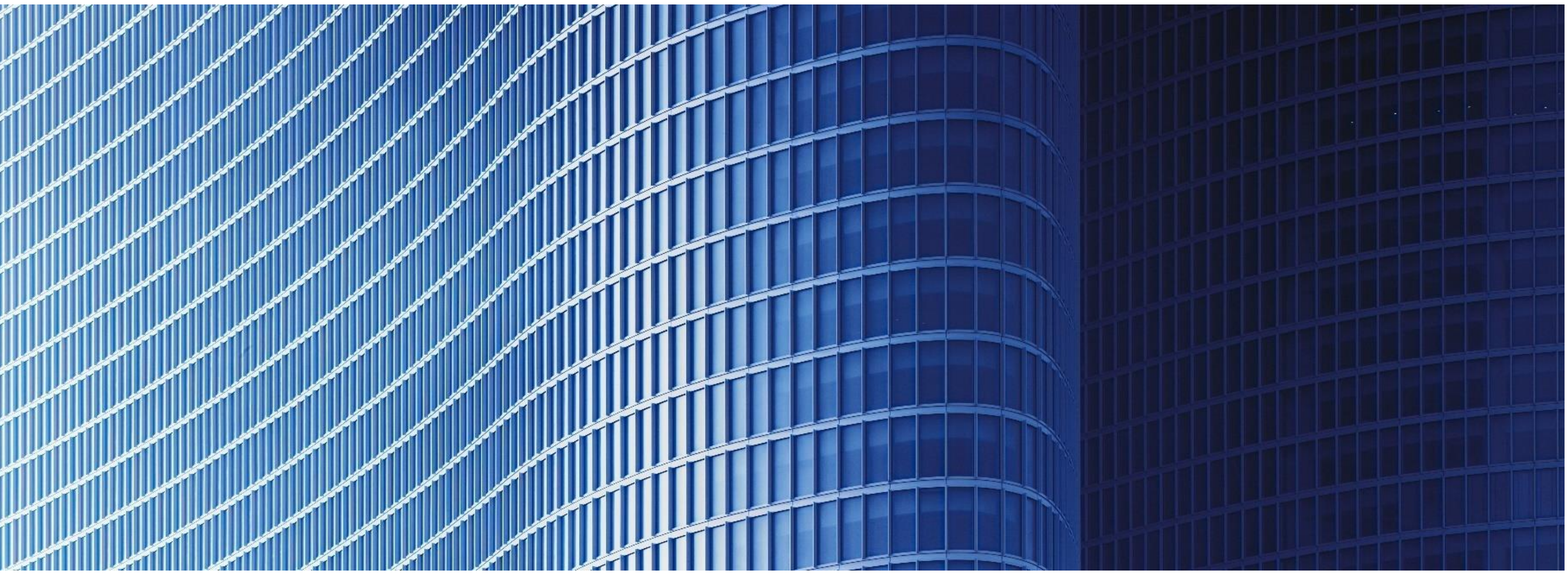

CIRCULAR NO: 2023/074 **March 12, 2023**

TAX BASE AND TAX INCREASE UNDER LAW NO. 7440

Law No. 7440 on the Restructuring of Certain Receivables and Amendments to Certain Laws was published in the Official Gazette No. 32130 of March 12, 2023.

In this circular, detailed information will be provided on the regulations regarding the tax base and tax increase by addressing the implementations in the year 2022 under a separate heading.

1. Increase in income and corporate tax bases

1.1. General

Income and corporate taxpayers can increase their tax bases in their yearly declarations (including those submitted with reservation) for the tax periods **2018, 2019, 2020 and 2021** at the rates specified below until **May 31, 2023** (including this date) and pay the taxes that accrue as a result of this increase within the period and in the manner specified in the Law.

In this case, income and corporate taxpayers will not be subject to annual income and corporate tax inspection for the years in which the increase is made and no further assessment will be made for these taxes for these years.

