accordingly, it is adopted that an amount is calculated by multiplying the rate applied to the first income tax bracket of the income tax tariff with 50% for the taxpayer, 10% for his spouse not working or not having any income, 7,5% for the first two children, 10% for the third children and 5% for each of the children remaining, of the annual gross amount of the minimum wage (amount valid at the beginning of the calendar year when the wage is earned, for the employees who are above 16 and working in the industrial sector); then this amount can be deducted from the income tax to be calculated over the wage.
- Rental income earners may either itemize expenses related to immovable or may deduct a lump sum of 25 % of gross rentals expenses,
- In calculation of taxable capital gains, the cost of assets whose disposal led to capital gains may be indexed to the inflation only if the inflation during the holding period is in excess of 10%. Non-residents are allowed to eliminate foreign exchange gains when calculating the taxable gains from disposal of Turkish securities.

## 9.2 Income Tax Rates

The income tax rate is applied at progressive rates in Turkey, currently from 15% to 35%.

The income tax rates and brackets applicable for income generated through personal investments (excluding employment income) in 2017 calendar year are as follows:

| Income scales (TRY) | Rate (%) |
|---------------------|----------|
| Up to 13.000        | 15       |
| 13.001 -30.000      | 20       |
| 30.001 -70.000      | 27       |
| 70.001 and upwards  | 35       |

The income tax rates and brackets applicable for employment income in 2017 calendar year are as follows:

| Income scales (TRY)<br>(Employment income) | Rate (%) |
|--|----------|
| Up to 13.000                               | 15       |
| 13.001 -30.000                             | 20       |
| 30.001 -110.000                            | 27       |
| 110.001 and upwards                        | 35       |

### Tax Credits

After tax has been calculated, credits against tax payable are allowed for;

- Tax withheld at source on certain income, and
- Foreign income tax that is limited to the amount of Turkish tax applicable to foreign income provided that the primary taxing right belongs to Turkey and certain conditions are satisfied.

### Tax Credit on Dividends

Resident taxpayers have to include 1/2 of gross dividends received from a resident company in their taxable income. Withholding tax paid at source, however, is wholly creditable against tax calculated on the return.

### Tax Returns, Filing, Payments

Tax returns must be filed by 25th of March in the following year. Income tax is payable in two equal installments in March and July.

Non-residents are taxable on all earnings of income collected or realized in Turkey unless exempted. The filing requirements and taxation systems on non-residents in general, are as follows:

- Income from commercial and agricultural activities must be included in the tax return,
- Salaries, income from services and proceeds of sale of rights, interest, rent and dividends are subject to withholding tax. No further filing is required, and
- The proceeds of sale of real estate and income from movables that have not been subjected to withholding tax must be declared on individual declarations.





# 10. Labour

## 10.1 Labour Legislation

The Turkish Constitution of 1982 stands as the most prominent source and one, which takes precedence over other areas of legislation. The Labor Legislation in Turkey consists, at present, of the following acts: the Labor Code numbered 4857, Social Security And General Health Insurance Law numbered 5510, Maritime Labor Act numbered 854, Act Concerning Labor/Management Relations in the Press numbered 5953, Occupational Health And Safety Law numbered 6331, Law On Trade Unions And Collective Labor Agreements numbered 6356, Unemployment Insurance Law numbered 4447, Law On Work Permits Of Foreigners numbered 4817, Labor Courts Act numbered 5521, National Holiday and General Vacations Act numbered 2429, Weekend Holiday Act numbered 394, Turkish Labor Institution Act numbered 4904 and relevant regulations.

### Weekly Working Hours and Vacations

In general the working week consists of a maximum of 45 hours. Weekly working hours may be unequally distributed throughout the working days of the week. However, employees must not work for more than a total of 11 hours in one day including overtime. In addition, working hours in a night shift must not exceed 7.5 hours per day.

Under Weekend Holiday Act (No: 394), it is obligatory to hold a holiday one day in a week.

Employees are entitled to use minimum subsequent 24 hours weekend holiday in a 7 days working period. Nevertheless, on condition of obtaining permission, it is possible to keep the workplace open 7 days a week. For example, large department stores can hold their workplaces open without holding a weekend

holiday. In case the employees do not work on days accepted as national and general holidays in the laws, they are paid the wages pertaining to such day completely without any work correspondence and in case they do not go on holiday and work on such days, they are additionally paid the wage of one day for each worked day.

Under the National Holiday and General Vacations Act, the official holidays are the following:

- January 1<sup>st</sup>, New Year's Day.
- April 23<sup>rd</sup> National Sovereignty and Children's Day, 1 day.
- May 1<sup>st</sup>, Labor and Solidarity Day
- May 19<sup>th</sup>, Youth and Sports Day, 1 day.
- July 15<sup>th</sup>, Democracy and National Solidarity Day, 1 day
- August 30<sup>th</sup> Victory Day, 1 day.
- October 29<sup>th</sup> the Republic Day, starts at 13.00 pm. on October 28 and continues on October 29.
- Ramadan Holidays, 3.5 days, the dates vary, starts at 13:00 pm on the day before the religious day
- Sacrifice Feast Holidays, 4.5 days, the dates vary, starts at 13:00 pm on the day before the religious day

### Overtime Work

Overtime work is defined as the working hours, which exceeds 45 hours in a week. Hourly wages for overtime is 50 % more than that for ordinary working hours. Where an employment contract stipulates less than 45 hours of work in a week, any work up to 45 hours that exceeds the weekly working hours provided by the contract are deemed as extra hours. The salary payable for each extra hour is 25% more than the salary payable for one standard hour of work. An employee who works overtime or extra hours is, at his discretion, entitled to request 1.5 hours of free time for each hour of overtime worked and 1.25 hours of free time for each extra hour worked, in lieu of increased salary. The days on which overtime work is done cannot exceed 270 hours a year.

When overtime work is undertaken in the weekend holiday or on official holidays, the employee is entitled to an additional full day working wage. The written consent of the employee must be obtained annually for overtime working.

### Annual Paid Leave

Employees who have worked for at least one year, including the probation period, from the date of recruitment are entitled for annual paid leave. The right for annual paid leave cannot be waived. The duration of annual paid leave to be allowed to employees cannot be less than;

- 14 working days for those having a service period between one year and five years (including five years),
- 20 working days for those having a service period more than five and less than fifteen years,
- 26 working days for those having a service period of fifteen years (included) and more.

In case of termination for any reason unused annual leave accrued must be paid to employee.

### Employment Contracts

Work, which continues for maximum 30 workdays on account of its nature, is called temporary work, and work that lasts longer is called permanent work. In case of temporary work, a large number of provisions of the Labor Code are not applied.

Employment contracts that have duration of one year or longer should be concluded in written form. It is not necessary to execute these at the office of the notary public, and employment contracts are exempt from all taxes, duties and charges. Nevertheless, should the notary public certify the contract; a fee must be paid to it. In cases where no written contract is made, the employer is obliged to present to the employee a written document indicating the general and special working conditions, daily or weekly work period, basic wage and wage additions, if any, wage payment period, term of contract, if definite, and the provisions that the parties should observe in case of termination within two months at the latest.

### Work on Call Basis

The labor relation where it is agreed through a written contract that the action of working shall be performed when employee is required in relation with the work undertaken by him/her is a part-

time labor contract based on on-call work. In such a case, if not otherwise stated in the employment contract, the working hours are accepted as 20 hours in a week and at least 4 hours in a day. The call should be made at least 4 days before the starting date of the work.

“Distant work” is a newly defined employment agreement, where the employer requests from the employee to perform his/her work at his/her home or via technological devices out of office and the terms of such agreement should be drawn in written.

