

Developments in current legislation

- *Regulation on Amending the Regulation on Facilitating Customs Transactions*
- *General Customs Communiqué Serial No. 1 on the Instrument for Pre-Accession Assistance for Turkey (IPA II) Framework Agreement was promulgated.*
- *The Decision of the Council of Ministers on Constituting the Decision on Provisional Article 2 of Law on Technology Development Zones No. 4691 was promulgated.*
- *The Regulation on Determining the Preferential Origin of Goods in Trade Activities Within the Scope of the Regional Convention on Pan Europe Mediterranean Preferential Origin Rules was promulgated.*
- *The Circular on the Re-valuation Method to be Applied in the Third Provisional Tax Period in 2017 was promulgated.*
- *Draft General Communiqué Serial No. 3 on Disguised Profit Distribution Through Transfer Pricing was prepared.*

Court decisions

- *Constitutional Court decision no. E.2016/198 – 2017/144, dated 28/09/2017 on Article 197/4 of the Customs Law was promulgated.*
- *The Individual Application Decision of the Constitutional Court on the Right to a Fair Trial and Right of Ownership (BN:2014/109) was promulgated.*

Global tax news

The Regulation on Amending the Regulation on Facilitating Customs Transactions was promulgated

With the regulation promulgated in the Official Gazette dated 13 October 2017, the Regulation on Facilitating Customs Transactions promulgated in Official Gazette No. 29006 on 21 May 2014 was amended, and requirements for performing certain customs transactions were eased, and facilitating provisions concerning the documents to be submitted, the conditions of the documents, and places of submission entered into force. In addition, periods were extended with amendments made to the authorized liable status, scope and certification provisions. Thus, comprehensive changes were made concerning import, export and on-site customs clearance in import.

General Customs Communiqué Serial No. 1 on the Instrument for the Pre-Accession Assistance for Turkey (IPA II) Framework Agreement was promulgated

The Communiqué sets forth the implementation rules and principles of customs clearance provisions of the Framework Agreement on Regulations Concerning the Implementation of Financial Aid to be Provided by the European Union to the Republic of Turkey (IPA II Framework Agreement) as per the Instrument for Pre-Accession Assistance between Turkey and the European Commission which became effective on 22 June 2015.

The Decision of the Council of Ministers on Implementing the Decision on Provisional Article 2 of Law on Technology Development Zones No. 4691 was promulgated

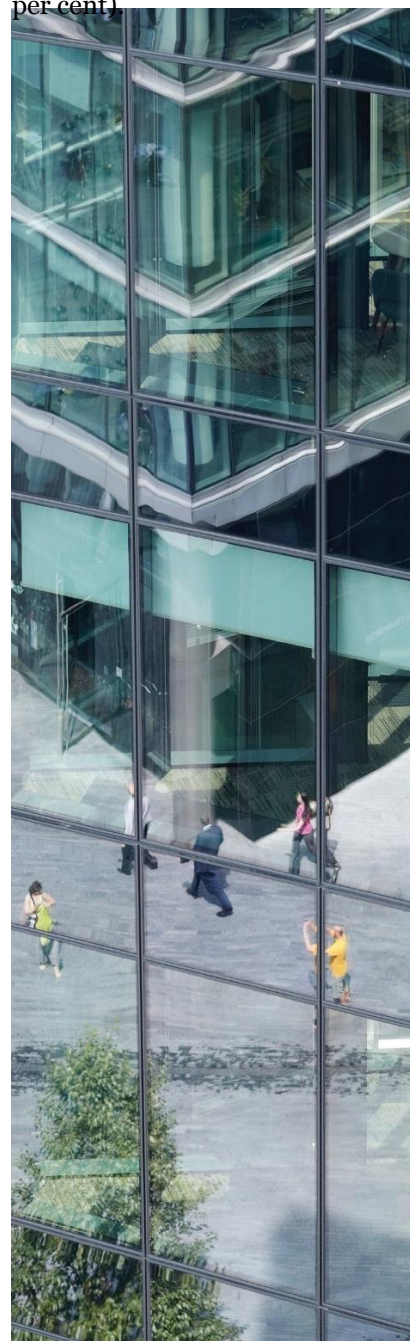
The decision includes regulations concerning rules and principles based on which income and corporate taxpayers operating in technology development zones and earning revenues within the scope of the exemption as per provisional article 2 of the Law benefit from the said exemptions.