Year	Tax Base Increase Rate
2018	35%
2019	30%
2020	25%
2021	20%

If there is no tax base in the relevant years, it will be necessary to declare the minimum amount of tax base based on the amounts mentioned in the next article. On the other hand, when the rates specified in the Law are applied to the tax bases in the relevant years, the tax base increase should be no less than the amounts in the next article.

1.2. Minimum increase amounts

1.2.1. Income taxpayers

If income taxpayers have declared a loss in their income tax returns for the year in which they wish to make an increase, or if there is no tax base due to discounts and exemptions, or if no declaration has been submitted (including taxpayers who have carried out activities or earned income in the relevant years but have not informed the tax office of these activities and income), the tax base to be taken as a basis for taxation and the tax bases increased according to the Subparagraph (a) of Paragraph 1 of Article 5 of the Law shall be no less than the amounts below.

Year	Tax Base Increase Rate	Minimum Increase Amount (TL) (Those who keep books based on their businesses)	Minimum Increase Amount (TL) (Those who keep books based on their balance sheet and the self-employed)	Normal Tax Rate	ReducedTax Rate
2018	35%	63,800	94,000	20%	15%
2019	30%	66,400	99,600	20%	15%
2020	25%	70,500	105,800	20%	15%
2021	20%	75,000	112,400	20%	15%

Taxpayer/Year	2018	2019	2020	2021
Taxpayers whose income consists only of commercial income determined in simple procedure	TL 6,380	TL 6,640	TL 7,050	TRY 7,500
Taxpayers whose income consists only of real estate capital income	TL 25,520	TL 26,560	TL 28,200	TL 30,000
Other income taxpayers whose income is different than the above	TL 63,800	TL 66,400	TL 70,500	TL 75,000

In the application of the minimum tax base increase, the exemption amounts determined for real estate capital income for the relevant years will not be taken into account.

We want to remind you that taxpayers who make revenues over more than one income item should increase the tax base for the relevant income item specified in this paragraph to not be subject to tax inspection and assessment.

1.2.2. Corporate taxpayers

In the event that corporate taxpayers have declared a loss in their corporate tax returns for the year in which they wish to make an increase, or if there is no tax base due to discounts and exemptions, or if no declaration has been submitted (including taxpayers who have carried out activities or earned revenue in the relevant years but have not informed the tax office of these activities and revenue), the tax bases to be taken as a basis for taxation and the tax bases increased according to the Subparagraph (a) of Paragraph 1 of Article 5 of the Law shall be no less than the amounts below.
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Year	Taxduced Base Increase Rate	Minimum increase amount (TL)	Normal Tax Rate	Reduced Tax Rate
2018	35%	200,000	20%	15%
2019	30%	215,000	20%	15%
2020	25%	230,000	20%	15%
2021	20%	260,000	20%	15%

1.3. Tax rate to be applied to the increased tax base

Increased tax bases will be taxed at **20%,** and no additional tax will be levied on them.

Additionally, the increased tax bases of income and corporate taxpayers will be taxed at a rate of **15%,** provided that;

- they have submitted their annual declarations for the year in which they wish to make an increase within the legal deadlines,
- they have paid their taxes accrued from these tax types on time and
- they have not benefited from the provisions of Articles 2 (Finalized receivables) and 3 (unfinalized receivables or receivables in litigation) of this Law for these tax types.

The above provision will also apply if no tax is due on these declarations owing to exemptions, discounts and deductions.

1.4. Increase in the corporate tax base for those with exempt earnings within the scope of Provisional Article 61 of Income Tax Law

Provisional Article 61 of the Income Tax Law is as follows:

"The provisions of the Income Tax Law in force before the effective date of this article shall apply to the investment expenditures related to the investments covered by the investment incentive certificates issued based on the applications made before this date (not including the expenditures made for the economic assets added to the incentive certificates after this date).