### Compensating Work

Employer has the right to request for compensating work within two months if the work is stopped due to the compulsory reasons or if the employees have holidays before and after the official and general holidays or work less than ordinary working hours or if a vacation right is given to the employee at his own request. Compensating work cannot be more than three hours in a day and cannot also exceed maximum working hours which is 11 hours per day.

### Termination of the Contract

The fixed term employment contracts terminates automatically at the end of the determined period without prior notice. Before terminating an employment contract with an indefinite term, a notice must be served to the other party.

### Statutory Notice

The indefinite term employment contract will be considered as annulled in:

- 2 weeks from the date of notification for employment of 0-6 months,
- 4 weeks from the date of notification for employment of 6 months-1.5 years,
- 6 weeks from the date of notification for employment of 1.5 years-3 years, and
- 8 weeks from the date of notification for employment of exceeding 3 years.

These intervals, so called the period of notice, may be extended, but not curtailed, through contracts.

The employer may immediately terminate the employment contract by paying the salary corresponding to the notice period (payment in lieu of notice) in advance. Where an employment contract is terminated by paying in lieu of notice, all other entitlements arising from the employment relationship must additionally be taken into consideration.

### Severance Pay

A severance payment in the amount of 30 days salary (limited with a semi-annually determined threshold) for each completed employment year is paid in the cases of the termination of the employment contract:

- by the employer without any cause;
- by the employee with just causes;
- because of the employee is taken under regular military service;
- because of retirement or disability, or single payment from the legal institution or the fund that the employee is related to;
- employee's own request by completing the required period of insurance and payment of premiums to take old-age pension;
- female employee's termination with her own will within one year beginning from her marriage date; or
- because of the employee's death.

Severance pay is assessed according to the last wage received and number of the years worked for the employer. Such payments are calculated at a minimum 30 days' wage per year of employment at the rate of pay of which maximum amount is announced by the government applicable at the date of retirement or termination. In calculating the wage that will form the basis of the severance pay, any benefits other than wages that were given to the employee during the last year under various names and all privileges that accrue from the contract and can be measured in money will be taken into consideration.

Presently, the maximum severance pay for each year of employment is TRY 4.426,16 (for the period 01.01.2017 - 30.06.2017).

### Collective Dismissal

Collective dismissal of the employees from a workplace is defined under Article 29 of the Turkish Labor Code. Accordingly, when the employer intends to dismiss employees in mass due to economic, technologic, structural and similar enterprise, business or work requirements, he/she notifies this to the business trade union representative, respective regional directorate and Turkish Employment Agency in writing at least thirty days in advance.

The dismissal of the following numbers of employees in accordance with their notice periods and on the same date or different dates within the same month is considered as mass dismissal:

- between 20 and 100, at least 10 employees
- between 101 and 300, at least 10 % of the employees
- 301 and more, at least 30 employees.

The notification should include information on the reasons of employee dismissal, the number and group of employees who will be affected and the period of time that the dismissal procedures will take place in.

Notices of termination become effective thirty days after the notification of regional directorate by the employer of his/her intention of mass dismissal.

In case the employer intends to employ employees for a work with the same qualifications within six months from the finalization of mass dismissal, he/she preferably invites qualified ones for the work.

The employer who wishes to reemploy employees for work of same nature during this period publishes the situation through suitable means, and notifies the former employees of the fact through the notary public. Employees who do not apply to the workplace within 15 days forfeit this right.

## 10.2 Labour Costs

### Wage Regulation

There is no ceiling to the wages that can be given. On the other hand, wages cannot be below the minimum wage. The minimum conditions concerning wages have been specified in the Labor Code.

However, the restrictions stipulated by the law may be altered in favor of the employee. The representatives of the government, employees and employers determine the minimum wages to be given in the agricultural and industrial sectors latest every two years. In recent years the minimum wage has been determined before the two-year period was over.

Monthly minimum wage applicable for the period of 01.01.2017 - 31.12.2017 is determined as TRY 1.777,50 in gross terms. It is forbidden to employ employees at wages below this minimum. The employer is obliged to pay or to advance to all employees using their annual vacation the wages for the vacation period before the employee starts his/her vacation. Wages for the weekend holidays, national holidays and general holidays that coincide with the annual paid vacation period are paid separately.

### Bonuses and Other Extra Payments

There are no legal obligations in this respect. They are determined totally by the own accord of the parties. Should a certain sum be given as a monthly wage or bonus, there will be no tax advantages.

## 10.3 Social Insurance - General Health Insurance

### Social Insurance

All employees and functionaries are considered as secured from the moment they start to work. The employer is obliged to submit the Social Security Institution ("Institution") the workplace notification at the latest on the date the insurance holder starts working.

Employers are obliged to notify the Institution the employees with an insurance holder employment report, before the date of insurance start. However, in case the employment is notified by the employer to the Institution;

- a) at the latest on the date of starting to work for insurance holders employed for workplaces of construction, fishing and agriculture,
- b) at the latest up to the end of one month time period from the date they start to work for insurance holders who start working within one month from the date on which the insurance holders are employed for the first time in the workplaces which will submit the first workplace report to the Institution and for the ones who are employed during travel in the transportation vehicles which travel to foreign countries,
- c) within month from the date of starting to work of contracted personnel who are not subject to unemployment insurance pursuant Unemployment Insurance Law Number 4447 and are employed by public administrations or of individuals who are employed by public administrations in order to work in abroad duties,

Then it is considered that the submission is made before the start of insurance.

Social insurance covers work accidents and occupational diseases, illness, maternity, disability, old age and death.

In case a work accident occurs in connection with his job at the work place or in another location or an occupational disease occurs, he/ she receives assistance for treatment, is paid wages for the periods he/she is unable to work, and when necessary he/she is provided with artificial devices and appliances.

This insurance branch is applied in general illness, accident and disablement cases other than work accidents and occupational diseases. For this purpose a physician, hospitalization, medication and treatment give the employee assistance for examination.

The spouse, children and parents of the employee also benefit from the sickness insurance.

The hospital treatments of the insured persons are carried out at the Social Security hospitals established for this purpose.

Maternity insurance provides for the extension of a certain and necessary assistance to the insured women and the non-insured wives of insured men in case of pregnancy and childbirth.

### Social Insurance Premiums

Social security premiums are compulsory in respect of all persons earning salaries and wages.

Social insurance premiums are calculated on the basis of the monthly wages and are paid jointly by the employee and the employer at the following rates:

| Branches   | Employee (%) | Employer (%) | Total (%)   |
|--|--------------|--------------|-------------|
| Short Term Social Security Branches including work accidents and occupational diseases (varies depending on the job) | -            | 2            | 2           |
| Disability, Old Age, Death   | 9            | 11           | 20          |
| General Health Insurance   | 5            | 7,5          | 12,5        |
| <b>Total Minimum</b>   | <b>14</b>    | <b>20,5</b>  | <b>34,5</b> |
| Unemployment Insurance   | 1            | 2            | 3           |

The above rates are applied to the gross total of salaries, wages and bonuses up to a current maximum monthly of TRY 13.331,40 for the period of 01.01.2017-31.12.2017.

The premiums are paid each month to the Social Insurance Institution at the place where the employee is employed prior to the 30th day of the following month.

In calculating the income withholding tax on the wages by the employer, the employee contribution (e.g. 15 %) is deducted from the withholding tax base.

### **General Health Insurance**

As explained above, social insurance also includes health insurance. Furthermore, social insurance is compulsory. Individuals or enterprises, which wish to do so, cannot be released from the obligation of social insurance on the grounds that they have subscribed to a private health insurance scheme.

