

TAX BULLETIN

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Bulletin Date : 02.08.2024
Bulletin No : 2024/002

TAX REGULATIONS INTRODUCED WITH LAW NUMBER 7254 (INCLUDING PILLAR II AND DOMESTIC MINIMUM CIT)

The “Law on Amending Certain Laws and Legislative Decree No. 375 with Tax Laws Numbered 7524” - omnibus law, the Law- is published in the Official Gazette dated 02.08.2024.

The law consists of 61 articles, some relevant to tax issues. A brief explanation of changes in the tax regulations is as follows:

1- Introduction of Pillar II: Global Minimum Taxation

Articles 37-49 of the Law stipulates that local and minimum top-up tax of up to 15% shall be imposed on multinational enterprises (MNE) whose worldwide annual consolidated revenues exceed the Turkish lira equivalent of EUR 750 million in at least two of the four accounting periods preceding the accounting period in which the income is reported.

The introduced law is mostly the same as the OECD Pillar 2 regulations.

Taxpayers in the scope of the rules calculate their effective tax rate (ETR) and pay top-up tax for the difference between, their effective tax rate per jurisdiction and the 15% minimum rate.

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Garantisi ile sınırlı bir Birleşik Krallık şirketi olan BDO International Limited'in üyesi ve bir Türk anonim şirketi olan BDO Yayıncılık A.Ş., bağımsız üye kuruluşlardan oluşan BDO ağıının bir parçasını teşkil etmektedir.

BDO International global ağıının toplam gelirleri 2021 yılında 12,8 milyar ABD Doları olarak gerçekleşmiştir. BDO, 164'dan fazla ülkede bulunan 1.803 ofiste faaliyet göstermekte olup, bu ofislerde denetim ve danışmanlık hizmetleri veren ortaklar dahil dünya çapında 111.307 kişi çalışmaktadır.

Dikkat ve titizlikle hazırlanan bu yayın, geniş anlamda görüşleri içermekte olup, genel bir yol gösterici olarak değerlendirilmelidir. Özel durumlara ilgili olarak, mesleki görüş ve yardım almadan, bu yayına dayanarak uygulamalarda bulunulmamalıdır. Bu konuların kendi özel durumunuza ilişkin etkilerini görüşmek için BDO Yayıncılık A.Ş. ile temas kurabilirsiniz. Bu yayındaki bilgilere dayanarak belli eylemlerde bulunmak veya bulunmamak nedeniyle doğabilecek zararlar nedeniyle, BDO Yayıncılık A.Ş. ve ortakları, çalışanları ile yazarları herhangi bir yükümlülük veya sorumluluk kabul etmemektedirler.

The ETR of an MNE group with net country-based income is calculated separately on a country-by-country basis for each accounting period.

To determine whether top-up tax is owed, rules stipulate that the ETR be calculated in each jurisdiction where the MNE operates. This requires calculating the income and the tax on that income.

A liability to top-up tax for a member of an in-scope MNE group arises under two types of provisions: Income Inclusion Rule (IIR) and Undertaxed Payments Rule (UPTR).

Provisional Safe Harbors are stipulated as below (Until the end of the 2026 accounting period):

- 1- De minimis test exclusion: The jurisdiction has a total Country by Country Report (CbCR) revenue of less than €10 million and a CbCR profit of less than €1 million.
- 2- Simplified ETR test exclusion: The jurisdiction's ETR is equal to or greater than the transition rate for the fiscal year. The 'simplified ETR' is calculated by dividing the simplified covered taxes by the profit reported in the MNE Group's CbCR. Transition rates are as below:
 - i. 15% for fiscal years beginning in 2024;
 - ii. 16% for fiscal years beginning in 2025; and
 - iii. 17% for fiscal years beginning in 2026
- 3- Routine profits test exclusion: The tested jurisdiction's profit or loss before income tax for the jurisdiction is equal to or less than the substance-based income exclusion (SBIE), which is:
 - For the 2024 period, 9,8 % of annual payroll costs and 7,8 % of net tangible fixed assets (These rates will be reduced by 0.2% for the following 4 accounting periods, and by 0.8% for the payroll costs and by 0.4% for net tangible fixed assets for each of the four accounting periods starting from the 2029 accounting period.

Permanent Safe Harbors are stipulated as below:

- 1- De minimis test exclusion: The jurisdiction has a total jurisdiction revenue of less than €10 million and a jurisdiction profit of less than €1 million.
- 2- Routine profits test exclusion: The tested jurisdiction's profit or loss before income tax for the jurisdiction is equal to or less than the substance-based income exclusion (SBIE), which is 5% of annual payroll costs and 5% of tangible fixed assets.

