



**CIRCULAR NO: 2022/193eng.**

**November 10, 2022**

## **LAW NO. 7420, WHICH INCLUDES REGULATIONS ON TAXATION IN CAPITAL DECREASE, TAX EXEMPTION IN MEAL ALLOWANCE PAYMENTS IN CASH TO EMPLOYEES, AND TAX AND INSURANCE PREMIUM EXEMPTION IN PAYMENTS TO BE MADE TO EMPLOYEES FOR HEATING EXPENSES, HAS BEEN PUBLISHED IN THE OFFICIAL GAZETTE**

The regulations introduced to the tax legislation with the Law No. 7420 published in the Official Gazette No. 32008 of November 9, 2022 are outlined below. (Our [circular no. 2022/183 of October 11, 2022](#) had previously provided information, when the regulations were at the bill stage.)

### **1. The Maximum Installed Capacity Limit for Unlicensed Electricity Generation Facilities in Residential Buildings within the Scope of Exemption for Tradesmen Increased**

Pursuant to subparagraph (9) of paragraph 1 of Article 9 titled “Tax-exempt tradesmen” of the Income Tax Law (ITL), those who sell to the end-source supply company the surplus electricity generated from only one production facility with an installed capacity of up to 25 kW (including 25 kW) (including those established by the flat owners for the purpose of meeting the common electricity energy needs of the main real estate) for the purpose of generating electricity based on renewable energy sources within the scope of activities that can be carried out without a license in accordance with the Electricity Market Law, are exempt from income tax.

In the first article of the Law, the 25 kW limit in the above regulation has been updated to 50 kW.

## 2. Meal Payments in Direct Cash to Employees Included in the Scope of Exemption

With the regulation in Article 2 of the Law, the parenthetical provision regulating the income tax exemption for meal payments in subparagraph (8) of paragraph 1 of Article 23 of the ITL has been amended as follows.

**Text of the article before the amendment:**      **Text of the article after the amendment:**

<p>Benefits offered to service personnel by employers by providing meals (In cases where employers do not provide meals in the workplace or its outbuildings, the cost of a daily meal for the days worked should not exceed TL 51 and the related payment must be made to the taxpayers providing the catering service. In the event that the payment exceeds this amount, the excess part and the payments made <del>in cash to the service personnel as meal fees</del>, as well as the benefits provided for this purpose shall be taxed as wages.)</p>	<p>Benefits offered to service personnel by employers by providing meals (In cases where employers do not provide meals in the workplace or its outbuildings, the <b>part</b> of the cost of one day's meal for the days worked <b>not exceeding TL 51 is included within the scope of the exemption</b>. If the payment exceeds this amount, the excess part and <b>other</b> benefits provided for this purpose shall be taxed as wages.)</p>
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Cash payments made to employees for meals, which do not exceed a certain daily amount, have been included within the scope of direct exemption from income tax, regardless of their intended use.

We would like to draw special attention to the fact that in cases where employees are paid an additional amount as meal fee in cases where employers provide meals in the workplace or outbuildings or provide meal vouchers / meal cards to employees, this amount will be subject to tax.

The regulation will enter into force on December 1, 2022.

## 3. Income Tax Exemption for Wages of Employees Working in Construction, Repair, Assembly Works and Technical Services Abroad

With the regulation in Article 2 of the Law, a new wage exemption has been added to Article 23 of the ITL as subparagraph (19) as follows.

*“19. Wage payments made to employees working in construction, repair, assembly works and technical services abroad, in return for their work abroad, which are covered from the foreign earnings of the employer.”*

Wage payments made to employees working in repair, assembly works and technical services abroad, in return for their work abroad, which are covered by the employer's foreign earnings, are exempt from income tax.

As it is known, according to the row 34 of the section titled "IV - Commercial and civil papers" of the table numbered (II) attached to the Stamp Tax Law, the papers related to the wages specified in Article 23 of the ITL are also exempt from stamp tax. Therefore, if the proposed regulation is enacted, these fees will also be exempt from stamp tax.

The regulation will enter into force on December 1, 2022.

#### **4. Extension of the Individual Participation Investor Deduction Period and Increase in the Maximum Deduction Limit**

With Article 3 of the Law, the application period of the deduction regulation for individual participation investors pursuant to the provisional Article 82 of the ITL has been extended from December 31, 2022 to December 31, 2027, and the upper limit for the annual deduction in the current article has been increased from TL 1,000,000 to TL 2,500,000.

The regulation entered into force on November 9, 2022 to be applied to income or gains obtained as of January 1, 2023.

#### **5. Taxation of Capital Decrease**

As it is known, disputes may arise between the administration and taxpayers regarding the determination of the elements of the capital decrease and these disputes are sometimes resolved before the judicial authorities due to the lack of a provision explicitly regulating this issue in the tax laws.