Income tax is withheld at the rate of 19,8%, whether distributed or not, on the earnings benefiting from investment deduction exemption as stated above and on the earnings benefiting from investment deduction calculated over the investments realised before the effective date of this article and carried forward to the following periods due to insufficient earnings.

Taxpayers may benefit from investment deduction exemption under the provisions of Article 19 of this Law for the expenditures made as of this date within the scope of investment incentive certificates issued based on the applications made before the effective date of this article (except for the expenditures previously benefited from investment deduction exemption as part of the foreseen expenditures). For this purpose, the tax office must be notified until the date of filing the declaration for the first provisional taxation period after the effective date of this article. This choice must be made for all of the investment incentive certificates received."

If corporate taxpayers have earnings and revenues that are subject to tax withholding per the provisional Article 61 of the Income Tax Law, to avoid being subject to tax inspection and assessment, the taxes withheld over these earnings and revenues must be increased as specified in Subparagraph (a) of Paragraph 1 of Article 5 of the Law for the relevant year.

If the corporate taxpayers have not declared in their withholding tax returns the earnings and revenues subject to tax withholding per the provisional article 61 of the Income Tax Law, in order not to be subject to tax inspection and assessment for these years, they must declare the withholding tax base of these earnings and revenues until May 31, 2023 (including this date), provided that it the earnings and revenues are no less than 50% of the minimum tax base specified in Subparagraph (c) of Paragraph 1 of Article 5 of the Law.

Accordingly, a 15% tax will be calculated on the increased tax bases.

For the taxpayers who have made an increase or declaration, as explained above, not to be subject to tax inspection and assessment for these years, they must increase their corporate tax bases for the relevant years as specified in Subparagraph (a) of

Paragraph 1 of Article 5 of the Law, provided that they are not less than the amounts specified in Subparagraph (c).

1.5. Non-use of 50% of the losses related to the tax base increase years in 2022 and the following years

Income and corporate taxpayers will be unable to deduct 50% of the losses related to the tax base increase years from their profits in 2022 and the following years.

1.6. Tax base increase for pro rata periods

The minimum tax bases determined for the relevant years regarding the taxpayers who have been operating in the pro rata period due to reasons such as starting and quitting the business will be calculated by taking into account the number of active months (fractions of months will be considered as full months).

1.7. Finalized assessments for the years in which the tax base increase was made

The assessments made and finalised before March 12, 2023, regarding the taxation periods for which the tax base increase is made, will be considered together with the declaration of the relevant period.

2. Increase in income tax withholding / corporate tax withholding (Increase in withholding tax return)

2.1. General

Provided that taxpayers increase their income (withholding) or corporate (withholding) tax in accordance with the conditions set out in Paragraph 2 of Article 5 of the Law until May 31, 2023, and pay it within the period. In the manner specified in this Article, no income (withholding) or corporate (withholding) tax inspection and assessment will be initiated due to the payments subject to the increase in relation to the taxation periods for the years in which they agree to pay said tax.

In the event of an increase, there will not be a requirement to increase the income or corporate tax base. However, in case of an increase in the **withholding tax bases declared** pursuant to Subparagraph (6) of Paragraph 1 of Article 94 of the Income Tax Law and Paragraph 2 of Article 15 and Paragraph 3 of Article 30 of the Corporate Tax Law **(for the bases related to profit distribution withholdings), it will be mandatory to increase the tax base for corporate tax.**

The salary amount and bases subject to the increase will not be considered an expense or cost element in the determination of income or corporate tax bases. In other words, it will be considered a non-deductible expense.

