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CIRCULAR 18/22

Subject: Procedures and Principles for Taking Advantage of the Retrospective SSI Incentives

The information regarding the Opportunity of Retrospectively Taking Advantage of the Employment Incentives introduced with the Article 70 of the Law no 7103 on Amendment to the Tax Laws and Certain Laws and Decrees which came into force by being published on the 2nd duplicated Official Gazette dated 27/3/2018 and no 30373 and with the additional Article 17 of the Social Insurances and General Health Insurance Law no 5510 was clarified with our circular no 2018/18 and the Procedures and Principles for Taking Advantage of the Retrospective SSI Incentives and the procedures and principles regarding the transactions to be executed by the provincial directorates of social security institution/the social security centers were established with the Circular, dated 29/05/2018 and no 26431140-207.02-E.4984245, of the General Directorate of Insurance Premiums.

In accordance with the Circular;

1. Procedures and Principles for the Transactions to be made about the Requests for changing the Retrospective Incentive with respect to the Period of April 2018 and After

1.1. Application

In the first paragraph of the Additional Article 17 of the Law no 5510, the provision “The premium incentives, supports and discounts, which were not taken advantage of, can be taken advantage of or the premium incentives, supports and discounts, which were taken advantage of, can be replaced with another premium incentive, support and discount with respect to no more than six months retrospectively from the date of application, provided that all conditions will have been met within the months/periods in which the premium incentives, supports and discounts provided with this Law or other laws were not taken advantage of even though they could be taken advantage of and an application will be made to the Institution within six months following the month/period in which the premium incentives, supports and discounts were not taken advantage of.” is set forth.

As the Additional Article 17 of the Law no 5510 came into force as of 1/4/2018, the transactions for taking advantage of the retrospective incentive or changing the incentive under the first paragraph of the mentioned article will be made for the period of April 2018 and after.

Accordingly, the request regarding taking advantage of the premium incentives, supports and discounts, which were not taken advantage of, as set forth either in the Law no 5510 or in the other Laws or replacing the premium incentive, support and discount, which were taken advantage of, with another incentive with respect to the period of April 2018 and after should be

made to the provincial directorate of social security institution/the social security center to which the workplace is associated in the internet environment or in paper environment within six months following the month/period in which the retrospective incentive is requested to be taken advantage of, provided that the terms required in the relevant Laws will be met.

In this regard, with respect to the period of April 2018 and after;

-the request for taking advantage of the retrospective premium incentive regarding the month/period in which the premium incentives, supports and discounts set forth either in the Law no 5510 or in the other Laws were not taken advantage of even though they could be taken advantage of

-the request regarding the replacement of the insurance premium incentive, support and discount, which was taken advantage of, with another incentive

should be made by the employer in the internet/paper environment within six months following the month/period in which the retrospective incentive is requested to be taken advantage of, provided that the terms required in the relevant Laws will be met.

1.2. Offsetting of the Amount calculated as a result of the request for taking advantage of the Retrospective Incentive and changing the Incentive regarding the Period of April 2018 and After from the Employer's Debts or its Refund to the Employer

With respect to the period of April 2018 and after, the offsetting transactions of the difference premium amounts arising as a result of the transactions made by the unit under the first paragraph of the Additional Article 17 of the Law no 5510 will be made within the framework of the principles set forth in the Law no 5510 without calculating the legal interest. If there is a remaining amount as a result of these transactions, this amount will be refunded to the employer without calculating the legal interest.

2. Procedures and Principles for the Transactions to be made about the Requests for changing the Retrospective Incentive with respect to the period of March 2018 and Before

2.1. Application

As the provision “If the Institution is applied to by the employers who did not take advantage of the premium incentives, supports and discounts provided with this Law or other laws even though they met all terms with respect to the periods before the date when this article came into force and the employers who made request for changing the premium incentives, supports and discounts which were taken advantage of before the date when this article came into force within one month as of the beginning of the month following the enforcement date of this article at latest, the premium incentives, supports and discounts, which were not taken advantage of, can be taken advantage of or the premium incentives, supports and discounts, which were taken advantage of, can be replaced with another premium incentive, support and discount. ” is set forth in the second paragraph of the Additional Article 17 of the Law no 5510, the transaction will be made in the requests for changing the incentive with respect to the period of March 2018 and before pursuant to the mentioned paragraph.

Accordingly, the employers should apply to the provincial directorate of social security institution/the social security center in the internet environment or in paper environment between the dates of 1/4/2018 and 1/6/2018 (including this date) for the requests for taking advantage of the retrospective incentive or changing the incentive with respect to the period of March 2018 and before.

