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DOMESTIC MINIMUM CORPORATE TAX

Appended to the Corporate Tax Law (CTL) by Law No. 7524 published in the Official Gazette No. 32620 of August 2, 2024, Article 32/C introduced a new tax safety instrument called "**Domestic Minimum Corporate Tax**".

As known, while calculating the corporate tax base, some exemptions and deductions stipulated in both tax laws and other laws are deducted from the income and corporate tax is calculated over the remaining amount. As per minimum corporate tax application, corporate tax is calculated without deducting certain exemptions and deductions. If the minimum corporate tax amount is higher than the corporate tax amount as a result of the said calculation, the amount therebetween must be paid as minimum corporate tax. Considering that **the regulation will be applicable to the earnings of 2025, we would like to state that the calculation, statement and payment regarding the minimum corporate tax will be performed according to each provisional tax period and year-end financial statements starting from the first provisional tax period of 2025.**

Our circular provides information on the implementing procedures and principles of the domestic minimum corporate tax.

1. Tax Rate

The domestic minimum corporate tax introduces a 10% threshold for corporate tax to be calculated over corporate income. As before, corporate tax will continue to be calculated by taking into account the provisions of paragraphs 1 to 9 of Article 32 of the CTL regulating the tax rate and Article 32/A thereof regulating the discounted corporate tax for investments granted incentive certificates, but the tax calculated in this way will not be less than 10% of the corporate income of corporations before deducting discounts and exemptions in accordance with the newly introduced domestic minimum corporate tax provisions. **If the corporate tax calculated without considering the domestic minimum corporate tax is less than 10% of the corporate income, the under-calculated tax will be accrued on behalf of the taxpayer and thus the actual tax rate will be topped up to 10%.**

We would also like to point out that the President of the Republic is authorized to reduce the 10% rate to zero or increase it up to one time, separately or together, by sectors, fields of activity, business lines or production areas.

2. Corporate Income to Be Considered As Basis for the Calculation of the 10%-Tax

Although the purpose of the domestic minimum corporate tax is to prevent the erosion of the corporate tax base due to discounts and exemptions, the law allows certain discounts and exemptions to be deducted from corporate income in the calculation of the 10% minimum tax. While calculating the domestic minimum corporate tax, the following deductions and exemptions can be deducted from the amount calculated by adding the non-deductible expenses to the commercial balance sheet profit at the end of the accounting period:

- Exemption for participation income derived from full-fledged taxpayer corporations,
- Exemption for premium on issued shares,
- Exempt earnings of the investment funds and partnerships listed in subparagraph (d), except for the earnings derived from the immovable properties owned (According to the article justification of the Law No. 7524, the phrase "immovable property earnings" should be understood as the income and earnings directly derived from immovable properties such as immovable property purchase and sale earnings, rental income, earnings from the transfer and assignment of rights based on immovable property, income from immovable construction projects, immovable property management income),
- Patronage dividend exception,
- Exempt gains from sale leaseback transactions,
- Exempt gains derived from the operation and transfer of ships registered in the Turkish International Ship Registry,
- Venture capital fund deduction,
- Protected workplace deduction,
- Earnings exempted from tax as per the Law No. 3218 on Free Zones (earnings from the overseas sales of manufactured products),

- Exempt earnings obtained in technology development zones as per the Law No. 4691,
- R&D and design discounts deductible from the corporate tax base.

The domestic minimum tax amount will be calculated by multiplying the amount determined by deducting the above-mentioned discount and exemption amounts from the sum of the commercial balance sheet profit and non-deductible expenses by 10%. Exceptions and discounts in tax laws and other laws other than the aforementioned discounts and exceptions will not be taken into account as discounts and exceptions in the calculation of minimum corporate tax.

3. Items Deductible From the Domestic Minimum Corporate Tax

As per paragraph 3 of Article 32/C of the CTL, taxpayers are given the opportunity to deduct the corporate tax that they have not paid due to the following reduced tax rate instruments stipulated in paragraphs 6 to 8 of Article 32 of the aforementioned Law from the corporate tax payable due to the minimum tax calculation.

