

CIRCULAR
Number: 2018/149eng.

İstanbul, 11 July 2018
Ref: 4/149

Subject:

THE COMMUNIQUE ON THE LAW NO. 7143 REGARDING THE IMPLEMENTATION OF THE PROVISIONS RELATED TO THE WEALTH AMNESTY AND THE TAX EXEMPTION OF CERTAIN EARNINGS GAINED ABROAD HAS BEEN PUBLISHED.

The "General Communiqué (Series No. III) on the Law No. 7143 regarding the Restructuring of Tax and Other Certain Receivables and Amending Certain Laws", which was published in the Official Gazette dated 4 July 2018 and numbered 30468, provides explanations related to the following within the scope of the provisions of the 13th paragraph of Article 10 of the Law No. 7143:

a) bringing the cash balances, foreign exchange funds, gold, securities and other capital market instruments **abroad** owned by natural persons and legal entities into the country, and **gaining them to the national economy**;

b) **declaring to the tax office** the cash balances, foreign exchange funds, gold, securities, other capital market instruments and immovable properties **in the country**, which are not shown in the legal book records of income and corporate tax payers, and **adding them to the legal book records**;

c) exemption of **certain earnings gained abroad** from income or corporate tax.

1. DECLARATION OF FOREIGN ASSETS, BRINGING THEM TO TURKEY AND PAYMENT OF THEIR TAXES

1.1. Declaration related to the foreign assets

Cash balances, gold, foreign exchange funds, securities and other capital market bonds kept abroad may be declared to the banks or (solely for securities and other capital market instruments) intermediary institutions in Turkey until (including) 30 November 2018 with the form provided in Annex 1 to the Communiqué, which will be issued in two copies.

No declaration shall be made to tax offices for these assets.

1.2. Bringing the foreign assets to Turkey

In the event that the conditions that the tax to be assessed for the declared assets be paid by its due date and the assets subject to declaration be brought to Turkey or be transferred to an account to be opened with a bank or intermediary institution in Turkey within three months following the date of declaration are **fulfilled altogether**, the assets to be declared **shall not be subjected to tax inspection or tax assessment in any manner whatsoever**. (As explained in the following sections, if the conditions of declaration and bringing to the country, as well as addition into legal book records are fulfilled until 31 July 2018, no tax assessment shall be made for them).

The foreign assets may be used for closing the loans obtained from the banks or financial institutions abroad, which are shown in the legal books as of 18 May 2018, until 30 November 2018. In this case, provided that this amount is written off in the books, the condition for being brought into Turkey shall not be sought for the assets used in the repayment of the debt. Those who will benefit from this provision shall be obliged to attach to their declaration form a copy of the supporting documents to be obtained from the banks or financial institutions abroad proving that they have closed their loan, and the bank or intermediary institution to receive this notification shall not be obliged to check the writing-off procedure.

If the capital advances recorded in the legal books as of 18 May 2018 are paid by bringing into Turkey the cash balances, gold, foreign exchange funds and other capital market instruments abroad before such date, then it shall be possible to benefit from the provisions of the law, provided that said advances are written off in the legal books.

If the assets located abroad, which are not covered by the scope of the law, (e.g. immovable properties) are converted into the assets included in said scope until 30 November 2018, it shall be possible to bring them into Turkey in accordance with the provisions of said paragraph.

Bringing into Turkey shall mean

- bringing into Turkey physically the cash balances, foreign exchange funds, gold, securities and other capital market instruments, or transferring these assets to an account to be opened with a bank or intermediary institution in Turkey; and

- declaring to intermediary institutions the securities and other capital market instruments, which are impossible to be physically brought to Turkey or to be transferred to an account to be opened with an intermediary institution in Turkey.

If the cash balances, gold, foreign exchange funds, securities and other capital market instruments abroad are transferred to an existing or newly-opened account held with a bank or intermediary institution in Turkey, the bank slip or the transaction outcome forms of intermediary institutions may be used for proving the transfer of the assets to Turkey.

Provided that said foreign assets are declared to the banks or intermediary institutions until 30 November 2018, the documents to be received from Customs Offices for the declaration/notification performed during the physical transfer of said assets to Turkey may be used for documenting their transfer to Turkey.

No tax inspection and tax assessment shall be made in any manner whatsoever for the transfer of the covered assets to Turkey.

1.3. The procedures to be carried out by banks or intermediary institutions upon the declaration of the assets abroad, and payment of their taxes

A copy of the form provided in Annex 1, which will be issued in two copies, shall be returned by the relevant bank or intermediary institution to the concerned party together with the bank slips or transaction outcome forms, after the information related to the account opened for the declaration is written down and verified.