2.2. Increase rates

Payment type in the withholding tax return	2018	2019	2020	2021
Over the annual sum of the gross amount of salaries under Income Tax Law 94/1	6%	5%	4%	3%
Over the annual sum of the gross amounts of self-employment payments under Income Tax Law 94/2	6%	5%	4%	3%
Over the annual sum of the gross amounts of lease payments under Income Tax Law 94/5	6%	5%	4%	3%
Over the annual sum of the gross amounts of earnings and dividend payments under Income Tax Law 94/6	6%	5%	4%	3%
Over the annual sum of the gross amounts of the payments under Corporate Tax Law 15/1-b, 15/2 and 30/3	6%	5%	4%	3%
Over the annual sum of the gross amounts of payments for construction and repair works spread over the years under Income Tax Law 94/3 and Corporate Tax Law 15/1-a and 30/1-a	%1	%1	%1	%1
Over the annual sum of the gross amounts of payments made for agricultural crops and services purchased from farmers under Income Tax Law 94/11 and 13, and payments made in return for the purchase of goods and services from farmers benefiting from the tradesmen exemption	25% of the applicable withholding tax rate for the relevant year	25% of the applicable withholding tax rate for the relevant year	25% of the applicable withholding tax rate for the relevant year	25% of the applicable withholding tax rate for the relevant year

Regulations have been made in Subparagraphs (b) and (ç) of Paragraph 2 of Article 5 of the Law on how the tax increase will be made for cases where no withholding tax return has been submitted in the relevant years in terms of these payment types, only a single period of declaration has been submitted, and a declaration has been submitted but does not declare these payment types.

2.3. Tax base increase for pro rata periods

Taxpayers who wish to increase their income (withholding) or corporate (withholding) tax will be able to do so for the taxation periods in which they are active (by considering the month fractions as full months) if they start or quit their business during the year, in line with the above-mentioned principles.

2.4. Finalized assessments for the years in which the tax increase was made

The assessments made and finalised before the publication date of this Law regarding the taxation periods within the year of income (withholding), or corporate (withholding) tax increase will be considered together with the declaration of the relevant period. In other words, the tax accrued with the tax increase will be deducted from the finalised assessment amount due to the examination.

3. VAT increase

3.1. General

Provided that taxpayers increase their calculated value-added tax under the conditions set out in Paragraph 3 of Article 5 of the Law until May 31, 2023, and pay it within the period and in the manner specified in this Article, no VAT inspection and assessment will be initiated in relation to the taxation periods for the years in which they agree to pay said tax.

VAT taxpayers are obliged to increase for all taxation periods of the relevant year. However, if the taxpayers start or stop their business in the year in which they wish to make an increase, an increase will be made for the taxation periods in which they are active pursuant to the principles in Paragraph 3 of Article 5 of the Law.

VAT paid in accordance with the increase provisions will not be recognised as an expense or cost element in the determination of income or corporate tax bases, cannot be deducted from the VAT to be paid or cannot be refunded in any way. In other words, it will be considered a non-deductible expense.

In the event that no declaration has been submitted or a declaration has been submitted for only one or two periods, it will be possible to benefit from the regulation by increasing the value-added tax at the rate of 18% over the increased tax base, provided that the income or corporate tax base has been increased for the relevant year.

In the case that all the transactions within the relevant calendar year consist of deliveries and services covered by exemptions, deliveries covered by the deferral-cancellation application, or if there is no value-added tax calculated in all periods of the calendar year for other reasons, it will be possible to benefit from the VAT base increase by increasing the value-added tax at the rate of 18% over the increased base, provided that the income or corporate tax base has been increased for the relevant year.

VAT taxpayers are obliged to increase for all taxation periods of the relevant year. However, if the taxpayers start or stop their business in the year in which they wish to make an increase, an increase will be allowed for the taxation periods in which they are active pursuant to the principles in the relevant Articles.

For the tax inspections to be made in the periods following the years for which the increase is requested, the right to inspect and/or assess is reserved for the following: transactions regarding VAT transferred to the following periods; the cancellation and refund transactions arising from the deliveries with export registration or the transactions giving rise to the right of return; the transactions made within the scope of Paragraph 2 of Article 9 of the VAT Law and the transactions made under joint liability. In the examinations made in terms of VAT carried forward to subsequent periods, assessment cannot be proposed for the periods for which an increase is requested.