Social Security and General Health Insurance Law numbered 5510 will be implemented after 01.01.2012. Accordingly, anyone resident in Turkey will be covered by the General Health Insurance according to the conditions of the 60th article of the Social Security and General Health Insurance Law.

Effective January 1, 2012 this law applies to foreigners who have been resident in Turkey more than 1 year.

The foreigners are required to apply to Social Security Institution within the one month after the completion of one year residence without interruption in Turkey. Otherwise, according to mentioned law article 102; these foreigners will be charged with interest applied by the Social Security Institution.

Foreigners entitled to social security in their home countries are not covered by the General Health Insurance in Turkey.

In Turkey many employers subscribe to private health insurance schemes for their employees in addition to the social insurance. They can, in this manner, ensure that their employees are examined and treated in better hospitals. However, a private health insurance is not obligatory. There are many insurance companies that offer health insurance schemes.

## 10.4 Rules Applicable to Expatriates

A foreign individual sent by a foreign company established abroad to carry out business on its behalf in Turkey who has notified the Department of Social Security that he is insured abroad will not be subject to Social Security deductions in Turkey in case they provide the official documents to Turkish Social Security that they are insured in their home country.

### International Agreements

Turkey has agreements with Germany, Austria, Belgium, Denmark, Sweden, Libya, Norway, UK, Switzerland, Netherlands, France, T.R.N. Cyprus, Azerbaijan, Romania, Albania, Bosnia Herzegovina, Czech Republic, Georgia, Canada, Quebec, Macedonia, Luxembourg, Bulgaria, Italy, Slovenia, Montenegro, Korea, Croatia. In case of individuals who are nationals of one of the above countries, which have social security totalization agreements, the provisions of the above agreements have to be considered to determine their social security status in Turkey. Except in the cases referred to above, a foreigner employed by a Turkish company is liable for full Social Security deductions as is the case for a Turkish national.

## 10.5 Collective Agreements - Trade Union Rights

Matters pertaining to trade unions and collective agreements have been regulated by Law on Trade Unions and Collective Labor Agreements numbered 6356.

### Collective Labor Agreements

According to the law, collective agreements are agreements concluded between the trade union and the employers' association or the non-affiliated employer for drawing up a service contract and regulating its content, termination and relevant matters.

Collective agreements can also contain provisions regulating the mutual rights and obligations of the parties, the implementation and supervision of the agreement and the methods to be applied for the settlement of the disputes.

Collective agreements have to be made in writing and can have duration of minimum one year and maximum 3 years. This period cannot be shortened or extended after the agreement has been signed.

The procedure for contracting a collective agreement has been stipulated by the law. This consists of, in the stated order, determining the unions that will make the agreement and obtaining the certificate of authorization for making an agreement, calling the other party to collective negotiations within 15 days from the date of receipt of certificate of authorization, specifying the venue, date and hour of the collective negotiations within 6 workdays following the forwarding of the call to the other party, carrying out the collective negotiations, and finally signing the agreement.

### Strikes

The expression "strike" means any concerted cessation by employees of their work with the object of halting the activities of a given establishment or of paralyzing such activities to a considerable extent, or any abandonment by employees of their work in accordance with a decision taken to that effect by an organization. Lawful strike means any strike called by employees in accordance with this law with the object of safeguarding or improving their economic and social position and working conditions, in the event of a dispute during negotiations to conclude a collective labor agreement.

Strike can be executed within 60 days provided that the notification has been made to the other party 6 days before. Unless the strike decision is taken or the strike date is notified to the other party, the authority to execute collective agreement will drop.

Strikes executed without fulfilling legal conditions will be deemed as illegal strikes.

The cases of occupation of the workplace, slow-downs, decreasing efficiency and other types of job actions are subject to the same sanctions as illegal strikes. A strike or lockout that is in the nature of endangering public health or national security can be postponed for 60 days by the Council of Ministers.

### Lockouts

Lock-out means any action taken by an employer or his representative, either upon his own initiative or in accordance with a decision taken by an organization, to collectively suspend employees from work in a manner that completely stops the activities in the workplace.

The employers' trade union, or the employer not belonging to any union, that is party to the dispute may take a decision to order a lock-out within sixty working days of the date on which the decision to call a strike is communicated to him and shall put into practice within this period and the date of the lock-out shall be communicated to the opposite party six working days before.

### Special arbitrator

The parties may agree to resort to special arbitration at any stage in the collective dispute involving rights and interests.

Provisions providing for recourse to special arbitration at the request of either of the parties may be included in the collective labor agreement.

Where the parties agree in writing to resort to special arbitration in a dispute involving interests, the provisions governing mediation, strike and lock-out, statutory arbitration shall not thereafter apply. In the disputes involving interests, the decisions of special arbitration shall have the same force and effect as a collective labor agreement.



# 11. Taxation of Mergers, Acquisitions and Reorganizations

This chapter aims to explain the basic taxation rules and considerations for an investor planning a merger, acquisition or a re-organization in Turkey:

## 11.1 Mergers

The absorption of one or more companies into an existing company where the absorbed company is deemed to be dissolved without liquidation is defined as a merger under Turkish Commercial Law. Under the recent changes in Turkish Commercial Law companies of different legal type can also participate in a merger.

### Taxable Mergers

A merger under the Turkish Commercial Law provisions is considered to be a taxable merger if the specific requirements for a tax free merger (pursuant to provisions of Articles 18, 19 and 20 of Corporate Tax Law) are not satisfied. In a taxable merger, the assets of the absorbed company are deemed to have been transferred at market value to the absorbing company which leads to taxable capital gains. The absorbing company is entitled to book the assets at their market values as their tax basis for depreciation purposes.

In a taxable merger, tax losses of the absorbed company cannot be transferred to the absorbing company. Nevertheless, the absorbed company can use the existing tax losses to offset against the capital gains arising from the transfer of assets through a taxable merger.

## **Tax Free Mergers**

A merger under the Turkish Commercial Law provisions is recognized as a tax free merger (also referred to as a "takeover") if the following tests are satisfied all together:

- Both the absorbing and absorbed companies are tax residents
- The absorbing company incorporates all assets and liabilities of the absorbed company into its balance sheet on a carryover basis (i.e. the whole balance sheet is transferred on the basis of book values)
- Other procedural and filing requirements with respect to the merger are satisfied on a timely basis

### ***Under a tax free merger***

- The absorbed company is subject to the usual taxation rules for profits up to the date of the merger however the gains arising from the merger itself (and the related transfer of assets) is not calculated and taxed
- The absorbing company assumes all known or unknown tax liabilities of the absorbed company
- Tax losses of the absorbed company can be transferred to the absorbing company, if the absorbing company continues the business activities of the absorbed company minimum for 5 years following the date of the merger. However, tax losses that can be transferred to the absorbing company are
- limited to the shareholders equity of the absorbed company as of the date of the merger.
- The tax free merger does not affect the tax attributes of the absorbing company
- There are also tax exemptions in other laws (such as VAT, stamp tax, real estate transfer tax) in reference to a tax free merger conducted as per Corporate Tax Law provisions.

### ***Simplified merger process***

According to the new Turkish Commercial Code, a simplified merger process is allowed if; one of the parties owns all shares that provide voting rights in the other company or the merging companies are sister companies. Through the simplified merger process, some obligations such as drafting of a merger report and

providing the audit right to related institutions or persons stated in the Turkish Commercial Code will not be applied, hence the merger can be implemented in a relatively less timeframe and administrative burden.

A simplified merger can also qualify as a “tax free merger” subject to the rules and conditions explained above.