The regulation in Article 22 of the Law tries to clarify which capital element will be reduced and in what amount, and how taxation will be made on these elements subject to decrease, in case of capital decrease by companies that include within capital calculations different elements such as inflation adjustment differences, retained earnings, funds that are legally required to be set aside and can be added to the capital, in addition to the in-kind or cash capital put into the company by the shareholders, which ***will not be taxed in case of capital decrease***.

As a result of economic and commercial activity, capital companies may decrease their capital for various reasons. The most well-known of these reasons are the idle capital of the companies due to their economic and financial situation, the amortization of accumulated losses through capital decrease in order to make the balance sheet and financial statements robust, or the will to withdraw some resources that were not taxed during the addition to the capital from the business through capital decrease.

According to Article 32/B added to the Corporate Tax Law with Article 22 of the Law, in the event that the equity items added to the capital by the corporations are subject to capital decrease **in any way after five full years** from the date of addition to the capital, the **capital elements within the amount subject to decrease shall be determined by proportioning to the total capital** the cash or in-kind capital and other elements added to the capital; and in determining the said ratio, the share of the following in the total capital will be taken into consideration;

- a) Equity items that will be subject to corporate tax on transfer to another account other than addition to capital, withdrawal from the enterprise or transfer from the capital account to other accounts, and tax deductions related to profit distribution or the amount transferred to the head office,
- b) Equity items to be subject to tax deductions based only on profit distribution or the amount transferred to the head office,
- c) In-kind and cash capital that will not be taxed if transferred to another account or withdrawn from the enterprise.

In the event that the corporations **make a capital decrease before the completion of the five full year-period** starting from the date of addition of the equity items to the capital, the decrease will be deemed to have been made from the capital items above-listed in subparagraphs a, b and c, respectively.

In addition, the said regulation states that, in capital decrease, the equity items that have been added to the capital for a period not exceeding five full years shall be deemed to have been withdrawn from the enterprise.

For capital elements subject to corporate tax and tax deductions, the deduction base shall be the amount remaining after deducting the calculated corporate tax.

The regulation indicates that in the event that **the capital is decreased by offsetting accumulated losses**, the capital elements subject to such decrease shall be determined as explained above, but **no tax deduction shall be made** over them. In this case, it can be said that if there is a capital decrease in the form of offsetting accumulated losses and an element subject to corporate tax added to the capital in the past years within the reduced amount is in question, **corporate tax will have to be calculated and declared even if no tax deduction is made** over this amount.

On the other hand, no special provision has been added to the aforementioned legal regulation regarding whether taxation will be applied in the event of a **compulsory capital decrease** due to a **partial division** transaction. We are of the opinion that, as it stands, the partial division arrangement has become inoperable due to the tax burden that may arise due to Article 32/B of the CTL.

In addition, as stated in our previously published circular, it can be said that there is a legal gap regarding the implementation of Article 32/B of the Corporate Tax Law together with the 15% withholding tax regulation stipulated in paragraph 4 of Article 94 of the Income Tax Law in the event that companies make capital decrease due to the acquisition of their own equity shares.

The legal regulation authorizes the Ministry of Treasury and Finance to determine the procedures and principles regarding the implementation of this article.

The regulation entered into force on November 9, 2022.

## **6. Tax Advantages Provided for Income from the Accounts to be Opened within the Scope of Exchange-Protected Deposit Extended until December 31, 2023**

Within the scope of the amendments made to the provisional Article 14 of the CTL with Article 23 of the Law, the periods for institutions to convert their foreign currency and gold account balances in their balance sheets dated December 31, 2021 into Turkish lira deposit and participation accounts (Exchange-Protected Deposit-FXPD) within the scope of the second and third paragraphs of the same article were extended from the end of 2022 to December 31, 2023. Accordingly, the exemptions regarding the gains from FXPD accounts will also be applicable within the same periods.

On the other hand, the period for corporations to convert their foreign currencies included in their balance sheets dated March 31, 2022 or June 30, 2022 into FXPD accounts has been extended from the end of 2022 until December 31, 2023 and the President has been authorized to implement the exemption to be provided to the earnings of the taxpayers pursuant to this subparagraph separately or together for the foreign currencies included in the balance sheets of the corporations as of the end of each provisional tax period or annual accounting periods until December 31, 2023.

The provision amending paragraph 7 of Provisional Article 14 entered into force on the date of publication of the law (November 9, 2022) to be applied as of May 26, 2022, and the other provisions entered into force on the date of publication (November 9, 2022).

## **7. Wages up to TL 1,000 to be Paid to Employees Until June 30, 2023 for Electricity, Natural Gas and Other Heating Expenses Excluded from Earnings Based on Insurance Premium and Income Tax Base**

With the regulation in the provisional Article 1 of the Law, from the date of entry into force of the article (November 9, 2022), payments **not exceeding TL 1,000 per month** to be made by employers to employees in addition to their current wages/premium-based earnings until June 30, 2023 (including this date) in return for electricity, natural gas and other heating expenses **will not be included in the earnings-based**

**insurance premium, and income tax deduction will not be calculated over this amount.**

Accordingly, such payments will have to be included in the payroll and in the gross wage income in the relevant month, and then such payments will have to be deducted when reaching the earnings based on the insurance premium and the base for income tax deduction, since the regulation in question provides a direct exception.

