

# Tax and Investment Facts

A Glimpse at Taxation and  
Investment in Turkey

**2019**



# WTS TURKEY

## Turkey

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- Foreigners work permit and social security applications
- Employee incentive advice and remuneration policy

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<b>1</b>	<b>Ways of Doing Business / Legal Forms of Companies</b>	<b>4</b>
<b>2</b>	<b>Corporate Taxation</b>	<b>6</b>
<b>3</b>	<b>Double Taxation Agreements</b>	<b>18</b>
<b>4</b>	<b>Transfer Pricing</b>	<b>19</b>
<b>5</b>	<b>Anti-avoidance Measures</b>	<b>20</b>
<b>6</b>	<b>Taxation of Individuals / Social Security Contributions</b>	<b>22</b>
<b>7</b>	<b>Indirect Taxes</b>	<b>25</b>
<b>8</b>	<b>Inheritance and Gift Tax</b>	<b>27</b>
<b>9</b>	<b>Wealth Tax</b>	<b>28</b>
<b>10</b>	<b>Property Tax</b>	<b>28</b>
<b>11</b>	<b>Stamp Tax</b>	<b>29</b>
<b>12</b>	<b>Special Consumption Tax</b>	<b>29</b>
<b>13</b>	<b>Resource Utilization Support Fund</b>	<b>30</b>
<b>14</b>	<b>Real Estate Investment Companies (REICs)</b>	<b>31</b>
<b>15</b>	<b>Debt Push Down</b>	<b>33</b>

The new Turkish Commercial Code numbered 6102 (New TCC), which came into effect on 1 July 2012 has introduced essential changes to create a more foreign-investor-friendly environment in Turkey. In light of the new Turkish Commercial Code, the principal types of business structure can be categorised under five sub-headings: joint-stock company, limited liability company, commandite company, collective company and cooperative company. Besides branch and liaison offices, limited liability and joint stock companies are the most preferred types of legal structures by foreign investors due to the liability position of the shareholders.

In general:

→ JSCs are appropriate for foreign investors envisaging large-scale projects. Furthermore, some of the business activities,

such as stock exchange activities, banking & insurance, financial leasing, factoring, independent auditing, venture capital investment, etc. might only be carried out through JSCs.

- LLCs are the most popular form of company among foreign investors due to the straightforward incorporation procedure and basic characteristics.
- A cooperative company is preferred by investors envisaging agricultural activities.
- Collective and Commandite companies, respectively, correspond to general partnerships and limited partnerships in other countries
- Branches might be considered the most suitable alternative for foreign companies which need a permanent establishment (PE) in Turkey.

## Comparison between JSC and LLC

	Joint Stock Companies (JSC)	Limited Liability Companies (LLC)
<b>Number of Shareholders</b> (real persons or corporations)	Minimum 1 shareholder – No upper limit	Minimum 1 – Maximum 50 Shareholders
<b>Minimum Share Capital</b>	TRY 50,000 (EUR 7,622)	TRY 10,000 (EUR 1,524)
<b>Shareholder Liability</b>	Limited to the subscribed amount of capital regardless of payment status. However, members of the board of directors might be held personally liable to the public authorities for unpaid public debts of the company commensurate to their share capital.	Limited to the subscribed amount of capital. However, shareholders and legal representatives might be held personally liable to the public authorities for unpaid public debts of the company commensurate to their share capital.
<b>Statutory Organs</b>	Board of Directors General Assembly	Partners Assembly Directors
<b>Shares</b>	Nominal value of each share in the capital TRY 1 (EUR 0.15).	Nominal value of each share in the capital TRY 25 (EUR 4), or multiples of this amount.
<b>Payment of Capital</b>	Full payment of capital before the registration is not mandatory. However, a cash contribution of at least 25% of the capital should be made to a blocked account opened at a bank before the registration is made at the trade registry. The remaining portion of the capital should be paid within 24 months of the registration.	

## 2 Corporate Taxation

The new Corporate Tax Law numbered 5520 was enacted on 21 June 2006 along with the legislative amendments regarding transfer pricing and thin capitalisation, while previous regulations were modernised and aligned with international standards. Also, new provisions were introduced such as controlled foreign corporations, anti-tax haven legislation and several BEPS-like regulations.

The standard corporate tax rate was increased to 22% from 20% for the 2018, 2019 and 2020 FY for tax periods beginning on or after 1 January 2018.