Declaration Date:

Global minimum top-up tax: In 15 months following the month in which the accounting period is closed. (In 18 months for the 2024 accounting period)

Domestic minimum top-up tax: In 12 months following the month in which the accounting period is closed.

This regulation will become effective for the earnings obtained in 2024 and subsequent taxation periods (for institutions subject to special accounting periods, for the earnings obtained in the special accounting period starting in the 2024 calendar year, and subsequent taxation periods).

2- Introduction of Domestic Minimum Corporate Income Tax (CIT)

According to Article 36 of the law, the CIT calculated by companies (including quarterly provisional tax periods) cannot be less than 10% of the corporate income before the deduction of discounts and exceptions.

Corporate income before deduction of discounts and exceptions refers to the amount calculated by adding non-deductible expenses to the company's commercial profit.

When calculating the domestic minimum CIT, the following exemptions and discounts can be deducted from the corporate income:

- Participation exemption for domestic income
- Emission premium exemption
- Return exemption for cooperatives
- Sale-leaseback exemption
- Fund income exemption specified in Article 5/1-d of the Law (excluding those obtained from real estate)
- Venture capital fund discount
- Disabled employee support discount
- Earnings exempted from tax within the scope of the Turkish International Ship Registry Law
- Earnings exempted from tax within the scope of the Free Zones Law,
- Technology Development Zone and R&D Discount
- Investment Incentive Discount

This regulation will become effective for the earnings obtained in 2025 and subsequent taxation periods (for institutions subject to special accounting periods, for the earnings obtained in the special accounting period starting in the 2025 calendar year, and subsequent taxation periods).

3- Regulations on Benefits Provided to Employees Through Granting of Shares

Within the scope of contracts made with employees, employees may be given the right to purchase shares of employer or group companies free of charge or at a discount, provided that they work for the employer for a certain period of time and meet certain performance and similar criteria.

The nature of the benefits provided to employees by giving them free shares is controversial, especially those provided by group companies other than their employers because there is no legal regulation that stipulates that these should be considered salary.

According to the Advance Rulings provided by the Tax Authority, regardless of whether they are issued by an employer or group company, these shares are subject to tax when they become legally and economically available for use (vesting date). The tax base shall be the difference between the fair market value shares and its cost to the employee at the vesting date.

As per Article 2 of the Law, the portion of the market value of the shares given to employees free of charge or at a discount will be exempt from tax up to the annual gross salary of the employee in that year. This exemption will be valid only for Techno-Enterprise companies according to the criteria determined by the Ministry of Industry and Technology.

In order to encourage the retention of shares granted to employees for a longer period, the exemption will be applied at different rates depending on the retention period of shares acquired by the employees.

This regulation will become effective on the date of publication of the Law (2 August 2024).

4- Precious Metals will be Subject to Valuation According to Stock Market Value

Articles 7 and 8 of the law stipulate that the stock market value shall be used as the criterion in valuing precious metals such as gold, silver, platinum, and palladium traded on precious metal exchanges. In cases where the stock market value does not exist or is formed fraudulently, the cost price shall be taken as the basis of the valuation.

This regulation will become effective on the date of publication of the Law (2 August 2024).

5- Free Zone Exemption is Limited Only for Export Activities

According to the current regulations, all profits obtained from manufacturing activities in free zones are exempt from corporate income tax, regardless of whether these products are sold domestically or abroad.

Article 24 of the Law stipulates that profits obtained by institutions operating in free zones exclusively from sales abroad (exports) will remain exempt, while the exemption granted to profits obtained from sales made domestically will be abolished.

This regulation will become effective for the earnings obtained in 2025 and subsequent taxation periods.

6- Deduction of Deferred VAT is Limited to 5 Years

With the arrangements made in Articles 30 and 58 of the VAT Law and Articles 20 and 22 of the Law, it is regulated that deferred VAT amounts of 5 calendar years or more will be removed from the deferred VAT accounts and transferred to a special account and that these amounts will be taken into account as an expense based on the results of the tax audit to be conducted on the taxpayer's request within 3 years.

If a request is not made within 3 years, the VAT cannot be written off as an expense or deducted as input VAT. These amounts can be removed from the records by being considered non-tax-deductible expenses.

This regulation will become effective on 01/01/2030.

7- Transfer of Deferred VAT in Merger, Acquisition, and Division Transactions will be Required Tax Inspection

According to the current regulations, the acquiring company can use the acquired company's deferred VAT without any inspection in mergers and acquisitions and division activities.

Article 19 of the Law stipulates a tax inspection to use the deferred VAT of the acquired company.

This regulation will become effective on the date of publication of the Law (2 August 2024).

8- Tax Principal is Excluded from the Scope of Tax Settlement

With Article 14 of the Law, the principal tax is removed from the scope of tax settlement and the relevant articles of Tax Procedure Law are being regulated in this regard.

