

**CIRCULAR**  
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**Subject:**

**GENERAL ACKNOWLEDGEMENT ON LAW NO. 6736 REGARDING THE REPATRIATION OF CASH AND RESTRUCTURING OF CERTAIN RECEIVABLES**

The Law Regarding the Restructuring of Certain Receivables, also referred to as the Tax Amnesty and Cash Repatriation Law, entered into force on 19 August 2016 when published in the Official Gazette. With the relevant law, the restructuring of many public receivables—particularly taxes, insurance premiums and customs taxes—was enabled, and also an opportunity for protection from tax audits was provided to taxpayers in the event they increase their tax bases and taxes related to certain declarations, which is explained below. In addition, correction of some records related to the business entity was also allowed for.

We can say that Law No. 6736 is basically composed of 4 sections in terms of **tax restructuring**:

1. Restructuring of Tax Receivables:

- Definite receivables
- Indefinite receivables or litigated receivables
- Receivables that are being audited or levied
- Tax returns (to be) filed voluntarily or by repentance

2. Tax Base Increase:

- Tax base increase in annual individual income tax return / annual corporate tax return
- Tax base increase in withholding tax returns
- Tax base increase in VAT returns

3. Correction of Legal Books Records:

- Inventories, machinery, fixtures and equipment present within the business entity but not found in the legal books records
- Goods that are found in the legal books records but are not present within the business entity.
- Correction of the cash account and receivables from the shareholders

#### 4. Repatriation of Cash:

- Bring to the country of assets (Cash, gold, foreign currency units, securities and other capital market instruments) that are located abroad
- Registration of domestic assets (Cash money, gold, foreign currency units, securities, other capital market instruments and immovable)

This circular will discuss the basic particulars of the regulation **broadly and in summary** rather than in detail. If you decide to benefit from the provisions of the law, we strongly recommend that before making an application you consult with your financial advisor and negotiate the issues that are the subject of the application.

#### **1. Restructuring of Tax Receivables:**

##### **a) Restructuring of Definite Tax Receivables**

Concerning taxes that are not yet paid even though they became due as of 19.08.2016, or taxes for which the period of payment has not yet lapsed:

- In the event that the amount to be determined by taking the Domestic PPI as the basis is paid in exchange for all unpaid portions of the taxes and calculated default interest, late fines and default fines related to the relevant tax, collection of secondary public receivables such as the tax loss fine, the default interest and late fee imposed in connection with the relevant primary tax shall be waived.
- In the event that the amount to be calculated by taking the Domestic PPI as the basis until the date on which the relevant law is promulgated is paid in exchange for 50% of the tax fines imposed not in connection with a primary tax or those imposed due to participation and the late fee calculated for this amount, the collection of the outstanding 50% of the tax loss fine and the whole of the late fee shall be waived.

##### **b) Restructuring of Indefinite or Litigated Receivables**

In the event that the amount to be calculated by taking the Domestic PPI as the basis until the date on which the relevant law is promulgated is paid in exchange for 50% of taxes that are indefinite or are litigated as of 19.08.2016 and the interest, default interest and late fee related to such amount, collection of the outstanding 50% of the relevant taxes and all interest, default interest, late fees and tax fines/administrative fines imposed in connection with the primary tax and late fees related to such fines shall be waived. In the event that the latest judgment delivered is a decision of abatement, a deduction of 80% shall be imposed instead

of a deduction of 50%, and if the latest judgment delivered is a decision of confirmation, it shall be necessary to pay 100% of the taxes.

In order for taxpayers to benefit from the above-mentioned deductions, they must withdraw their lawsuits or declare in writing that they will not file any further lawsuits.

There is also a possibility for the receivables to be restructured for payment in installments. In the event that the amounts to accrue within the scope of the restructuring are **paid in advance and in full** by the end of the payment period for the first installment, a further deduction shall be imposed at the rate of 50% of the amount to be calculated in accordance with the Domestic PPI. This deduction also applies to the restructuring of and payments to be made for the definite receivables.

