

ANKARA: (H/Q)
BILLUR SOK. 23/5
06700 KAVAKLIDERE
ANKARA TURKIYE
TEL: +90- 312-4266573 / 4260153
4266890 / 4260057
FAX: +90-312-4260058

MS SELHEP OFFICE
CHARTERED PUBLIC ACCOUNTANTS CO.LTD.
TAX CONSULTANCY LEGAL ADVISORY
ACCOUNTING BOOK KEEPING

e-mail Ankara sarper@selhep.com
e-mail Istanbul seref@selhep.com
info@selhep.com

ISTANBUL:(BRANCH)
KORESEHITLERI CAD.
NO. 37/6
34394 ZINCIRLIKUYU
ISTANBUL, TURKIYE
TEL:+90-212-2880293 / 2880294
2754066 / 2880054
FAX:+90-212-2720535

30 March 2018
Ref. 18/18-1

CIRCULAR NOTE /18/18-1

Subject: Retroactive Utilisation of Employment Incentives

According to the law no. 7103 which was published in Official Gazette dated 28 March 2018, several tax codes and other codes have been amended. There have been amendments to the Law no. 4447 on Unemployment Insurance, Law no. 5510 on Social Securities and Universal Health Insurance, and on the minimum pay support which has been executed upon the article 68 of Law no. 5510 which was added with the Law no. 6661.

These incentives and the conditions for benefiting from these incentives are explained below.

Retroactive Utilisation of Employment Incentives: With the additional clause 17 added to the Law no. 5510 on Social Securities and Universal Health Insurance, it has become possible to remunerate the unused incentive sums to those who have the proper conditions to benefit from premium incentives, assistance and discounts provided by the Law no. 5510 and by other legislation but have not benefited from them, The employees who intend to benefit from these incentives should submit their applications by 30 April 2018. (Law no. 7103, Article 70)

CONDITIONS FOR BENEFITING FROM THE INCENTIVES IN THE PROVISIONAL ARTICLE 19 ADDED TO LAW NO. 4447 (This article shall go into execution on 01.01.2018.)

- a-** The worker should be employed by private sector employers from 1/1/2018 to 31/12/2020 under the Law no. 5510, article 4, clause 1, paragraph (a), among the unemployed individuals registered at the Turkish Employment Agency (İŞKUR).
- b-** The worker should not be reported to the Social Security Institution for more than 10 days of employment in the three months preceding the date of employment, under the Law no. 5510, article 4, clause 1, paragraph (a) and (c),
- c-** The worker should not be insured under the Law no. 5510, article 4, clause 1, paragraph (b), except for voluntary insurance,
- d-** The worker should be included in the average number of insured workers reported in the monthly premium and service documents or in the condensed or premium service statements submitted by the employing workplace in the calendar year preceding the employment date

If the abovementioned conditions are met, the premium assistance provided in this article shall be implemented for 12 months for the insured workers who are covered by the assistance, provided that the duration does not go beyond December 2020. However, this term shall be 18 months for women who are older than 18 years old as of the date of employment, for men who are older than 18 but younger than 25 years old, and for the workers who are registered as disabled at the Agency.

If the workplace is operating in production or information industry, all of the premiums for the shares of the insured and the employer calculated on the basis of the earnings of the insured that serve as a basis for the premium as specified in Law no. 5510, article 82 shall be deducted from the premiums to be paid by the employer to the Social Security Institution every month, provided that it does not exceed the amount that is calculated by multiplying the gross minimum wage for the relevant period with the number of premium days, and if the workplace is operating in the other industries, all of the premiums for the shares of the insured and the employer calculated on the basis of the lower limit of earnings that serve as a basis for the premium as specified in Law no. 5510, article 82 shall be deducted from the premiums to be paid by the employer to the Social Security Institution every month, to offer a premium assistance to the employer.

The employers cannot benefit from this incentive if the following conditions are not met.

- a-** If the monthly premium and service documents of the workplace or the statements of summary and premium service statements are not submitted until legal deadline,
 - b-** If the premiums are not paid within the legal period,
 - c-** If there are unpaid premiums, administrative fines and associated late fees and late interests to the Social Security Institution,
- the incentive described in this article will not be offered.

However, the employers who postpone, split or workout their due payments of premiums, administrative fines and associated late fees and late interests to the Social Security Institution under Law no. 6183, article 48, will be able to benefit from this article as long as the installment plan or workout plan is maintained.

