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**Konu** : Turkish Transfer Pricing Documentation Guideline

## **Guidance on Turkish Transfer Pricing Rules**

### **1. Government policy**

*Q. Describe the general government/regulatory policy for transfer pricing in your jurisdiction. To what extent is the arm's-length principle followed?*

Article 13 of the Corporate Income Tax Law covers the key provisions regulating transfer pricing rules in Turkey. The Individual Income Tax Law also contains certain transfer pricing provisions.

In addition, as Turkey is a member of the Organisation for Economic Cooperation and Development (OECD), its transfer pricing policy follows the OECD Transfer Pricing Guidelines. Thus, the arm's-length principle is accepted in Turkish law and is defined as "setting prices or amounts for purchase or sale of the goods or services between the related parties as the prices or amounts would be charged for the same transactions carried out between unrelated parties."

### **2. Trends and developments**

*Q. Have there been any notable recent trends or developments concerning transfer pricing in your jurisdiction, including any regulatory changes or case law?*

Following the release in October 2015 of the OECD Base Erosion and Profit Shifting (BEPS) Action Plan, Turkey enacted Law No. 6728 on the Improvement of the Investment Environment, which introduced many amendments to the Corporate Income Tax Law. These include amendments to Article 13 on transfer pricing rules. These amendments concern:

- the scope of the definition of 'related party';
- transactional profit methods;
- the introduction of a roll-back mechanism for advance pricing agreements;
- the introduction of reduced transfer pricing penalties for taxpayers that fulfill their documentation obligations completely and on time; and
- required additional authorisation from the Turkish government with regard to transfer pricing procedures.

Another notable recent development is the release by Turkey on transfer pricing documentation rules in line with OECD BEPS Action 13, bringing into effect the OECD's three-tiered documentation approach. A Presidential Decree No. 2151 on transfer pricing documentation procedures have been issued in early 2020. New documentation obligations is applicable as from 2019.

### 3. Legal framework

#### 3.1. Domestic legislation and applicability

*Q. What primary and secondary legislation governs transfer pricing in your jurisdiction?*

Article 13 of the Corporate Income Tax Law regulates the primary legislation, and contains general provisions on transfer pricing issues. Further guidance comes from two cabinet decrees, General Communiqué 1 on Transfer Pricing by means of Disguised Profit Allocation (published in the Official Gazette on November 18 2007) and General Communiqué 2 on Transfer Pricing by means of Disguised Profit Allocation (published in the Official Gazette on March 24 2008) and General Communiqué 3 on Transfer Pricing by means of Disguised Profit Allocation (published in the Official Gazette on December 7 2017). Besides, a draft General Communiqué 4 on Transfer Pricing by means of Disguised Profit Allocation introduces OECD's three-tiered documentation obligations including Masterfile, country-by-country reporting. However, it is not finalised, yet.

*Q. Are there any industry-specific transfer pricing regulations?*

No.

*Q. What transactions are subject to transfer pricing rules?*

Without any limitation, all related-party transactions are subject to transfer pricing rules. However, in terms of transfer pricing documentation rules, there are certain limitations. Taxpayers registered with the Large Taxpayers Office must prepare transfer pricing documentation for their related-party (both cross-border and domestic) transactions. For other taxpayers, transfer pricing documentation is required only for cross-border related-party transactions. There is currently no minimum threshold for the related-party transactions and all related-party transactions fall within the scope of the transfer pricing legislation.

*Q. How are 'related/associated parties' legally defined for transfer pricing purposes?*

According to Article 13 of the Corporate Income Tax Law, 'related parties' for corporate taxpayers are:

- the company's own shareholders holding at least 10% of the company's equity;
- individuals and entities associated with the shareholders;
- individuals and entities attached to the company directly or indirectly in terms of its management, supervision or capital;
- individuals and entities under the direct or indirect control of the company's management, supervision or capital; and
- the shareholders' spouses and any relatives up to the third degree by either blood or marriage.

Cross-border transactions are regarded to have conducted with related-parties if performed with the parties located in foreign jurisdictions or regions which are considered by the President as harmful tax regimes (established by considering whether taxation on income in these foreign jurisdictions is at the same level and capacity as Turkish taxation). However, Turkish President has not released such a list containing harmful tax regimes, yet.

