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Subject : Türkiye Introduces Global And Domestic Minimum Corporate Income Tax

Turkish Government submitted a "Legislative Proposal on Amendments to Tax Laws (the Draft Law)" to the Grand National Assembly on July 16, 2024. Articles 37 through 51 of the law include regulations on global and domestic minimum tax practices added to the Corporate Income Tax Law No 5520. Mentioned articles aim to introduce a global and domestic minimum corporate income tax for multinational companies. The Draft Law is being ratified by the Commission and General Assembly with slight changes as Law No: 7524. It is published in Official Gazette in August 2nd, after the approval of the Turkish President. You can find more details about the whole amendments in our blog.

This bulletin provides explanations and opinions on the global and local minimum tax provisions of this Law. This law includes one new Chapter and 13 articles and one provisional article.

1. **Part 1: Subject of the Tax, Definitions and Exemptions**

Article 37 of the bill defines the subject of global and domestic minimum tax. Accordingly, multinational enterprise (MNE) groups whose ultimate parent companies have annual consolidated revenue more than EUR 750 million in at least two of the four accounting periods prior to the current financial reporting period will be subject to global minimum corporate income tax. In this case, Türkiye implements OECD Pillar 2 standard for the in-scope group of companies.

In Article 38, bill provides definition for key concepts of the minimum tax application such as ultimate parent entity, intermediate parent entity, partially owned entity, jurisdictional net profit, covered taxed etc. as well as concepts such as qualified refundable tax credits, transferable tax credits or deferred tax assets, which were not previously included in Turkish tax legislation. However, these concepts are prominent features in IFRS or other international accounting standards, which are included in the GloBE calculations; therefore, this bill also includes them. On the other hand, key features such as Income Inclusion Rule (IIR), Qualified Domestic Minimum Top-up Tax (QDMTT) or Undertaxed Payment Rule (UTPR) are not defined in this section but mentioned in following chapters.

According to Article 39, businesses exempt for global and domestic minimum top-up tax are listed as such:

- International organizations and public institutions and organizations
- Nonprofit organizations
- Pension funds
- Investment funds that are regarded as the ultimate parent companies and are assessed in that context
- Organizations regarded as ultimate parent entities that are assessed in relation to real estate investment vehicles, such as real estate investment funds.

The article goes on to refer to what is referred to as the "Ownership Test" in the "Tax Challenges Arising from the Digitalization of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)" (hereby "OECD Pillar 2 Guidelines") published in December 2021 and "Consolidated

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Commentary to the Global Anti-Base Erosion Model Rules" (hereby "Consolidated Commentary") published in 2023.

Accordingly, commercial enterprises that are not included in the above list but at least 95% of the said business value is owned by an "Excluded Entity" are also considered within the exemption. In addition, the practice referred to as the "Activity Test" in the OECD Pillar 2 Guidelines is also included in the Law. In this sense, if an Excluded Entity owns at least 85% of the value of another Entity whose Financial Accounting Net Income or Loss would otherwise be excluded from the GloBE Income or Loss because it is primarily composed of Excluded Dividends or Excluded Equity Gains or Losses that are excluded from GloBE income. Globe Income Exclusions are also mentioned in detail under Article 41 of the mentioned Law.

The relevant article also states that, although the revenues of excluded entities are not considered in the top-up tax calculations, they will be considered in the Revenue Threshold test (4 Year Test, EUR 750 million) used to determine the covered groups as in OECD Pillar 2 Guidelines.

2. Part 2: Tax Burden Calculations, Minimum Top-Up Tax Base, Rate and Calculations

The calculation of covered taxes and adjustments to be made are mentioned in Article 40 and these rules are entirely in line with the OECD Pillar 2 Guidelines. Thus, covered taxes are defined as taxes on net income and exclude taxes on income not currently included in GloBE income (i.e. dividend income) and taxes such as tax accruals that do not relate to the current period. The rest of the article includes adjustments related to deferred taxes. Accordingly, taxes not covered by the above-mentioned scope are deducted from deferred tax expense, while the portion of deferred tax liabilities settled in the current period is added to deferred tax expense. If a deferred tax asset is recognized because of this calculation, it will be included in the covered taxes even if this tax is not paid in the current period.