- A two-point discount applicable to the corporate earnings for five accounting periods of corporations the shares of which are offered to the public at a rate of at least 20% for trading on the Borsa Istanbul Stock Market for the first time,
- A five percentage point deduction on export earnings,
- One percentage point discount applicable exclusively to earnings from production activities.

In addition, **taxpayers are given the opportunity to deduct the tax not collected in the relevant accounting period in accordance with the provision of Article 32/A due to the use of the investment contribution amounts in the incentive certificates obtained from the Ministry of Industry and Technology before August 2, 2024**, when Article 32/C entered into force, and determine the domestic minimum corporate tax payable by taking this discount into account.

The taxes not collected in the relevant accounting period in accordance with the provision of Article 32/A due to the use of the investment contribution amounts in the incentive certificates obtained from the Ministry of Industry and Technology after August 2, 2024 will not be deducted from the minimum corporate tax.

4. Status of Dividends Paid Under Double Taxation Agreements Against Minimum Corporate Tax

As known, according to some double taxation agreements, dividends distributed by a resident of the country party to the agreement to the corporate taxpayer in Türkiye can be exempted from corporate tax in accordance with such agreement. For example, as in the Türkiye-Netherlands double taxation agreement. In the hierarchy of norms, the Constitution, international agreements, laws, presidential decrees, regulations, directives, circulars, communiqués and instructions are taken into consideration. Since double

taxation agreements are above regulations, we are of the opinion that earnings exempted under double taxation agreements will not be subject to minimum corporate tax.

5. Status of Prior Years' Losses

Although opinions were expressed on the necessity of deducting prior years' losses from corporate income in the calculation of the minimum domestic corporate tax while the Law No. 7524 was still a proposal, the domestic minimum corporate tax article appended to the CTL did not introduce any regulation allowing the deduction of prior years' losses, contrary to what was expected. So far, no explanation or regulation has been issued by the tax administration. Although it is expected that the tax administration will clarify the uncertainties regarding the issue with the secondary legislation to be published, we think that it is not possible to deduct prior years' losses from the corporate income in the calculation of the minimum tax calculation.

6. Status of the Amounts Indicated in the Other Discounts and Exemptions Lines of the Corporate Tax Return

In the absence of any regulation to the contrary, we believe that items such as TAS/TFRS and Turkish Tax Procedure Law valuation differences, reversals for termination indemnity provisions, tax compliant taxpayer discount of 5%, which are shown in the "Other discounts" or "Other discounts and exemptions" lines of the corporate tax return, but which are not discounts or exemptions by nature, and which are shown in the relevant lines for the purpose of determining the tax base correctly, can be deducted from the corporate income to be taken as basis for the minimum corporate tax calculation.

7. Tax Implementation Period

Domestic minimum corporate tax will also apply to provisional tax periods. Accordingly, **the first minimum corporate tax will be applicable to the first provisional tax period of 2025.**

The provisions of this Article will not be applicable to the corporations that become operational for the first time for three accounting periods starting from the accounting period in which they start their activities.

Domestic minimum corporate tax has entered into force as of August 2, 2024 to be applicable **to the earnings obtained in 2025 and the ensuing taxation periods**, and to the earnings of the corporations subject to special accounting period in the special accounting period starting in the calendar year 2025 and the ensuing taxation periods.

8. Principles and Procedures of Implementation

The procedures and principles regarding the statement and payment of domestic minimum corporate tax will be determined by the Ministry of Treasury and Finance.

Therefore, we expect the communiqué containing examples of implementation to be published in the near future.

Sincerely,

DENGE İSTANBUL YEMİNLİ
MALİ MÜŞAVİRLİK A.Ş.

APPENDIX:

The Law Amending Tax Laws, Certain Laws and the Decree Law No. 375

(*) 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
Forvis Mazars, Partner

Tufan SEVİM
Certified Public Accountant
Forvis Mazars, Partner