### 2.1 Applicable Taxes / Tax Rates

In general, companies in Turkey are subject to corporate income tax on their worldwide income. The mainstream Corporate Income Tax (CIT) in Turkey was increased to 22% from 20% for the 2018, 2019 and 2020 FY for tax periods beginning on or after 1 January 2018.

### 2.2 Resident Companies

Entities with legal and business centres located in Turkey qualify as residents and are taxed based on their worldwide income. The legal centre is presented in the Articles of Association and the business centre is the place where the main business and commercial activities are concentrated.

An Advance Corporate Income Tax return should be submitted by the 14<sup>th</sup> of the second month following the quarter. It is also due on the 17<sup>th</sup> of the second month following the quarter.

- Q1 deadline: By the 17<sup>th</sup> of the second month following the first quarter (for submission) and by the 17<sup>th</sup> of the related month for payment.
- Q2 deadline: By the 17<sup>th</sup> of the second month following the second quarter (for submission) and by the 17<sup>th</sup> of the related month for payment.
- Q3 deadline: By the 17<sup>th</sup> of the second month following the third quarter (for submission) and by the 17<sup>th</sup> of the related month for payment.
- Q4 deadline: By the 17<sup>th</sup> of the second month following the last quarter (for submission) and by the 17<sup>th</sup> of the related month for payment.

The paid advance tax amounts during the corresponding financial year are offset against the final corporate income tax liability of the company that will be determined in the corresponding year's corporate income tax return. Moreover, if the total paid amount of advance corporate income tax exceeds the actual corporate income tax payable, the company will be entitled to a corporate income tax refund.

A corporate income tax return must be submitted by the 30<sup>th</sup> day of the fourth month after the end of the accounting year. The corporate income tax is also due by the end of the month in which the tax return is submitted.

The effective CIT rate to be applied for 2019 is 22%.

## 2.2.1 Computation of Taxable Income

The calculation of the taxable corporate income starts with making the compulsory legal adjustments, where capital items are abolished and statutory allowances and disallowances are applied on the income shown on the commercial balance sheet.

Non-deductible expenses are added and exempted incomes as well as loss carry forwards are deducted accordingly. Deductible and non-deductible expenses are all separately listed in the law. Tax losses may be carried forward for 5 years.

<b>Computation of FY19 CIT</b>	
<b>a</b>	Commercial Loss / Profit
<b>b</b>	Non-Deductible Expenses
<b>c</b>	Exemptions
<b>d=a+b-c</b>	Loss/Gain
<b>e</b>	Previous Year's Losses
<b>f=d-e</b>	Tax Base
<b>g=f*22%</b>	Calculated Tax

## 2.2.2 Tax Reduction for Compliant Taxpayers

Income Tax Law No. 193 was amended in March 2017 to provide a 5% discount for eligible taxpayers who consistently file their tax returns on time and have no outstanding tax liability.

To qualify, taxpayers must meet the following conditions:

- All tax returns with respect to the year the tax discount will be applied, and to the previous two years, must be submitted by the statutory deadline. In addition, the taxes due must be paid by the statutory deadline (the period 2015-2017 will be considered for evaluating eligibility for the discount to be applied in 2018).
- The taxpayer should not be subject to any additional tax assessment by the Turkish tax authorities in the year the discount is applied and in the two preceding years (the 2015-2017 period will be considered for evaluating eligibility for the discount to be applied in 2018). Tax returns designated for correction or for voluntary disclosure purposes are not regarded as a violation of the condition.

- The taxpayer should not have any unpaid tax debt exceeding TRY 1,000 (EUR 152).

The discount is applicable for annual corporate and income tax returns to be submitted after 1 January 2018, and the amount to be deducted should not exceed TRY 1 million (EUR 152,439).

Taxpayers who committed tax evasion in the year when applying the discount and in the four preceding calendar years are not allowed to benefit from the discount.

Taxpayers should be careful with utilising this tax reduction opportunity during the tax declaration process.

### 2.2.3 Taxation of Dividends

Dividends paid out by Turkish residents to a company overseas are liable for dividend withholding tax. The rate of withholding tax is 15% and may be reduced in accordance with the provisions of an applicable tax treaty.

However, there are two different participation exemptions:

National participation exemption: dividends derived by a resident company from a participation in another Turkish corporation are exempt from corporate income tax.