#### **c) Restructuring of Receivables That Are Being Audited Or Levied**

Collection of the 50% of the taxes levied after the completion of tax audits initiated before the date of 19.08.2016 and the total amount to be calculated on the basis of the monthly exchange rates for the Domestic PPI until the date on which the relevant law is promulgated in exchange for the default interest related to the levied tax and also collection of the default interest to be calculated until the expiration date of the term of litigation determined upon the submission of the notice after the said date, collection of the 25% of the fine for fines not connected with the primary tax, collection of the 50% of the primary tax, collection of the 75% of the fine for fines not connected with the primary tax, collection of the default interest imposed upon the taxes until the date on which the relevant law is promulgated, and collection of all fines related to the primary tax shall be waived.

If they wish, those taxpayers still undergoing a tax audit can also increase tax bases and taxes for periods during which the audit is ongoing. In the event that the tax audits and appraisal proceedings initiated on taxpayers who have increased their tax bases and taxes are not finalized within one month starting from the month following the date on which the relevant Law is promulgated (19.08.2016), i.e., by the end of September at the latest, these proceedings shall not continue.

#### **d) Restructuring of Tax Receivables Related To Tax Returns (to be) Filed Voluntarily or by Repentance**

On condition that the amount calculated by taking the monthly exchange rates for the Domestic PPI until the date on which the relevant law is promulgated is paid within the period and in the due form specified in the relevant law in exchange for all taxes assessed and

accrued over the tax bases declared by repentance and the repentance fee to be calculated, collection of all repentance fees and tax fees shall be waived.

On condition that the amount to be calculated by taking the monthly exchange rates for the Domestic PPI until the date on which the relevant law is promulgated is paid within the period and in the due form specified in the relevant law in exchange for all of the taxes assessed and accrued over the tax returns submitted automatically and default interest to be calculated, the collection of all default interests and tax fees shall be waived.

#### **e) Payment of the restructured debts in installments**

While tax debts included within the scope of restructuring can be paid in full, there is also a possibility of payment in installments. It is possible to pay the due amounts in a maximum of eighteen equal installments by two-month periods, with the first installment starting on the third month following the date on which the relevant law is promulgated.

In the event they choose to pay the debts included within the scope of the restructuring in installments, during the application tax payer can opt for payment in six, nine, twelve or eighteen equal installments on condition that the provisions in the relevant articles are reserved. No payment shall be made in a period that is longer than the preferred period for the installments.

The amounts determined for payments to be made in installments as per the relevant articles shall be multiplied by the coefficients listed below:

- 1) (1.045) for six equal installments
- 2) (1.083) for nine equal installments
- 3) (1.105) for twelve equal installments
- 4) (1.15) for eighteen equal installments

The amount determined in this manner shall be divided by the number of installments, and the amount of the installments to be paid by two-month periods shall be calculated accordingly. Tax payers who apply in order to benefit from the relevant provisions of the law shall be presented a payment plan that suits the installment period they have chosen. However, in the event that the payment is made in a shorter period than that which is preferred, the due amount shall be corrected according to the relevant coefficient.

In the event that taxpayers who restructure their debts and choose the option of payment in installments do not repay their debts for the current period or make an incomplete payment within the period for payment in installments and for more than two legal periods in one year,

with the exception of the presence of “highly stringent circumstances,” the conditions for restructuring shall be deemed violated.

## 2. Tax Base Increase:

### 2.1. Tax Base Increase In Annual Individual Income Tax Returns/ Annual Corporate Tax Return

Taxpayers who wish to benefit from regulations on tax base increase must submit their tax returns related to the tax base increase by the end of October.

#### 2.1.1. Annual Individual Income Tax Return

As per the regulations under clauses (a), (b) and (ç) of the first paragraph of Article 5 of the relevant law, the tax base and tax increase that can be made by the payers of the income tax can be summarized as shown in the table below.

