

THE PRESIDENTIAL DECREE  
NO. 3490, IN WHICH THE  
RATIO OF FINANCING  
EXPENSES IS DETERMINED,  
HAS BEEN PUBLISHED

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## The Presidential Decree No. 3490, in which the Ratio of Financing Expenses is Determined, Has Been Published

With the regulations made in the Income and Corporate Tax Laws with the Law No. 6322 published in the Official Gazette dated 15.06.2012; It has been stipulated that the part to be determined by the Council of Ministers (later the President), with a maximum of 10%, will not be considered as expenditure.

- ◆ For Interest and similar payments (excluding interest and similar payments added to investment cost) regarding the portion of the liabilities used exceeding the total equity
- ◆ Except for credit institutions, financial institutions, financial leasing, factoring, and financing companies

The aforementioned regulation entered into force on 01.01.2013. However, it was not actually implemented since the restriction rate was not determined by the Council of Ministers (or, the President).

This time, with the "[Presidential Decree No. 3490](#)" published in the Official Gazette dated 04.02.2021, the rate regarding the financing expense restriction to be applied in the taxation periods starting from 01.01.2021 was determined **as 10%**.

Accordingly, 10% of the interest and similar payments (excluding the interest and similar payments added to the investment cost) corresponding to the part exceeding the equity from the liabilities used by the taxpayers within the scope will not be considered as expenses and the said expenses will be considered as non-deductible expenses in Corporate Income Tax Return.

On the other hand, the definitions of equity and liabilities regarding the implementation are not clear, the date of the comparison between equity and liabilities is not determined, the application regarding the situations in which the maturity differences are within the amount to be paid, or the application in the enterprises having financing income together with financing expense are not clear. Hence, all these application related uncertainties raise hesitations regarding the subject.

In addition, the “investment” statement has not been defined for the expenses and cost elements to be added to the investment cost excluding the expense limitation, and it has not been determined whether the value added tax incurred due to expenses that will not be considered in the determination of the earnings will be deducted as an expense while determining non-deductible expenses within the framework of the financial expense restriction.

The same provisions were included in the legal regulation, which was the basis of implementation in previous years (between 1996 and 2003). Regarding the said issues, following provisions were mentioned:

- ◆ With the abrogated General Communiqué No. 54 of the Corporate Income Tax Law, the concept of investment was defined as an economic asset investment subject to any amortization (with or without incentive certificate), and
- ◆ With the abrogated General Communiqué No. 55 of the Corporate Income Tax Law, deduction of value added tax incurred due to expenses not considered in the determination of earnings as a non-deductible expense was deemed appropriate.

In addition, financing expenses were calculated without considering the financing incomes in enterprises having financing income together with financing expenses, and this practice was approved by the Council of State's Tax Law Offices.

Although it is anticipated that similar approaches will be followed in the new application, it is beneficial to clarify all these issues with a communiqué to be published by the Financial Administration in the upcoming days.

Kind Regards,

Please contact us for the further details on our international tax bulletin



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