

TAX NEWS NO: 2016/10

August 31, 2016

Subject:



The “Law Regarding the Restructuring of Certain Receivables” (Tax Amnesty Law) No. 6736 has entered into force.

The Law No.6736 Regarding the Restructuring of Certain Debts (Amnesty Law) was approved by the Grand National Assembly on August 3th, 2016 and has entered into force as of August 19th, 2016 by being promulgated on the Official Gazette.

1) Scope of The Law

This law provides various advantages to taxpayers. In general, the following receivables and transactions are covered by the Law:

- Restructuring of public receivables which have been accrued but unpaid (tax, customs duty, SSI and other receivables)
- Opportunity to benefit from the Law for taxes which will be accrued as a result of inspections or assessment processes commenced before the Law (Restructuring of the receivables not accrued yet)
- Declarations made by regret or voluntary
- Tax Base and tax increases
- Stock declaration and correction of accounting entries
- Cash Repatriation

2) Restructuring of accrued and unpaid receivables

Following receivables which have accrued, but are not yet paid, or whose payment deadline has not yet expired as of (and including) the date when this Law is published;

To be paid	To be waived
Whole tax / customs tax amount	Whole amount of penalties based on tax basis (tax loss) or administrative penalties
50% of the tax penalties imposed with no relation to the principal tax amount,	The remaining 50% of the tax penalties imposed with no relation to the principal tax amount
50% of the tax penalties imposed due to participation, inducement and support actions,	The remaining 50% of the tax penalties imposed due to participation, inducement and support actions,
Delay charges will be calculated based on "Domestic Producer Price Index" rather than a monthly fixed rate of 1.4%.	Entire amount of auxiliary receivables such as interest, delay penalty, delay interest, etc.

Note:

Whole secondary receivables such as delay charges will not be collected. Instead, an amount to be calculated based on monthly change rates of "Domestic Price Index" will be collected. Furthermore, in case the calculated amount is fully paid within the first legal payment period, an extra discount of 50% will be applied on the amount to be collected.

Domestic Consumer Price Index Table

Month on Month Exchange Ratio (%)												
Year	Jan.	Feb.	March	April	May	June	July	August	Sep.	Oct.	Nov.	Dec.
2011	2,36	1,72	1,22	0,61	0,15	0,01	-0,03	1,76	1,55	1,60	0,65	1,00
2012	0,38	-0,09	0,36	0,08	0,53	-1,49	-0,31	0,26	1,03	0,17	1,66	-0,12
2013	-0,18	-0,13	0,81	-0,51	1,00	1,46	0,99	0,04	0,88	0,69	0,62	1,11
2014	3,32	1,38	0,74	0,09	-0,52	0,06	0,73	0,42	0,85	0,92	-0,97	-0,76
2015	0,33	1,20	1,05	1,43	1,11	0,25	-0,32	0,98	1,53	-0,20	-1,42	-0,33
2016	0,55	-0,20	0,40	0,52	1,48	0,41	0,21	0,21				

3) Receivables which have not accrued yet or still in the stage of litigation (disputed receivables)

A) Litigation process has been initiated or term of litigation process has not expired.

Litigation process has been initiated or term of litigation process has not expired for the taxes accrued by administrative, ex officio, additional assessments or customs tax	Tax / customs tax	%50 is payable. Remaining amount will not be collected. (50%)
	Penalties which are related with tax / administrative penalties / delay charges	Collection of relevant penalties/delay charges will be waived
	Penalties which are not based on the original amount of tax such as special irregularity fines	25% of penalties which are not based on the original amount of tax will be collected. Collection of whole remaining amount will be waived.
	Delay Charges	Delay charges will not be collected. Instead, an amount calculated based on 50% of original tax amount by taking into account monthly producer price index rates will be collected.

B) Tax Court Decision

1) In case Tax Court cancels the assessment

Term of objection/appeal has not expired or appeal process has been initiated or terms of request of revision of decision has not expired or Request of revision process has been initiated for the taxes accrued by administrative, ex officio, additional assessments or customs tax	Tax / customs tax	20% of the first assessment/ accrual will be collected. Remaining amount (80%) will not be collected.
	Penalties which are related with tax / administrative penalties / delay charges	Collection of whole amount will be waived.
	Penalties which are not based on the original amount of tax such as special irregularity fines	10% of penalties which are not based on the original tax amount will be collected. Remaining amount (90%) will not be collected.
	Delay Charges	Collection of delay charges will be waived. Instead, monthly domestic producer price index would be calculated over %20 of the actual tax payable and collected.