<b>The Minimum Amount of Tax Base Increase</b>							
<b>Year</b>	<b>Tax Base Increase Rate</b>	<b>Taxpayers Who Keep Books as per the Balance-Sheet Principle and Self-Employed Persons</b>	<b>Taxpayers Who Keep Books as per the Operating Account Principle</b>	<b>Taxpayers Whose Income is Determined Only as per the Simple Procedure</b>	<b>Taxpayers Whose Income Consists Solely of Income from Immovable Property</b>	<b>Taxpayers Whose Income Falls Outside of Those Stated</b>	<b>The Rate of Tax to be Imposed on the Increased Tax Base (%) (*)</b>
<b>2011</b>	35	14,000	9,500	1,400	2,800	9,500	20/15
<b>2012</b>	30	14,820	9,890	1,482	2,964	9,890	20/15
<b>2013</b>	25	15,740	10,490	1,574	3,148	10,490	20/15
<b>2014</b>	20	16,740	11,160	1,674	3,348	11,160	20/15
<b>2015</b>	15	18,970	12,650	1,897	3,794	12,650	20/15

(\*) For taxpayers who have submitted their tax returns related to the tax types in question previously within the legal period and who pay their accrued taxes in full and on the due date, **a tax rate of 15% instead of 20% shall apply.**

The taxpayers shall increase the tax bases they have declared for the relevant years in a way not less than the rates specified above. For instance: the tax base for 2013 will be increased by 25% at least.

In the event that taxpayers increase their income tax bases in accordance with the conditions stipulated in this paragraph, no **annual income tax audit** shall be conducted on them for the years in which an increase is made, and no further assessment shall be carried out for the tax types relevant to these years.

**Those taxpayers who have more than one item of income** in the annual income tax return that they submit shall make their tax base increases over the **total tax base** stated in their annual tax returns and shall not make an increase by a portion of the items of income.

### 2.1.2. Corporate Tax Return

As per Article 5 of the relevant law, the tax base and tax increase that can be made by the payers of the corporate tax can be summarized as shown in the table below.

<b>Years</b>	<b>Tax Base Increase Rate</b>	<b>The Minimum Amount of Tax Base Increase</b>	<b>The Rate of Tax to be Imposed on the Increased Tax Base (*)</b>
<b>2011</b>	35	28,000	20/15
<b>2012</b>	30	29,650	20/15
<b>2013</b>	25	31,490	20/15
<b>2014</b>	20	33,470	20/15
<b>2015</b>	15	37,940	20/15

(\*) For taxpayers who have submitted their corporate tax returns previously within the legal period and who pay their accrued taxes in full and on the due date, **a tax rate of 15% instead of 20% shall apply.**

In the event that taxpayers increase their corporate tax bases in accordance with the conditions stipulated in the relevant law, no **annual corporate tax audit** shall be conducted on them for the years in which an increase is made, and no corporate tax assessment relevant to these years shall be carried out.

Tax base and tax increases shall not constitute an obstacle for tax audits and appraisal proceedings which have commenced before the date on which the relevant law is promulgated (19.08.2016). However, **in the event that the tax audits and appraisal proceedings initiated on taxpayers who have increased their tax bases and taxes are not finalized within one month starting from the month following the date on which the relevant Law is promulgated (19.08.2016), i.e. by the end of September at the latest, these proceedings shall not continue.** Requests for a pre-assessment compromise related to tax audits finalized within the said period shall not be taken into consideration. What is meant by the finalization

of audit and appraisal proceedings is that the audit reports and the decisions of the appraisal commission are transferred onto tax office records.

In the event that as a result of the tax audit or tax appraisal a difference is detected between the tax bases or taxes that are the subject of an assessment, on the condition that **the increase is made before the date on which the tax audit reports and the decisions of the appraisal committee are transferred into tax office records**, the additional taxes declared as a result of the tax base increase and the taxes assessed as a result of the tax audit report or the decision of the appraisal committee shall be compared, and if the assessed taxes exceed the taxes declared as a result of the tax base increase, an additional tax assessment shall be carried out for the difference determined after the deduction of the additional taxes declared upon the tax base increase. And regarding this amount for which an assessment is carried out, it will naturally be possible to make a payment by benefiting from the regulation under Article 4 of the relevant law. In the event that the tax amounts declared upon the tax base increase and the tax amount to be assessed as per the tax audit report or the decision of the appraisal committee are equal or the tax amount to be assessed is less, no additional tax assessment shall be carried out and no fine shall be imposed.