According to Article 41 of the Individual Income Tax Law, ‘related parties’ for individual income taxpayers are:

- the spouse of a business owner and any relatives of that business owner up to the third degree by either blood or marriage;
- companies in which the business owner is a shareholder directly or indirectly in terms of management, supervision or capital;
- shareholders of companies in which the business owner is a shareholder directly or indirectly in terms of management, supervision or capital; and
- other companies controlled by the business owner through management, supervision or capital.

The term ‘real person’ used in Article 13 of the Corporate Income Tax Law means the individuals taxable and partnership companies or ordinary partnerships; ‘corporate’ means equity companies, cooperatives, quasi-public companies, associations, foundations and joint ventures.

*Q. Are any safe harbours available?*

Under Article 13(7) of the Corporate Income Tax Law (amended by the Law No. 5766), to apply transfer pricing rules and make a transfer pricing adjustment for related party transactions, treasury losses must occur as a result of domestic related-party transactions between:

- resident corporations;
- resident corporations and non-resident corporations’ offices or permanent establishments in Turkey; or
- non-resident corporations’ offices or permanent establishments in Turkey.

Accordingly, domestic transactions between related parties in Turkey are not characterised as a hidden profit distribution by means of transfer pricing if there is no overall loss of tax revenue to the national treasury from the related-party transactions. In this sense, corporations in Turkey can benefit from the safe harbour rule on treasury losses. Accordingly, if treasury losses do not occur in domestic related-party transactions, there will be no transfer pricing adjustment.

### **3.2. Regulators**

*Q. Which government bodies regulate transfer pricing and what is the extent of their powers?*

Article 13 of the Corporate Income Tax Law authorises the Turkish President to determine transfer pricing procedures. In that time, the Cabinet used this authorisation in 2007 and 2008 to specify those procedures. Under the amending Law No. 6728, the following additional authorisations were granted to the Turkish President:

- decreasing, collectively or individually, of the 10% condition to 1%, or increasing to 25% for capital, voting or dividend rights in order to be regarded as a related party in the case of real persons, corporates or direct or indirect ownership or acquisition of shares;
- increasing the duration of advance pricing agreements by up to five years;

- imposing transfer pricing documentation obligations and the obligation to include information on the activities of related parties abroad within the scope of documentation requirements in accordance with international agreements; and
- determining the principles and procedures for the international exchange of information with other countries within the framework of international agreements.

### 3.3. International agreements

*Q. Which international transfer pricing agreements has your jurisdiction signed?*

Article 13 of the Corporate Income Tax Law provides for an advance pricing agreement (APA) programme. To the best of our knowledge, Turkey has signed 15 unilateral and two bilateral APAs. However, details are unknown as the tax authorities do not make these APAs public.

To what extent does your jurisdiction follow the Organisation for Economic Cooperation and Development (OECD) Transfer Pricing Guidelines?

The OECD Transfer Guidelines are not legally binding on Turkish tax law, which means that any changes in the OECD Transfer Pricing Guidelines do not enter into force immediately in Turkey. However, Turkey closely follows the OECD Transfer Pricing Guidelines when transfer pricing legislation is drafted and the tax authorities also consider the guidelines in particular, especially during the audit practices.

## 4. Transfer pricing methods

### 4.1. Available methods

*Q. Which transfer pricing methods are used in your jurisdiction and what are the pros and cons of each method?*

Under Article 13 of the Corporate Income Tax Law, transfer pricing methods are defined as outlined below.

#### **Comparable uncontrolled price method**

The arm's-length price is determined by comparing the company's transfer price to the (market) price applied in comparable purchases and sales of goods or services between unrelated individuals or entities.

#### **Cost plus method**

The arm's-length price is determined by applying an appropriate gross profit mark-up on costs incurred in supplying the goods or services. General Communiqué 1 on Transfer Pricing states that the cost plus method is the most appropriate method for manufacturing and services activities if it can be properly applied.

#### **Resale price method**

The arm's-length price is determined by reducing an appropriate gross profit margin from the resale price applied when goods or services in question are resold to unrelated individuals or entities. General Communiqué 1 also states that the resale price method is the most appropriate transfer pricing method for distribution activities.