The text of the law does not specify whether the payment is net or gross. According to the wording of the regulation, it can be said that the payment of TL 1,000 should be considered as the net amount. On the other hand, the regulation **does not include an exemption for stamp tax.**

The regulation entered into force on November 9, 2022.

## **8. Miscellaneous Regulations**

**8.1.** According to the regulation made with the provisional Article 2 of the Law, in cases where enforcement proceedings have been initiated pursuant to Execution and Bankruptcy Law and Law No. 7155 on the Procedure for Initiating Proceedings based on Monetary Receivables Arising from Subscription Agreements, where the debtor is a real person, and the amount of the proceedings on the date of the initiation of enforcement proceedings, including the original receivable and its accessories, does not exceed TL 2,000 for each enforcement file, where proceedings have been initiated for amounts exceeding TL 2,000 but the balance proceedings have fallen to TL 2,000 or below due to collections made as part of the file as of August 15, 2022, the receivables subject to enforcement proceedings **will be deemed as worthless receivables within the scope of Article 322 of the Tax Procedure Law**, provided that the creditors terminate the enforcement proceedings by waiving their rights until the end of the third month following the date of entry into force of this article by submitting a petition stating that they waive their rights to receivables. For the receivables for which enforcement proceedings are terminated pursuant to this article, the fee required to be collected due to the waiver of enforcement proceedings pursuant to Article 23 of the Law No. 492 on Fees and the fee regulated in Article 1 of the Law No. 2548 on Fees to be Collected in Return for the Construction of Prisons and Court Buildings and Food Costs to be Paid by Prisoners will not be collected. Previously collected fees will not be refunded. In order to benefit from the provisions of this Law, the parties will not be able to mutually request trial expenses and attorney fees in relation to the enforcement files, the proceedings of which have been terminated.

The regulation entered into force on November 9, 2022.

**8.2.** According to the regulation made by Article 14 of the Law;

- Ministry and Institution personnel will not be held responsible for the procedures regarding the receipt, evaluation and payment of short-time work applications made by employers due to Covid-19 and cash wage support transactions,
- The overpayments and improper payments arising from erroneous transactions related to short-time work allowance and cash wage support payments made due to Covid-19, which have not been collected as of the effective date of this article (November 9, 2022) will be canceled, and those collected will not be refunded or offset,
- The follow-up and collection procedures initiated regarding these receivables will not continue, and no judicial expenses will be awarded against the Institution and the Ministry in the files that have been transferred to the judicial authorities,
- Except for the reasons specified in subparagraph (II) of paragraph 1 of Article 25 of the Law No. 4857, excess and unwarranted payments arising from the dismissal of workers by the employer, and short-time work allowance and cash wage support payments subject to criminal investigation or prosecution during the period of short-time work will be excluded from the scope of this article,
- The provisions of cancelment pursuant to this article will be applied to those who have been given a decision of non-prosecution or acquittal following criminal investigation or prosecution.

The regulation entered into force on November 9, 2022.

**8.3 Changes in Tourism Share Rates**

With the amendment made to subparagraphs a, b, c, ç and d of paragraph 2 of Article 6 of the Law No. 7183 on the Tourism Promotion and Development Agency of Turkey, the tourism share rates have been changed as follows.

- a) Five per thousand from compound facilities and accommodation facilities,
- b) Five per thousand from food and beverage and entertainment facilities certified by the Ministry,
- c) Five per thousand from marine tourism facilities,
- ç) Five per ten thousand from travel agencies (except for individual air ticket sales),
- d) Five per ten thousand from airline companies (commercial passenger transportation activities),

The regulation will enter into force on December 1, 2024.

For marine tourism vehicles certified by the Ministry, tourism share payments will be made until December 31, 2022.

Sincerely,

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

**APPENDIX**

Law No. 7420 on Amendments to the Income Tax Law and Certain Laws and Decree Laws

(\*) The remarks in our circulars are for information purposes only. We recommend that the opinion and support of a qualified counsellor be sought before taking final action on questionable matters. Our company shall not be held responsible for any damages to be incurred as a result of transactions to be made solely on the basis of the statements in our circular.

(\*\*) For opinions, criticism and questions about our circulars, please contact our experts below.

**Erkan YETKİNER**  
**Certified Public Accountant**  
**Mazars Denge, Partner**  
**eyetkiner@mazarsdenge.com.tr**

**Güray ÖĞREDİK**  
**Independent Accountant and Financial Advisor**  
**Mazars Denge, Director**  
**gogredik@mazarsdenge.com.tr**