Foreign participation exemption: dividends derived from a participation in a foreign corporation or limited liability company are exempt from corporate tax under the following conditions:

- Equity participation of at least 10% in a foreign corporation for a minimum uninterrupted period of one year.



- The profits from which the dividends are paid were subject to a foreign income tax of at least 15%<sup>1</sup>.

Participation income should be transferred to Turkey until the due date for the corporate tax declaration of the respective financial year.

## 2.2.4 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

The taxation of capital gains varies depending on the asset giving rise to the capital gain. Generally, capital gains are included in the income and subject to 22% corporate income tax. Taxation of a capital gain realised from the sale of the shares varies based on the legal status of a company. However, 50% of the capital gains derived from the sale of property or 75% of the participation shares held by corporations for more than two years are exempt from corporate income tax if certain conditions are met.

## 2.2.5 Depreciation / Capital Allowances

Fixed assets held for more than one year are subject to depreciation at varying rates determined by the Turkish Ministry of Finance. Depreciation can be calculated either using the straight-line or the declining-balance method. Intangible assets are depreciated over fifteen years.

<sup>1</sup> The profits from which the dividends are paid were subject to a foreign income tax of at least 20% if the respective entity falls into the category of financial institutions, insurance providers and real estate investors.

## 2.2.6 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

Tax losses can be carried forward for five years without any further requirements, though losses cannot be carried back. Qualifying tax losses can be consolidated in merger transactions.

## 2.2.7 Group Taxation

Group taxation is not possible in Turkey. Every entity within a group is taxed separately as an independent unit and must file its own corporate tax return.

## 2.2.8 Relief from Double Taxation (Tax Credit / Tax Exemption)

Depending on the tax treaty, two main methods, the exemption method or the credit method, are adopted in conventions for the avoidance of double taxation.

## 2.2.9 Tax Incentives in Turkey

The Turkish government has developed several tax incentives to encourage and attract foreign direct investment. These incentives can be categorised under four main headings:

- General investment incentives
- Regional investment incentives
- Large-scale investment incentives
- Strategic investment incentives

Support Instruments	General Investment Incentives	Regional Investment Incentives	Large-Scale Investment Incentives	Strategic Investment Incentives
VAT Exemption	✓	✓	✓	✓
Customs Duty Exemption	✓	✓	✓	✓
Tax Reduction	X	✓	✓	✓
Social Security Premium Support (Employer's Share)	X	✓	✓	✓
Income Tax Withholding Allowance*	✓	✓	✓	✓
Social Security Premium Support (Employee's Share)*	X	✓	✓	✓
Interest Rate Support**	X	✓	X	✓
Land Allocation	X	✓	✓	✓
VAT Refund	X	X	X	✓

\* Provided that the investment is made in Region 6.

\*\* Provided that the investment is made in Regions 3, 4, 5 or 6 within the framework of the Regional Investment Incentive Scheme

## Regions

**Region 1:** Ankara, Antalya, Bursa, Eskisehir, İstanbul, İzmir, Kocaeli, Muğla

**Region 2:** Adana, Aydın, Bolu, Çanakkale\*, Denizli, Edirne, Isparta, Kayseri, Kırklareli, Konya, Sakarya, Tekirdağ, Yalova

**Region 3:** Balıkesir, Bilecik, Burdur, Gaziantep, Karabük, Karaman, Manisa, Mersin, Samsun, Trabzon, Uşak, Zonguldak

**Region 4:** Afyonkarahisar, Amasya, Artvin, Bartın, Çorum, Düzce, Elazığ, Erzincan, Hatay, Kastamonu, Kırıkkale, Kırşehir, Kütahya, Malatya, Nevşehir, Rize, Sivas

**Region 5:** Adıyaman, Aksaray, Bayburt, Çankırı, Erzurum, Giresun, Gümüşhane, Kahramanmaraş, Kilis, Niğde, Ordu, Osmaniye, Sinop, Tokat, Tunceli, Yozgat, Sivas

**Region 6:** Ağrı, Ardahan, Batman, Bingöl, Bitlis, Diyarbakır, Hakkari, Iğdır, Kars, Mardin, Muş, Siirt, Şanlıurfa, Şırnak, Van, Bozcaada and Gökçeada

\* Except for Bozcaada and Gökçeada

## 2.3 Non-Resident Companies

Companies whose legal and business centre is located overseas and are incorporated as non-residents for tax purposes in Turkey have a limited tax liability position in Turkey. As a non-resident qualified company, taxes are only levied on the income derived from Turkey.

