

June 2021

## Legislative Proposal on Restructuring of Certain Receivables

The Legislative Proposal on Restructuring of Certain Receivables (Proposal) has been submitted to the Grand National Assembly of Turkey on 21 May 2021 and regulations of the Proposal regarding tax receivables, with the final version accepted by the Plan and Budget Committee, are as follows:

### **Finalized Receivables (Article 2)**

Tax principals, tax penalties, delay interests and late fees related to the periods before **30 April 2021** (including this date) and for the taxes based on declaration, tax and penalties related to the declarations that should be submitted until this date are included within the scope of the relevant article.

**Provided that following amounts are fully paid** in the time and form specified under the Law;

- Whole amount unpaid of taxes and customs duties; and
- Amount to be calculated based on domestic producer price index (D-PPI) monthly change rates until the date of publication of the Law

which have not been paid even though the due date has arrived or whose payment period has not passed as of the date of publication of the Law (including this date); then, the whole amount of:

- Tax penalties imposed based on tax principals and late fee related thereto; and
- Secondary receivables such as delay interest, late fee related to outstanding debts

**shall be waived.**

Furthermore, **provided that following amounts are fully paid** in the time and form specified under the Law;

- 50% of tax penalties that are imposed irrespective of a tax principal and administrative fines imposed due to the customs obligation irrespective of customs duties principal and tax penalties imposed due to participation; and
- Amount to be calculated based on D-PPI monthly change rates until the date of publication of the Law

which have not been paid even though the due date has arrived or whose payment period has not passed; then, the whole amount of:

- The remaining 50% of tax penalties and administrative fines imposed due to the customs obligation irrespective of customs duties principal; and
- Late fees related thereto

**shall be waived.**

### **Receivables Not Finalized or in the Stage of Litigation (Article 3)**

In case of accruals pertaining to tax assessments and customs duties imposed additionally, ex-officio or by the administration, for which;

- Litigation was initiated at the first instance judicial authorities; or
- The litigation period for which has not yet expired,

as of the date of publication of the Law, the receivables waived would be as follows, upon payment:

Amount Payable	Amount Waived
50% of tax principal	50% of tax principal and tax penalties imposed on tax principal
Amount to be calculated based on D-PPI monthly change rates	Secondary receivables such as interest, delay interest and late fee

If an application was made to benefit from the **settlement after assessment** provisions as of the date of publication of the Law, receivables for which a settlement date has not been assigned or whose settlement date is yet to come or for which settlement could not be achieved but whose deadline for litigation has not expired will be able to be restructured within the scope of this article.

For the accruals relating to customs duties and tax assessments imposed ex-officio, additionally or by administration, which are at the below stages of litigation process, as of the date of publication of the Law:

- Appeal or objection at the level of the District Administrative Court,
- Appeal or decision rectification at the State Council or
- Whose period for application for appeal/objection or decision rectification has not yet expired;

the amounts to be waived are as follows, upon payment of the receivable amounts that will be determined based on the latest status of the litigation:

Final Decision	Amount Payable			Amount Waived		
<b>Cancellation of Tax Assessment in Favour of the Taxpayer</b>	10% of the tax principal			90% of the tax principal		
	Amount to be calculated based on D-PPI monthly change rates			Whole amount of the interests, delay interests, late fees and tax penalties/administrative fines imposed on the tax principal, as well as delay interests applicable to these penalties		
<b>Acceptance of Tax Assessment Against the Taxpayer / Acceptance with Amendment</b>	100% of the accepted tax	Acceptance with Amendment:		0% of the accepted tax	Acceptance with Amendment:	
		100% of the accepted tax	10% of the cancelled tax		0% of the accepted tax	90% of the cancelled tax
	Amount to be calculated based on D-PPI monthly change rates			Whole amount of the interests, delay interests, delay surcharges and tax penalties/administrative fines imposed on the principal tax, as well as delay interests applicable to these penalties		
<b>Annulment</b>	50% of the tax principal			50% of the tax principal		
	Amount to be calculated based on D-PPI monthly change rates			Whole amount of the interests, delay interests, delay surcharges and tax penalties/administrative fines imposed on the principal tax, as well as delay interests applicable to these penalties		
<b>Partial Approval Partial Annulment</b>	<ul style="list-style-type: none"> <li>• 10% if the approved part is related with cancellation</li> <li>• 100% if the approved part is related with acceptance</li> <li>• 50% for the annulled part</li> </ul>			<ul style="list-style-type: none"> <li>• 90% if the approved part is related with cancellation</li> <li>• 0% if the approved part is related with acceptance</li> <li>• 50% for the annulled part</li> </ul>		
	Amount to be calculated based on D-PPI monthly change rates			Whole amount of the interests, delay interests, delay surcharges and tax penalties/administrative fines imposed on the principal tax, as well as delay interests applicable to these penalties		

In order to benefit from this article, no lawsuits should have been filed against the receivables within the scope of the article, and the lawsuits filed should have been waived and legal remedies should not have been sought.

