

The Legal 500 Tax Comparative Guide 2022 – Turkey Chapter

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1. How often is tax law amended and what are the processes for such amendments

Turkish tax law has been constantly being amended by Turkish Parliament and the changes in tax legislation are put into effect almost every year or sometimes more than once during the year.

According to Article 73 of the Constitution of the Republic of Turkey, taxes, duties and charges can be imposed only by law, and it is not possible to impose, abolish or change taxes without a law. The principle that taxes must be based on a law is called the principle of "*legality in taxation*". President, head of executive organ, can only amend ratio of exemption, exception and discount regarding taxes, duties and charges within the thresholds determined by law.

However, the executive organ, i.e. President, Ministry of Treasury of Finance or Revenue Administration, constantly uses its regulatory authority with secondary regulations like regulations or communiqués to change and shape implementation principles or procedures and/or interpretation of tax laws. This practice is generally criticized as it contradicts with the principle of "*legality in taxation*".

2. What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts

Principal procedural obligations can be briefly listed as follows:

- Making required notifications (e.g. starting to work),
- Keeping books, records and accounts,
- Preparing required documents (e.g. invoice, dispatch note)
- Filing tax returns,
- Maintaining and presenting books, records, accounts and relevant documents.

Pursuant to Turkish Tax Procedural Code No. 213, books and records must be maintained for a period of five years starting from the next calendar year of which they are related to.

In principle, with respect to income tax, individual and corporate taxpayers file annually their tax returns.

However, there are still special filing periods for certain types of taxes. For example, with respect to value added tax ("**VAT**"), tax returns must be filed on a monthly basis or corporate income taxpayers must also submit an advanced corporate income tax returns for each quarter in the relevant year.

3. Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?

The principal administrative actor with respect to taxation is the Ministry of Treasury and Finance and the key regulatory authority on this field is the Revenue Administration.

Complexity of tax related issue determines the time and effort needed to resolve the matter. That said, in terms of standard issues, there are reliable online systems of the Revenue Administration that allow taxpayers to carry out their tax transactions in an easy, fast, and effective manner, 24/7 without having to go to the tax office, without looking for time and place conditions.

4. Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?

Turkish system allows adjudication of tax disputes by administrative jurisdiction established by law and there is no other independent body to review them. That said, taxpayers are entitled to challenge tax assessments before Turkish Tax Authority by applying administrative procedures before legally challenging them before administrative jurisdiction.

Tax courts are the courts with special jurisdiction in charge of resolving tax and similar disputes within the administrative jurisdiction. Tax court procedure involves three levels of judgment, which involve tax courts of first instance, the Regional Administrative Court and Council of State. There is a two-tier appellate review system, where the Regional Administrative Court operate as the intermediate appellate courts and the Council of State operates as the final court of appeals.

In recent years, resolution period of tax disputes has comparably accelerated, and in general, the trial takes approximately one year before court of first instance, five or six months at the Regional Administrative Court and approximately one year at the Council of State.

5. Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?

Turkish tax regime has different specific dates for payment of each tax and depending on type of tax, payment can be made provisionally or in arrears or sometimes in both methodologies.

For example, corporate income tax return must be filed between first and 25th day of the fourth month following end of taxpayer's accounting period and corporate income tax must be paid until the end of the month in which corporate tax return is submitted. That said, corporate income taxpayers must pay still advance corporate income tax at the ratio 23% (*applicable for 2022*) over their quarterly profit.

Differently from payment methodology of corporate income tax, property tax is accrued on January of relevant year and paid in equal installments: (i) first installment between March and May and (ii) second installment in November.

In principle, as per Article 27 of Turkish Tax Procedural Code, execution of taxes in dispute which were brought attention to tax courts are automatically suspended until tax court of first instance is rendered a decision.

6. Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?

Tax confidentiality which prohibits use of taxpayer information learned by tax officials or other relevant persons during tax process on their or third parties' interest and disclosure of them to third parties is one of the important principles of Turkish tax legislation. In other words, taxpayer data is kept highly confidential and adequately safeguarded. In this context, violation of this principle is defined as a criminal offence and those who commit this offence are sentenced with imprisonment from one year to three years and judicial monetary fine up to five thousand days. However, in certain situations determined by law such as judicial and administrative investigations conducted by public officials, this information can be disclosed.

Turkey is a signatory to the Common Reporting Standard and has already ratified the Convention on Mutual Administrative Assistance in Tax Matters.

Furthermore, Turkey also maintains a public Register of beneficial ownership namely Central Registry Agency for bearer shareholders in joint stock companies. In addition to this, corporate income taxpayers must also share annually beneficial ownership information with Turkish Tax Authority.