The Regulation on Determining the Preferential Origin of Goods in Trade Activities Within the Scope of Regional Convention on Pan Europe Mediterranean Preferential Origin Rules was promulgated

The regulation sets forth implementation rules and principles of the article concerning “Rules of Origin and Administrative Cooperation” included in preferential trade regulations signed between Turkey and other countries party to the Regional Convention on Pan Europe Mediterranean Preferential Origin Rules or the Protocol on the Definition of Goods Using Origin and Administrative Cooperation Methods.

The circular on the Re-valuation Method to be Applied in the Third Provisional Tax Period in 2017 was promulgated

With Corporate Tax Law No. 5520 Curricular/46, the re-valuation rate to be applied in the third provisional tax period in 2017 was determined to be 12.37% (twelve point thirty-seven per cent).



Draft General Communiqué Serial No. 3 on Disguised Profit Distribution Through Transfer Pricing was prepared

The Communiqué includes changes in the title “6 - Procedures for Agreeing with the Ministry of Finance, Revenue Administration” of General Communiqué Serial No. 1 on Disguised Profit Distribution Through Transfer Pricing promulgated in Official Gazette No. 26704 on 18 November 2007. The Revenue Administration continues work to improve the draft and ready it for promulgation.

First round negotiations between the government of the Republic of Turkey and the government of the Republic of Mozambique on the conclusion of the double taxation treaty were carried out in Maputo

In the negotiations, the parties reached agreement on almost all parts of the treaty. A second round of discussions about the issues for which agreement could not be reached will be held on a date to be agreed upon by the parties. As the agreement is completed and becomes effective, an investment environment that is stable in terms of tax issues for entrepreneurs in both countries will be created.

Constitutional Court decision no. E.2016/198 – 2017/144 dated 28/09/2017 on Article 197/4 of the Customs Law was promulgated

The Istanbul 7th Tax Court brought the phrase “provided that a criminal lawsuit was filed” in sub-Article (4) of Article 197 of the Customs Law to the Constitutional Court. The ruling of the court of first instance is as follows: it is not clear whether the criminal lawsuit was filed within the statute of limitations set forth in the Customs Law and if customs duty receivables are related with an action requiring a penal sanction and a criminal lawsuit is filed, it is not clear whether this lawsuit must be filed within the three-year statute of limitations or if the lawsuit and punishment statute of limitations in the Turkish Penal Code must be implemented as of the date when the customs obligation arises without considering the three-year period. Due to these uncertainties, different court decisions undermine the principles of legal clarity and confidence and contradict Article 2 of the Constitution. For the reasons mentioned above, the non-compliance was brought to the Constitutional Court. The Supreme Court emphasized that a legal decision must not be interpreted in parts but the entire text in which it is included must be considered as per the systematic interpretation method and by addressing the regulations in Articles 181 and 197 of the Customs Law as a whole and interpreting them systematically,

and stated that the sub-article that is the subject of the objection states an exemption to the rule requiring that customs duties must be assessed, accrued and communicated within three years after the customs obligation arises. The court decided unanimously to reject the objection, stating that there is no uncertainty related to the collection of customs duty receivables in the statute of limitations on lawsuits and punishment set forth in the Turkish Penal Code if the collections are related with an action requiring a penal sanction.

