



**CIRCULAR NO: 2023/072**

**March 10, 2023**

## **CORPORATE TAXPAYERS BENEFITING FROM EXEMPTIONS AND DEDUCTIONS ARE OBLIGED TO PAY A ONE-TIME ADDITIONAL TAX**

The Law Proposal on the Restructuring of Certain Receivables and Amendments to Certain Laws was accepted and enacted by the General Assembly of the Turkish Grand National Assembly on March 9, 2023. With the provision of the new paragraph included in the Law Proposal during the General Assembly negotiations, corporate taxpayers benefiting from deductions and exemptions or having tax bases subject to discounted corporate tax are obliged to pay a one-time "additional tax". The provisions of the Law, which has not yet been published in the Official Gazette, regarding the additional tax are mentioned in our Circular.

### **1. Exemption and Deduction Elements Subject to Additional Ten Percent Tax**

As per the regulation in paragraph 27 of Article 10 of the Law, as shown by the corporate taxpayers in the corporate tax return for the year 2022, the following items, which are deducted from the corporate income under the Corporate Tax Law No. 5520 and the regulations in other laws, will be **subject to an additional tax of 10%** without being associated with the income for the period.

- Exemption and discount amounts
- Bases subject to reduced corporate tax

The exemptions and deductions subject to 10% additional tax are shown in **Table (I)** in the annexe of this Circular per the corporate tax return composition.

In addition to the exemption and discount amounts subject to additional tax, a one-time **additional tax of 10%** will be collected on the bases subject to discounted corporate tax under

Article 32/A of the Corporate Tax Law.

## 2. Exemption Elements Subject to Additional Five Percent Tax

The general tax rate for exemptions and deductions to be subject to additional tax is 10%, and the Law stipulates a tax rate of 5% for exemptions for domestic and foreign participation earnings. Under the regulation, a one-time 5% additional tax will be collected for the following:

- Exemption of participation income (CTL Art. 5/1-a),
- Exempt earnings obtained from abroad and certified to bear a tax burden of at least 15% (CTL Art. 5/1-b).

## 3. Exemption and Deduction Elements Excluded from the Scope of Additional Tax and Exemption Provisions

The law provides that the exemptions and deductions that will not be subject to additional tax are as follows:

- Exemptions falling under the scope of subparagraphs (d), (i), (j) and (k) of the first paragraph of Article 5 and provisional Article 14 of CTL, discounts falling under the scope of subparagraphs (b), (c), (ç), (d), (e), (f), (g) and (h) of the first paragraph of Article 10 of the same Law,
- Investment deduction exemption subject to withholding tax under the provisional Article 61 of Law No. 193,
- Donations and grants that can be deducted from the corporate profit under the relevant laws,
- Earnings subject to exemption and deduction from technology development zones and R&D and design centers of micro and small-scale enterprises defined within the scope of Article 407 of the Presidential Decree on the Organization of the Presidency No. 1 of July 10, 2018.

No additional tax will be applied to the above-mentioned exemption and deduction amounts.

Here, we would like to emphasize that corporations that fall outside the definition of "micro and small-scale enterprises" defined under Article 407 of the Presidential Decree are obliged to calculate additional tax for their exempt and deductible earnings from technology development zones and R&D and design centers.

The types of exemptions and deductions that fall outside the scope of the additional tax are available in **Table (II)**, attached to our Circular.

In addition, as of February 6, 2023, corporate taxpayers in Adana, Adiyaman, Diyarbakır, Elazığ, Gaziantep, Hatay, Kahramanmaraş, Kilis, Malatya, Osmaniye and Şanlıurfa Provinces and Gürün District of Sivas Province will be exempted from the additional tax.

## 4. Payment Periods for the Additional Tax

The first instalment of the additional taxes calculated under Sections 1 and 2 of our Circular will be paid within the corporate tax payment period (1-30 April) . The second instalment will be paid in the fourth month following this period (1-31 August). For taxpayers assigned a

special accounting period, this tax will be applied by showing it in the declarations required to be submitted for the accounting period ending in 2023.

## **5. Common Provisions Related to Additional Tax**

Additional taxes calculated and paid by taxpayers cannot be considered expenses and deductions and cannot be deducted from any tax.

Since the additional tax is to be calculated irrespective of the income for the period, taxpayers may be obliged to pay tax even if the relevant accounting period ends with a loss or if there is no tax to be paid due to exemptions and deductions in the period in question.

Increasing the corporate tax base for 2022 will not constitute an obstacle to the examination and assessment for this period for additional tax.

The certainty and foreseeability of tax obligations are indispensable elements for the legal security of taxpayers. Paragraph 3 of Article 73 of the Constitution aims to ensure the certainty and foreseeability of tax obligations for taxpayers and to ensure the legal security of taxpayers. Currently, since the additional tax application, which was justified to be regulated due to the Earthquake, was made after the closure of the 2022 taxation period, it has been evaluated that this regulation, which was introduced only for taxpayers applying exemptions and deductions, is contrary to the criteria of "proportionality", "certainty" and "equality". In this case, since the additional tax regulation also causes a violation of the rule of non-retroactivity of the laws, we believe that it is possible to file a declaration with a reservation and file a lawsuit before the Tax Court within 30 days.