7. What are the tests for residence of the main business structures (including transparent entities)?

According to Article 3 of the Corporate Income Tax Law No. 5520, legal entities and joint ventures whose legal or business center is located in Turkey are identified as Turkish resident taxpayer. Legal center is defined as the headquarters determined in the articles of association, statute or contracts of respective taxpayers, whereas business center is defined as center where business transactions are *de facto* gathered and managed.

For transparent entities, taxpayer status of owners or investors are determined based on whether they have domicile in Turkey. Having a domicile in Turkey is determined by two criteria: (i) residence and (ii) duration of living. Those who have a certified residence in Turkey and who live in Turkey continuously for more than six months in one calendar year are considered to have a domicile in Turkey. As per Article 193 of Turkish Civil Law No. 4721 place of residence is where one lives with the intention of permanent stay.

8. Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?

As Turkey being a regional hub for many multinational companies due to its vibrant and skilled workforce at competitive cost, cultural alignment both with many countries, high quality technology ecosystem with best-in-class resources and services and alignment and ease of communication by eliminating the time zone differences, subsidiaries of many of them such as company, branch or liaison office are existing in Turkey.

Therefore, cross border transactions within an international group have always been one of the most priorities in the eyes of Turkish Tax Authority and their compliance with arm's length principle have always been closely inspected.

In this respect, all corporate income taxpayers must prepare an annual transfer pricing report on foreign transactions with related parties.

9. Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?

Turkish taxation system contains CFC, thin capitalization and transfer pricing regimes.

a. CFC regime

With respect to Turkish tax residents who control, directly or indirectly, at least 50% of share capital, dividend or voting power of a foreign entity, CFC rules are applicable if below listed conditions are simultaneously met:

- i. if at least 25% of gross income of this foreign entity is comprised of passive income such as interest, dividend, rents, license fees or gains from sale of securities which are outside of commercial, agricultural or professional service activities,
- ii. Corporate income tax burden of this foreign entity is lower than %10 over commercial profit,
- iii. Annual gross income of it is higher than TRY 100.000.

If this will be the case, profits of foreign entity are became subject to income tax in Turkey, regardless of whether they are distributed or not.

b. Thin capitalization regime

If the ratio of the borrowings, directly or indirectly, from shareholders or from persons related to the shareholders exceeds three times of the equity capital of the company at any time within the relevant year, the exceeding portion of the borrowing will be considered thin capital and interest payment made for this portion are considered as dividends subject to 15% withholding tax, instead of 10%, and non-deductible for corporate income tax purposes.

c. Transfer pricing regime

Transfer pricing regime has been part of Turkey's legislative framework since the 1930s and Turkey harmonized and synchronized, in some form, its relevant local regulations with OECD rules in 2016.

Corporate income taxpayers that perform foreign transactions can make advance pricing agreements with the Revenue Administration for related party transactions, for up to three years.

An advance pricing agreement can be executed:

- Unilaterally, between the Turkish Tax Authority and corporate taxpayer.
- Bilaterally, between the Turkish Tax Authority, corporate taxpayer, and a foreign country's tax authority.
- Multilaterally, between the Turkish Tax Authority, corporate taxpayer, and the tax authorities from multiple foreign countries.

10. Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?

A key factor when considering tax avoidance in Turkey is a legislative provision stipulating that the incident that produces the tax and the real nature of the incident are the essence. Article 3 of the Tax Procedure Law No. 213 contains Turkey's general anti-avoidance rule ("**GAAR**"), which specifically states as its goal the prevention or reduction of abusive tax avoidance. This is commonly referred to as the economic approach principle, which is implemented in other legislative provisions and mechanisms and which means that it is a transaction's economic essence and substance that determine whether it constitutes abusive tax avoidance, rather than how the transaction appears on the surface. A transaction's economic content is more important than its form.

Therefore, any mechanism that a taxpayer uses to reduce or negate tax must accord with the transaction's economic, commercial and technical reality, as well as the ordinary course and nature of things. If not, the Turkish Tax Authority may consider the mechanism to be contrary to the spirit of tax legislation, and therefore to fall outside the scope of legitimate tax planning. However, a taxpayer may be able to use its commercial books and records to challenge the Turkish Tax Authority's assessment.

Every passing year, Turkey's fight against abusive tax avoidance accelerated. However, there is still no widely accepted precedent identifying abusive tax avoidance. The concept has developed only relatively recently and therefore it would be appropriate to evaluate the issue and its implications based on just a couple of years of operation.

11. Is there a digital services tax? If so, is there an intention to withdraw or amend it once a multilateral solution is in place?

Yes, digital service tax was introduced to Turkish tax regime, being effective from 1 March 2020.

Revenue derived from the below listed services rendered in Turkey is subject to digital service tax at the ratio of 7,5%:

- All kinds of advertising services offered in the digital environment,
- Sale of audio, visual or digital content in a digital environment, as well as services provided for listening, watching, playing of these contents in a digital environment, or recording of these contents to or using of these contents on electronic devices,
- Services rendered for providing and operating digital environments where users can interact with each other.