The current reconciliation applications are envisaged to be finalized according to the pre-amendment provisions of the Tax Procedure Law.

This regulation will become effective on the date of publication of the Law (2 August 2024).

9- VAT Exemption for Services Provided at Marinas to non-commercial Marine Transport Vehicles is Abolished

Article 17 of the Law stipulates that VAT exemption for rental, maintenance, etc., services provided at marinas to marine transport vehicles used in non-commercial activities such as travel, entertainment, and sports will be abolished.

This regulation will become effective on 1 September 2024.

10- Revenue Audits will Commence

Article 3 of the law establishes an institution to determine the actual income of those who are liable for commercial or professional activities.

It is envisaged that the monthly and annual revenue amounts of taxpayers will be determined by taking the average of the daily revenue amounts determined through the inspections to be conducted with the taxpayers.

The revenue amounts determined in this way will be compared with the revenue amounts declared by the taxpayers for the period in which they were active, and

if the difference found as a result of the comparison is more than 20 percent, taxpayers will be invited to provide explanations.

This regulation will become effective on 01.01.2025.

11- Some Payments within the Scope of e-Commerce Will be Subject to Withholding

Under Articles 4, 33, and 34 of the Law, payments made by intermediary service providers and electronic commerce intermediary service providers operating based on the provisions of Law no 6563 are included in the scope of personal or corporate income tax withholding.

On the other hand, the President is given the authority to determine rates for payments subject to withholding based on the fields of activity, payment types, sectors, business groups, and types of business.

This regulation will become effective on 01.01.2025.

12- Penalties for Forged Documents are Increased

Article 5 of the Law stipulates collateral and penal obligations for those identified by the tax audit report as having been established solely to prepare forged documents and for persons related to them. Otherwise, a special irregularity penalty is envisaged.

This regulation will become effective on the date of publication of the Law (2 August 2024).

13- Information Obligation for e-Commerce Transactions

Article 6 of the Law regulates the information obligation of banks and payment institutions for the persons who engage in commercial activities such as buying, selling, renting, advertising, and posting on all kinds of digital platforms.

This regulation will become effective on the date of publication of the Law (2 August 2024).

14- Tax Penalties Against Shadow Economy Increased

Article 9 of the Law stipulates that a tax penalty will be imposed on those who work without the knowledge of tax administration and operate off the record. This regulation will become effective on the date of publication of the Law (2 August 2024).

15- Some Irregularity Penalties are Increased

Articles 10, 11, 12, and 13 of the law stipulate that the amounts of special irregularity penalties will be increased to increase their deterrent effect. This regulation will become effective on the date of publication of the Law (2 August 2024).

16- Special Consumption Tax (SCT) Regulations

Article 18 of the Law eliminates the difference between the exemptions for deliveries and services to national security institutions for national defense and internal security needs in accordance with the VAT and Special Consumption Tax Laws and the exemption provision on the same subject in the Customs Law.

Article 25 of the Law removes the limitation of up to 20% of the minimum lump sum tax amount collected from certain tobacco products.

This regulation will become effective on 1 November 2024.

17- VAT Exemption for Aids Provided by Foreign State Institutions Related to Earthquake

Article 23 of the Law provides VAT exemption for deliveries of goods and services related to aid provided by foreign state institutions and organizations due to an earthquake.

This regulation will become effective on the date of publication of the Law (2 August 2024).

18- Corporate Income Tax Exemption for Funds and Partnerships Investing in Real Estate

Article 32 of the Law stipulates that funds and partnerships investing in real estate will benefit from the corporate tax exemption if they distribute 50% of the profits, they obtain from the real estate they own.

Also, it is regulated that the participation income exemption can be used for profit shares obtained from investment funds and partnerships that do not meet the profit distribution criteria and, therefore, cannot benefit from the above exemption.

This regulation will become effective for the earnings obtained in 2025 and subsequent taxation periods.

19- Increase in Corporate Income Tax Rates for Public-Private Partnership Model

Article 35 of the Law stipulates that a 30% (normally it is 25%) corporate income tax will be calculated on all profits of the institutions operating in projects carried out within the framework of the build-operate-transfer model according to Law No. 3996 and in projects carried out within the framework of the public-private partnership model according to Law No. 6428.

This regulation will become effective for the earnings obtained in 2025 and subsequent taxation periods.

20- Some Transactions Required to Obtain “Tax Clearance Certificate”

Payments to be made upon court decrees and payment or enforcement orders of enforcement offices are included among the payments and transactions for which it is mandatory to seek a Tax Clearance Certificate.

This regulation will become effective on the date of publication of the Law (2 August 2024).

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Kind regards.