

***New amendments of the TP Legislation:***

Turkey Parliament has passed a new law on 15 July 2016 numbered 6728. And this law has published on August 9<sup>th</sup> 2016. According to the new law numbered 6728; besides many other amendments, there are some changes at the Turkish transfer pricing regulations.

Prior to the new amendments, there was not a minimum shareholding requirement in order to being a related person. Therefore the definition of related party is clearer and has more objective criteria. These changes can have a positive effect of the business environment because not having a limited ratio was affecting many tax payers putting them under transfer pricing risks. Even if there was not a direct shareholding relations, tax authorities were able to deem a person or company a related company in terms of transfer pricing because of having an intense transactions with such person or company.

According to new amendments; on the direct or indirect shareholding in cases where the profit distribution channels covered at least 10% of the partnership to be considered within the scope of the right to vote or profit share must be sought. Without the partnership relationship directly or indirectly in cases where at least 10% of the party vote or dividend rights, this person counted as related person.

The Council of Ministers; can change this %10 percent ratio for, individual taxpayers, corporations, direct or indirect shareholders as of or depending on how the acquisition of shareholdings collectively or individually decrease to until 1% or raise up to 25%.

With the new law, the definition of the transactional profit methods has also been revised. According to the new article has been defined as below;

***Transactional profit methods:*** *In determining the arm's length price (or cost), these methods examine profit arising from transactions between related parties. These methods are Transactional net profit margin method and profit split method. Transactional net margin method, a process under the control of the taxpayer; costs related to such sales or assets and examining the net profit margin is determined based on a proper foundation is based on. Profit split method, the associated person of the total operating profit or loss related to one or more of the controlled transactions undertaken between their functions and related persons in proportion to the risks they installed is based on the allocation in accordance with their peers. "*

According to sub paragraph (d) if it is not possible by using any of the above methods with the possibility of reaching the arm's length price, taxpayers can use unspecified method. Unspecified method was already in the TP regulation, so this paragraph just revised the wordings.

---

<sup>1</sup> Metin Duran is tax and transfer pricing consultant based in Istanbul, Turkey

There is also an addition to sub paragraph 5 of the article 13 of the Corporate Tax Code related to advance price agreement. According to this, if tax payers have an advance price agreement, they can include previous years to the agreement if some conditions met. Turkish Tax Laws allow the ministry of Finance perform tax audit up to previous 5 years. Therefore up to previous 5 years can include the APA.

According to Turkish transfer pricing regulations corporate tax payers can apply to the Ministry of Finance to sign an APA for up to 3 years. After this change now the Ministry of Finance can expand this period up to 5 years. This change is important for encouraging taxpayers to apply for APA. So far there are not many APA signed by Revenue Administration since transfer pricing regulations in effect since 2009.

A new paragraph (8) added to the article 13 of the CTL. With this paragraph taxpayers who fulfill the requirements related to transfer pricing documentation will benefit **%50 of** discount if there will be any tax penalty related to transfer pricing.

The law also gives the Council Of Ministers to increase the period of APA from three years to five years. The Council of Ministers can also bring certification obligations for documentation and those obligations scope, in accordance with international agreements, the inclusion of information on the activities of people associated located abroad to compel; other procedures related to transfer pricing methods for this information to be shared.

According to transfer pricing general communiqué number one and government decree on transfer pricing all corporate tax payers can apply for an APA to the Revenue Administration beginning of January 1<sup>st</sup> 2009.

In Turkey bilateral, unilateral or multilateral APA is possible. Companies, who have signed an APA, do not need to prepare yearly transfer pricing report for transactions covered by APA, but they have to prepare yearly APA report. For other related party transactions which are not covered by an APA a transfer pricing documentation report should be prepared.

## **Conclusion:**

These new amendments give to the government flexibility to harmonize the rules with the OECD regulations and other international requirements, such as BEPS requirements. Therefore these changes will have positive effect for commercial environments, and also will help the Turkish tax administration update the regulations in line with the developments of international transfer pricing regulations.