The Decision of the Constitutional Court on Application No. 2014/1090n for the Right to Fair Trial and Right of Ownership dated 20 September 2017 was promulgated

Briefly, the matter subject to individual application is as follows: after it was determined that the taxpayer did not declare the revenue earned from the off-shore deposit in 2001, a tax inspection report was prepared on 18 October 2006 and the transaction folder was sent to the Appraisal Commission on 10 November 2006 to determine the income tax base. The commission gave its decision on 08 February 2008 and the administration prepared the notice on 11 February 2008 based on this decision and served the applicant taxpayer on 12 February 2008. The taxpayer filed a lawsuit contesting the notice with the local court. The taxpayer appealed the rejection decision of the local court. Upon the Constitutional Court’s decision No. K. 2009/146, dated 15 October 2009, the 3rd Chamber of the Council of State reversed the decision on 21 December 2010.

The Decision of the Constitutional Court on the Right to Fair Trial and Right of Ownership with Application No. 2014/109 dated 20 September 2017 was promulgated (continued)

In the said decision, the Constitutional Court stated that Article 114 of the Tax Procedure Law is contrary to principles such as “clarity” and “predictability” since there is no time limitation concerning submission to the appraisal commission that suspends the assessment statute of limitations, and annulled the regulation and determined an effective date ahead of the release date to allow for the new regulation. The 3rd Chamber of the Council of State ruled that the assessment statute of limitations was based on this decision.

In the evaluation of the decision adjustment request, the reversal decision was revoked, referring to the new regulation.

In the reference regulation, with a provisional article added to the Tax Procedure Law, the legislator determined the assessment and notification statute of limitations to expire on 31 December 2012 with regard to taxes submitted to the appraisal commission concerning the periods before 2005. The taxpayer was served with Notice No. 2 and the payment order issued by the administration as per the court’s decision.

As the lawsuit filed against the payment order was rejected, the taxpayer appealed to the Constitutional Court.

The main justification provided by the applicant is the allegation that the above-mentioned changes in Article 114 of the Tax Procedure Law were applied in the pending lawsuit.

The Supreme Court assessed the matter in the light of local legislation and international law and ruled that the right to a fair trial and property rights were not violated, based on the following justifications:

- security income earned by the taxpayer falls within the scope of “property” but the tax transactions performed by the administration on such property are not contrary to “legality”, “public interest”, “proportionality”, “legitimate purpose” and “disproportionality” principles;
- since measures must be taken in relation to public receivables during the transition period due to the revoked provision of the Tax Procedure Law, retrospective regulations can be enacted by setting a provisional time/period limitation;
- if the effective date of the revoked provision is delayed, the provision is considered to be effective on the said date and may be applied to the decisions;

- the period (1 year, 2 months, 28 days) spent waiting for the appraisal commission to provide the result of the assessment of the transaction based on the revoked regulation did not cause intolerable results and was not disproportionate.



International Tax Law News



OECD

The 2017 Progress Report on Preferential Tax Regimes was released

On 16 October 2017, the OECD released the Harmful Tax Practices - 2017 Progress Report on Preferential Tax Regimes. In the report, all the work done by the Forum on Harmful Tax Practices (FHTP) on preferential regimes since the Action 5 report was issued were collected.

The review results for preferential tax regimes in relation to BEPS Action 5 minimum standards are included in the Progress Report. The report consists of three main sections. The first chapter includes the standards for preferential tax regimes and the second includes updates on the status of regimes. In BEPS Action Plan No. 5, the IP regime in Turkey was found to be «potentially harmful» in October 2015 but it was removed from this status in the progress report.

The third chapter of the report is related with the next steps. The report also has four appendices. These are:

- timelines for implementing nexus in preferential tax regimes where intellectual rights are exercised,
- guidance on closing off preferential regimes and grandfathering non-IP regimes,

- monitoring data on preferential regimes,
- substantial activities in regimes other than IP regimes.