### 2.1.3. Minimum Amount Of Tax Base Increase

What is expressed as the “*Minimum Amount of Tax Base Increase*” is the tax base to be taken as basis for the taxation in the event that **a loss is declared** in the tax returns submitted by the taxpayers in relation to the year for which they wish to make an increase, that **no tax base is evident due to deductions and exceptions** or that **no tax return is submitted**. Also, if the previously declared tax bases remain below these minimum amounts even when they are increased in accordance with the rates specified above, the minimum tax base amounts shall be taken into consideration in the tax base increase.

### 2.1.4 Other Issues

As is known, financial losses accrued during the previous year can be set off from the gains made in a period of five years. **50% of the losses belonging to years in which the payers of the individual income and corporate taxes have made a tax base increase cannot be offset from the profits of 2016 and subsequent years.**

## 2.2. Withholding Tax Returns

The increase rates to be implemented by tax types can be summarized as illustrated in the table below.

TAX TYPE	RATE OF INCREASE BY YEARS (%)				
	2011	2012	2013	2014	2015
<b>Tax to be calculated over the annual total of gross amounts</b> related to <b>wage</b> payments within the scope of Art. 94/1 of the Income Tax Law	6	5	4	3	2
<b>Tax to be calculated over the annual total of gross amounts</b> related to <b>self-employment</b> payments within the scope of Art. 94/2 of the Income Tax Law	6	5	4	3	2
<b>Tax to be calculated over the annual total of gross amounts</b> related to remunerations for long-term <b>construction and repairs contracts</b> within the scope of Art. 94/3 of the Income Tax Law and Arts. 15/1-a and 30/1-a of the Corporate Tax Law	1	1	1	1	1
<b>Tax to be calculated over the annual total of gross amounts</b> related to <b>rental</b> payments within the scope of Art. 94/5 of the Income Tax Law and Art. 15/1-b of the Corporate Tax Law	6	5	4	3	2
<b>Over the annual total of gross amounts</b> related to payments made for agricultural products and services purchased from farmers within the scope of Art. 94/11 of the Income Tax Law	Tax to be calculated at the rate of 25% of the withholding rate applicable for the relevant years				
<b>Over the annual total of gross amounts</b> related to payments made for the purchase of goods and services from those who benefit from the artisan exemption within the scope of Art. 94/13 of the Income Tax Law (these can also be referred to as miscellaneous payments made by notes of expense in practice)	Tax to be calculated at the rate of 25% of the withholding rate applicable for the relevant years				

For the years in which they have made a withholding tax increase, no further tax audits and assessments shall be carried out on taxpayers in relation to the tax types for which they have made the a tax increase.



### 2.3. VAT Returns

Payers of the value added tax who wish to benefit from the practice will declare the value added tax **to be determined over the annual total of the value added tax** calculated in the tax returns that they have submitted in relation to each taxation period (including those submitted with reservation) and in such a way as to be not less than the amount to be calculated in accordance with the rates given below by the end of the second month following the date on which the relevant law is promulgated (the end of October).

Years	Rate of Increase to be Imposed on Annual Total of Calculated VAT (%)
2011	3.5
2012	3
2013	2.5
2014	2
2015	1.5

No further VAT audits and assessments shall be carried out on taxpayers in relation to the years in which they have made a tax increase.

### 3. Correction of Legal Books Records

By declaring inventories, machinery, fixtures and equipment present within the business entity but not found in the records to the tax office with an list until 30 November 2016, and declaring and paying the VAT to be calculated over their fair values, taxpayers will be able to include such inventories, machinery, fixtures and equipment in their records. The VAT to be calculated shall be 10% for goods subject to the general rate, and half of the rate to which they are subject for goods subject to the reduced tax rate.