## **Transactional net profit margin method**

The transactional net profit margin method (TNMM) relies on the examination of the net profit margin in a controlled transaction identified by the taxpayer relative to an appropriate base such as costs, sales or assets. Although the TNMM is in some ways similar to the application of cost plus and resale price methods, the difference between the TNMM and these methods is that the other two methods require calculation of the gross profit margin, whereas the TNMM requires the calculation of the net profit margin.

## **Profit split method**

This is based on the allocation of total operating profit or loss attributable to one or more controlled transactions of related parties at the arm's-length rates among the related parties by reference to the functions performed and risks undertaken. According to General Communiqué 1 on Transfer Pricing, this method should be used in cases when the traditional transaction methods are not feasible and particularly when there are no comparable transactions and the transactions between the related parties are inseparable from one another.

## **Other methods**

When none of the defined methods is conclusive in determining the arm's-length price, other methods defined by the taxpayer as most appropriate for the true nature of the transactions can be applied. However, such method should be also based on the Arm's Length Principle.

## **4.2. Preferred methods and restrictions**

*Q. Is there a hierarchy of preferred methods? Are there explicit limits or restrictions on certain methods?*

Article 13 of the Corporate Income Tax Law did not previously regulate transactional profit methods, but covered only so-called 'traditional transaction methods' – namely, the comparable uncontrolled price method, cost plus method and resale price method. However, transactional profit methods (i.e., TNMM and profit split method) were included in Cabinet Decree 2007/12888 and General Communiqué 1 on Disguised Profit Distribution by means of Transfer Pricing.

Before the recent amendment by the Law No. 6728 on the Improvement of the Investment Environment, traditional transaction methods prevailed over transactional profit methods, and this was openly stated in General Communiqué 1 on Transfer Pricing. In view of the new amendment, the hierarchy among the traditional methods and transactional methods was removed. Thus, the Corporate Income Tax Law now reflects the fact that the most appropriate method based on the nature of the transaction will be applied for controlled transactions. However, our understanding is that the traditional transaction methods will continue to prevail over transactional profit methods where traditional transaction methods and transactional profit methods are equally applicable, as stated in the 2010 OECD Transfer Pricing Guidelines.

## **4.3. Comparability analysis**

*Q. What rules, standards and best practices should be considered when undertaking a comparability analysis?*

According to Cabinet Decree 2007/12888 and General Communiqué 1 on Disguised Profit Distribution by means of Transfer Pricing, a comparability analysis is based on the comparison between the conditions of controlled transactions and uncontrolled transactions. For this reason, ‘comparability’ means that the differences between the situations being compared should not materially affect the condition or reasonably accurate adjustments can be made to eliminate the effect of any such differences.

Under Turkish transfer pricing legislation, the main elements for the comparability analysis are:

- the characteristics of the property or service transferred;
- the functional analysis of the controlled transaction under examination;
- the contractual terms of the transaction; and
- the economic circumstances of the transaction or business strategies of the parties.

#### 4.4. Special considerations

*Q. Are there any special considerations or issues specific to your jurisdiction that associated parties should bear in mind when selecting transfer pricing methods?*

Taxpayers should review whether the comparable uncontrolled price method is applicable based on the internal or external comparables. Also, where traditional transaction methods (i.e., the comparable uncontrolled price method, cost plus method and resale price method) and transactional profit methods (TNMM and profit split method) are equally applicable, taxpayers should apply the traditional transaction methods for their related-party transactions. Where they are not equally applicable, the transactional profit methods may be selected as the most appropriate method for the related-party transaction in question.

### 5. Documentation and reporting

#### 5.1. Rules and procedures

*Q. What rules and procedures govern the preparation and filing of transfer pricing documentation (including submission deadlines or timeframes)?*

Taxpayers registered with the Large Taxpayers Office must prepare an annual transfer pricing report that includes information and documents related to their domestic and cross-border transactions with related parties in a fiscal year until the end of the corporate tax declaration period and submit it to the Large Taxpayers Office or to the tax authorities if it is requested. Corporate taxpayers other than those registered with the Large Taxpayers Office need to prepare only an annual report related to their cross-border transactions with related parties.