## **Receivables in the Stage of Audit and Assessment (Article 4)**

- Tax audits
- Assessment and accrual procedures,

which were commenced before the date of publication of the Law, but which could not be completed until the said date, will be continued without prejudice to provisions on tax base and tax increase.

Following the completion of these procedures, by a written application to be made **in 30 days as of the date of notification of the tax/penalty notice** and provided that the first instalment is paid in six equal instalments in two-month periods starting from the month following the notification of the notice, the provisions of the Law may be enjoyed as follows:

Amount Payable	Amount Waived
50% of the tax assessed	The remaining 50% of the tax assessed
Amount to be calculated based on D-PPI monthly change rates until the date of publication of the Law, for 50% of the tax assessed	Whole amount of penalties imposed on tax principal
Whole amount of the delay interest to be calculated from the date of publication of the Law until the date of expiration of the period for initiating litigation which is determined upon notification of the notice	Delay interest applied until the date of publication of the Law
25% of penalties not affiliated to tax principal	The remaining 75% in case of penalties that are not affiliated to tax principal
25% of the penalty imposed due to participation	75% of the penalty imposed due to participation

The provision of this article shall also be applied to receivables for which settlement was requested as per the provisions on **settlement before assessment**, but whose date of settlement is yet to come or for which settlement could not be obtained, and whose tax and penalty notices were not yet notified to the taxpayer.

## **Tax Base and Tax Increase (Article 5)**

In case tax base or tax is increased under the following conditions, for income tax, corporate tax, income (withholding), corporate (withholding) and value added tax, provided that the amount calculated is paid in the time and form specified, no tax audit or tax assessment shall be conducted for the periods and types of taxes that the tax/tax base increase is benefitted for.

**Tax Base Increase for Income and Corporate Tax:** Taxpayers of income and corporate tax may benefit from the provisions of the article by increasing their tax base regarding the relevant period at no less than the following rates for one or more year (limited to 2016 to 2020) **until 31/8/2021**:

	2016	2017	2018	2019	2020
<b>Tax Base Increase Rate</b>	35%	30%	25%	20%	15%

- In case loss was declared or there was no tax base due to deductions and exemptions in the **corporate tax returns** submitted, or no tax return was filed for the year of which the tax base increase is intended, the tax base cannot be less than the following amounts (TRY):

	2016	2017	2018	2019	2020
Corporate taxpayers	94.000	99.600	105.800	112.400	127.500

- In case loss was declared or there was no tax base due to deductions and exemptions in the **income tax returns** submitted, or no tax return was filed for the year of which the tax base increase is intended, the tax base cannot be less than the following amounts (TRY):

	2016	2017	2018	2019	2020
Taxpayers keeping books on balance sheet basis and Independent Personal Service Providers	47.000	49.800	52.900	56.200	63.700
Taxpayers keeping books on the business account principle	31.900	33.200	35.250	37.500	42.500
Taxpayers subject to simple procedure	4.700	4.980	5.290	5.620	6.370
Taxpayers whose income only consists of income from immovable property	9.400	9.960	10.580	11.240	12.740
Other Income Taxpayers	31.900	33.200	35.250	37.500	42.500

- Increased tax bases pursuant to the Law shall be **taxed at the rate of 20%** and no other tax shall be imposed thereon.
- However, income and corporate taxpayers can benefit from a tax rate of 15% instead of 20% provided that:
  - ✓ annual tax returns of the year for which they want to increase their tax bases were filed before the statutory deadlines,
  - ✓ the taxes accrued due to these tax types were paid on time, and
  - ✓ provisions on restructuring as per this law (regarding finalized receivables or receivables not finalized or in the stage of litigation) were not benefited for these types of taxes.
- This provision shall also apply to the cases where there are no tax payable by these tax returns due to exemptions, credits and deductions.
- Taxpayers' 50% of the losses pertaining to the years for which the tax base is increased, cannot be deducted from the profits of 2021 and following years.
- The right to audit and assessment regarding the taxpayers' requests for the refund of the taxes they have previously paid through withholding as a deduction from the annual income and corporate tax is reserved.