## 11.2 Acquisitions

An investor may execute an acquisition in Turkey either through acquisition of a company (share deal) or acquisition of a certain business (asset deal). The following represents the key considerations when planning an acquisition in Turkey:

### Regulations for Acquisition

There are no general government controls or restrictions on investments in assets, business entities or acquisition of other rights in Turkey. However, certain specific business activities require a regulatory approval before change of ownership (e.g., banking and insurance, telecommunications, tobacco and alcoholic beverages, production and distribution of energy, etc.). Acquisition of real estate in Turkey by foreign investors is also subject to specific regulations which need to be observed by the foreign investors. A merger or acquisition transaction may also trigger approval requirement from Turkish Competition Board based on certain criteria.

### Asset vs. Share Acquisition

A foreign company can acquire a Turkish company by acquiring either the assets or the shares of the target company. In case of an asset acquisition, this can be done either via a branch of the foreign entity, which is taxable in Turkey on non-resident status, or via a Turkish subsidiary of the foreign company. The respective tax implications are summarized below:

- **Purchase of assets**

Acquisition of assets can only be done through a Turkish company or a Turkish branch of a foreign company.

### *Purchase Price*

In principle, the transfer of assets should be conducted at fair value, which should represent the market value. Transfers between related parties must be documented to comply with transfer pricing requirements.

### *Goodwill*

In case of an asset-deal, the excess of the purchase price over the fair value of the assets being transferred represent the goodwill, which can be capitalized by the buyer and depreciated for tax purposes. Turkish tax law does not require recognition of internally developed goodwill and rights in the tax basis balance sheet, so there is usually no tax basis cost for the goodwill in the seller's books and it, therefore, represents pure taxable income.

### *Depreciation*

The depreciation period of assets are refreshed in an asset deal. The selling entity has the right to deduct all remaining net book value of assets as the tax basis cost against the transfer value; and the buyer has to book the assets at their transfer value and start depreciating a new term of useful life for each asset (as prescribed by the Communiqués of the Ministry of Finance).

### *Tax Attributes*

The tax attributes (i.e. tax losses and incentives) are not transferred to a buyer in an asset deal. However, the selling entity has the right to use its existing tax losses and VAT credits against the taxable profits (such as capital gains) and VAT obligations arising from the asset transfer.

### *Value Added Tax (VAT)*

Transfer of assets through a regular asset purchase agreement is subject to VAT at regular rates depending on the type of assets being transferred (normally 18%).

Real estate properties that are included in the asset purchase agreement could potentially be exempt from VAT if held for a period of more than 2 years. The buyer has the right to get a deduction of the VAT incurred on asset deal against VAT generated from its sales. However, the full recovery of VAT can take time depending on the VAT generation of the acquiring entity, which may lead to an additional cash flow problem on asset purchase transactions.

### *Transfer Taxes*

In an asset deal, asset purchase agreement would usually be subject to 0.948% stamp tax on the basis of contract value whereas transfer of title to real estate is subject to a title deed registration fee of 2 % for both seller and buyer separately. In case of transfer of an existing agreement to the acquiring entity, stamp duty is payable at 1/4th of the stamp duty that was payable on the original agreement.

- **Purchase of shares**

Acquisition of shares by a foreign entity has no immediate Turkish income tax consequences.

### *Goodwill*

If the acquisition is via a Turkish branch or subsidiary, goodwill implicit in the share price cannot be recognized for tax purposes. There is no step-up availability for target company assets during a share acquisition.

### *Depreciation*

A Turkish company buying the shares in another entity cannot depreciate the value of shares for tax purposes. The shares are booked at historical acquisition value and offset against future proceeds from sales as a tax basis cost.

### *Tax Attributes*

A change in the shareholding will not have any effect on the tax attributes of the target company. Following the acquisition of shares, the target company can continue to carry forward its tax losses.

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

Share transfers by an individual are out of the scope of Turkish VAT. Where the transferor of shares is a corporate entity (e.g. a company or a branch) in Turkey, the transaction is principally in the scope of Turkish VAT. In this case, transfer of shares (in Joint Stock Companies) are exempted from VAT, however sale of participation shares (in Limited Liability Companies) by a Turkish entity can potentially attract Turkish VAT at 18% unless the participation shares are held for a period of more than 2 years.

### *Tax Indemnities and Warranties*

In a share deal transaction, the historical tax liabilities of the target (known or unknown) remain in the company and are acquired by the new shareholder(s). It is, therefore, usual for the buyer to ask for tax indemnities and warranties in a share acquisition.

### *Transfer Taxes*

According to a recent change in stamp tax law (Number 6728), enacted on 29 September 2016, documents concluded for share transfers of joint-stock companies, limited liability companies and limited partnerships shall be exempted from stamp tax.

- **Concerns for the Seller**

### *Sale of assets*

The sale of assets of an entity is subject to usual corporate tax on the gains realized from the sale of the assets. Losses arising from the sale of assets are available for immediate deduction or carry-forward. With respect to sale of certain fixed assets (e.g. real estate property), 75% of the gains realized from such sales may be exempted from corporate taxation provided that the real estate has been held for at least two years and the gains are retained in a special reserve account in the balance sheet for at least five years. Note that the transfer of the real estate property which has been held at least for two whole years by the companies is exempt from VAT.

### *Sale of shares*

The sale of shares in another corporation is subject to corporate tax on the gains realized from the sale of shares. Losses are available to off-set income from other activities of the entity. The corporate tax exemption on 75% of such gains is available under the conditions mentioned above (i.e. 2 year holding period and requirement to retain the gains in a special reserve account for at least 5 years) in respect of sale of real estate property.

If the seller of the shares is an individual, capital gains derived by individuals on the sale of shares (of a Joint Stock corporation) held for more than two years are fully exempt from personal income tax (Please note that, the proposed changes to the Income Tax Law may limit the exemptions granted to share sale transactions, however it is yet subject to further discussion and possible changes

in the Parliament); otherwise, if the shares are held less than two year, then the capital gains are subject to personal income tax at usual rates (i.e. 15% to 35%). There are no similar exemptions for individuals in respect of capital gains arising from transfer of participation rights in a Limited Liability Company.

Please refer to our comments above with respect to VAT implications in case of share transfer transactions.

- **Comparison of Assets and Share Purchases**

In view of the above, please find below a summary of the tax considerations comparing an asset purchase transaction vs. a share purchase transaction:

|                          | Advantages   | Disadvantages   |
|--------------------------|--|---|
| <b>Asset Acquisition</b> | <ul style="list-style-type: none"> <li>Purchase price can be depreciated for tax purposes</li> <li>Step-up in tax basis of assets is possible</li> <li>Previous tax liabilities not inherited by the buyer (except for certain anti-avoidance rules for related party transactions)</li> <li>Possible to acquire part of a business</li> </ul>                             | <ul style="list-style-type: none"> <li>Potential need to renegotiate the contracts, renew the licenses etc.</li> <li>Tax attributes like carried forward losses remain with the seller</li> <li>More transactions costs (stamp duty, transfer taxes, registration fees etc.)</li> <li>Potentially represents more tax cost to the seller (compared to share acquisition)</li> </ul>   |
| <b>Share Acquisition</b> | <ul style="list-style-type: none"> <li>Possible to purchase on net asset basis; hence lower capital outlays</li> <li>Likely to be more attractive to the sellers due to possible tax exemptions</li> <li>Tax attributes like carried forward losses are also acquired with the company</li> <li>Continue to enjoy existing contracts, licenses, incentives etc.</li> </ul> | <ul style="list-style-type: none"> <li>Acquisition of potential tax liability due to difference between market value and book value of assets in the target company</li> <li>Inability to recognize a goodwill for tax purposes</li> <li>Acquisition of contingent (unknown) tax liabilities with the company</li> <li>Potential need for post-acquisition structuring if non-core assets are also acquired with the company</li> </ul> |