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

## **ANNEXES**

Exception and Deduction Tables

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

(\*\*) For opinions, criticism and questions about our circulars, please get in touch with our experts below.

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**TABLE (I): EXEMPTIONS AND DEDUCTIONS SUBJECT TO ADDITIONAL TAX**

<b>EXCEPTIONS AND DEDUCTIONS ARE TO BE DEDUCTED EVEN IN THE EVENT OF A LOSS</b>	<b>TAX RATE (%)</b>
Participation Earnings (CTL Art. 5/1-a)	5
Foreign Participation Earnings (CTL Art. 5/1-b)	5
Foreign Branch Earnings (CTL Art. 5/1-g)	5
Earnings on Sale of Foreign Participation Shares of Full Taxpayer Joint Stock Companies (CTL Art. 5/1-c)	10
Emission Premium Earnings (CTL Art.5/1-ç)	10
Earnings arising from immovable and participation shares, founders' shares, redeemed shares and preemptive rights (CTL Art. 5/1-e)	10
Earnings arising from the sale of immovables, participation shares, redeemed shares and preemptive rights of banks, financial leasing or finance companies or institutions indebted to the SDIF	10
Foreign Branch Earnings (CTL Art. 5/1-g)	10
Earnings from Foreign Construction and Repair Works (CTL Art. 5/1-h)	10
Earnings from Training and Education Institutions, Private Kindergartens, Preschools and Rehabilitation Centers (CTL Art. 5/1-i)	10
Exemption for Industrial Property Rights (CTL Art. 5/B)	10
Earnings in Free Zones	10
Earnings in Technology Development Zones*	10
Earnings from Turkish National Ship Registry, Ship Operations and Transfers	10
Foreign Exempt Earnings within the Scope of Law No. 7143	10
Other Discounts and Exemptions	10
<b>EXEMPTIONS AND DEDUCTIONS TO BE DEDUCTED IN THE EVENT OF EARNINGS</b>	<b>TAX RATE (%)</b>
R&D Deduction (CTL Art. 10/1-a)	10
R&D Deduction (Art. 3 of Law no 5746)**	10
R&D Deduction (Art. 3/A of Law no 5746)	10
Design Deduction (Art. 3 of Law no 5746)**	10
50% of earnings from services provided from Türkiye to persons and/or institutions residing abroad (CTL Art.10/1-ğ)	10
Interest deduction arising from cash capital increase (CTL Art. 10/1-i)	10
Techno-initiative Capital Support Deduction (Art. 3/5 of Law no. 5746)	10
Technopolis Capital Support Deduction (Provisional Art. 4 of Law no. 4691)	10
Donations, Aids and Sponsorship Expenditures for the Cappadocia Area Presidency	10
Other Deductions	10

**TABLE (II): EXEMPTIONS AND DEDUCTIONS NOT SUBJECT TO ADDITIONAL TAX**

<b>EXCEPTIONS AND DEDUCTIONS ARE TO BE DEDUCTED EVEN IN THE EVENT OF A LOSS</b>
Operating Earning/Business Gain of Mutual Funds and Investment Trust Portfolio (CTL Art 5/1-d)
Exemptions Born of Sell and Leaseback Transactions (CTL Art. 5/1-j)
Exemption on Earnings Arising from the Sale of Assets and Rights for the Purpose of Issuance of Lease Certificates (CTL Art. 5/1-k)
Exemption on Earnings Arising from Currency-Protected Deposits (CTL Temporary Art. 14.)
<b>EXEMPTIONS AND DEDUCTIONS TO BE DEDUCTED IN THE EVENT OF EARNINGS</b>
Returns (CTL Art. 5/1-i)
Sponsorship Expenditures (CTL Art. 10/1-b)
Donations and Aids (CTL Art. 10/1-c)
Donations and Aids (CTL Art. 10/1-ç)
Donations and Aids for Culture and Tourism Purposes (CTL Art. 10/1-d)
Donations and Aids Made to Aid Campaigns Initiated by the President (CTL Art. 10/1-e)
Cash Donations and Aid to the Turkish Red Crescent Society and the Green Crescent Society (CTL Art. 10/1-f)
Venture Capital Fund (CTL Art. 10/1-g)
Protected Workplace Deduction (CTL Art. 10/1-h)
Investment Deduction Exemption
Donations and aid that can be deducted from the corporate income under the relevant laws
The exempted and deducted earnings of micro and small enterprises, which are defined under the Article 407 of the Presidential Decree on the Presidential Organization dated 10/7/2018 and numbered 1, arising from technology development zones, and R&D & design centers.

(\*) No additional tax will be calculated on the exempted earnings of micro and small enterprises, which are defined under the Article 407 of the Presidential Decree on the Presidential Organization dated 10/7/2018 and numbered 1.

(\*\*) No additional tax will be calculated on the exempted earnings of micro and small enterprises, which are defined under the Article 407 of the Presidential Decree on the Presidential Organization dated 10/7/2018 and numbered 1.