### 2.3.1 Concept of Permanent Establishment / Doing Business

The definition of a permanent establishment is regulated under Turkish Tax Procedure Law. In this respect, those who have a fixed place of business and generate income from commercial, industrial, agricultural or professional activities are deemed to have a permanent establishment in Turkey. Business profits derived through a permanent establishment in Turkey will be assessed in the same way as for resident companies, and tax liabilities on behalf of the headquarters situated overseas must be fulfilled.

### 2.3.2 Withholding Taxes

The general withholding tax rate in Turkey is 20%, but this may be reduced under the provisions of an applicable double tax treaty. The amount of domestic withholding tax differs based on the following income:

<b>Income</b>	<b>Percentage*</b>
Professional Independent Services	20%
Dividend	15%
Interest (Deposit)	0% - 18%
Interest (Loans) paid to non-financial institutions	10%
Royalty	20%
Rental fees	20%
Multi-year construction	3%
Cross-border online advertising services	0% - 15%

\* Unless a treaty provides for a lower rate

### 2.3.3 Capital Gains

Capital gains derived from the sale of shares by non-resident companies that do not have a permanent establishment in Turkey are not subject to withholding tax or corporate income tax provided that the holding terms indicated within the double tax treaties are observed.

## 2.4 Tax Compliance

Business profits of resident and non-resident entities having a permanent establishment in Turkey are assessed in the same way as for local companies in terms of their income generated in Turkey. Consequently, a registered permanent establishment is also obliged to file an annual corporate income tax and quarterly provisional corporate income tax declarations. Corporations are entitled to use the calendar year as their fiscal year, while a special fiscal year is also possible, subject to permission from the Ministry of Finance. Certain companies are obliged to hire an independent auditor.

Companies subject to independent auditing are determined by the following criteria:

- Total asset value of TRY 35 million (roughly EUR 5,335,000) or more;
- Annual net sales revenue of TRY 70 million (roughly EUR 11,000) or more;
- Employ at least 175 employees.

Tax returns must be filed by the following deadlines:

<b>Type of Declaration</b>	<b>Deadline for Filing Declaration</b>	<b>Payment Deadline for Declaration</b>
Annual Corporate Tax Return	Between 1 <sup>st</sup> and 30 <sup>th</sup> of the fourth month following the fiscal year end	Latest by the end of the month that the return is filed
Provisional Corporate Tax Return (quarterly)	Between 1 <sup>st</sup> and 17 <sup>th</sup> of the second month following the 3-month tax quarter*	Latest by the 17 <sup>th</sup> of the month for which the return is filed
Withholding Tax Return (monthly)	Between 1 <sup>st</sup> and 26 <sup>th</sup> of the following month	Latest by the 26 <sup>th</sup> of the month for which the return is filed
Withholding Tax Return for businesses that have 10 or fewer employees (quarterly)	Between 1 <sup>st</sup> and 26 <sup>th</sup> of the month following the 3-month tax quarter*	Latest by the 26 <sup>th</sup> of the month for which the return is filed
VAT Return (monthly)	Between 1 <sup>st</sup> and 26 <sup>th</sup> of the following month	Latest by the 26 <sup>th</sup> of the month for which the return is filed

<b>Type of Declaration</b>	<b>Deadline for Filing Declaration</b>	<b>Payment Deadline for Declaration</b>
Reverse charge VAT Return	Between 1 <sup>st</sup> and 26 <sup>th</sup> of the following month	Latest by the 26 <sup>th</sup> of the month for which the return is filed
Stamp Tax Return	Between 1 <sup>st</sup> and 26 <sup>th</sup> of the month following that in which the document is signed/issued	Latest by the 26 <sup>th</sup> of the month for which the return is filed
Sales and Purchase Declaration (monthly)	Latest till the end of the following month	No payment required
Annual Post-Closing Trial Balance Declaration	Latest till the end of the fourth month following the fiscal year end	No payment required

Non-compliance with the tax filing and payment of assessed tax may result in irregularity fines and delayed interest payments. Also, procedural penalties are imposed in the event of failure to comply with statutory accounting principles.

### 3 Double Taxation Agreements

Turkey has an extensive tax treaty network to avoid double taxation and to attract foreign investment. The OECD Model Tax Convention on Avoidance of Double Taxation serves as the basis for Turkey's tax treaties. Turkey has currently concluded 85 bilateral tax agreements and also other drafts of treaties are awaiting ratification by governments.