If the declaration is made by an agent or legal representative of the relevant natural person or legal entity, banks or intermediary institutions shall check whether said agent or legal representative has the required authorizations.

The banks or intermediary institutions shall not request any documents from the declarant parties for the assets subject to declaration.

Banks and intermediary institutions shall declare the tax to be calculated at a rate of **2%** for the assets declared to them to their tax office with the return provided in Annex 2 to the Communiqué using the e-declaration system under the reverse-charge rule until (including) 31 December 2018. The banks and intermediary institutions shall pay the tax to be assessed by their tax office at a rate of 2% for the value of the declared assets under the reverse-charge rule until 31 December 2018.

No documents shall be requested by the tax offices from the banks or intermediary institutions for the assets subject to declaration.

2. DECLARATION OF ASSETS IN TURKEY AND PAYMENT OF THEIR TAXES

2.1 Declaration of assets in Turkey

Cash balances, gold, foreign exchange funds, securities, other capital market instruments and immovable properties owned by income or corporate tax payers in Turkey but which are not shown in the legal book records may be declared either directly to the tax payers' tax office for income or corporate tax together with the tax return provided in Annex 3 to the communiqué, or electronically in accordance with the principles and procedures provided in the General Communiqué Series No. 340 until (including) 30 November 2018.

The tax payers who are obliged to submit their annual income or corporate tax returns electronically shall also be obliged to submit their tax returns provided in Annex 3 in electronic environment.

2.2. Payment of taxes

A tax of 2% shall be assessed by the tax offices on the basis of the value of the assets declared to tax offices. The tax calculated in this manner shall be paid until (including) 31 December 2018. **(As explained in the following sections, if all legal obligations are fulfilled until 31 July 2018 and these assets are transferred to the legal book records, 2% tax shall not be calculated.)**

3. COMMON PROVISIONS REGARDING DECLARATION OF THE ASSETS

3.1. The status of the assets that seem to be registered in the name of legal representatives, shareholders or agents of companies

Company's legal representatives and shareholders or those who are authorized to assess the assets included in the scope of the Law in the name of the company or the company shareholders on the basis of a power of attorney or agency contract issued by the authorized institutions **before 18 May 2018** may benefit from the provisions of the Law if their assets owned abroad as of such date are subjected to declaration **on behalf of the company** in accordance with the explanations provided in the Communiqué and are brought into Turkey, or are transferred to an account to be opened with a bank or intermediary institution in Turkey, or their assets in Turkey, which are not included in the legal book records as of 18 May 2018, are declared on behalf of the company in accordance with the explanations provided in the Communiqué.

3.2. Notification or declaration value of assets

While declaring the assets kept abroad to the banks or intermediary institutions or the assets kept in the country to tax offices, the assets shall be assessed in accordance with the following assessment criteria as of the date of notification or declaration:

- a) nominal value for cash balances in Turkish Lira;
- b) current value for gold;
- c) foreign exchange buying rate of the Central Bank of the Republic of Turkey for foreign exchange funds; ç) for securities and other capital market instruments:
 - (if any) stock exchange prices for stocks such as share certificates, and if no stock exchange price is available, their current value. If this value cannot be determined, their purchase price, and if their purchase price cannot be determined, their nominal value;
 - (if any) stock exchange prices for debt instruments such as bills, bonds and Eurobond, and if no stock exchange price is available, their current value. If this value cannot be determined, their purchase price, and if their purchase price cannot be determined, their nominal value;
 - the closing price determined in the relevant market for mutual fund participation certificates;
 - (if any) stock exchange prices for derivative instruments such as forward and option contracts, and if no stock exchange price is available, their current value. If this value cannot be determined, their purchase price, and if their purchase price cannot be determined, their nominal value; and
- d) current price for immovable properties.

The **Turkish Lira equivalent of the value of** said **assets** shall be taken as the basis for declarations or notifications.

Current price shall mean the purchase-sale price on the date of notification or declaration of said assets, and must reflect the actual status.

While determining the stock exchange price of the **assets to be assessed on the basis of their stock exchange price**, the prices at which said assets are traded in the stock exchange markets in the country or abroad as of the date of their notification or declaration shall be taken into consideration.

In case of assets in foreign currency, the buying rate of the Central Bank of the Republic of Turkey prevailing on the date of their notification or declaration shall be considered.

After notification is made, the value prevailing on the date of first notification of the assets shall be taken as the basis for corrections to be made until 30 November 2018 with a view to ensuring the correction of errors made or the reduction of the assets subject to declaration.

3.3. Transfer of notified or declared assets to the legal book records

Tax payers keeping books in accordance with the Tax Procedure Law may record the assets subject to notification or declaration in legal books.