Corporate taxpayers other than those registered with the Large Taxpayers Office are not required to prepare a transfer pricing report for their domestic transactions with related parties and individual income taxpayers are also not required to prepare a transfer pricing report for their both domestic and cross-border transactions with related parties; they must, however, prepare transfer pricing documentation for their controlled transactions upon request by the Turkish tax authorities.

#### 5.2. Content requirements

*Q. What content requirements apply to transfer pricing documentation? Are master-file/local-file and country-by-country reporting required?*

Turkey released transfer pricing documentation rules by Presidential Decree No. 2151 to be in line with Action 13 of the Base Erosion Profit Shifting (BEPS) Plan of the Organisation for Economic Cooperation and Development (OECD), bringing into effect the OECD's three-tiered documentation approach in Turkey. In this sense, corporations are obliged to prepare a master file and country-by-country reporting (CbCR), yet if they pass certain thresholds.

Accordingly, operating in Turkey, companies that are members of multinational groups and whose both turnover and total assets are over TRY 500 Million will need to prepare master file in accordance with the standard introduced by the OECD. Master file will be prepared for the first time for the financial year 2019 and will be submitted upon the request by Turkish Tax Authorities and tax auditors.

Country-by-Country Reporting (CbCR) refers to a report that will be submitted to the Ministry of Finance for the first time by multinational companies. Based on the Decree, this reporting requirement is brought for the ultimate parent company of Turkish multinational groups, which has a consolidated turnover of 750 Million Euro. Companies in this scope are required to file the first reporting until December 31, 2020 (within 12 months of the end of the accounting period for companies with special accounting periods).

In addition, it will be obliged to carry out CbCR notifications for other companies which fall within the scope of CbCR but whose ultimate parent company is domiciled in another country.

Also, Turkish legislation on transfer pricing requires corporations to prepare a local file annually. Annual transfer pricing documentation (local file) should include the following information and documents:

- Summary Information About The Activities, Form Of The Organisation (Headquarters And Branches), Shareholders, Capital Structure, Sector, Economic And Legal Background Of The Taxpayer And A Description Of The Related Parties (E.G., Tax Id Number, Address And Telephone Numbers), And Information About Ownership Relations Between These Parties;
- All Information Related To The Functions, Risks And Assets That Are Used;
- The Price List Of The Year When The Transaction Occurred;
- The Cost Of Production During The Year The Transaction Occurred;
- Information About The Volumes Of Controlled And Uncontrolled Transactions During The Fiscal Period, Which Includes Transaction Dates And Invoices, Bank Slips And Similar Documents;
- Copies Of Agreements Issued Between Related Parties During The Fiscal Period;
- Summaries Of Financial Statements Of Related Parties;
- The Intercompany Pricing Policy Applied To Transactions Between Related Parties;
- If The Related Parties Use Different Accounting Standards And Methods, The Information Related To These Standards And Methods;
- Information Related To Intangible Property Ownership And Payments Of Intangible Rights;
- Information And Documents (Internal And/Or External Benchmarks, Comparability Analysis) Related To The Selection And Application Of The Transfer Pricing Method Used;
- Detailed Information Related To Calculation And Assumptions To Determine The Arm's-Length Price or profit margin;

- If The Arm's-Length Range Is Determined, The Method Used In The Determination Of That Range; And
- Other documents that are required to determine the arm's-length price.

The Turkish tax authorities may also ask for additional information and documentation from the taxpayer if it is considered necessary. If the related information and documents are written in a foreign language, it is compulsory to present a Turkish translation of that information and documents.

### 5.3. Penalties

*Q. What are the penalties for non-compliance with documentation and reporting requirements?*

There is no special penalty for transfer pricing issues, but failure to comply with the documentation requirements may incur penalties under the Turkish Tax Procedure Code.

### 5.4. Best practices

*Q. What best practices should be considered when compiling and maintaining transfer pricing documentation (e.g., in terms of risk assessment and audits)?*

The transfer pricing documentation should include the expected level of information as to form and substance. In this sense, an ideal transfer pricing documentation should include:

- information about the company and the group;
- industry analysis;
- transaction-based functional analysis including all functions performed, risks assumed, and assets used by the related parties;
- information about the related parties;
- transfer pricing analysis including comparability analyses;
- reasons for selection and elimination of transfer pricing methods;
- benchmark studies; and
- other required information (e.g., related-party agreements).