Turkey also signed a Multilateral Tax Instrument (MLI) in Paris on June 2017. The MLI entered into force in July 2018 after the approval of the MLI by the first five countries in March 2018.

Turkey has reservations for the MLI articles mentioned below:

- Article 4: Dual Resident Entities
- Article 5: Application of Methods for Elimination of Double Taxation
- Article 6: Purpose of a Covered Tax Agreement
- Article 8: Dividend Transfer Transactions
- Article 9: Capital Gains from Alienation of the Shares or Interest of Entities Deriving Their Value Principally from Immovable Property
- Article 10: Anti-abuse Rule for Permanent Establishments Situated in Third Jurisdictions
- Article 11: Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents
- Article 14: Splitting-up of Contracts

The MLI is not effective in Turkey since the approval process to be completed by the local executive authority is not completed yet.



Since the launch of specific transfer pricing rules as of the beginning of 1 January 2007, transfer pricing has become one of the most prioritised tax topics in Turkey. The legal framework for transfer pricing is found in the Turkish Corporate Tax Code and published communiques. The content is generally in line with the OECD Transfer Pricing Guideline. In order to avoid artificial profit shifting by (inter)national group companies, taxpayers must select the most appropriate transfer pricing method during their intercompany transactions. The Comparable Uncontrolled Price Method (CUP), the Cost Plus Method (C+), the Resale Price Method (RPM) and Transactional Profit Method are the methods which can be used to determine the arm's length price. Other methods like the Profit Split Method, the Transactional Net Margin Method and taxpayer-determined methods can also be selected. Taxpayers have the opportunity to request advance approval from the Turkish Ministry of Finance concerning the "most appropriate" method to be implemented during their transactions (i.e. Advanced Pricing Agreements). Corporate taxpayers are obliged to keep and submit necessary documentation which shows their transactions and the selected method for determining the arm's length price during their transactions with related parties. An Annual Transfer Pricing Documentation Report is mandatory for corporations who have realised transactions with their (overseas) related parties.

## 5 Anti-avoidance Measures

Turkey has always had a supportive position for anti-avoidance measures. The current legislation already contains a number of anti-avoidance rules which are in line with the BEPS project deliverables. Some specific anti-avoidance measures are highlighted below.

### 5.1 General Anti-avoidance Rule

The General Anti Avoidance Rule (GAAR) is adopted in the Turkish Tax Procedural Code which relies on the “substance over form” principle. The Turkish tax authorities regularly resort to this rule by disregarding the form of the transaction and tracing the main purpose of the taxable event.

### 5.2 Thin Capitalisation Rules

Resident group companies are allowed to procure loans from related parties (including non-resident group companies operating in Turkey through a branch or permanent establishment). Turkey employs a ratio approach by referring to a specific ratio of debt-to-equity in order to limit the cross-border shifting of profit through excessive debt. Thin capitalisation rules apply if intercompany loans from related parties exceed three times the value of shareholder's equity at any time during the accounting period. The excess is considered as thin capitalisation. Consequently, the interest on related foreign exchange losses and other similar expenses calculated over the loan will be non-deductible for corporate tax purposes and subject to withholding tax.

### 5.3 Controlled Foreign Company Provisions

The controlled foreign corporation (CFC) regime is designed to prevent the diversion of profits generated in Turkey to low-tax

territories. CFC rules require that a resident company owns at least a 50% interest in a non-resident company and:

- 25% or more of the gross revenue of the CFC is composed of passive income;
- The CFC is subject to an effective income tax rate of less than 10% on its commercial profits in its country of residence; and
- The annual gross revenue of the CFC exceeds the foreign currency equivalent of TRY 100,000 (roughly EUR 15,250).

If all of the above conditions are met, the profits of the CFC are apportioned to the business profits of the Turkish corporation and taxed at a rate of 20% in Turkey.

#### 5.4 Others (e.g. subject-to-tax clauses)

The Turkish Corporate Tax Code introduces anti-abuse provisions regarding payments made to low-tax jurisdictions. Accordingly, any payments made either in cash or on account to persons resident in countries that are considered low-tax jurisdictions are subject to 30% withholding tax. The criterion of being a low-tax jurisdiction is determined by the Council of Ministers based on the taxation capacity and exchange of information criteria. The Council of Ministers has not specified these countries yet. However, it is expected that the approach of the Council of Ministers will be in line with the OECD approach.