## 11.3 Corporate Reorganizations

### Tax Free De-merger

There are two types of tax free de-merger allowed under the Turkish tax laws:

- A full de-merger is reorganization where a company is divided into two or more existing or new companies while the transferring company is dissolved, pursuant to the provisions of Article 19-3-a of Corporate Tax Law. This type of de-merger allows transfer of tax losses. By the introduction of the new Turkish Commercial Law effective from July 2012, it also became possible to implement such a de-merger from a Commercial Law perspective.
- A partial de-merger (also called a “partial de-merger”) is reorganization where certain assets (i.e. participation shares or real estate property that has been held for a period of more than 2 years or complete production / service facilities) of a company are contributed into a new or existing company as capital in kind on a carryover basis, pursuant to the provisions of Article 19-3-b of Corporate Tax Law. A reorganization of a Turkish branch of a foreign company by way of a partial de-merger has recently become possible provided that the transferee company is a tax resident. Tax implications are similar as a tax free merger, except that transfer of losses is not possible under a partial de-merger.

### Tax Free Share Swaps

A share swap is a tax free transaction if the acquiring company receives the target shares in exchange for its shares to acquire control of management as well as a majority of shares in the target company. Although a tax free share swap is principally defined as a non-cash transaction, it is allowed to pay the shareholders of the company whose shares have been acquired up to 10% of the nominal value of the shares to be given to them.

### Conversions

Conversions (i.e. change of legal form of a company) carried out under the requirements for tax-free mergers will not be considered as a taxable reorganization.

### Liquidations

A Turkish Corporation may liquidate its assets and distribute the proceeds to its shareholders through a formal liquidation process to be carried out in accordance with Turkish Commercial Law requirements.

In the taxation of liquidations, financial period is replaced by liquidation period, which starts when a company is put into liquidation. The period between this date and the end of the same calendar year, as well as every calendar year following this date, is considered as a separate liquidation period. When liquidation is finalized, the final liquidation profit or loss is computed and the liquidation returns, which were previously filed, are corrected and, if necessary, taxes overpaid are refunded.

The company will be subject to usual taxation rules during the liquidation period and will be required to maintain all legal bookkeeping and filing obligations as a normal company.

The repayment of capital to shareholders at the end of liquidation does not trigger any taxes, but distribution of excess profits, reserves (or hidden reserves such as the capital adjustment differences) to the shareholders will attract dividend withholding tax at 15% (may be reduced by Double Tax Treaty provisions). Note that it is a statutory requirement for the tax office to carry out a tax audit upon the closing of liquidation.



# 12. International Corporate Taxation

## Residency and Taxation of Non-Resident Entities

A company is considered to be resident in Turkey if it has either its legal seat or place of effective management in Turkey or both. Legal seat refers to the place of official center of company, defined in, such as, the articles of association. The place of effective management refers to the place where the top management of the company is located. As a general rule, residence of a company is determined by the domestic rules of the contracting states. However, in some cases provisions of tax treaties might be applied.

If neither of two conditions is met for the residency in Turkey, then a company is considered to be non-resident for tax purposes. Non-resident entities are subject to taxation in Turkey on their Turkey sourced income.

Taxable income of non-residents is determined-but not limited to these-based on the following type of income:

- Profits from commercial (business) activities earned through a place of business or a permanent representative in Turkey
- Income derived from professional services performed in Turkey (or the fees that are obtained in Turkey)
- Income derived from income from lease of immovable properties, intangibles and machinery in Turkey (also transfer of intangibles in Turkey)
- Interest income obtained from Turkey
- Dividend income obtained in Turkey
- Capital gains of transactions performed in Turkey or obtained in Turkey

Foreign entities may operate in Turkey to run a business in form of branch or through their subsidiaries as separate entity. These forms are elaborated in more detail below. Besides, operations of non-resident entities might be considered to constitute a permanent establishment for tax purposes. These create the concept of business place in local rules. Of course the provisions of tax treaties should also be taken into account. Business profits of non-resident entities are assessed in the same way as that of resident companies for their Turkish sourced income (please see the other sections in "Corporate Taxation").

### **Permanent Establishment**

Under Turkish Corporate Income Tax Legislation; the income derived by nonresident entities through their Permanent Establishment ("PE") or Permanent Representative ("PR") in Turkey are subject to tax in Turkey. Turkish Corporate Tax Law refers to provisions of Tax Procedural Law regarding the definition of PE and provisions of Income Tax Law regarding the definition of PR.

In this respect, a workplace (PE) is defined as the places of business which is dedicated/allocated to the carrying out commercial, industrial, agricultural or professional activities. A business place of a non-resident entity operating in Turkey solely for the purpose of buying or producing goods in Turkey to be later exported is not considered to be a PE.

On the other hand, a PR is defined as the person who is bound to a principal by a service or representation act, and is authorized to carry out transactions on behalf and on account of the principal for a definite or indefinite period of time.

There are no further specific definitions or guidelines in respect of the definition of a PE under domestic law. Based on the generally accepted interpretation of the above mentioned tax law provisions, the following are seen as common features of a PE of a foreign entity in Turkey:

- There should be an income generating activity performed by the foreign entity (or its representatives) in Turkey
- The foreign entity should have a fixed place of presence in Turkey where the activities are concentrated

- There should be a close link between this fixed place of presence and income generating activities

Based on the above, it is usually accepted that Turkish tax laws follow the PE definition OECD model tax treaties where activities carried out in Turkey who do not have a strong connection with the income generation (e.g. preparatory and auxiliary services) should not lead to recognition of PE; on the other hand, the persons who carry out commercial transactions on behalf of a foreign entity may still lead to taxation in Turkey if deemed as PR as explained above.

In contrast to the provisions under domestic rules, warehouses and independent agents are generally not included in the definition of "permanent establishment" under Turkey's treaties.

### **Branches**

Branches are treated as non-resident entities for tax purposes and subject to corporate taxation in Turkey for their profits generated in Turkey.

Under local foreign investment legislation, a branch of a foreign company is a type of foreign direct investment and the establishment of a branch is subject to the same requirements and procedures as a foreign company that intends to run a business in Turkey. A branch office may only operate in the areas of activities of the head office. It is managed by a representative (could be a foreigner but is required to be a Turkish resident) who is appointed to this effect by a power of authorizations. The representative must be authorized to represent the foreign entity in Turkey before all public and private authorities.

A Branch has to fulfill all statutory bookkeeping and filing requirements in Turkey same as a usual resident entity.

### **Subsidiaries**

Another form which can be used to run a business in Turkey is to set up a subsidiary as a separate legal entity, which can be established as Limited Liability Company (Ltd.) or Joint Stock Company (A.Ş).

These two forms of companies are considered as Turkish resident for tax purposes and subject to corporate taxation on their worldwide income as opposed to PE and Branches.

### **Withholding Taxation**

The taxation of income received by non-resident entities in Turkey is regulated under the Article 30 of Corporate Income Tax Law. According to the Article, parties who make the payment to non-residents are responsible for withholding and the payment of taxes. The general withholding tax rate is 15% under the article, however the Council of Ministers are authorized to determine the rates between the range of 0% and 30%.

