Turkish Tax Amnesty

General overview of Tax Amnesty

Turkey has introduced a tax restructuring programme for corporate and individual taxpayers with the Law no. 7143 (Tax Amnesty Law) that entered into force on 18 May 2018. Under this programme, there are various mechanisms with different scopes, deadlines and methods that would help the taxpayer to mitigate the tax risks of the past and/or to restructure the different types of taxes due (public debts), so as to provide flexibility for the taxpayer to repay its taxes due.

The mechanisms under the programme are mainly categorized into the following:

a. Restructuring of the public debts;

b. Increase of the tax base retrospectively to enjoy an immunity from inspection;

c. Regularisation of the unrecorded certain assets /receivables and payables of taxpayers in their legal books;

d. Tax amnesty which enable taxpayers to bring certain undeclared foreign assets, as well as to introduce certain Turkish undeclared asset in to the economy, and to exempt various income from foreign subsidiaries/branches which will also serve the purpose of enjoying immunity from inspection.

a. *Restructuring of the Public Debts*

In general, the scope of the public debt covers direct taxes such as income / corporate taxes, withholding taxes, indirect taxes such as VAT, stamp duty, property taxes etc and customs, and all monetary penalties, tax penalties and irregularity penalties resulting due to failure of compliance matters. In relation to tax penalties, irregularity penalties and late payment interest and custom taxes and its liabilities that are due before 31 March 2018 will be in the scope of the restructuring of public debts. Any liability that are due on or after 31 March 2018 will not be in the scope. Taxes that are filed with annual tax return (e.g. income tax and corporate tax) and due in 2017 will be in scope, whereas income tax and corporate tax that will be due 2018 is not. Further, in relation to taxes filed on monthly basis such as VAT or withholding tax, the scope cover until February 2018, whereas any tax that is due in March 2018 is out of the scope.

The progamme is mainly aimed to restructure the debt of the taxpayer to provide flexibility to repay its debts. In general, this means:

1. Write off the late payment interest on taxes (e.g. income tax or stamp duty tax) which is quite high and punitive (1.40% per month) and replacing the late payment interest with a much more favourable interest (based on the domestic Producer Price Index);
2. Give opportunity to repay the principal of the tax in instalments (e.g. up to 36 months) or in one lump sum which will also eliminate 90% of the new and favourable interest rate; and
3. Write off some portion of the monetary penalties, tax penalties and irregularity penalties depending on the situation.

The degree and flexibility of the restructuring will depend on the category in which the taxpayer falls:

1. Restructuring of public debts that are finalised either the final court decided against taxpayer or court case cannot be filed due to certain reasons (filing date has expired);
2. Restructuring of public debts that are in the process of litigation;

3. Restructuring of public debts that are in the process of inspection or tax assessment;

4. Restructuring of public debts under declaration with regret which is a mechanism to repay the tax due before tax authorities discovers the unpaid taxes.

Amounts to be paid or to be waived under each category would differ. Even in some categories (i.e., restructuring of public debts that are in the process of litigation) amounts to be waived or to be paid will change depending on the court process that the tax payer is subject to (e.g. whether the taxpayers' conflict is dealt with first degree court or second degree court) etc.

To benefit from restructuring of public debts, taxpayer should apply by the end of 31 July 2018.

b.Tax Base Increase

Under this mechanism, taxpayer enjoys an immunity from inspection that may arise for any given reason if such taxpayer opts to increase the tax base of certain years, for certain taxes and pay 15% flat rate tax (the flat rate goes up to 20% if such taxpayer also benefits from restructuring of debts at the same time).

The is akin to paying an insurance premium to secure an immunity from inspection. However the scope of this mechanism is a limited compared to income tax, corporate tax, value added tax (reverse charge VAT is excluded), and certain withholding tax (withholding tax on payroll or independent professional services and withholding tax on payments made to subcontractors in relation to constructions and certain other payments). Further only taxes due in the years between 2013 and 2017 is within scope.

The law provides for different rates of increase for different categories of taxes.

For example, taxpayers should increase the income tax base by 35%, 30%, 25%, 20% and 15% for years 2013, 2014, 2015, 2016 and 2017 respectively, whereas for WHT purposes, the tax base will increase by 6%, 5%, 4%, 3% and 2% for years 2013, 2014, 2015, 2016 and 2017 respectively.

The increased amounts relating to income and corporate tax rates are subject to 15% to 20% tax (the applicable rate can be reduced to 15% provided that tax payments are made by the their due dates). Different rates may apply for tax base increase for VAT and WHT. In return the taxpayer will not be inspected.

Please note that the there is minimum fixed threshold and the increased amount cannot be less than this threshold. The increase rate and minimum thresholds differs depending on type of tax and certain other conditions.

For corporate tax payers, only 50% of the carried tax losses for the years which were subject to tax base increase method can be deducted from the future corporate tax base (2018 and following years).

Taxes calculated with this method can be be paid in one lump sum before 30 September, or via instalments (up to a maximum of 18 bi-monthly instalments) starting from September 2018.