## 6. Advance pricing agreements

### 6.1. Availability and eligibility

*Q. Are advance pricing agreements with the tax authorities in your jurisdiction possible? If so, what form do they typically take (e.g. unilateral, bilateral or multilateral) and what enterprises and transactions can they cover?*

Advance pricing agreements (APAs) with the tax authorities are possible in Turkey, whether unilateral, bilateral or multilateral, although only corporate taxpayers can currently enter into APAs. All corporate taxpayers, without any exceptions or limits, may request an APA from the Turkish Revenue Administration for only the cross-border transactions with their non-resident entities or related parties to determine the transfer pricing method to be used. Domestic transactions of corporate taxpayers cannot be included in APAs.

Also, it is possible to request an APA regarding transfer pricing for transactions that occur among the corporate taxpayers operating in the free trade zones of Turkey and other corporate taxpayers in the scope of related parties.

Although personal income taxpayers are subject to transfer pricing regulations, they cannot request an APA, whether for internal or cross-border transactions.

## **6.2. Rules and procedures**

### *Q. What rules and procedures apply to advance pricing agreements?*

The initial step in any APA is for the taxpayer to make a written request to the tax administration. The taxpayer must submit documents containing the necessary information for the request to be deemed an acceptable method by the Turkish Revenue Administration for related-party transactions.

The Turkish Revenue Administration then examines the documents submitted and decides whether an APA for those transactions is legally possible.

If the answer is positive, the evaluation stage follows. The taxpayer completes any missing items for the APA if the Turkish Revenue Administration requires further information at this stage; the administration also starts to investigate the conditions surrounding the APA. The administration then moves on to the analysis stage.

During the analysis stage, the authorities examine comparable transactions, functions performed, assets used, risks assumed, other adjustments, applicable method(s), critical assumptions and the choice and assessment of other essential elements.

After this, the authorities either:

- Accept The Taxpayer's Request;
- Accept The Request Provided That Some Changes Are Made; Or
- Reject the request completely.

If the request is denied, the tax authorities will return all the documents submitted by the taxpayer.

The final step consists of signing an official APA, which remains confidential between the tax authorities and the parties involved (i.e., it is not disclosed to third parties).

### Required information and documents for an APA

The basic information and documents that taxpayers requesting an APA should present to the Turkish Revenue Administration are:

- A Written Application Containing The Period Of Arrangement To Consider, The Names, ID Numbers, Addresses And Telephone Numbers Of The Taxpayers Or Their Representatives Who Will Be Involved In The Arrangement Process, The Taxpayers' Line Of Business, Structure Of Organisation (Headquarters And Branches), Shareholders, Capital Structure, Sector, Summaries Of Economic And Legal Background, Definitions Of Related Parties And Ownership Relations Of Related Parties;

- All Information Related To The Functions And Risks Of The Company And The Assets That Are Used;
- Documents And Reasons Related To Critical Assumptions (Suggested Transfer Pricing Method And Explanations, Analysis And Other Works Based On The Choice And Application Of This Method);
- Information Related To Intangible Property Ownership And Payments Of Royalties Or Intangible Rights;
- If The Related Parties Use Different Accounting Standards And Methods, Information Related To These Standards And Methods;
- The Price List For The Fiscal Period;
- The Cost Of Production For The Fiscal Period;
- The Intercompany Pricing Policy Applied To Transactions Between Related Parties;
- Information About The Volumes Of Controlled And Uncontrolled Transactions During The Fiscal Period, Including Transaction Dates And Invoices, Bank Slips And Similar Documents;
- Related Parties' Financial Statements From The Previous Three Years, Copies Of Income Or Corporate Tax Returns And Copies Of Agreements About Foreign Transactions;
- Financial Data And Documents Of The Previous Three Years Supporting The Suggested Transfer Pricing Method;
- If There Are Two Or More Comparable Transactions, The Arm's-Length Range And The Method Used To Determine That Range; And
- Any Other Documents Required To Determine The Arm's-Length Price.