2) In case the Tax Court approves the assessment

Term of objection/appeal has not expired or appeal process has been initiated or terms of request of revision of decision has not expired or Request of revision process has been initiated for the taxes accrued by administrative, ex officio, additional assessments or customs tax	Tax / customs tax	Whole approved amount / 20% of cancelled amount will be collected.
	Penalties which are related with tax / administrative penalties / delay charges	Collection of whole amount will be waived.
	Penalties which are not based on the original amount of tax such as special irregularity fines	50% of penalties which are not related with original tax amount will be waived.
	Delay Charges	Delay charges will not be collected. Instead, an amount based on monthly domestic producer price index would be calculated over the actual payable tax (20% or 100%) and will be collected.

3) In case Council of State or Regional Administrative Court overturns the decision of the Tax Court

Term of objection/appeal has not expired or appeal process has been initiated or terms of request of revision of decision has not expired or Request of revision process has been initiated for the taxes accrued by administrative, ex officio, additional assessments or customs tax	Tax / customs tax	50% would be payable. Remaining amount (50%) would not be collected.
	Penalties which are related with tax / administrative penalties / delay charges	Collection of whole amount will be waived.
	Penalties which are not based on the original amount of tax such as special irregularity fines	25% of penalties which are not based on the original tax amount will be collected. Remaining amount (75%) will not be collected.
	Delay Charges	Collection of delay charges will be waived. Instead, monthly domestic producer price index would be calculated over %50 of the actual tax payable and collected.

Note:

In case the decree is made in a manner to partially approve and partially overturn, what shall be done?

Terms of approval decision shall be valid for the approved part while terms of reversing decision shall be valid for the overturned part.

C) On tax settlement phase

Assessments which are at reconciliation phases (For applied reconciliations, appointment date of reconciliation undetermined or appointment date has not come yet or term of litigation does not expired in cases reconciliation phase has adverse outcome.	Tax / customs tax	50% would be payable. Remaining amount (50%) would not be collected.
	Penalties which are related with tax / administrative penalties / delay charges	Collection of whole amount will be waived.
	Penalties which are not based on the original amount of tax such as special irregularity fines	25% of penalties which are not based on the original tax amount will be collected. Remaining amount (75%) will not be collected.
	Delay Charges	Collection of delay charges will be waived. Instead, monthly domestic producer price index would be calculated over %50 of the actual tax payable and collected.

4) Tax Base Increase

Among other various regulations, the Law No. 6736 granted the taxpayers the opportunity to voluntarily increase the taxes and tax bases declared during the fiscal years 2011, 2012, 2013, 2014 and 2015.

Accordingly, the taxpayers will not undergo any tax inspection or tax assessment regarding the income tax, corporate tax, income withholding tax (i.e. on salary payments, rental payments, independent professional service fee payments and the payments associated with multi-year construction works) and VAT amounts declared during the concerning fiscal years on condition that the tax / tax base amounts are increased and the tax amounts are paid at rates specified by the law.

A) Enhancement of the Corporate Tax

Please note that the corporate tax bases enhanced within the scope of the Law No. 6736 cannot be lower than a certain threshold. The relevant rates and amounts are summarized in the table below;

Year	Enhancement Rate	Minimum Enhancement Amount	Corporate Tax Rate Applicable Over the Enhanced Tax Base
	(i.e. Over the Corporate Tax Base Declared)	(in TL)	
2011	35%	28.000	15 % or 20 %
2012	30%	29.650	15 % or 20 %
2013	25%	31.490	15 % or 20 %
2014	20%	33.470	15 % or 20 %
2015	15%	37.940	15 % or 20 %

The enhanced corporate tax bases shall principally be subject to corporate tax at a rate of 20%. However, corporate tax rate shall be applied at 15% upon the fulfilment of the following conditions;

- (a) corporate tax returns were submitted and corporate tax liabilities were paid within the specified time limits in 2011, 2012, 2013, 2014 and 2015 and
- (b) the taxpayer has not benefited from the provisions of the law regarding the restructuring of the public receivables.

Please note that pursuant to the Article 10 of the Law No.6736, taxpayers are allowed to make the payments in six to eighteen equal instalments. In that case, the total amount due will be increased by using installment multipliers varying from 1,045 to 1,15 depending on the number of installments.

Note:

- Taxpayers can increase the tax base for specified fiscal years or preferred fiscal years.
- Tax payers can increase the tax base even if there is no tax base in the CIT Return or even no CT return has been declared. Minimum increase amounts are announced; tax base increase amount for the preferred fiscal years. (e.g.) TRY 37.940 will be applied to fiscal year 2015.

- The Law states that if income and corporate income taxpayers increase their annual corporate income tax bases for the fiscal years between 2011 and 2015 at the rates specified in the Law, no tax inspection or tax assessment will be conducted on these taxpayers regarding the taxation periods and tax types, tax bases which have been increased.
- If taxpayers benefited from investment allowance during the years they benefited from the corporate tax base increase, they are required to increase also the withholding related to investment allowance
- Tax to be paid over increased base will be considered as non deductible expense.
- Half of previous year losses related to the fiscal years in which tax bases have been increased can be offset against the profit of 2016 and the following years. In other words the other half of the relevant losses cannot be benefited.
- Stamp tax will not be levied on declarations submitted for tax base increase purposes.
- Deferred losses and previous years losses regarding exemptions and deductions cannot be offset from the increased bases.