Article 41 lists the adjustments to be made in the calculation of Entity-based GloBE gain or loss. These adjustments are in line with the relevant OECD Pillar 2 Guideline and Consolidated Commentary. Accordingly, adjustments such as mismatches arising from accounting differences and errors, asymmetric foreign exchange gains or losses, differences between accrued and incurred pension-related expenses are listed, and in addition, the penalty expenses limit entails that penalty payments exceeding EUR 50,000 cannot be deducted from covered income is also included here.

Under the Article 42 of Law, the minimum corporate income tax rate is 15% and it is calculated using the global minimum top-up corporation income tax base, which is arrived at by subtracting 5% from the total jurisdictional net profits and 5% from the net book value of the tangible fixed assets of the related parties in that jurisdiction.

As can be observed, the practice called "Substance-based Income Exclusion" (SBIE) in the OECD Pillar 2 Guidelines and the Consolidated Commentary is opted by Türkiye under this article, although it is not specifically indicated in the Law. The transition period rates for SBIE implementation are not specified in this article. However, all rates for the transition period are specified in Article 51 of the law. Accordingly, in 2024, 7.8% of the net book value of tangible fixed assets and 9.8% of gross payroll expenses will be deductible from jurisdictional net profit. As stated in the same article, these rates will decrease by 0.2% in each subsequent accounting period until 2029, and after 2029, a decrease of 0.8% for gross wages and 0.4% for tangible fixed assets will be applied every year for the following four accounting periods.

3. Part 3: Taxpayers, Taxation Period, Tax Declaration and Payment of Global Minimum Top-up Tax

Pursuant to the Additional Article 7 added to the Corporate Income Tax Law No. 5520 under Article 43 of the Law, the global minimum top-up taxpayer is determined according to the Income Inclusion Rule (IIR) and the Undertaxed Payment Rule (UTPR). As stated in Article 50 of the Law, the IIR is applicable for earnings derived as of 01.01.2024, while the UTPR will be applicable for earnings derived as of 01.01.2025.

Besides, Article 44 lays out the filing obligation of GloBE Information Return (GIR) that is in line with OECD arrangements. Accordingly, taxpayers obligated to file GIR because of IIR or UTPR must declare GIR and pay any top-up tax occurred except domestic minimum top-up tax. On the other hand, under Article 50, the GIR can be submitted in the 18th month following the relevant fiscal year for 2024. This option will be valid for taxpayers who will submit GIR for the first time in the following periods.

There is no provision regarding to a notification like CbCR Notification in Türkiye for other companies in the group to file a GIR. However, as stated in the article, the obligation to file a GIR in Türkiye is eliminated by filing a GIR in countries that have a "Multilateral Competent Authority Agreement" (MCAA) with Türkiye and declaring it in the annex of the declaration. However, we are of the opinion that the introduction of a GIR Notification like CbCR Notification, to be used to point out that the constituent entity resident in Türkiye is not obligated to declare GIR would be a solution to the inevitable slowdown in communication with other countries that MCAA method brings.

4. Part 4: Taxpayers, Taxation Period, Tax Declaration and Payment of Domestic Minimum Top-up Tax

Article 45 of the Law contains information on the local top-up tax to be applied in Türkiye. With the adoption of this article, Türkiye will adopt the practice referred to as "Qualified Domestic Minimum Top-up Tax" (QDMTT) which is fully in line with the OECD Pillar 2 Guidelines and the Consolidated Commentary.

According to the Law, the domestic minimum top-up tax is calculated in accordance with the rules and principles used in the calculation of the global minimum top-up tax. If one of the related parties of the same multinational group resident in Türkiye pays a top-up tax, the other party's obligation to pay is eliminated. However, in case of partial or full non-payment of the tax, all parties belonging to the same multinational group resident in Türkiye are considered jointly and severally liable.

Unlike GIR, domestic minimum top-up tax must be declared and paid from the first to the last day of the following 12th month.

5. Part 5: Other Provisions

This section of the Law includes provisions on mergers, demergers and share transfers, which are among the most popular solutions when discussing tax avoidance options related to the EUR 750 million revenue limit, which plays a key role in falling within the scope of global minimum corporate income tax regulations.