If the assets kept abroad are declared on behalf of the company, the relevant company, and if such assets are declared on behalf of natural persons, such natural persons may benefit from the provisions of the law, and thus the assets declared on behalf of the company may be recorded in the company's legal books.

As explained in the following sections, even though transfer to the legal book records seems optional, it is mandatory to make these declarations until 31 July 2018, and to record these assets in the legal books if the tax payer does not wish to pay taxes for such declarations.

The assets brought to Turkey by the tax payers keeping legal books pursuant to the Tax Procedure Law and the assets recorded in the legal books by the income or corporate tax payers may be included in their business without being considered while determining their profit for the period, and may also be withdrawn from their business without being considered while determining the taxable profit and the distributable profit for corporations.

Tax payers keeping books on balance sheet basis shall open a special fund account under the liabilities for the assets they recorded in their legal books. This account may be subject to free disposal, and may be either added to the share capital or distributed to the shareholders. These amounts kept in the fund account shall not be taxed if the business is liquidated, or in case of merger, transfer or spin-off to be performed in accordance with the provisions of the Income Tax Law or the Corporate Tax Law. Besides, if the amounts of these assets are distributed by the corporate tax payers to the shareholders, dividend distribution shall not be subjected to withholding tax, and these amounts earned by the natural person shareholders and corporate tax payers shall also not be subjected to tax.

Tax payers keeping legal books on the basis of operating account method with self-employment revenue book shall be entitled to show said assets separately in their books.

Tax payers keeping books in accordance with the Tax Procedure Law may record the notified or declared assets in the legal books at their TL equivalent value determined in accordance with the principles set forth in Article 9 of the Communiqué as of the date of their notification to the banks or intermediary institutions or declaration to the tax offices, and this value shall be considered while determining the sales proceeds if these assets are disposed.

3.4. Expense and depreciation practices

The taxes payable under Articles 5 and 7 of the Communiqué (to be calculated at 2%) may not be considered as an expense while determining the tax base for income or corporate tax base, or be set-off against another tax in any manner whatsoever.

It shall not be possible to depreciate the immovable properties declared and recorded in legal book records under the provisions of the Tax Procedure Law.

Losses to arise from the subsequent disposal of the assets recorded in legal books may not be accepted as expense or discount with respect to the income or corporate tax applications while determining the income or company profit.

3.5. Cases where no taxes will be payable

If, until (including) **31 July 2018**,

a) the cash balances, gold, foreign exchange funds, securities and other capital market instruments abroad

— are notified and brought to Turkey,

— are used for closing the loans obtained from the banks or financial institutions abroad, which are shown in the legal books as of 18 May 2018, and for writing them off in the legal books,

— are brought to Turkey before 18 May 2018 and **the capital advances recorded in the legal books** as of such date **are paid by these assets**, provided that said advances are written off in the legal books,

b) cash balances, gold, foreign exchange funds, securities, other capital market instruments and immovable properties owned by income or corporate tax payers in Turkey but which are not shown in the legal book records are declared and **recorded in legal books,**

no tax shall be assessed for these assets within the scope of the 13th paragraph of Article 10 of the Law No. 7143. **(In other words, if the required procedures of notification and transfer to the country are performed until 31 July 2018, without waiting for the deadline of 30 November 2018 specified in the law, the 2% tax shall not be paid.)**

In order for no taxes to be assessed for the assets notified until 31 July 2018, the documents proving the transfer of these assets to Turkey should be submitted to the relevant bank or intermediary institution until the specified date.

No declaration shall be made by these relevant institutions to the tax offices for the assets notified to the banks or intermediary institutions and brought to Turkey until 31 July 2018.

The 2% tax shall not be calculated by tax offices for the assets declared by income or corporate tax payers to the tax offices until 31 July 2018, **provided that they are recorded in the legal books. (Even though transfer to the legal book records seems optional, it is mandatory to declare and bring into the country these assets until 31 July 2018 and to record them in the legal books if the tax payer does not wish to pay taxes for such declarations.)**

3.6. Exemptions for tax inspection and assessment

Provided that the tax assessed for the declared or notified amounts are paid within due term and the notified assets are brought to Turkey or are transferred to an account to be opened with a bank or intermediary institution in Turkey within three months following the date of notification, no tax inspection or tax assessment shall be made for the notified or declared assets in any manner whatsoever.

The notified assets may be used for closing the loans obtained from the banks or financial institutions abroad, which are shown in the legal books as of 18 May 2018, until 30 November 2018, and provided that these amounts are written off in the legal books, it shall be possible to benefit from tax inspection and tax assessment exemption without the condition of being brought into Turkey being sought for the assets used in the repayment of the debt.