B) Enhancement of the VAT

Pursuant to the Article 5/3/a of the Law No. 6736, in the event that the taxpayers declare additional VAT amounts for the 2011, 2012, 2013, 2014 and 2015 fiscal years at the rates specified by the law, they will not undergo any tax inspection nor will they be subject to any tax assessment from the perspective of the VAT legislation for the concerning periods. The additional VAT amounts shall be required to be declared by the end of the second month following the month in which the law is published on the Official Gazette. The relevant rates are summarized in the table below;

Year	Tax rate
2011	3,50%
2012	3,00%
2013	2,50%
2014	2,00%
2015	1,50%

Note:

- VAT increase will be performed for a full fiscal year.
- Taxpayers who has not calculated VAT amount due to various reasons or taxpayers who has calculated VAT amount which is consisting only of deliveries within the scope of

defer-cancel implementation can benefit from VAT base increase on the condition that corporate tax base increase has been realized for the concerning year. For such cases, VAT to be paid will be calculated by applying 18% to the increased corporate tax base.

- Administration's right to conduct tax inspection will be reserved for those who has made request for VAT refund.
- Tax inspections can also be made for deferred taxes. However, no assessment will be made as a result of inspection regarding the years in which tax base increase has been realized.

C) Enhancement of the WHT on Salary Payments

As expressed before, the scope of the provisions of the law in connection with the enhancement of the tax and tax base amounts covers WHT (i.e. on salary payments, rental payments, independent professional service fee payments and the payments associated with multi-year construction works) as well. For the sake of practicality, only the WHT applicable over the salary payments will be analyzed in this circular.

Pursuant to the Article 5/2/a of the Law No. 6736, in the event that the taxpayers declare additional WHT (i.e. on salary payments) amounts for the 2011, 2012, 2013, 2014 and 2015 fiscal years at the rates specified by the law, they will not undergo any tax inspection nor will they be subject to any tax assessment from the perspective of the income tax legislation (i.e. as far as the salary payments are concerned) for the concerning periods. The additional WHT amounts shall be required to be declared by the end of the second month (31 October 2016) following the month in which the law is published on the Official Gazette. The relevant rates are summarized in the table below;

Year	Enhancement rate (i.e. over the annual amount of gross salary payments)
2011	6,00%
2012	5,00%
2013	4,00%
2014	3,00%
2015	2,00%

5) Declarations to be Made for the Receivables from Shareholders & Cash Accounts

Provisions of the Law No.6736 also allows the taxpayers to declare certain fixtures and commodities which are deemed to be present in the records despite not being present in the enterprise, such as fixtures, machinery and equipment, inventory, cash balance and receivables from shareholders.

Stocks & Accounting Record Corrections Table:

Type	Recorded value	Reverse Charge VAT	VAT Deduction	Declaration and Payment Date
Ware	Fair Value	10% of fair value, if subject to general rate	Applicable	Declaration and inventory list should be declared and paid at the end of November.
		Half of the reduced rate If subject to reduced rate		
Machinery	Fair Value	10% of fair value, If subject to general rate	Non-Applicable	Declaration and inventory list should be declared and paid at the end of November
Equipment		Half of the reduced rate If subject to reduced rate		
Fixed Asset				

According to the Article 6 of the Law No.6736, taxpayers are required to pay additional taxes in the amount of % 3 over the receivables from shareholders and cash balances declared through amnesty returns.

The amounts stated in the 31.12.2015 books have to be declared and corrected by the last day of the 3rd month (30 November 2016) following the publishing date of the Legislation.

The taxes paid may not be offset from income or corporate tax and may not be deemed as expense in the calculation of the tax base.

6) Payment

The taxpayers will be granted the opportunity to make the payments in 18 installments over a time period spreading to 36 months. However, they might opt to make the payments over a shorter period of time. The payments will commence as from the third month following the month in which the law is published on the Official Gazette (i.e. November 2016).

The taxpayers will be granted the opportunity to make the payments in equal installments to be paid in a bimonthly periods. In the event that the taxpayers opts to make the payments in installments, the amount due will be multiplied by a coefficient that will vary depending on the number of installments. The taxpayers might also decide on making the payments in a lump. The payments will commence as from November 2016. The relevant payment opportunities are summarized in the table below;

No. of Installments	Payment Period (i.e in Months)	Coefficient
6	12	1,045
9	18	1,083
12	24	1,105
18	36	1,15

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Deloitte Turkey

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