**Tax Increase for Income (withholding) and Corporate (withholding) Tax:** Taxpayers may benefit from the provisions of the article by increasing their taxes no less than the following rates for one or more year (limited to 2016 to 2020) **until 31/8/2021**:

- Income Withholding Tax (for employment income):** Those who are obliged to withhold tax from the employment income under subparagraph (1) of the first paragraph of the article 94 of the Income Tax Code, may increase the income tax to be calculated at no less than the following rates over total annual gross amounts pertaining to the employment income payments in withholding tax returns for each taxation period.

	2016	2017	2018	2019	2020
<b>Increase Rate</b>	6%	5%	4%	3%	2%

- In case a tax return was filed for at least one period among the withholding tax returns that need to be submitted,** by conveying the average gross amount pertaining to declared employment income payments to a year, income (withholding) tax base would be determined based on annual employment income in order to be the basis of the increase and income tax is calculated at the rates specified under subparagraph (a) of this paragraph.
- In case no tax return was filed at all,** to be the base of the income (withholding) tax to be calculated for each month, accepting that at least;
  - ✓ Average number of employees in monthly premium and service documents submitted in the year in question before the date of publication of the Law,
  - ✓ If no monthly premium and service documents were filed at all for the year in question, the number of employees in the one-month premium and service document submitted in following taxation periods provided that it is submitted as of the date of publication of the Law,
  - ✓ If the premium and service declaration was not submitted at all, accepting that at least two employees were employed and by paying the income tax at the rates specified under the subparagraph (a) of this paragraph over the income (withholding) tax base calculated on the basis of the gross amount of the minimum wage amount valid in the last taxation period of the relevant year; this paragraph may be benefited.

- **Other Payments Subject to Withholding Tax:** Those who are obliged to withhold tax can increase taxes at the following rates over the total annual gross amounts pertaining to the relevant payments in withholding tax returns submitted in the relevant year:

Income (withholding) and corporate (withholding) increase rates			
Year	Tax Rate Applicable to the annual amount of gross amounts pertaining to independent personal service and rent payments	Tax Rate Applicable to the annual amount of gross amounts pertaining to progress payments regarding the construction and repair works over years	Tax Rate Applicable to the annual amount of gross amounts pertaining to payments made to farmers and tax-exempt tradesmen
2016	6%	1%	25% of the applicable withholding tax rate
2017	5%	1%	25% of the applicable withholding tax rate
2018	4%	1%	25% of the applicable withholding tax rate
2019	3%	1%	25% of the applicable withholding tax rate
2020	2%	1%	25% of the applicable withholding tax rate

**VAT Increase:** VAT taxpayers may declare the value added taxes, as tax increase, which will be determined as not less than the following rates over the total VAT amount calculated annually in tax returns submitted for each taxation period:

	2016	2017	2018	2019	2020
<b>Increase Rate</b>	3%	3%	2,5%	2%	2%

- Regarding the taxation periods within the year in which the increase is intended to be made;
  - ✓ **In case tax returns were filed for at least three periods among the VAT returns that need to be submitted,** by conveying the average amounts of value added taxes calculated on the tax returns to a year, VAT amount calculated annually is determined in order to be the basis of the increase and the amount to be increased is calculated based on the rates in the table above over this amount.
  - ✓ **In case no tax return was filed at all or less than three tax returns were filed,** taxpayers must increase VAT at the rate of 18% over the increased tax base provided that income or corporate tax is increased pertaining to the relevant year.

#### **Important Issues in Tax Base and Tax Increase:**

- As per this article, applying tax base and tax increase does not prevent tax audits and assessment procedures started before the date of publication of the Law. However, **if the tax audit and assessment procedures that have already been initiated for taxpayers who have benefited from increase cannot be concluded as of 2/8/2021 (including this date),** these procedures will not be continued.
- In case all of the taxes accrued as a result of the tax base or tax increase are paid in advance within the first instalment period, these taxes would be subject to a 10% reduction and the coefficient is not applied.
- Tax base increase may also be benefited for periods subject to tax audit previously. However, the administration reserves the right to carry out tax audits for years or periods in which no increase has been made.
- Those, who “destroy books, records or documents or destroy the sheets of books and replace with any other sheets or do not replace at all or forge the originals or copies of documents in whole or in part” under subparagraph (b) of article 359 of the Tax Procedure Code, cannot benefit from the provisions on tax base and tax increase. As of the effective date, in the event that those, whose tax audits are ongoing based on the aforementioned acts, benefit from tax base or tax increase within the specified period and as stipulated, the accrual procedures related to these increases are suspended until the completion the tax audit. If these ongoing tax audits within this scope cannot be

concluded within twelve months from the beginning of the month following the date of publication of the Law, these procedures shall not be continued.