Revenue from intermediary services performed in digital environment for above listed services also falls into the scope of this tax.

Taxpayer of this tax is digital service providers, regardless of whether they are tax resident in Turkey. That being said, those (in a financially consolidated manner), whose revenue generated through above listed services does not concurrently exceeds TRY 20 million in Turkey and EUR 750 million in the world, are exempt from this tax.

As a final remark regarding this tax, if internationally recognized solution/decision comes in place in future, Turkey is expected to be in compatibility with it and harmonize its domestic rules accordingly, including, as an option, withdrawal of this tax.

12. Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?

As one of the twenty founding members of the OECD, Turkey actively participated and contributed BEPs projects from the very beginning and committed to implement BEPS recommendations into its domestic legislation.

Within this context, Turkey implemented some recommendations in BEPS Action 1 by introducing Digital Service Tax and Action 13 by obliging country-by-country reporting requirements. As being one of members of the OECD/G20 Inclusive Framework on BEPs, Turkey is expected to sign multilateral convention/instrument and implement two-pillar solution addressing the tax challenges arising from digitalization of the economy until end of 2023.

With respect to BEPS Action 15, Turkey is also amongst to the first signatories of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, however, has not ratified it yet.

13. In your view, how has BEPS impacted on the government's tax policies?

As indicated in question 11, Turkey takes BEPS recommendations very seriously and seems determined to implement them into domestic law. Since 2020, it is observed that Turkish Tax Authority has also been increasingly interested in and keen about implementing BEPS recommendations.

Within this context, BEPS has significant impact on government's current taxation strategy and policies.

14. Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?

Turkish tax system broadly follows the recognized OECD model.

Taxation of business profits, employment income and pensions, savings income and royalties, income from land, capital gains are mainly regulated under income tax legislation: (i) Personal Income Tax Law No. 193 and (ii) Corporate Income Tax Law No. 5520.

a. Personal income tax

Personal Income Tax Law No. 193 envisages a progressive tax tariff with respect to income tax which is as follows (*applicable for 2022*). Thresholds in TRY are re-determined at the beginning of each calendar year. Please also be advised that these thresholds are slightly different for employment income in favor of employees.

- 15% up to TRY 32.000
- 20% between TRY 32.000 and TRY 70.000 (*income tax of TRY 4.800 in total up to income of TRY 32.000*)
- 27% between TRY 70.000 and TRY 170.000 (*income tax of TRY 12.400 in total up to income of TRY 70.000*)
- 35% between TRY 170.000 and TRY 880.000 (*income tax of TRY 39.400 in total up to income of TRY 170.000*)
- 40% for exceeding TRY 880.000 (*income tax of TRY 287.900 in total up to income of TRY 880.000*)

b. Corporate income tax

In principle, corporate income tax rate is 20%. However, this rate is applied as 23% for 2022.

c. VAT

Delivery of goods and services related to commercial, industrial, agricultural and professional activities realized in Turkey are subject to VAT and realization in Turkey means rendering service in Turkey or benefiting from service in Turkey.

The standard rate of VAT is 18% for goods and services, except those specified on a *numerus clausus* basis which are subject to a lower VAT rate, which are 8% and 1%.

d. Special consumption tax

There are four main product groups subject to special consumption tax at various rates:

- Petroleum products, natural gas, lubricants, solvents and solvent derivatives,
- Automobiles and other vehicles, motorcycles, airplanes, helicopters, yachts,
- Tobacco and tobacco products, alcoholic beverages,
- Luxury goods.

Unlike VAT, which is applied on every delivery, special consumption tax is applied only once.

e. Stamp Duty

Stamp duty is applicable to a wide range of documents, including contracts, at rates ranging from 0,189% to 0,948% over the value indicated in the respective document. For certain documents, a fixed price is determined as stamp duty.

f. Capital duty

Capital duty is not available in Turkey's tax regime.

15. Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?

In Turkish legal system, taxpayers generating business profit prepare two types of financial tables. These are the commercial financial tables prepared in accordance with private law, especially the provisions of the Turkish Commercial Code No. 6102, and the tax financial tables prepared in accordance with the tax legislation. Turkish Accounting Standards and Turkish Financial Reporting Standards determined by Turkish Public Oversight, Accounting and Auditing Standards Authority, which are compatible with International Accounting Standards as well as International Financial Reporting Standards, are taken as basis for preparation of commercial financial tables, whereas; rules set forth in Tax Procedural Law No. 213 is taken into account while preparing tax financial tables.

For taxation purposes, only tax financial tables, i.e. tax balance sheet, which are prepared according to principles of tax accountancy rules, are used.