The current status of country-by-country reporting was released

On 13 October 2017 the OECD released «Country-by-Country Reporting», which is the minimum standard of Action Plan No. 13 and contains the current status of the exchange of reports between tax administrations. According to the «Multilateral Competent Authority Agreement» on the exchange of country-by-country reports, a substantial stage commenced with the implementation of information exchange activities. Currently, more than 1,000 automatic information exchange relationships have been established by the competent authorities. This number includes EU member countries subject to EU Council Directive 2016/881/EU.

It is expected that in the next weeks additional competent authorities will be assigned to automatic information exchange activities in country-by-country reporting.

It should be noted that as of 11 October 2017, the USA signed 27 bilateral competent authority agreements for the exchange of country-by-country reports.

Public opinion information about the digitalisation cause were released

On 22 September 2017, the OECD called for all parties to comment on the «Tax Challenges of Digitalisation» with an invitation on its website.

The comments were collected in a report published on the official website of the OECD on 25 October 2017.

A similar "public consultancy" initiative took place at the University of California, Berkeley, in which speakers and attendees were selected from among the people and organisations who sent written comments.

World News



European Commission

The commission began acting on 4 October 2017 to renew VAT rules in EU countries. With the renewal, governments and businesses are expected to develop and modernize their current systems. The purpose of the renewal is to save 80% of the annual tax loss of 150 billion euros. The proposed VAT reform aims to create an easier, faster system for companies. The four principles on which the European Commission will seek agreement are: “Tackling Fraud”, “One Stop Shop”, “Greater Consistency”, Less Red Tape”.

Australia

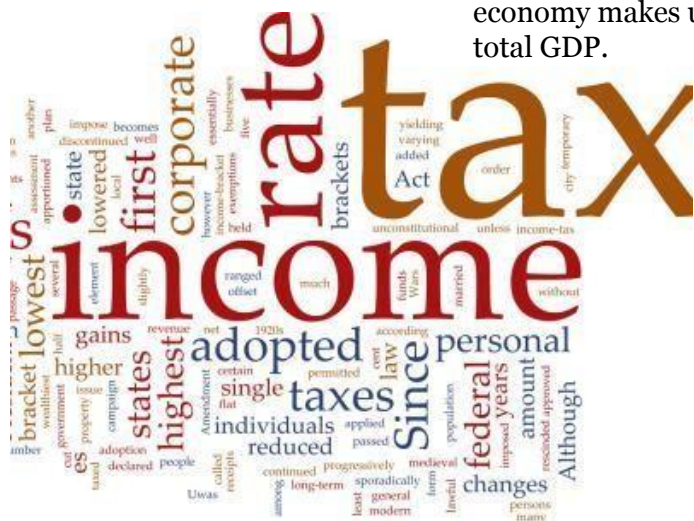
The government of Australia is discussing two measures to overcome the “black economy”. These measures were included in the 2017-2018 budget proposal released by the government on 23 October. The aim of the government is to prohibit producing, keeping, using and selling machines which are used to declare that the income of companies is less than it actually is. It is expected that producing or supplying these machines will become an unlawful act, and that the punishment for doing so will be five years imprisonment and/or a criminal fine. It is estimated that the black economy makes up 1.5% of the total GDP.

Taiwan

The executive body of Taiwan approved the proposed tax reforms in September. The reform increases income tax from 17% to 20% and decreases the tax on retained earnings from 10% to 5%. In addition, some of the tax reforms include reducing the upper limit of individual income tax from 45% to 40%, additional tax deductions for employees and disabled persons and increasing withholding for dividend distributions of non-resident companies by 1%.

European Union

On 10 October 2017, the ECOFIN Council approved the new directive on the resolution of disputes concerning double taxation in the EU. The new directive is based on the agreement that EU countries settled on 23 May. The directive aims to strengthen the mechanisms used to solve problems that may arise when interpreting double taxation treaties between member states. The new regulation proposes an arbitration method if efforts to resolve disputes fail.



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