### **Dividends**

Dividends distributed to non-resident entities are subject to 15% withholding tax. The withholding tax applies when the dividends are actually distributed in cash or on account. The use of profits to increase the capital of the company is not considered as profit distribution and hence not subject to dividend withholding taxation. This is the final tax for non-residents and there is no further filing requirement.

Income of Branches in Turkey is not subject to withholding taxation unless remitted to headquarters. The 15% withholding taxation applies for remittance of income to head office. The transfer of income of PEs is also subject to 15% remittance withholding. The rate of 15% withholding tax can be reduced to 5%-10% through the use of tax treaties.

### **Royalties**

Royalties paid to non-residents are subject to withholding tax at 20%. In a case that the non-resident company has a PE in Turkey, no withholding tax applies, however those royalties should be declared in the annual corporate income tax return and subject to taxation accordingly. This is the final tax for non-residents and there is no further filing requirement.

Gains received from the sale of copyrights, patents, trademarks and other intangible rights are subject to a final withholding tax of 20%.

The reduced rates of withholding tax over the royalty payments are available for all Turkish Tax Treaties and the rates vary between 5% and 15% (the general cap of 10% applies for nearly all tax treaties)

### **Interest**

Interest paid to non-resident entities is subject to withholding taxation at the gross amount of interest paid to non-resident entity. In a case that the non-resident entity has a PE in Turkey, the interest income is included in the annual tax return and subjected to taxation accordingly. This is the final tax for non-residents and there is no further filing requirement.

Withholding tax rates applied to interest payments to non-resident companies are as follows, unless a treaty provides for a lower rate;

A rate of 0% applies to:

- Interest on Turkish government bonds and debentures (including those issued abroad);
- Interest on bonds and debentures issued by companies on or after 1 January 2006;
- Loan interest paid to foreign banks or states, or to international institutions;
- Loan interest paid to other companies that are authorized habitually to provide loans in the country in which they are established and provide loans not only to related companies but also to all individuals and legal entities.
- Interest on debentures issued by Turkish resident companies with the maturity over than 5 years.
- Income on lease certificates issued by Turkish resident asset lease companies with the maturity over than 5 years.

A rate of 1% applies to:

- Interest paid by banks on subordinated loans similar to equity and interest paid by banks and other companies on loans received by way of securitization abroad.

A rate of 3% applies to:

- Interest on debentures issued by Turkish resident companies with the maturity between 3 and 5 years.
- Income on lease certificates issued by Turkish resident asset lease companies with the maturity between 3 and 5 years

A rate of 5% applies to:

- Interest in relation to the sale of goods on credit.

A rate of 7% applies to:

- Interest on debentures issued by Turkish resident companies with the maturity between 1 and 3 years.
- Income on lease certificates issued by Turkish resident asset lease companies with the maturity between 1 and 3 years

A rate of 10% applies to:

- Interest on other loans
- Interest on debentures by Turkish resident companies with the maturity less than 1 year
- Income on lease certificates issued by Turkish resident asset lease companies with the maturity less than 1 year
- Interest on deposit accounts with the maturity more than 1 year
- Portion of profits received from profit/loss partnership accounts/certificates in participation banks (interest-free) with the maturity more than 1 year;

A rate of 12% applies to:

- Interest on deposit accounts with the maturity between 6 months and 1 year
- Portion of profits received from profit/loss partnership accounts/certificates in participation banks (interest-free) with the maturity between 6 months and 1 year;

A rate of 13% applies to:

- Interest on foreign currency deposit accounts with the maturity more than 1 year;

A rate of 15% applies to:

- Interest on deposit accounts with the maturity less than 6 months or demand deposit accounts
- Interest over profit participating loans
- Portion of profits received from profit/loss partnership accounts/certificates in participation banks (interest-free) with the maturity less than 6 months
- Interest on foreign currency deposit accounts with the maturity between 6 months and 1 year

- Income from repo transactions for treasury bonds and debentures;

A rate of 18% applies to:

- Interest on foreign currency deposit accounts with the maturity less than 6 months or foreign currency demand deposits.

### **Capital Gains**

In accordance with the provisions of Income Tax Law, capital gains received by non-residents upon disposal of shares and other assets are taxable in Turkey as long as the related gains are deemed to be Turkish sourced. In reference to Turkish income tax code provisions, such capital gain is deemed to be Turkish sourced if the sale transaction is performed in Turkey or the transaction is evaluated in Turkey (i.e. the payment is born by a Turkish taxpayer).

If capital gain, received by non-resident entities, is considered as Turkish sourced then it would be subject to corporate income tax at usual rate of 20%. Furthermore, the remaining amount after corporate taxes would also be subject to 15% dividend withholding taxation (taxation of remittance of capital gains). Hence, the effective tax rate reaches up to 32%.

The taxation right of the capital gains over the disposal of shares is generally remains with the country of which the selling entity is a resident provided that the minimum holding period should be more than 1 year under many of Turkish Tax Treaties.

### **Professional Services**

Professional service fees paid to non-resident companies are subject to 20% withholding if the service is rendered in Turkey or the payment is made in Turkey. Turkey generally follows 183 days test in tax treaties. Accordingly, in most of Turkish Tax Treaties, the professional services are taxable in Turkey if the employees of the non-resident entity stay in Turkey more than 183 days in a 12 months period or has fixed place of business in Turkey.

Withholding tax rate is reduced to 5% for oil exploration activities performed in Turkey.

### **Income from Lease of Tangible Assets**

According to local rules, payments to non-residents for the lease of movable or immovable properties are taxable in Turkey if the assets are in Turkey or the relevant rights are used in Turkey. Such leasing payments to non-residents are subject to withholding tax at 20%. The payments for the financial leasing, however, are subject to 1% reduced rate of withholding taxes.

### **Construction and Repair Works, Spread Over the Years**

Payments for construction works and repair projects which spread more than one calendar year are subject to 3% withholding taxes.

### **Turkey's Treaty Network**

Turkey's double tax treaty network consist of 94 countries, 82 of this are already in effect, 4 new treaties (Philippines, Senegal, Ivory Cost and Somalia) have been signed but not yet in effect and 8 new treaty (Palestinian, Gabon, Gambia, Uganda, Kenya, Hong Kong, Burundi and Chad) have been initialed but not yet in effect. Please refer to Appendix 13.4 where the table for the treaty countries and relevant provisions are summarized.

In addition to the double tax treaties, Turkey has started to sign Exchange of Information Treaties with the jurisdictions, so called as tax heavens, within the scope of measures for the prevention/control of capital movements and tax avoidance. In this view, Turkey has signed exchange of information treaties with 5 countries (Jersey, Gibraltar, Isle of Man, Guernsey and Bermuda) in addition to the ongoing negotiations with 5 countries (Barbados, Panama, Cayman Islands, British Virgin Islands and Bahamas).

### **Tax Treaties Signed but not yet in Force**

Turkey has signed tax treaties with the below list of Countries and these treaties will be in effect following the approval of the Parliaments of both Countries.

| Country        | Date of Signature |
|----------------|-------------------|
| Philippines*   | 18.03.2009        |
| Palestinian**  | 15.11.2012        |
| Gabon**        | 03.09.2015        |
| Gambia**       | 11.02.2014        |
| Uganda**       | 14.07.2016        |
| Kenya**        | 19.07.2016        |
| Hong Kong**    | 18.07.2016        |
| Burundi**      | 19.12.2016        |
| Ivory Coast*** | 29.02.2016        |
| Chad**         | 10.04.2015        |
| Senegal***     | 14.11.2015        |
| Somalia***     | 03.06.2016        |

(\*) After signature, Treaty has been ratified by Turkey and Philippines, and would be in effect from 1 January following the year of completion of process by the contracting states.