### 6.3. Timeframes

*Q. How long does it typically take to conclude an advance pricing agreement?*

The APA process may take years because of the complexity of related-party transactions and the difficulty to obtain adequate information promptly. To avoid such delays, it is useful for taxpayers to submit adequate documents and information, as requested by the Turkish Revenue Administration.

What is the typical duration of an advance pricing agreement?

Currently, an APA could be requested for future years and maximum duration of an advance pricing agreement is 3 years under the Article 13 of Corporate Income Tax Law. However, a roll-back mechanism is applicable and allows taxpayers to sign an APA for previous 5 tax calendar years.

### 6.4. Fees

*Q. What fees apply to requests for advance pricing agreements?*

There is no application fee to request an APA in Turkey.

### 6.5. Special considerations

*Q. Are there any special considerations or issues specific to your jurisdiction that parties should bear in mind when seeking to conclude an advance pricing agreement (including any particular advantages and disadvantages)?*

A pre-filing meeting with the Turkish Tax Authorities is possible to discuss any issues. Accordingly, it is possible to take the tax authority's opinion regarding the subject or the industry. This can be done anonymously and does not mean that the taxpayer requesting the tax authorities' opinion must apply for an APA.

Requesting an APA does not necessarily mean that the tax authorities will commence a transfer pricing audit on the related-party transactions of the applicant. Transfer pricing audits and APAs are different processes and should be considered separately. In this sense, if an APA application has not been completed yet, a taxpayer that requested the APA may be subject to a transfer pricing audit. Likewise, a taxpayer can apply for an APA during a transfer pricing audit.

## **7. Review and adjustments**

### **7.1. Review and audit**

*Q. What rules, standards and procedures govern the tax authorities' review of companies' compliance with transfer pricing rules? Where does the burden of proof lie in terms of compliance?*

The tax authorities will review transfer pricing as a part of a taxpayer's tax audit or risk review. In general, any multinational conducting cross-border related-party transactions and incurring losses or low profits can expect to be scrutinised by the tax authorities. Taxpayers should therefore keep relevant statutory books and accounting records. In addition, all transfer pricing-related documents and information should be submitted by the taxpayers upon request by the tax authorities. Hence, the burden of proof lies on the taxpayers in terms of compliance.

*Q. Do any rules or procedures govern the conduct of transfer pricing audits by the tax authorities?*

The Turkish tax authorities have a risk analysis system to identify the taxpayers to be audited. In this sense, transfer pricing forms and corporate income tax declarations are analysed. If a taxpayer has incurred losses, low profits, related-party transactions (e.g., management fees, royalties, intra-group financing etc) that bear risk, he may be subject to a transfer pricing audit. The tax authorities may also choose a specific taxpayer to audit. In addition, the tax authorities conduct frequently industry-specific transfer pricing audits, for instance in the automotive, pharmaceutical and energy sectors.

### **7.2. Penalties**

*Q. What penalties may be imposed for non-compliance with transfer pricing rules?*

There are no specific penalties applicable for transfer pricing issues. However, business owners or corporates that have bought or sold goods or services below arm's-length price entirely or partly with related parties are liable to penalties under the Turkish Tax Procedure Code. Also, any party that is required by the law to submit transfer pricing documentation to the Turkish tax authorities but fails to do so is subject to the same penalties under the Turkish Tax Procedure Code.

In this sense, corporations may be subject to a tax loss penalty due to the purchase or sale of goods or services below arm's-length price. However, taxpayers that fulfil their transfer pricing documentation obligations completely and on time are subject to tax penalties at a reduced rate of 50%, even if they are applied a tax loss penalty.

### 7.3. Adjustments

*Q. What rules and restrictions govern transfer pricing adjustments by the tax authorities?*

There are no regulations or restrictions for transfer pricing adjustments. In practice, the Turkish tax authorities may adjust prices for or against taxpayers during a transfer pricing audit. Accordingly, upward or downward transfer pricing adjustment might be carried out by the Turkish tax authorities. However, if treasury losses do not occur due to the taxpayer's domestic related-party transactions, the Turkish tax authorities will not make any transfer pricing adjustments.

