

## **Withholding Tax Obligation on Payments for Online Advertisement**

As per Presidential Decree numbered 476 published in the Official Gazette dated 19/12/2018 and numbered 30630, in relation to the online advertisement services, payments made to foreign resident legal and real persons providing online advertisement services or their intermediaries are subject to withholding tax as from 1 January 2019 within the scope of article 94 of Income Tax Law and articles 15 and 30 of Corporate Tax Law.

Accordingly, withholding tax rate for payments made to foreign resident legal and real persons providing online advertisement services is 15%, which shall be applied regardless of whether or not these online advertisement service providers or their intermediaries are tax payer in Turkey.

Income generated by foreign resident real and legal persons providing online advertisement services is regarded as business income within the context of International Tax Treaties. As per article 7 of OECD model tax conventions, business income generated from a foreign (source) country can only be taxed by source country if such business operations must be carried out with a permanent establishment (PE) in the source country. According to the Tax Treaties, business income generated in a foreign (source) country without having a permanent establishment would only be taxed in the resident country in which the business entity has statutory seat. In such case, source country, in which business income is generated, has no authority to tax relevant business income due to lack of permanent establishment in the source country.

The Presidential Decree numbered 476 does not take into account whether or not the foreign resident online advertisement providers have a permanent establishment in Turkey when imposing a 15% withholding tax. Therefore, the said Decree does not comply with the International Tax Treaties to which Turkey is a signatory and the relevant withholding tax is open to challenge by tax courts.

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