### **Correction of the Records (Article 6)**

Income and corporate taxpayers may book the goods, machinery, equipment and fixtures **that are present in the enterprise but not booked in the records, until 31/8/2021 by notifying them to the tax offices together with an inventory list prepared at their market values.**

VAT must be calculated based on the half of the rates applicable to the values of declared machinery, equipment, fixtures and goods and it should be declared and paid before the deadline for filing the tax return.

Income and corporate taxpayer may book and declare **the goods that are present in the records, but not in the enterprise until 31/8/2021** by issuing invoice based on the gross profit rate determined according to the records of the current year pertaining to commodities of the same type and fulfilling all kinds of tax liabilities.

The first instalment of the VAT payable will be paid before the deadline for filing tax return, while the following instalments will be paid in the second and fourth months that follow the first payment, as to total in three equal instalments.

Taxpayers subject to balance sheet principle may correct their records by declaring to the tax offices **until 31/8/2021, the cash balance and the net receivable amounts** between the amounts indebted by shareholders and the amounts indebted to shareholders due to transactions that are out of the main field of activity of the enterprise (resulting from lending or similar activities) and other related transactions in other accounts, **which are shown on the balance sheet** dated 31 December 2020 **but that are not present in their enterprises**. Tax calculated at the rate of 3% over the declared amounts shall be paid before the deadline for filing the tax return.

### **Common Provisions**

- **Application period:** Except for specific application periods stipulated in the section on receivables in the stage of audit and litigation (article 4), in order to benefit from other provisions of the Proposal, taxpayers **must apply to the relevant administration until 31/8/2021 (including this date).**
- **Payment:** The first instalment of the amounts payable to the Ministry of Treasury and Finance, the Ministry of Commerce and special provincial administration and municipal collection offices must be **paid until 30/09/2021**, while other instalments must be paid in two-month periods following these dates, as to total in eighteen equal sums at maximum.
- For payments in instalments, the amount determined pursuant to the relevant articles is multiplied by following the coefficients;
  - ✓ (1,09) for six equal instalments,
  - ✓ (1,135) for nine equal instalments,
  - ✓ (1,18) for twelve equal instalments,
  - ✓ (1,27) for eighteen equal instalments,and instalment amount to be paid in two-month periods is calculated by dividing the amount found by the number of instalments.
- In case the payment is **made in advance during the first instalment period**, an additional discount of 90% will be applied to the amount to be calculated based on D-PPI monthly change rates (including the delay interest calculated with the amount to be calculated based on D-PPI monthly change rates instead of the secondary receivables as per article 4 of the Law) payable instead of secondary receivables.
- In case the payment is **made in advance during the first two instalment periods**, an additional discount of 50% will be applied to the amount to be calculated based on D-PPI monthly change rates (including the delay interest calculated with the amount to be calculated based on D-PPI monthly change rates instead of the secondary receivables as per article 4 of the Law) payable instead of secondary receivables.
- Disputed receivables restructured within the scope of article 3 and article 4 of the Law, provided that the restructuring is not violated, cannot be considered within the scope of subparagraph (2) of the second paragraph of the repeated Article 121 of the Income Tax Code and the relevant taxpayers will be able to benefit from the 5% compatible taxpayer discount.



## **Amendment to Provisional Article 31 of the Tax Procedure Code**

As per the added subparagraph to provisional Article 31 of the Tax Procedure Code, taxpayers with full liability and subject to balance sheet principle will be able to revalue their immovable properties and other economic assets subject to depreciation that are registered in their legal books as assets (other than immovable properties and assets that are subject to sell-rent-buyback transactions or to the issuance of a lease certificate) until 31/12/2021, provided that the scope, conditions and provisions of provisional Article 31 are complied with.

The tax, which is calculated at the rate of 2% over the amount of the capital gain shown in a special fund account in the liabilities after revaluation within the scope of the article, will be declared to the relevant tax office by a tax return until the end of the following month upon the date of revaluation and will be paid in three equal instalments.

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