### 7.4. Challenge

*Q. How can parties challenge adjustment decisions by the tax authorities?*

A taxpayer may indicate in the transfer pricing audit report that it does not accept the auditor's view in terms of transfer pricing adjustment. A taxpayer may also state that the adjustment made by the tax auditor is inaccurate, and request a session before the Report Evaluation Commission at the Turkish Tax Audit Board. A taxpayer has the right to explain its transfer pricing position if it receives an invitation from the Turkish tax authorities for a potential transfer pricing adjustment. Furthermore, a taxpayer may appeal the decision of the Turkish tax authorities and request the removal of the transfer pricing adjustment from the court.

## 8. Mutual agreement procedures

*Q. What mutual agreement procedures are available to avoid double taxation arising from transfer pricing adjustments? What rules and restrictions apply?*

Taxpayers may request a mutual agreement procedure (MAP) related to transfer pricing cases. If the dispute is not settled through the conciliation or audit settlement, the taxpayer can avail of a MAP or seek a judicial review within the legal timeframe. If the taxpayer seeks a judicial remedy first, there will be no access to a MAP, unless the dispute is withdrawn by the taxpayer during the judicial process. As Turkish law does not allow a MAP process to run concurrently with a judicial process, both the tax administration and the taxpayer are bound by the court decision. In addition to a MAP, Turkish law provides for other remedies for taxpayers to resolve tax disputes through an administrative or statutory dispute settlement or resolution process independent from the audit and examination functions, which can be accessed only on request by the taxpayer. Audit settlement (conciliation before imposition) is available to taxpayers as an administrative remedy. Taxpayers can choose a MAP or audit settlement as their first option. If no agreement is reached, the taxpayer still has the right to litigate or to initiate a MAP under a double tax agreement.

## 9. Anti-avoidance framework

### 9.1. Regulation

*Q. What legislative and regulatory initiatives has the government taken to combat tax avoidance in your jurisdiction?*

A general anti-avoidance rule (substance over form) exists in the Turkish Tax Procedure Code. Transfer pricing rules, thin capitalisation rules and controlled foreign corporation rules constitute specific anti-avoidance rules in the Corporate Income Tax Law. In addition, the Corporate Income Tax Law authorises the Turkish government to limit interest expenses of corporate income taxpayers. However, the government has not yet used its authorisation to determine interest limitations.

*Q. To what extent does your jurisdiction follow the OECD Action Plan on Base Erosion and Profit Shifting?*

Turkey is a party to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS). In doing so, Turkey has taken a key step forward to prevent tax avoidance and evasion by multinational enterprises.

On April 17, 2020 the Turkish tax authorities also released Draft General Communiqué 4 on Disguised Profit Distribution through Transfer Pricing. The draft communiqué No. 4 implements in Turkey the OECD's three-tiered approach (master file, local file and country-by-country reporting) to transfer pricing documentation under BEPS Action 13 and provides more details on new transfer pricing documentation obligation introduced by the Presidential Decree No. 2151. However, this legislation has not been finalised, yet but it is expected that the draft legislation is finalised, soon

In terms of BEPS Action 1, the Turkish Value Added Tax (VAT) Law on the party liable for tax was amended in 2017. The amended article applies as of January 1, 2018. The amendment stipulates that VAT arising from services provided electronically by those without a residence, workplace, headquarters, or business centre in Turkey to individuals in Turkey who are not VAT taxpayers must be declared and paid by the non-resident e-service providers.

Turkey also made legislative changes in the law to reflect BEPS Action 5. Law 6728/2017 empowers the government to bring legislation in line with international standards of the BEPS Action Plan, and a cabinet decree in this regard was released. The cabinet decree regulates the technology development zones and introduced the 'nexus approach', an international approach introduced by the BEPS Action Plan to apply for the intellectual property. Thus, the definition of qualifying IP assets was brought into line with the nexus approach.

*Q. Is there a legal distinction between aggressive tax planning and tax avoidance?*

There is no legal distinction between aggressive tax planning and tax avoidance.

Penalties

*Q. What penalties are imposed for non-compliance with anti-avoidance provisions?*

There is no specific penalty for anti-avoidance provisions. Taxpayers accused of tax avoidance may incur penalties such as a tax loss penalty and an irregularity fine regulated in the Turkish Tax Procedure Code.

*Thanks Ramazan Biçer (Advanced LLM in International Tax Law)*

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