

# Most Recent Turkish Law Amendments

## *Financial Restructuring, Tax and Capital Markets*

### *July 2019*



Law No. 7186 that packages together several and diverse measures mainly in banking, tax and capital markets laws was published on 19 July 2019. Material changes relate to long-awaited updates to financial restructurings and are in force as of 19 July 2019.

#### **Banking Law - Financial Restructuring**

Provisional Article 32 added to the Banking Law regulates financial restructurings to be concluded under the Financial Restructuring Framework (“**Financial Restructuring**”). Financial Restructuring Framework is constituted by virtue of the Regulation on the Restructuring to Financial Sector dated 15 August 2018 and the Financial Restructuring Framework Agreement issued by the Turkish Bankers Association. As currently stands, Provisional Article 32 will be in force for two years, but the President is entitled to lengthen such period for additional two years.

The most material change is expansion of scope of lenders who can participate to Financial Restructurings; accordingly, lenders that can participate to Financial Restructurings are Turkish banks, Turkish factoring companies, Turkish financial leasing companies, foreign banks and financial institutions, international financial institutions, special purpose companies/vehicles (SPV) established by the foregoing and investment funds incorporated pursuant to the Turkish Capital Markets Law (“**Lenders**”).

The following methods are made available to the lenders in a Financial Restructuring based on Provisional Article 32:

- i. extension of maturity, renewal of loans, additional loans,
- ii. full or partial write off of any principal, interest (or profit payment), default interest (or late payment penalties), and any other receivables arising from the loan,
- iii. full or partial release of collateral and of liability,

- iv. conversion of principal and interest or profit to equity (in whole or in part),
- v. sale or transfer of loans to SPVs or investment funds incorporated pursuant to the Capital Markets Law.

Another major change introduced with Law No. 7186 is that any decrease on the principal or interest of a loan or any release of collateral/liability as part of a Financial Restructuring will no longer constitute embezzlement. The receivables, which are written-off will qualify as 'bad debt' (değersiz alacak) and will be tax-deductible for the lenders, and the discounts provided by the lenders to the debtors will be considered as 'waived receivable' (vazgeçilen alacak) for the debtors. It should be noted that this provision is not restricted by the two-year time period nor it is particularly subject to Financial Restructurings.

## **Tax Laws - Taxation in Financial Restructuring and Wealth Amnesty**

### ***Tax Implications in Financial Restructuring***

Law No. 7186 also introduces further changes/improvements to the taxation of Financial Restructurings:

- Agreements to be executed, loans to be extended and collections to be made under the Financial Restructurings are exempt from (i) stamp tax, (ii) duties, including judgement fees, (iii) prison fee, (iv) the Banking and Insurance Transactions Tax and (v) the Resource Utilization Support Fund. These exemptions are also available to transfer of assets and collateral by debtors to the lenders, by lenders to debtors and amongst the lenders ("**Transfers**"); but not to transfers by the lenders to the third parties ("**Disposals**"). In other words, tax exemptions are applicable when lenders are acquiring the assets, but not when they are exiting from them.
- The former corporate income tax ("**CIT**") exemption that was applicable to banks, financial leasing companies and financing companies for loans, which are subject to legal proceedings, allowed the banks to benefit from a full CIT exemption in Transfers and a partial CIT exemption in the Disposals (i.e., 50% for the gains derived from the sale of real properties and 75% for the gains derived from the sale of shares). This exemption is now applicable to all such lenders without any legal proceeding requirement.
- The VAT exemptions, which were available to Transfers and Disposals by banks, financial leasing and financing companies, is now applicable to other lenders as well.
- The abovementioned tax exemptions are not available to a second financial restructuring, if it is made before the expiry of two-year period following a financial restructurings.

### ***Tax Amnesty***

The new wealth amnesty allows both individual and corporate taxpayers to declare and freely dispose their previously undeclared assets both inside and outside of Turkey – the tax authorities will not investigate taxpayers for these declared assets under the scope of the amnesty.

For assets located outside of Turkey, the taxpayers will need to (i) notify Turkish banks or intermediary institutions ("**Intermediaries**") until 31 December 2019, (ii) bring the assets into Turkey within three months and (iii) pay a 1% tax, which will be withheld by the Intermediaries. For assets that are located in Turkey, on the other hand, the taxpayers will need to notify their tax offices until 31 December 2019 and pay 1% tax to their tax offices in the following month. The tax payable for the amnesty cannot be recorded as an expense or be offset from other taxes at the level of the taxpayer.

Taxpayers can inject these assets into their entities (without considering them as income) and can freely withdraw them anytime from their entities – those amounts will not be subject to corporate income or dividend withholding taxation.

Further, taxpayers are not required to bring these assets into Turkey, if the assets are utilized to pay off/close loans obtained from banks and financial institutions outside of Turkey until 31 December 2019.

In case the capital advances recorded in taxpayers' books as of the enforcement date of the wealth amnesty are compensated by bringing the assets into Turkey before the amnesty, taxpayers can still benefit from the amnesty if the capital advances are removed from their books.

The undeclared assets outside of Turkey refer to cash funds in TRY or foreign currency terms, securities, golds, other capital market instruments, where the undeclared assets inside of Turkey refer to cash funds in TRY or foreign currency terms, securities, golds, other capital market instruments and real estates.

## Capital Markets Law - Recognition of Bond Registry Documents Strengthened

The registry document provided by the Turkish securities depository institution, Central Registry Agency (MKK), to the bondholders is now treated as a document which could immediately and permanently remove any objection in the debt collection proceedings that could be made by the issuer/debtor as to the right to receivables or existence of the debt under the bonds.

The amendment clearly counts such document among the proof documents in reference to Article 68 of the Turkish Enforcement and Bankruptcy Law that serve the permanent removal of issuer's objection (*itirazın kesin kaldırılması*) and allows the bondholder/creditor to immediately proceed with the debt collection proceedings and seizure of the assets of the issuer, if needed.

This amendment provides a relief to bondholders to eliminate initiating a full-fledged lawsuit in order to annul the issuer's objections which would trigger a lengthy debt collection process risk in case of default of the issuers.

Please do not hesitate to contact us for any further information on this briefing.

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