Over the last couple of years the Turkish Tax Authority has taken action with respect to certain BEPS Action plans which can be seen below:

- Action 1 – Digital Economy
- Action 4 – Interest Deductions
- Action 8-10 TP
- Action 13 – TP Documentation
- Action 15 – MLI

## 6 Taxation of Individuals / Social Security Contributions

One of the principal taxes in Turkey is personal income tax (Law No. 193) which was originally passed in 1961 and has been amended many times over the years. This tax is levied at a progressive rate on individuals residing in Turkey. This tax revenue is an important source of income for the Turkish government.

### 6.1 Residency rules

Individuals who reside in Turkey for more than six months in any calendar year are deemed residents in Turkey and are fully liable for taxation on their worldwide income. Non-residents are only taxed on their income generated in Turkey. These are individuals who reside in Turkey for less than six months during the calendar year and whose centre of vital interests is not concentrated in Turkey. Individuals who remain in Turkey for more than six months for a specific and short-term assignment are also considered non-residents for tax purposes.

### 6.2 Income Liable for Tax

Specific provisions concerning the taxation of each category are spelled out in relevant sections of the Personal Income Tax Law. The source of personal income is listed in the law in seven categories: commercial earnings, agricultural earnings, wage and salary income, independent professional service income, income generated from real estate, dividend and interest income and miscellaneous profits and earnings.

Just as significant as the type of income is where the income is generated, i.e. inside or outside Turkey. Foreigners who have full tax liability status in Turkey are taxed on their income derived either in Turkey or outside Turkey.

## 6.3 Allowable Deductions

Turkish Income Tax Law includes several deductions and allowances for each of the income categories. Some important deductions and allowances are:

- Compulsory pension contributions and social security premiums
- Individual business expenses
- Private Life and Health Insurance payments (limited)
- Education expense

## 6.4 Tax Rates

Income tax is levied on taxable income at a progressive rate after the application of allowed deductions and allowances.

Employment Income Tax Rates as of 1 January 2019:

<b>Taxable Income (TRY)</b>	<b>Tax on column 1 (TRY)</b>	<b>Tax on excess percentages</b>
0 - 18,000		15%
18,000 - 40,000	2,700	20%
40,000 - 98,000	7,100	27%
98,000 and above	22,760	35%

Personal Income Tax Rates as of 1 January 2019:

<b>Taxable Income (TRY)</b>	<b>Tax on column 1 (TRY)</b>	<b>Tax on excess percentages</b>
0 - 18,000		15%
18,000 - 40,000	2,700	20%
40,000 - 148,000	7,100	27%
148,000 and above	29,160	35%

## 6.5 Tax Compliance

The annual declaration is used by individuals to consolidate profits and earnings derived from various sources in the course of one calendar year. An individual whose income is derived only from a wage is not obliged to file an annual income tax declaration in Turkey. The employer deducts tax from the employee and transfers it to the tax authority every month. However, wage earners receiving a wage from more than one employer within a calendar year and where the amount of income exceeds a certain limit, must file a personal income tax declaration in Turkey based on their total salaried income.

Individuals who receive rental income are also obliged to file an annual tax declaration by 25 March of the following year, which is the due date for submitting an annual income tax return for an accounting year.

Furthermore, non-resident individuals who are not obliged to submit an annual income tax return should also submit a special income tax return for their income generated from certain gains specified in Turkish Income Tax Law. This special income tax return should be submitted within 15 days of the related transaction.

## 6.6 Social Security Contributions

Public sector workers and private sector workers are covered by the Social Security Law. Foreigners who reside in Turkey and where their home country has signed a social security treaty with Turkey are exempt from the provisions of the Social Security Law provided there is full compliance with the conditions of the given social security agreement.

There are three major types of indirect tax in Turkey, namely, value added tax levied on the consumption of goods and services, taxes on foreign trade and stamp tax.

### 7.1 Value Added Tax

The implementation of value added tax in Turkey is similar to practices in force in other European countries and levied at each stage in the chain of producing and distributing goods and services. As a main rule, all deliveries of goods and services that take place in Turkey are subject to VAT. VAT is also levied on the supply and import of goods and services. The VAT rate is 18%, but there are also reduced rates of 1% for agricultural products, newspapers, magazines and houses (based on certain conditions stated in the law) and 8% for basic foods, medical products and books. Exports of goods and services are exempt from VAT. There is no turnover threshold for VAT registration in Turkey. Any person or entity engaged in an activity within the scope of the VAT law must register for tax purposes. Registration for VAT purposes only is not possible in Turkey. Reverse charge VAT payments are applicable for services from non-resident individuals and entities.