For goods found in the records but not present within the business entity, taxpayers shall make out an invoice over the sale price to be calculated in accordance with the imputed rate of profit, and they will be able to transfer this transaction into their records and declarations by means of fulfilling all their tax liabilities.

Corporate taxpayers who keep books as per the Balance-Sheet principle will be able to correct their records by declaring to the tax offices:

- Cash in hand;
- Net receivable amounts between the amounts receivable from the shareholders and amounts owed to the shareholders due to actions falling outside of the primary field of activity of the enterprise (which arise due to lending, etc.); and
- Transactions in relation to these found in other accounts,

which are found in the balance sheets as of 31/12/2015 but are not present in their business entity, on **30 November 2016**, which is the last day of the third month following the date on which Law No. 6736 is promulgated.

#### **4. Repatriation of Cash:**

In the event that cash money, gold, foreign currency units, securities and other capital market instruments which are abroad are brought to Turkey by real or legal persons by 31.12.2016, the relevant assets can be disposed of freely, and no tax whatsoever shall be levied on such amounts. The relevant law enabled taxpayers who keep books to incorporate the assets that they have brought to Turkey into their business entities without taking them into consideration in determining periodic incomes and to withdraw them from the business unit free of tax.

Cash money, gold, foreign currency units, securities and other capital market instruments which are abroad can be used to pay off loans taken out of foreign banks or financial institutions, and which are registered in the legal books as of the effective date of the relevant article, by 31/12/2016 at the latest. In such case, it is possible to benefit from the provisions of the relevant article with regard to the assets used in paying off the debt without having to meet the condition that they be brought to Turkey, provided that they are erased from the bookkeeping records.

The capital advances registered in the legal books as of 19.08.2016, which is the effective date of the relevant law, can be covered from the portion of foreign cash money, gold, foreign currency units, securities and other capital market instruments brought to Turkey before the entry into force of the relevant article. In such case, the advances in question will have to be erased from the bookkeeping records.

The practice whereby amounts declared and registered within the scope of the Repatriation of Cash act as some sort of a shield with relation to the tax base differences to be detected as a result of the tax audits conducted on the taxpayers—as was the case in previous implementations—was not included in the relevant law.

Apart from bringing assets located abroad to Turkey, it is also possible to benefit from the provisions of this article in terms of domestic assets. Accordingly, payers of individual income or corporate taxes will be able to register in the legal books the cash money, gold, foreign currency units, securities, other capital market instruments and immovables that they own and that are present in Turkey but not found in the legal bookkeeping records, again until

31/12/2016 and without taking them into account in the determination of periodic incomes. It is also possible to withdraw the assets in question from the business unit without taking them into account in the determination of the taxable period income.

The losses arising from the disposal of such assets registered in the business unit in the future shall not be accepted as an expenditure or deduction in the determination of the business unit's income in terms of the implementation of the income or corporate taxes. No depreciation shall be allocated for immovables transferred into the bookkeeping records.

Regarding those who benefit from the provision of the relevant article due to assets brought to Turkey from abroad or assets present in Turkey and registered later on in the legal books, as well as their legal representatives, no tax audit or assessment whatsoever and no investigation, examination, inquiry or prosecution shall be carried out in any way, and no tax fine or administrative fine shall be imposed upon them, solely because of the fact that this transaction is carried out and acted upon , **on the condition that cases where such transaction is necessitated by another reason remain reserved.**

The expression "on the condition that cases where such transaction is necessitated by another reason remain reserved" is not defined and specifically regulated in the text of the law; and no specific explanation was brought in relation to this in the general communique. Therefore it seems possible that real or legal persons who benefit from the repatriation of capital may be subject to a tax audit, examination, investigation and prosecution due to a reason other than the declaration of the repatriation of cash. **If the legal boundaries of the relevant expression are not drawn up, and it is not made clear what exactly is meant by "another reason,"** we can say that participation in the regulation related to the repatriation of cash will be lower than expected.

Best regards,

**DENG E İSTANBUL YEMİNLİ  
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