In Subparagraphs (b) and (c) of Paragraph 3 of Article 5 of the Law, regulations are included on how the VAT increase should be made in cases where VAT returns have never been submitted, or returns have been submitted for at least one or two periods, and if all of the transactions in the relevant years fall within the scope of the exemption.

3.2. Increase rates

VAT increase rates are as follows:

Amount subject to increase	2018	2019	2020	2021
Over the annual sum of the VAT calculated in the declarations submitted for each taxation period (including those submitted with reservation)	3%	3%	2.5%	2.5%

For taxpayers who benefit from the deferral-cancellation application as per Subparagraph (c) of Paragraph (1) of Article 11 and provisional Article 17 of the Value Added Tax Law, the deferred taxes will be deducted from the calculated tax in determining the amount based on the increase.

3.3. Finalized assessments for the years in which the tax increase was made

The assessments made and finalised before the publication date of this Law regarding the taxation periods within which the taxpayers wish to make an increase will be considered together with the declaration of the relevant period.

4. Tax base and tax increase to be made in 2022

Provisional Article 1 of Law No. 7440 includes 2022 within the tax base and tax increase. The 2022 tax base and tax increase regulations differ from the previous four years.

4.1. Income and corporate tax increase

Taxpayers will benefit from the provision of the Article provided that they increase their income and corporate tax bases for the 2022 calendar year by no less than 25% within the conditions specified in Article 5 of the Law.

The minimum increase amounts specified in Subparagraphs (b) and (c) of Paragraph 1 of Article 5 of the Law will be as follows for income and corporate taxpayers who increase their tax base for 2022.

Year	Tax Base Increase Rate	Minimum Increase Amount (TL) (Income taxpayers who keep books based on their business accounts)	Minimum increase amount (TL) (Income taxpayers and the self-employed who keep books based on their balance)	Minimum increase amount (TL) (Corporate taxpayers)	Normal Tax Rate	Reduced Tax Rate
2022	25%	105,000	200,000	500,000	20%	15%

This Article stipulates that the following conditions must also be met for a tax base increase to be made for the 2022 calendar year:

- Income or corporate tax return for the year 2022 must be submitted,
- The tax bases declared in these returns shall be no less than the higher one of the amount found by increasing the tax base declared in the 2021 calendar year by 122.93% and the amount found by increasing the tax base declared in the third provisional taxation period of the 2022 calendar year by 40%.

In the event that the taxpayers whishing to increase their tax base for the 2022 calendar year submit a correction declaration reducing the tax base after January 1, 2023, the comparison to be made based on the provision of this Subparagraph shall be based on the tax bases declared before the correction.

Regarding the 2022 calendar year; while comparing the 2021 calendar year and the 2022 third provisional taxation period, the comparison will be based on;

- The amount found by increasing the tax base declared in the second provisional taxation period declaration by 100% if the income or corporate tax return for the third provisional taxation period has not been submitted,
- The amount found by increasing the tax base declared in the first provisional taxation period declaration by 300% if only the first provisional taxation period declaration has been submitted. In the event that losses are declared in the

income or corporate tax returns for the 2021 calendar year and the third provisional taxation period of 2022, or if there is no tax base due to discounts and exemptions, or if no return is submitted (including the taxpayers who have carried out activities or earned income in the relevant years but have not declared these activities and income to the tax office), this condition will not be sought for the income and corporate tax returns of 2022. In determining the amounts subject to 2022 income and corporate tax base increase, 25% of the amounts determined according to Subparagraph (b) will be taken as a basis, provided that it is no less than the minimum amounts determined in said Subparagraph.

Compared to the previous practices in 2018-2021, the 2022 tax base and tax increase has more severe consequences for income and corporate taxpayers in terms of loss carry-forward and advance tax refunds. That is to say, the whole of the losses for the year 2022, for which the tax base increase was made, will not be deducted from the profits of the following year starting from 2023. The income or corporate taxpayers who increased their tax base for 2022 are not allowed to receive a refund of the provisional taxes that cannot be deducted from the taxes calculated in their annual declarations for this year.