Furthermore, in accordance with the amendment realized in January 2018; VAT stemming from electronically provided services by non-resident businesses to non-taxpayer real persons must be declared and paid by those non-resident businesses (such as non-resident e-service providers) through VAT Return No. 3.

## 7.2 Transfer Taxes

Transfer tax is levied on the acquisition of property in Turkey corresponding to 4% of the sales price. Normally this tax is split between the buyer and the seller (each bearing 2%), though it is also possible for one party to bear the whole amount.

Fee must be paid to the tax office before the transaction is made at the registrar.

According to Cabinet Decree 2018/11674, the title deed fee is reduced from 4% to 3%. These changes are valid until 31 December 2019.

## 7.3 Others

Turkey has a broad range of indirect taxes. Besides VAT, property, motor vehicle, banking and insurance transaction, private consumption, special communication, customs duty and stamp taxes are applied in Turkey.



Property acquired through inheritance or gratuitously by donation, which belonged to a Turkish resident, is subject to inheritance and gift tax. Foreigners are also subject to inheritance and gift tax for their acquisitions (in the event of free transfers of ownership) of goods and property situated in Turkey. However, foreigners who acquire goods overseas from Turkish citizens are not liable for inheritance and gift tax in Turkey.

### 8.1 Taxable Base

According to Turkish Tax Procedural Law, the tax base is determined according to the value of the acquisition after deducting any debts and costs. A progressive rate ranging from 1% to 10% is applicable for goods acquired through inheritance. Gift tax is within a range of 10% to 30% of the appraised value of the goods.

### 8.2 Valuation

An acquisition through inheritance or gift is first valued by the person liable for the tax based on the methodologies mentioned in the Inheritance and Gift Tax Law. However, if the Law does not provide for an appropriate valuation method, the tax authorities will assess the value of the acquisition in a second stage according to the methods described in the Tax Procedural Code.

## 9 Wealth Tax

Turkey has three kinds of taxes on wealth: property tax, motor vehicle tax and inheritance and gift tax. Motor vehicle taxes are collected based on a fixed amount that depends on the age and engine capacity of the vehicle.

## 10 Property Tax

An annual property tax<sup>2</sup> on the tax value applies to residences (0.1%), buildings other than residences (0.2%), cultivated land (lots) (0.3%) and uncultivated land (0.1%). The tax value is determined via appraisal procedures that are performed every four years. The procedures are performed for each city, each street and each road. The rates are applied twice (increased from 0.1% to 0.2% for residences and from 0.2% to 0.4% for other buildings) for property located in metropolitan municipality areas like Istanbul, Ankara or Izmir.

<sup>2</sup> The stated rates are increased by 100% if the property is within the boundaries of a metropolitan municipality.

Stamp tax applies to a wide range of documents, including, but not limited to, agreements, financial statements and payrolls. Stamp tax is levied as a percentage of the monetary value stated on the agreements at rates varying between 0.189% and 0.948%.

Stamp tax is capped at TRY 2,642,810 (EUR 402,793) for the year 2019. All signatory parties are held jointly liable for the stamp tax payment. In practice, the parties come to a mutual agreement regarding the stamp tax payment.

## 12 Special Consumption Tax

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

- List I relates to energy products
- List II relates to motor vehicles
- List III relates to alcoholic beverages and tobacco products
- List IV relates to other consumption goods such as luxury products

Special consumption tax is assessed and collected upon the declaration of taxpayers.

There are two different taxation periods in a month: the first 15 days of each month, and the remaining part of the month. The special consumption tax return should be prepared and submitted by the 10<sup>th</sup> of the month following the end of the corresponding special consumption tax duty period.

## 13 Resource Utilization Support Fund (RUSF)

The "Resource Utilization Supporting Fund" (RUSF) is applicable for loans. The RUSF is a type of charge levied on loans (as well as imports made under delayed payment terms) obtained by Turkish companies and real persons. The rate and application of the RUSF charge depends on the maturity, type and currency of the loan. The RUSF is not applicable to foreign currency loans obtained from foreign countries which have an average maturity of three years or longer.