16. Are different vehicles for carrying on business, such as companies, partnerships, trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

Below listed legal entities are subject to corporate income tax as taxable entities:

- Equity companies,
- Cooperatives,
- Public economic institutions,
- Economic enterprises owned by associations or foundations.

Joint ventures are also subject to corporate income tax as taxable entity on the condition that they are registered as corporate income taxpayer, otherwise tax transparent.

Partnerships are fiscally transparent. Partners who are subject to personal income tax are taxed for the profit earned by entity.

There is no institution of trust under Turkish law.

17. Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?

Both. Please see question 7.

18. Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?

Many incentive programs are implemented in Turkey for many different purposes.

Technology development zones (=technoparks), established to support R&D and high-technology activities, organized industrial zones and free zones, sites deemed as outside of Turkish customs area, are the investment zones where special taxation regimes are applied.

Furthermore, favorable tax regime is also applicable to certain sectors, e.g. banking services are not subject to VAT, instead to banking insurance transaction tax, or renewable energy, and to certain centers such as R&D centers or designing centers.

19. Are there any particular tax regimes applicable to intellectual property, such as patent box?

Particular favorable tax regime for intellectual property, such as patent box, is existing in Turkey.

Within this context, 50% of income derived from (i) lease, (ii) transfer or sale, or (iii) marketing through serial production of inventions created as a result of research, development and innovation activities or software activities, and (iv) sales of products manufactured by using inventions licensed as patents or utility models are exempt from corporate income tax.

In addition, as mentioned in question 17, with respect to R&D centers, all research, development and innovation expenditures can be deducted during determination of corporate income tax basis, while earnings deriving by corporations operating in technology development zones from software, design and R&D activities performed in these zones are exempt from corporate income tax until 31/12/2028.

Finally, income derived from sale, transfer or lease of intellectual properties such as book, movie, software etc. created by real persons such as writer, painter or software developer etc. (including their legal inheritors) are exempt from personal income tax.

20. Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?

The method in the question is not available in Turkish tax law, each company has its own tax liability.

21. Are there any withholding taxes?

Yes, there are various withholding taxes at the different rates in Turkey such as for dividend, employment income, self-employment income, interest income, royalty, income from land etc.

22. Are there any recognised environmental taxes payable by businesses?

There are no environmental taxes recognized directly for business.

Nevertheless, pursuant to Repetitive Article 44 of Law on Municipal Revenues No.2464, those benefitting from buildings used as residence, workplace and other forms within the municipal boundaries and adjacent areas and benefitting from environmental cleaning services of municipalities are subject to environmental cleaning tax.

23. Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?

With respect to corporate income taxpayers, dividend received resident companies is exempt from tax. Dividend received from non-resident companies is exempt from tax, without prejudice to domestic CFC rules indicated in

question 9, on the condition that below criteria are cumulatively met, otherwise is included into tax basis.

- Non-resident company is joint stock company or limited liability company,
- Turkish corporate income taxpayer holds at least 10% of share capital of non-resident company,
- Dividend received from non-resident company must be continuously in possession of Turkish corporate income taxpayer for a period of one year,
- Dividend must have been taxed at least at the rate of 15% in the country where non-resident company operates,
- Dividend must have been transferred to Turkey before filing corporate tax return.

With respect to personal income taxpayers, i.e. individuals, half of gross dividend received from resident company is exempt from taxation. However, if the remaining half of gross dividend is exceeding TRY 70.000 (*applicable for 2022*), this is a taxable income terms of personal income tax which must be declared in annual tax return. Resident company who distributes dividend must also apply withholding tax at the rate of 15% while distributing dividends.

Dividend received by personal income taxpayers from non-resident companies are declared with annual tax return and then paid.

For dividend income received from non-resident companies, provisions of relevant Double Taxation Agreement, if any, are taken firstly into consideration.

24. If you were advising an international group seeking to re-locate activities from the UK as a result of Brexit, what are the advantages and disadvantages offered by your jurisdiction?

For an international group seeking to re-locate its activities from UK, Turkey can be a good option due to its vibrant and skilled workforce at competitive cost, cultural alignment both with many countries, high quality technology ecosystem with best-in-class resources and services and alignment and ease of communication by eliminating the time zone differences.

In addition, according to World Bank's Doing Business 2020 study comparing business regulation among 190 countries, Turkey is in 33rd rank which means before Switzerland or many EU countries such as Italy, Greece, Belgium or Netherlands and nearly in the same ranks with France and Spain.

Furthermore, Turkey has a very friendly approach towards foreign investments and encourages foreign investors with quite comprehensive incentive schemes including VAT and customs duty exemptions, tax reductions, social security premium support and even land allocations.

Finally, favorable and rather lower corporate income tax rate and extensive treaty network with 89 countries which facilitate cross-border transactions are also advantageous sides of Turkey.

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