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Pursuant to Article 47 of the relevant law, in the event of a merger of two or more groups, if the total of the revenues of these groups in their consolidated financial statements in at least one of the four accounting periods preceding the relevant accounting period exceeds EUR 750 million, the newly formed group is also deemed to exceed this revenue limit. Consequently, in the event of a merger, the sum of the last four years' revenues of the merged groups is estimated to be EUR 750 million, the group formed during the relevant period will be covered even if it does not exceed this revenue limit.

If an entity that is not part of any group is affiliated to a group through a merger, at least one of the revenues of the related entity or the affiliated group for the last four years is EUR 750 million, the relevant group will be considered within the scope.

In case of a demerger of multinational companies, the groups formed after the demerger will be considered in scope if their annual revenues exceed EUR 750 million respectively in the first accounting period after the year of the demerger. Additionally, the consolidated revenue threshold is deemed to be met by a demerged group with respect to the second to fourth tested fiscal years ending after the demerger, if the demerged Group has annual revenues of EUR 750 million or more in at least two of the fiscal years following the year of the demerger. As can be observed, by narrowing the number of years covered, the strategy of avoiding the revenue threshold through demerger is attempted to be prevented and Türkiye has included this rule in the Law.

In the rest of the relevant article, there are provision on different issues such as transparently taxed institutions, special taxation situations, and taxation of joint ventures.

6. Safe Harbor Practices under Global and Domestic Minimum Top-up Tax

The Law does not include a separate section on safe harbor practices. Instead, information on safe harbor practices is provided under the relevant articles. For example, while Article 42 mentions the base rate and calculation of the global top-up tax, Paragraph 8 of the relevant article includes the safe harbor practice referred to as “De Minimis Exemption” in the OECD Pillar 2 Guidelines and Consolidated Commentary. According to this, if the Average GloBE Revenue of such jurisdiction is less than EUR 10 million and the average net profit or loss before tax of such jurisdiction is a loss or is less than EUR 1 million, the top-up tax in the relevant country is considered as zero.

Paragraph 10 of the same article mentions the “Transitional UTPR Exclusion” in the OECD Pillar 2 Guideline. This exclusion is a transitional safe harbor application formulated to save companies that are just starting their commercial life from the additional tax burden. Accordingly, if the relevant multinational group has constituent entities in a maximum of 6 countries, and the sum of the Net Book Values of Tangible Assets of all Constituent Entities located in all jurisdictions other than the Reference Jurisdiction does not exceed EUR 50 million, top-up taxes to be calculated in any jurisdiction under the UTPR will be deemed zero for five accounting periods.

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7. Final Remarks

Türkiye introduced Pillar 2 model rules into its domestic law and those rules are almost the same as with OECD arrangements. The Law does not contain all specific issues but fundamentals of global minimum corporate income tax law.

In this regard, it is expected that Turkish tax authorities release a detailed secondary legislation and its implementation. Nevertheless, we do not expect important deviation from OECD Model. This also indicated that we already know the details of global minimum corporate income taxation. For that reason, it is time also Turkish multinationals to start their preparations for this new taxation. This certainly requires some preparations and works.

In this sense, we highly recommend to carry out the works containing the below issues:

- Examination of intra-group transactions of a multinational enterprise and determination of intra-group transactions to which STTR can be applied through Subject to Tax Rule (STTR) analysis
- GloBE Rules applied in the countries where the MNE operates and the impact of these rules on the calculation in the relevant country
- Calculating Global and Country Based Effective Tax Burdens and listing countries that may pose a risk
- Performing the Global ETR Calculation by determining the income and taxes paid in the countries where the MNE operates using CbCR data
- Analyzing the impact of incentives and exemptions on the effective tax burden of a multinational enterprise
- In case the Global Effective Tax Burden is found to be low, determining the methods that can increase the relevant tax burden
- Identification of low-taxed countries in case of low Global Effective Tax Burden and Calculation of Additional Tax Burden
- QDMTT, IIR and UTPR analysis of how and by whom the additional taxes would be paid if the Global Effective Tax Burden is lower
- Demonstrating the applicability of transitional and permanent safe harbor rules and assessing their impact on MNEs
- Identifying the steps to be taken regarding Pillar 2 and determining the road map.

Our experienced team will be happy to conduct such a work for your group of companies and please contact us for your queries on our international tax matters.

Kind regards,

Taxia Partners

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