The RUSF rates for foreign loans obtained by Turkish-resident real persons or companies (except for banks or financial institutions) in terms of foreign currency or gold (except for fiduciary transactions) were restructured based on average maturities as follows:

- 3% on the principal if the average maturity period of the foreign currency credit does not exceed one year.
- 1% on the principal if the average maturity period of the foreign currency credit is between one and two years.
- 0.5% on the principal if the average maturity period of the foreign currency credit is between two and three years.
- 0% on the principal if the average maturity period of the foreign currency credit is over three years.
- 1% on the interest amount if the average maturity period of the foreign loan denominated in TRY does not exceed one year.
- 0% on the interest amount if the average maturity period of the foreign loan denominated in TRY is over one year.

Before 15 March 2017 the RUSF was 3% of the interest amount for TRY loans regardless of the maturity of the loan. With the latest amendment announced on 15 March 2017 with the Council of Ministers' Decision, the RUSF rates for TRY loans changed to 1% on the interest amount with an average maturity of less than one year, and 0% on the interest amount with an average maturity period of more than one year.

## 14 Real Estate Investment Companies (REICs) In Turkey

The concept of a 'trust' does not exist in Turkey, so REICs are structured as Real Estate Investment Companies (REICs). REICs are defined by the Turkish Capital Markets Board (CMB) as capital market institutions that invest in real estate, in capital market instruments based on real estate, real estate projects and rights based on real estate.

REICs are completely exempt from Turkish Corporate Income Tax, and 0% dividend withholding tax is applicable to REICs.

A REIC must be a stock corporation. A REIC can either be a new joint-stock company (a new establishment), or an existing joint-stock corporation can convert to a REIC by amending its Articles of Association with the Trade Registry.

New and existing joint-stock corporations that will operate as a REIC have to meet the requirements for the founders and shareholders of a REIC, as regulated under Article 7 of the related Communiqué that prescribes certain qualifications for shareholders.

Regardless whether a REIC is a new corporation or an existing corporation, the founders must apply for approval from the CMB.

The minimum capital requirement for a REIC is TRY 30,000,000 (roughly EUR 4,570,000) for 2018. The amount may be amended annually by the CMB.

The CMB allows companies listed on the BIST to buy their own shares if they meet certain conditions stated by the CMB decision.

The assets and rights of Turkish REICs are subject to valuation on a yearly basis.

According to the Communiqué, REICs are allowed to invest in real estate and capital market instruments based on real estate, real estate projects, real-estate-related rights and capital market instruments. Capital market instruments must be traded on the stock exchange or an organised market. The purchase and sale of capital market instruments must be carried out on the exchange.

- REICs are totally exempt from corporate income tax.
- Dividend distributions to resident and non-resident individual and corporate shareholders of a REIC do not trigger a dividend withholding-tax burden.
- Determining a REIC's taxable income is no different than determining the taxable income for ordinary companies in Turkey.
- The foreign corporate income of REICs is exempt from corporate income tax.
- In general, 18% VAT is applied on most transactions carried out by REICs. However, some transactions are not subject to VAT, which requires further detailed analysis.
- VAT on the delivery of houses and workplaces subject to 18% VAT has been updated and decreased to 8% until 31 December 2019

The Turkish Corporate Tax Code allows Turkish corporate taxpayers to merge in a tax-free manner under certain conditions stipulated by law. Accordingly, Turkish companies may carry out a tax-free merger if all the items of the balance sheet of the merged entity are transferred to the acquiring entity. Typically, if one of the companies has an outstanding debt, there is nothing stopping them transferring the loan to the acquiring entity. The interest expenses arising from this loan can still be deducted at the level of the acquiring entity.

There is no tax consolidation (fiscal unity) regulation under Turkish tax rules.

In this respect, a debt push down can be achieved in Turkey through a merger either by having loans in the holding company at the beginning, or by replacing capital with interest-bearing loans after the merger; both have the same result.

As per the current legislation there is no article that explicitly prohibits debt push down structures, and this has not been tested in Turkey. The only case relating to a listed oil company in Turkey was not taken to court and the company agreed to pay discounted tax penalties.

Yet since a debt push down structure – whose purpose is to make financial expenses related to an acquisition tax deductible in the acquired company – is an easy and lucrative target for inspectors, this kind of debt push down structure must be carefully analysed from a legal form and substance perspective.

## Disclaimer

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