To benefit from tax base increase, taxpayer should apply by the end of August 2018.

c. Regularisation of Unrecorded Assets

Under this mechanism, taxpayers are able to correct their legal books as of 31 December 2017.

The scope of this mechanism covers 1) unrecorded assets such as commodities, equipment, machinery and other fixed (ie. physical) assets in legal books; 2) correction of the recorded assets which do not exist physically; and 3) cash balances and net amount of receivables offset against receivables from shareholders and payables to shareholders recorded in the legal books .

A summary of the transactions that enjoy this method is as follows:

Covered Issue	**Required Transaction**
1) Unrecorded assets such as equipment machinery and similar items in legal books	A 10% VAT wil be applied on the current real value of unrecorded assets (for assets subject to reduced VAT rates, half of their reduced VAT rates should apply (4%-0.5%)) should be paid
2) Correction of the recorded assets (non-physical assets)	This will be treated as sale of assets but no penalty or late payment interest will be applied. The sale will trigger VAT and corporate tax
3) Cash balances and net amount of receivables offset against receivables from shareholders and payables to shareholders recorded in the legal books	3% tax should be paid over the corrected amounts

To benefit from regularisation of unrecorded assets, taxpayers should apply by the end of 31 August 2018.

d. Tax Amnesty

With the tax amnesty programme taxpayers can enjoy a tax amnesty by declaring their undeclared assets located abroad and in Turkey and/or enjoy exemption for income from foreign subsidiaries or branches.

1. Decleration of assets

i. Assets located abroad:

The scope of the tax amnesty programme is cash, foreign exchange, gold, securities , other capital market instruments, and movable assets. Taxpayers who wish to benefit from amnesty will have to file a form declaring the assets to the Turkish banks and brokerage houses. The brokerage house / bank will file a tax return for the declared assets to the tax office and levy 2% tax over the declared assets and pay such tax by 31 December 2018. Following the filing date, the assets will have to be brought to Turkey within 3 months and then they can be freely utilised, meaning that it can be repatriated back to abroad. By paying 2% the taxpayer enjoys an immunity from inspection .

The deadline for filing the declaration is 30 November 2018, however there is an exception that if taxpayer opts to file declaration by end of July and bring the assets into Turkey by then, the 2% levy will not applicable.

Bringing the assets means either bringing assets physically or transferring to an account opened at a Turkish brokerage house or bank. If the securities or capital markets instruments cannot be transferred to an account in Turkey, declaration of such instruments will be deemed as brought into Turkey. Also repaying a debt owed by corporate taxpayers with the declared cash will be viewed as bring the cash into Turkey.

The assets brought into Turkey by corporate taxpayers can be booked in the legal books and declared amount will be the new base. However no depreciation will be allowed for these assets. Further, losses from the disposal of these assets are not deductible for tax purposes. However, any profit from disposal, being the difference of sale price minus declared amount, will be subject to ordinary corporate tax.

Should the taxpayer own a non-Turkish property, taxpayer may also benefit from the tax amnesty if such property is sold and converted into cash before the deadlines of 31 July 2018 or 30 November 2018.

The valuation of most repatriated in-scope assets should be evaluated based on fair market value, and should be recorded in the taxpayer's legal books accordingly. However,

- cash assets are based on their nominal value,
- foreign currency denominated assets are to be expressed in local currency based on the Central Bank of Turkey purchase rate,
- securities and other capital market instruments are based on their fair market value; if fair market value is not available, then it will be based on cost value and if cost is not available, it will be based on their nominal value.

ii. Assets located in Turkey

For the assets located in Turkey, only taxpayers who are keeping legal books can benefit from this tax amnesty. The scope of assets are identical and in addition, properties in Turkey is in the scope. These taxpayers can declare the assets to the tax office and tax office will levy 2%, and such tax shall be paid by 31 December 2018. If the declaration is made by end of July 2018, no tax shall due.

No depreciation will be allowed for these assets. Further, losses from the disposal of these assets are not deductible for tax purposes. However, any profit from disposal, being the difference of sale price minus declared amount, will be subject to ordinary corporate tax.

<u>2. Exemptions for income derived from non-resident subsidiaries</u>

The Tax Amnesty Law further set forth corporate and income tax exemptions for:

i. Capital gains derived from disposal of subsidiaries abroad;

ii. Dividends derived from subsidiaries abroad;

iii. Foreign branch income;

iv. Liquidation income of non-resident corporations.

Both income and corporate taxpayers can benefit from this opportunity provided that:

- Capital gain and dividend income are derived on or before 31 October 2018 and repatriated to Turkey on or before 31 December 2018;

- Foreign branch income is derived on or before 31 October 2018 and repatriated to Turkey on or before 31 December 2018;

- Liquidation income is derived on or before 31.10.2018 and repatriated to Turkey on or before 31 December 2018.

Important Notice:

The information this document prepared by an external consultant and is for general guidance only. It does not constitute tax advice. The information may not be complete nor suited to your specific circumstances and therefore should not be relied upon. Given the complexity of the Tax Amnesty as well as the various conditions and implications thereof, we highly recommend taxpayers engage the assistance of an independent legal or tax counsel.