

English translation

Regulations introduced under the “Draft Law on Restructuring Certain Receivables”

The outline of the “Draft Law on Restructuring Certain Receivables”, which is still being worked on by the Government and which will soon be submitted to the Grand National Assembly of Turkey (GNAT) has been announced on 15 November 2010 by Ali Babacan, Minister of State and Vice Prime Minister. The announcement outlines the regulation, which is still in draft stage.

The new regulation restructures specified receivables, aims to accelerate collection of disputed receivables by ending their dispute, allows taxpayers to benefit from the law for taxes to be accrued upon completion of inspection and assessment processes commenced before the Law, provides taxpayers with the opportunities to increase tax base and tax, declare inventory and to correct entries, waives the collection of receivables that are below a certain amount and provides an additional right to taxpayers who submitted declaration in the scope of the Cash Repatriation Law, but who could not benefit from the opportunities provided by this Law due to different reasons.

I. Receivables that are in the scope of new regulation

Within the framework of the new practice, taxes, tax penalties, administrative fines, social security premiums and administrative fines, certain receivables of special provincial administrations such as miscellaneous fees and participation shares, water receivables together with the municipality taxes and tariff fees, electricity receivables of TEDAŞ, scholarship receivables of YURT-KUR, TRT's receivables arising from electricity share and stamp fees, KOSGEB's receivables arising from supports, TOBB's and its affiliated chambers' chamber fee receivables and OSB's electricity, water, natural gas receivables and subscription fee receivables shall be restructured.

In terms of taxes and customs taxes; Taxes concerned with periods before 31.07.2010, for taxes based on declaration, taxes concerned with tax returns that must be filed by 31.07.2010 and property tax, environmental cleaning tax and motor vehicles tax accrued before 31.07.2010 for the year 2010 will be restructured.

In terms of social security premiums; Insurance premium related to employers and the employees, pension contribution and corporation provision, unemployment premium, social security support premium, premiums related to those with voluntary insurance and collective insurance, social security support premium that must be deducted from the salary of the self-employed, who must be considered as insured because of working on their behalf and account after they are put on old age pension, retirement pension or invalidity pension, and that must be paid by themselves, stamp duty, special communication tax and contributions to education that are excused by the Social Security Institution, which pertain to June 2010 and previous months, insurance premium calculated over the deficient labor amount related to works subject to tender and private-nature constructions completed by 30/6/2010 and administrative fines imposed on acts conducted until 31.07.2010 will be restructured.

In terms of electricity and water receivables those that must be paid before 31.07.2010, **in terms of contribution fees of TOBB and affiliated chambers** contribution fees that must be paid before the enactment of the draft law and other receivables which were matured as of 31.07.2010 but not paid on the date when the Law becomes effective are also covered in the scope of the restructuring practice.

II. Advantages provided to debtors

It would be sufficient to pay the whole amount of principal receivables **for specified public receivables**, 50% of the administrative fines applied by SSI, 50% of the penalties that are not related to the principal receivable, the amount to be determined based on the update rate (WPI/PPI) instead of interest for default, fine for default and penalty for default. The collection of 50% of the fines and penalties imposed related to the principal tax amount and the total amount of ancillary receivables such as interest for default, fine for default and penalty for default would be waived.

For disputed public receivables; according to the phase of the dispute, 50% or 20% of principal receivables, 25% or 10% of the penalties that are not related to the principal receivable, the amount to be determined based on the update rate (WPI/PPI) instead of interest for default, fine for default and penalty for default will be paid. Collection of the whole amount of the penalties imposed related to the principal tax and

whole amount of ancillary receivables such as interest for default, fine for default and penalty for default will be waived.

SSI's principal premium receivables will not be reduced; 25% of administrative fines and the amount to be determined based on the update rate (WPI/PPI) will be paid instead of interest for default and penalty for default.