Accordingly, if the applications for taking advantage of the retrospective incentive or changing the incentive were made until 1/6/2018 (including this date) within the legal period of time under the second paragraph of the mentioned article, the premium incentives, supports

and discounts, which were not taken advantage of, can be taken advantage of or the premium incentives, supports and discounts, which were taken advantage of, can be replaced with another premium incentive, support and discount, provided that the terms required in the relevant laws will be met.

If the applications for taking advantage of the retrospective incentive and changing the incentive with respect to the period of March 2018 and before were made on 2/6/2018 and after, however, no transaction will be made about these requests.

2.2. Offsetting of the Amount calculated as a result of the request for taking advantage of the Retrospective Incentive and changing the Incentive with respect to the period of March 2018 and Before or its Refund to the Employer

In the third paragraph of the Article 17 of the Law no 5510, the provision "The amount to be refunded to the employers who made request under the second paragraph of this article is calculated by taking the legal interest as basis as of the beginning of the month following the enforcement date of the article for those who made request before the enforcement date of the article and as of the beginning of the month following the date of request for those who made request after the enforcement date and is paid within three years starting from the beginning of the calendar year following the date when this article came into force.

The payment is made primarily by offsetting from the premiums and all kinds of debts, which are due and payable according to the paragraphs fourteen and sixteen of the Article 88 of this Law, afterwards, by offsetting from the premiums and all kinds of debts, which are due and payable, including the restructuring or instalment made in accordance with the related laws. However, it is offset in cash from the instalment payments that are not due because of the structuring or instalment made in accordance with the related laws at the end of three years. Employers, who do not have any debt to the Institution, are refunded with equal instalments semi-annually. " is set forth.

2.2.1. Calculation of the Legal Interest

The difference premium amount calculated as a result of putting the incentive change requests regarding the period of March 2018 and before into operation,

- In the case of making a request before 1/4/2018, on the date of 1/5/2018,
- In the case of making a request between 1/4/2018 and 1/6/2018 (including this date), at the beginning of the month following the request date,
- In the pending lawsuits, from the date of the administrative application made before the lawsuit,
- For those, who directly file a lawsuit at the courts without applying to the Institution, as of 1/5/2018,

the daily legal interest shall be calculated by single entry by taking the legal interest rate determined by the Council of Ministers for the period passed until the date of payment (including this date) into consideration.

2.2.2. Offsetting the calculated Amount from the Debt of the Employer

With respect to the period of March 2018 and before, the offsetting of the difference premium amounts arising from the transactions made by the unit under the second paragraph of the Additional Article 17 of the Law no 5510 shall be made in accordance with the principles stated in the Law no 5510.

On the other hand, with respect to the period of March 2018 and before, in case that the application for taking advantage of the retrospective incentive and changing the incentive in the offsetting transactions in relation with the incentive change are made before 1/4/2018, the date of 1/4/2018 shall be regarded as the collection date of the amount related to offsetting and if they are made after the date of 1/4/2018, the application date in question shall be regarded as the collection date of the amount related to offsetting.

In case that the employer has debts of which the current month or legal due period is expired in our Institution, offsetting transaction shall be able to be made on such debts without waiting for the date of 1/1/2019.

2.3. Transactions to be made about the Claims subjecting to the Lawsuit

In the fourth paragraph of the Article 17 of the Law no 5510, the provision

"Without seeking for an additional application requirement in the pending cases, the amount to be calculated together with the legal interest to be executed from the date of the administrative application made before the case shall be set off or returned according to the provisions of the third paragraph. The courts decide that there is no possibility to make any decisions due to the fact that there is no case subject in the cases opened before the date on which this article entered into force. The litigation expenses are charged to the administration and are awarded to one quarter of the counsel's fee. In addition, the Social Security Institution does not appeal against the judicial decisions of the first instance courts and the requests of appeal made before the date of entry into force of this Article are deemed to have been waived. " is set forth.

Accordingly, it is required that the necessary examinations are carried out by the units on whether the decisions made as a result of the lawsuits filed against our Institution meet the conditions stated in the mentioned article or not,

It is necessary to appeal, in case the decisions made/ to be made as a result of the lawsuit filed fail to comply with the requirements stipulated in the aforementioned article,

Also, according to the arrangement made indicating that the appeals filed before the date, on which the aforementioned article has entered into force, shall be deemed waived, it is necessary not to appeal against the decisions which meet the requirements stipulated in the aforementioned article and which have been decided but have not yet been appealed against.

3. Enforcement

The provisions of this Circular entered into force on the date of its publication being valid from 1/4/2018.

Yours respectfully,

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