(\*\*) Treaty has been initialed only.

(\*\*\*) Treaty has been signed only and would be in effect following the completion of ratification process in both countries.



# 13. Appendices

## 13.1 Appendix I: Chart of Principal Turkish Taxes

|   |  |   |
|---|--|---|
| Corporate income tax  | Increase in net                        | 20%   |
| Advance corporate income tax  | worth                                  | 20%   |
| Individual income tax   | Net taxable<br>income                  | 15 - 35%<br>(all source of<br>income including<br>salary income)                |
| Value Added Tax – VAT   | Sales value                            |   |
| • General   |  | 18%   |
| • Certain products and services   |  | 8%  |
| • Certain products and services   |  | 1%  |
| Banking & Insurance Transaction Tax   |  |   |
| • General   |  | 5%  |
| • Interbank deposit transactions  |  | 1%  |
| • Repos   |  | 1%  |
| • Money market transactions between<br>banks and brokers  |  | 1%  |
| • Sale of Government bonds and T-bills  |  | 1%  |
| • Sale of foreign currency  |  | 0%  |
| Stamp Duty (Where the stamp duties are payable, the amount of the stamp duty payable on each document is limited to TRY1.865.946,80 for the year 2017.) | Value specified<br>in the<br>documents | generally at 0,948%<br>(0,189% for rental<br>contracts, 0,759%<br>for salaries) |
| Gift and Inheritance Tax  | Value                                  | 1 – 30%   |
| Customs Duties  | Value                                  | Various   |
| Transfer of real estate   | Sales Value                            | 2%, each buyer and<br>seller  |

|   |   |   |
|---|---|---|
| Special Consumption Tax   |   |   |
| • Petroleum products  | Per liter, kg, etc.                           | Specific  |
| • Vehicles  | Value and engine size                         | 0,5 to 160%                                       |
| • Alcoholic beverages & tobacco products                              | Value, retail sale price for tobacco products | 25% - 65,25% (*) and specific                     |
| • Certain luxury goods  | Value   | 3%-6,7%-20%-25%                                   |
| Special Communication Tax   | Service fee                                   |   |
| • Mobile telecommunication services                                   |   | 25%   |
| • Radio & Television broadcasting services through satellite or cable |   | 15%   |
| • Wired, non-wired and mobile internet service providing facility     |   | 5%  |
| • Other telecommunication services                                    |   | 15%   |
| Lottery taxes (National Lottery, horse racing, Toto, lotto, etc.)     | Various                                       | Specific and ad valorem at 5%-7%-10 %             |
| Motor Vehicle Tax   | Model, engine, weight                         | Certain amounts revised each year                 |
| Major Municipal & Local Taxes:  |   |   |
| Real Estate Taxes   | Tax Value Per tariff, gross profit Fee Sales  |   |
| * Buildings   | Value Per flat                                | 0,1 - 0,4%  |
| * Lands   | and business premises                         | 0,1 - 0,6%  |
| Entertainment Tax   |   | Specific ( TRY 5 – 100) and ad valorem at 5 – 50% |
| Communication Tax   |   | 5 – 15%   |
| Electricity & Gas Consumption Tax                                     |   | 1 - 5%  |
| Sanitation Tax  |   | Certain amounts revised each year                 |

(\*) Only the percentage tax rate is applied provided that not being less than the tax calculated by using the minimum lump-sum tax amounts.

## 13.2 Appendix II: Chart of Withholding Tax

| Description   | Tax Base                                 | Non Resident Company (*) (%) | Non Resident Individual (***) (%) | Resident Company (**)(%) | Resident Individual (***) (%) |
|---|--|------------------------------|-----------------------------------|--------------------------|-------------------------------|
| Technical / Professional Services -General              | Gross billings                           | 20                           | 20                                | na                       | 20                            |
| Construction projects lasting more than a calendar year | Progress billings                        | 3                            | 3                                 | 3                        | 3                             |
| Salaries • Turkish Payroll                              | Gross less social security contributions | -                            | 15 - 35                           | na                       | 15 - 35                       |
| Rentals / Royalties                                     | Gross                                    | 20                           | 20                                | n.a                      | 20                            |
| Financial Leases  | Gross                                    | 1                            | n.a                               | n.a                      | n.a                           |
| Dividends   | Gross                                    | 15(****)                     | 15                                | n.a                      | 15                            |
| Branch profits  | Net profits less corporate taxes         | 15                           | na                                | na                       | 20                            |
| Interest on loans                                       | Gross                                    | 0(*****) 1/5/10              | -                                 | -                        | -                             |
| Sales proceeds:   |  |                              |                                   |                          |                               |
| • of copyrights and patents                             | Gross billing                            | 20                           | 20                                | na                       | 17                            |
| • of other intangible rights                            |  | 20                           | -                                 | na                       | -                             |

\* In the Article 30 of Corporate Tax Law, withholding tax rate applied to certain payments to non-resident companies is set as 15%. On the other hand, the Council of Ministers is authorized to reduce withholding tax rate to zero or to increase it to 30%.

\*\* In the Article 15 of Corporate Tax Law, withholding tax rate applied to certain payments to resident companies is set as 15%. On the other hand, the Council of Ministers is authorized to reduce withholding tax rate to zero or to increase it to 20%.

\*\*\* Withholding tax rates applicable to resident and non-resident individuals are based on the Council of Ministers Decrees numbered 2013/4962, 2013/4552, 2012/3141, 2011/1854, 2009/14593-4, 2006/11449, 2006/10731 and 2003/6577.

\*\*\*\* Except those who are receiving dividends via a fixed business place or a permanent representative.

\*\*\*\*\* Zero rate withholding tax is available depending on status of the foreign lender (i.e. banks and financial institutions). 1% interest on subordinated loan facilities to the Turkish banks being subject to the provisions of the supplementary capital in compliant to the Turkish Banking Law and interest on loans received by banks and other corporations by way of securitization based on a cash flow or an asset portfolio from abroad. 5% withholding tax is applied for interest on installments or credit for the purchase of imported goods. 10% withholding tax is available on other loans and transactions that are not within the above mentioned loans.

### 13.3 Appendix III: Computation of Taxes on the Year-end Profits

The corporate income tax will be calculated in its simplest form as follows:

| Explanation                            | Calculations |
|--|--------------|
| Book profits adjusted for tax purposes | 100          |
| Corporation tax at 20%                 | 20           |
| Available for distribution             | 80           |

The following tax computation may be more applicable in most of the cases.

|                                   |     |
|-----------------------------------|-----|
| Operating profits                 | 500 |
| Dividends from a resident company | 250 |
| Total book profits                | 750 |
| Disallowable expenses             | 100 |

“No dividend policy” is assumed.

Computation of corporation tax would be as follows:

|                            |            |
|----------------------------|------------|
| Book profits               | 750        |
| Disallowable expenses      | 100        |
| Tax adjusted profits       | 850        |
| Exempt income              | 250        |
| • <b>Dividends</b>         | <b>250</b> |
| Taxable profits            | 600        |
| Corporate tax base         | 600        |
| Corporate tax at 20%       | 120        |
| Total taxes                | 120        |
| Available for distribution | 630        |

### Dividend distribution and legal reserve requirements

Dividend distribution paid from a Turkish company to another Turkish company is exempted from withholding tax (without any further condition). Dividends received by a holding company in Turkey from another Turkish subsidiary are exempt from corporate income tax (without any further conditions). Dividend distribution from a Turkish company to a Turkish individual or a non-resident shareholder (whether individual or corporate) is subject to withholding tax 15%. The rate of dividend withholding tax applied for a non-resident shareholder may be reduced if the shareholder is located in a jurisdiction having a favorable double tax treaty with Turkey. Profits retained in the company are not subject to withholding tax unless declared as dividend to shareholders.