If the capital advances recorded in the legal books as of 18 May 2018 are paid by bringing into Turkey the cash balances, gold, foreign exchange funds and other capital market instruments abroad before said date, then it shall be possible to benefit from tax inspection and tax assessment exemption, provided that said advances are written off in the legal books.

3.7. Miscellaneous Provisions

The relevant organizations and institutions shall be obliged to fulfill the requests of natural persons or legal entities with respect to the procedures to be performed under the law.

If the amount calculated at the rate of 2% on the basis of the notification value for the assets notified to banks or intermediary institutions is not paid, the banks or intermediary institutions shall not be obliged to accept said notification.

If the accrued taxes are not paid by the due date or the other conditions set forth in said paragraph are not fulfilled, this failure shall not prevent the initiation of enforcement proceedings for, and the collection of, the tax principal together with the late interest under Law No. 6183. Besides, the taxes collected due to the notifications or declarations shall not be rejected or returned.

4. EXEMPTION FOR THE EARNINGS GAINED ABROAD

4.1. Earnings covered by the scope of exemption and those to benefit from the exemption

Certain earnings gained abroad are exempted from income or corporate tax under subparagraph (h) of the 13th paragraph of Article 10 of the Law No. 7143.

Including those gained (including) until 31 October 2018, the exemption covers:

- Earnings arising from the sale abroad of participation shares in the institutions whose registered business headquarters is not located in Turkey **(they should have been gained within the 18 May 2018 - 31 October 2018 period);**
- Earnings arising from the participation shares in the institutions whose registered business headquarters is not located in Turkey **(they should have been gained within the 18 May 2018 - 31 October 2018 period);**
and
- commercial earnings gained through business places or permanent representatives abroad **(they should have been gained within the 1 January 2018 - 31 October 2018 period.)**

In order for the earnings of branches abroad to be subjected to exemption, the branch's earnings for the period between 1 January 2018 and 31 October 2018 should be calculated, and this amount should be exempted in the annual tax return. Taxation of a part of the earnings in the provisional tax periods shall have no impact on this application.

In addition, the earnings arising from the **liquidation** of the corporations whose registered business headquarters is not located in Turkey, **which are transferred to Turkey until (including) 31 December 2018**, shall also be exempted from income and corporate tax. *(they should have been gained within the 18 May 2018 - 31 October 2018 period.)*

Natural persons and legal entities who are full tax payers in Turkey (including tax payers operating in free trade zones) shall be entitled to benefit from the foregoing exemptions, provided that **these earnings are transferred to Turkey until 31 December 2018**.

The fact that these earnings were brought to Turkey shall be proven by tax payers with satisfactory documents.

4.2. Declaration of earnings abroad subject to exemption

These earnings shall be exempted from tax by means of inclusion in the profit or the company earnings in the annual income or corporate tax returns to be filed for 2018, and by means of showing them in the relevant line of the tax returns.

Tax payers subject to special account period shall be entitled to subject to exemption such earnings they derive during the period between the dates specified, by means of including them in the profit or the company earnings in the annual income or corporate tax returns to be filed for 2018 and 2019 depending on their accounting period, and by showing them in the relevant line of the tax returns.

Shareholding earnings **not transferred to the records and excluded from the scope of declaration despite having been acquired before 1 January 2018**, earnings derived from the disposal of the participation shares, earnings of branches abroad and the **earnings** arising from the liquidation of the corporations located abroad before such date **shall not be eligible for the application of this exemption provision related to earnings**. However, it is possible to bring these earnings into Turkey by means of benefiting from the provision of subparagraph (a) of the thirteenth paragraph of Article 10 of the Law No. 7143.

Yours respectfully,

**DENGE İSTANBUL YEMİNLİ
MALİ MÜŞAVİRLİK A.Ş.**

ANNEX:

General Communiqué (Series No. III) on the Law No. 7143 on the Restructuring of Tax and Other Certain Receivables and Amending Certain Laws

(*) The explanations provided in our circulars are for information purposes only. We recommend obtaining the opinion and support of an expert before performing a final transaction with respect to any issues on which hesitation prevails, and our consultancy company shall not be liable for any losses to arise from transactions made on the basis of the explanations included in our circulars.

(**) Please do not hesitate to write to our experts whose information is provided below for any questions, criticism and questions about our circulars.

Erkan YETKİNER

Chartered Accountant

Mazars/Denge, Shareholder

evetkiner@mazarsdenge.com.tr

Güray ÖĞREDİK

CPA

Mazars/Denge, Director

gogredik@mazarsdenge.com.tr