4.2. Increase in income and corporate tax withholding

The amounts that taxpayers are required to increase their income and corporate tax withholding in 2022 are shown in the table below regarding payment types in the Income and Corporate Tax Laws.

Type of Payment	**Increase Rate**
Income Tax Law 94/1-1 (Wages)	2.5%
Income Tax Law 94/1-2 (Self-Employment Earnings)	2.5%
Income Tax Law 94/1-5 (Lease payments)	2.5%
Income Tax Law 94/1-6 (Dividends)	2.5%
Corporate Tax Law 15/1-b (Lease payments to cooperatives)	2.5%
Corporate Tax Law 15/2 (Dividend distribution)	2.5%
Corporate Tax Law 30/3 (Dividend payments to limited taxpayers)	2.5%
Income Tax Law 94/1-3 (Construction and repair works spread over the years)	%1
Corporate Tax Law 15/1 (Construction and repair works spread over the years)	%1
Corporate Tax Law 30/1-a (Annual construction and repair works spread over the years)	%1
Income Tax Law 94/1-11 (Agricultural crop and service purchase payments)	25%

Income Tax Law 94/1-13 (Payments made to tax-exempt craftsmen)	25%

Taxpayers are to benefit from the provisions of said Article, provided that they increase the withholding rate applicable in 2022 by no less than 25% for the above payments separately.

4.3. VAT increase

Taxpayers are to benefit from the provisions of said Article, provided that they increase the value-added tax to be determined at a rate no less than 2% for the year 2022 over the annual total of the value-added tax calculated in the value-added tax returns submitted for each taxation period of the year 2022 (including those submitted with reservation) within the conditions specified in Article 5 of the Law.

4.4. The effect of the tax base increase on tax inspections and assessments to be made in terms of additional tax

Increasing the corporate tax base for 2022 will not constitute an obstacle to the examination and assessment for this period for the additional tax to be collected pursuant to Paragraph 27 of Article 10 of this Law.

5. Application, payment and installment periods, advance payment discount

Applications for tax base and tax increase must be submitted until May 31, 2023.

Taxes calculated as a result of the tax base or tax increase must be paid in advance or maximum of 12 equal installments in **monthly** periods starting from **June 30, 2023.** In the event that the entire amount of taxes accrued as a result of the tax base or tax increase is paid **in advance within the first installment payment period, a 10% discoun**t will be made from these taxes.

Taxes paid by calculating or increasing **will not be accepted as an expense or cost element** in determining income or corporate tax bases. They will not be subject to deduction, offset and refund.

6. Preservation and submission of books and documents

An increase in the tax base or tax does not constitute an obstacle to the fulfilment of the provisions of the Tax Procedure Law regarding the preservation and submission of books and documents. In other words, taxpayers will be obliged to keep their books and documents for the periods in which they make tax base and tax increases within the legal period and submit them to the authorities upon request.

7. Tax inspections started before March 12, 2023

An increase in tax base or tax will not constitute an obstacle to the tax inspections and tax assessment procedures started before the publication date of this Law.

With that said, **tax inspections and appraisal procedures initiated against taxpayers who have made an increase will not proceed if they cannot be finalised within seven business days following the publication of the Law**, without prejudice to the provisions of;

- Subparagraph (h) of Paragraph 1 of Article 5 of the Law (Inspections and assessments related to the requests of taxpayers who have increased their income or corporate tax base for the refund of taxes previously paid by taxpayers who have increased their annual income and corporate tax base).

- Subparagraph (e) of Paragraph 3 of Article 5 of the Law (For the tax inspections to be made in the periods following the years for which the VAT increase is requested, the right to inspect and assess is reserved for the following: transactions regarding VAT transferred to the following periods; the cancellation and refund transactions arising from the deliveries with export registration or the transactions giving rise to the right of return. In the inspections made in terms of VAT carried forward to subsequent periods, assessment cannot be recommended for the periods for which an increase is requested).