For receivables at the phase of inspection and assessment, tax inspections already started and assessment and accrual procedures will be continued. After the completion of these procedures; 50% of the imposed tax and the amount to be determined based on the update rate (WPI/PPI) instead of interest for default, will be paid, whereas the remaining principal receivable amount and tax penalties and ancillary receivables such as interest for default will be waived.

If the taxpayers submitting declarations with penitence or without being demanded pay the whole amount of taxes accrued and the amount to be determined based on the update rate (WPI/PPI) instead of penitence surcharge and interest for default, collection of tax penalties, penitence surcharge and interest for default will be waived. Same principles are prescribed for customs taxes as well.

Taxpayers who have not declared their property tax on time are allowed to make declaration, and provided that whole amount of taxes along with the amount to be determined based on the update rate (WPI/PPI) instead of interest for default are paid, collection of interest for default and tax penalties arising from this tax will be waived.

The new regulation introduced an opportunity to increase tax base, such that income tax, corporate tax, income withholding tax, value added tax that taxpayers declared between 2006 and 2009 will not be subject to inspection and assessment provided that the tax base/tax amounts are increased at the rates specified in the Law and a certain rate of tax is paid.

Furthermore, thanks to the **inventory declaration** practice, assets which are present within the enterprise, but which are not entered in the books can now be entered in the books by taxpayers; in addition, taxpayers may perform correction processes for the assets which are entered in the books but are not present in the enterprise. By stipulating that no tax and penalty shall be imposed if taxpayers pay tax at certain rates over these assets they declare, it is ensured that enterprises' records are compatible with the actual situation.

Those who have not been able to bring their assets from abroad to Turkey on time along with those who have not been able to apply capital increase on time and those who have not been able to pay the accrued taxes on time shall be provided with additional time to benefit from the Cash Repatriation.

III. Payments related with restructuring

To benefit from the opportunities mentioned above, it would be sufficient if taxpayers file a written application by the end of the second month following the month when the law becomes effective, cancel the lawsuits initiated, make the aforementioned payments on time and fulfill the current period's tax and premium payment liabilities during the installment payment term.

Payments may be made in cash or in 18 installments in 36 months. Furthermore, installments of tax debts can be paid by credit card.

Evaluation of transfer pricing practices regarding business partnerships

In developed economies, it is frequently observed that companies specialized in different areas carry out certain activities with other companies. In Turkey where establishing a new company is sometimes a long and costly process, companies may prefer ordinary partnership status for the activities which will be performed jointly in a certain period of time.

In our study, we first focused on different types of business partnership in our tax legislation.

There are three main types of partnerships in practice which are:

- a. Business partnerships with Corporate Tax Liability
- b. Ordinary Partnerships without Corporate Tax Liability
- c. Consortiums

After discussing different types of partnerships stated above, we have focused on the transfer pricing practices regarding these partnerships and their partners.

Partnerships with corporate tax liability, are deemed to be business partnerships under the Turkish Corporate Tax Code.

Although this sort of business partnerships do not carry legal personality, they fulfill all the obligations related with regular corporate tax payers. Therefore, partners' share of profit, is treated as dividend and taxed accordingly.

Since business partnerships and parties forming the business partnership are regarded as corporate tax payers according to Corporate Tax Code, their transactions are deemed to be related party transactions. Therefore It has been concluded that business partnerships who are corporate taxpayers must be treated in the scope of the transfer pricing legislation.

In case of ordinary partnerships with no corporate tax liability, the partners forming the partnership are tax liable over the profits they have obtained through the partnership. Although the issue is not specifically stated in the transfer pricing communiqués, since the partners have the means to alter the tax liabilities through the partnership, after detailed analysis, we have concluded that partnerships with no corporate tax liability cannot be excluded from the transfer pricing legislation.

In our study, we have also evaluated consortiums, which are seen frequently particularly in the construction sector, in terms of the transfer pricing legislation and explained our view that consortiums' shareholders should not be treated as related parties.

We have further commented on "treasury loss" clause in the Turkish Tax legislation which should also be taken into account during a transfer pricing analysis among partnerships.