Consider the following example, with assumption that the paid in capital of the company is TRY100.000 and a full dividend policy is adopted.

| Explanation  | Calculations |
|--|--------------|
| Book profit  | 100,000      |
| Corporate income tax at 20%  | 20,000       |
| Available for distribution   | 80,000       |
| First legal reserves (5% of net profits, capped at 20% of paid in capital) | 4,000        |
| 1 <sup>st</sup> level gross dividends (5% of paid in capital)              | 5,000        |
| Available for secondary dividends  | 71,000       |
| Secondary legal reserves (1/11 of available for secondary dividends)       | 6,455        |
| 2 <sup>nd</sup> level gross dividend                                       | 64,545       |
| Gross dividends (first and secondary dividends)                            | 69,545       |
| Withholding taxes on dividends at 15%                                      | 10,432       |
| Net dividends  | 59,113       |

## 13.4 Appendix IV: Turkish Withholding Taxes by Treaty Countries

| Country             | Dividend (%) | Branch Profit (%) | Interest (%) | Royalty (%) |
|---------------------|--------------|-------------------|--------------|-------------|
| 1 Austria           | 5/15         | 5                 | 10/15        | 10          |
| 2 Ireland           | 5/10/15      | 5                 | 10/15        | 10          |
| 3 South Korea       | 15/20        | -                 | 10/15        | 10          |
| 4 Jordan            | 10/15        | -                 | 10           | 12          |
| 5 Tunisia           | 12/15        | -                 | 10           | 10          |
| 6 Romania           | 15           | 15                | 10           | 10          |
| 7 Netherlands       | 15/20        | 7.5               | 10/15        | 10          |
| 8 Pakistan          | 10/15        | 10/15             | 10           | 10          |
| 9 United Kingdom    | 15/20        | 15                | 15           | 10          |
| 10 Finland          | 5/15         | 5/15              | 5/10/15      | 10          |
| 11 T.R.N.Cyprus     | 15/20        | 15                | 15           | 10          |
| 12 France           | 15/20        | 7.5               | 15           | 10          |
| 13 Sweden           | 15/20        | 15                | 15           | 10          |
| 14 Belgium          | 15/20        | 15                | 15           | 10          |
| 15 Denmark          | 15/20        | 7.5               | 15           | 10          |
| 16 Italy            | 15           | 15                | 15           | 10          |
| 17 Japan            | 10/15        | 10/15             | 10/15        | 10          |
| 18 U. Arab Emirates | 5/10/12      | 5/10/12           | 10           | 10          |
| 19 Hungary          | 10/15        | 10                | 10           | 10          |
| 20 Kazakhstan       | 10           | 10                | 10           | 10          |
| 21 Macedonia        | 5/10         | 5                 | 10           | 10          |
| 22 Albania          | 5/15         | 5                 | 10           | 10          |
| 23 Algeria          | 12           | 12                | 10           | 10          |
| 24 Mongolia         | 10           | 10                | 10           | 10          |
| 25 China            | 10           | 10                | 10           | 10          |
| 26 India            | 15           | 15                | 10/15        | 15          |
| 27 Malaysia         | 10/15        | 10                | 15           | 10          |
| 28 Egypt            | 5/15         | 5                 | 10           | 10          |
| 29 Poland           | 10/15        | 15                | 10           | 10          |
| 30 Turkmenistan     | 10           | 10                | 10           | 10          |
| 31 Azerbaijan       | 12           | 12                | 10           | 10          |
| 32 Bulgaria         | 10/15        | 10                | 10           | 10          |
| 33 Uzbekistan       | 10           | 10                | 10           | 10          |
| 34 United States    | 15/20        | 15                | 15/10        | 10/5        |
| 35 Ukraine          | 10/15        | 10                | 10           | 10          |
| 36 Israel           | 10           | 10                | 10           | 10          |
| 37 Belarus          | 10/15        | 15                | 10           | 10          |
| 38 Russia           | 10           | 10                | 10           | 10          |
| 39 Kuwait           | 10           | 10                | 10           | 10          |
| 40 Slovakia         | 5/10         | 10                | 10           | 10          |
| 41 Indonesia        | 10/15        | 10/15             | 10           | 10          |

| Country                 | Dividend (%) | Branch Profit (%) | Interest (%) | Royalty (%) |
|-------------------------|--------------|-------------------|--------------|-------------|
| 42 Lithuania            | 10           | 10                | 10           | 10/5        |
| 43 Croatia              | 10           | 10                | 10           | 10          |
| 44 Moldova              | 10/15        | 10/15             | 10           | 10          |
| 45 Singapore            | 10/15        | 10                | 7.5/10       | 10          |
| 46 Kyrgyzstan           | 10           | 10                | 10           | 10          |
| 47 Tajikistan           | 10           | 10                | 10           | 10          |
| 48 Sudan                | 10           | 10                | 10           | 10          |
| 49 Czech Republic       | 10           | 10                | 10           | 10          |
| 50 Bangladesh           | 10           | 10                | 10           | 10          |
| 51 Latvia               | 10           | 10                | 10           | 5/10        |
| 52 Spain                | 5/15         | 5/15              | 10/15        | 10          |
| 53 Slovenia             | 10           | 10                | 10           | 10          |
| 54 Greece               | 15           | 15                | 12           | 10          |
| 55 Syria                | 10           | 10                | 10           | 15/10       |
| 56 Estonia              | 10           | 10                | 10           | 10/5        |
| 57 Thailand             | 10/15        | 10/15             | 10/15        | 15          |
| 58 Luxembourg           | 5/10/20      | 10                | 10/15        | 10          |
| 59 Iran                 | 15/20        | 15                | 10           | 10          |
| 60 Saudi Arabia         | 5/10         | 5/10              | 10           | 10          |
| 61 Lebanon              | 10/15        | 10                | 10           | 10          |
| 62 Morocco              | 7/10         | 7                 | 10           | 10          |
| 63 Rep. of South Africa | 10/15        | 10                | 10           | 10          |
| 64 Portugal             | 5/15         | 5                 | 10/15        | 10          |
| 65 Serbia Montenegro    | 5/15         | 5                 | 10           | 10          |
| 66 Ethiopia             | 10           | 10                | 10           | 10          |
| 67 Bahrain              | 10/15        | 15                | 10           | 10          |
| 68 Qatar                | 10/15        | 10/15             | 10           | 10          |
| 69 Bosnia Herzegovina   | 5/15         | 5/15              | 10           | 10          |
| 70 Canada               | 15/20        | 15/20             | 15           | 10          |
| 71 New Zealand          | 5/15         | 5/15              | 10/15        | 10          |
| 72 Norway               | 5/15         | 5                 | 5/10/15      | 10          |
| 73 Oman                 | 10/15        | 10                | 10           | 10          |
| 74 Georgia              | 10           | 10                | 10           | 10          |
| 75 Yemen                | 10           | 10                | 10           | 10          |
| 76 Germany              | 5/15         | -                 | 10           | 10          |
| 77 Switzerland          | 5/15         | 5/15              | 5/10         | 10          |
| 78 Brazil               | 10/15        | 10                | 15           | 10/15       |
| 79 Australia            | 5/15         | 5/15              | 10           | 10          |
| 80 Malta                | 10/15        | 10                | 10           | 10          |
| 81 Mexico               | 5/15         | 5                 | 10/15        | 10          |
| 82 Kosovo               | 5/15         | 5                 | 10           | 10          |

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