Finalisation of the examination and appraisal procedures means the transfer of the examination reports and the decisions of the appraisal commission to the tax office records.

Pre-assessment settlement requests related to the tax inspections finalised within this period will not be considered.

In the event that a tax base or tax difference subject to assessment is determined as a result of the inspection or assessment, the difference will be evaluated together with the provisions of Paragraphs 1, 2 and 3 of Article 5 of the Law, **provided that the increase has been made before the date on which the inspection reports and the decisions of the assessment commission are transferred to the tax office records.**

However, the examinations to be made within the scope of Article 367 of the Tax Procedure Law titled ***"Procedure in the Punishment of Certain Smuggling Offenses"*** about those who make tax base and tax increase by benefiting from the provisions of Paragraphs 1, 2 and 3 of Article 5 of the Law are reserved. However, no assessment will be made for the periods and taxes for which tax base or tax increase is made due to these examinations.

8. The taxpayers listed below will not be able to benefit from the tax base and tax increase provisions:

8.1. Those who ***"destroy the books, records and documents, or destroy the pages of the books and replace them with different pages or do not put in any pages at all, or forge the original or copies of the documents in whole or in part"*** as specified in Paragraph (b) of Article 359 of the Tax Procedure Law titled ***"Smuggling Offenses and Penalties"*** and those who commit the acts as specified in Paragraph (ç) of Article 359 of the same Law. (In the event that it is determined that the acts described in this Subparagraph were committed in 2022 or in any of the periods covered by this Article, these taxpayers will not be able to benefit from the tax base and tax increase provisions for other periods).

8.2. Those convicted of terrorism offences,

8.3. Those who, as of the publication date of the Law, have been requested to **undergo tax examinations** within the scope of investigations and prosecutions carried out by judicial authorities, general law enforcement forces or the Presidency of the Financial Crimes Investigation Board on the grounds that they have membership, affiliation or association with or are in contact with terrorist organisations or entities, formations or groups that the National Security Council deems to be active against the national security of the State, or to carry out examinations and investigations within the scope of terrorist financing crime or laundering offence.

We want to remind you that detailed explanations are made in the Law regarding some special situations regarding the taxpayers within the scope of Tax Procedure Law article 359/b.

9. Miscellaneous Regulations

Provisions regarding irregularity and special irregularity penalties within the scope of the Tax Procedure Law will not be applied due to the declarations that are understood to have not been submitted within the legal period for the periods in which taxpayers have made tax base or tax increases.

Taxes that are accrued incompletely due to incorrect declaration or tax errors related to the tax base or tax increase will be deemed to have accrued at the end of the first installment payment period and will be followed up according to Law No. 6183 in case of non-payment. However, provided that no provisions of the Law have been violated, the taxpayer will be notified and asked to pay the incompletely accrued amount together with the late payment increase within one month. If the payment is made within the given period, the provisions of the Law will not be deemed to have been violated in terms of the taxes that are accrued incompletely.

Benefiting from the provisions of the tax base and tax increase will not constitute an obstacle to the determination of smuggling offences under Article 359 of the same Law under Article 367 of the Tax Procedure Law and the opening of a public case. However, no assessment will be made for the periods and taxes for which tax base or tax increase is made due to these examinations.

We want to state that we expect an explanatory communiqué on the tax base increase regulations of the Law to be published in the near future.

Sincerely,

DENGE İSTANBUL YEMİNLİ MALİ MÜŞAVİRLİK A.Ş.

ANNEXES

The Law No. 7440 on the Restructuring of Certain Receivables and Amendments to Certain Laws

(*) 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 based on the statements in our circular.

(**) For opinions, criticism and questions about our circulars, don't hesitate to get in touch with our experts below.

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