The workplaces which have undertaken collusive transactions to benefit from the contribution of funds, such as closing an existing business and reopening it as a different title, name or business unit, or transferring employees between companies with which they have direct or indirect partnership relationship to control or manage these companies, or changing ownership of private companies, shall refund the amounts paid by the Fund, along with relevant late fees and late interest.

Provided that the conditions described in this article are met, and the term for benefits described in clause two is not exceeded, if the employee for whom premium assistance is paid leaves work before the end of the assistance period and then re-employed, the assistance for this employee shall be continued for the remaining from the period described in clause two, taking into consideration the status of the employee at the time of re-employment.

The provisions in this article shall not be applicable for the employees who are subject to social security assistance premiums and for the employees who work abroad.

The workplaces which are included in the scope of Law no. 5510 between 1/1/2018 and 31/12/2020 and the workplaces which have not submitted monthly premium and service document or summarized premium service statement to the Social Security Institution since they did not employ insured workers during the year when the average number of insured workers were calculated, although they were registered at an earlier time, they shall be able to benefit from this assistance after 1/1/2018, starting with the monthly premium and service document or summarized and premium service statement for the third month following the

month when the insured workers were reported for the first time, during the period described in clause two of this article, provided that they fulfil the requirements described in this article.

The employees who benefit from the incentives described in this article cannot benefit from the other insurance premium incentives, assistance and discounts for the same insured worker in the month when they benefit from this incentive.

**CONDITIONS FOR BENEFITING FROM THE INCENTIVE IN LAW NO. 4447,
PROVISII-ONAL ARTICLE 20
(This article shall become effective on 01.01.2018.)**

For the workplaces in the private industry, which have an average number of 1 to 3 insured workers registered in the monthly premium and service documents submitted to the Social Security Institution in 2017, which operate in the production industry and which hold a certificate of mastership in this industry, provided that

a- the worker is older than 18 years old and younger than 25 years old, and is registered as unemployed at the Agency as of the date of employment,

b- the workers hired after 1/1/2018 under Law no. 5510, article 4, clause 1, paragraph (a) are not reported to the Social Security Institution for more than 10 days of employment in the three months preceding the date of employment, under the Law no. 5510, article 4, clause 1, paragraph (a) and (c),

c- The worker is not insured under the Law no. 5510, article 4, clause 1, paragraph (b), except for voluntary insurance,

d- The worker is included in the average number of insured workers reported in the monthly premium and service documents or in the condensed or premium service statements submitted by the employing work place to the Social Security Institution in 2017,

all of the premiums for the shares of the insured and the employer calculated on the basis of the earnings of the insured that serve as a basis for the premium as specified in Law no. 5510, article 82 shall be deducted from the premiums to be paid by the employer to the Social Security Institution every month for the insured workers who are included in the incentive plan, to be applicable until December 2018.

Furthermore, the amount to be calculated by multiplying the number of premium payment days of the insured worker for the month when the incentive is offered with 53,44 TRL shall be paid by the Institution to the employer as wage support, along with the premium assistance for the insured workers included in the incentive plan described in clause one, which is applicable until December 2018.

The premium and wage support described in this article shall be applicable for every second month starting in the first month when the insured worker was employed, provided that it is not extended beyond December 2018.

The workplaces which are included in this article may benefit from the incentive for not more than two insured workers.

If the employee for who premium assistance is paid under this article leaves work and is then re-employed, the assistance for this employee shall be continued provided that it is not continued beyond December 2018.

**THE INCENTIVE DESCRIBED IN THIS ARTICLE SHALL NOT BE OFFERED
UNDER THE FOLLOWING CONDITIONS**

a- The workplaces which were included in Law no. 5510 in 2018 and the workplaces which have not submitted monthly premium and service document or summarized and premium service statement to the Social Security Institution in 2017 although they were included in the law at an earlier time and which have reported insured workers for the first time in 2018,

b- The workplaces owned by the institutions and organizations included in this article and in the Law no. 5335, article 30, clause two, and the workplaces operating in purchasing and construction activities under the Law no. 2886, Law no. 4734 and international conventions, and the workplaces operating in purchasing and construction activities excluded from Law no. 4734, and the employees working under social security support premiums and the employees working abroad,

c- If the insured worker is a close relative or a relative by marriage or a spouse of the employer as of the date of employment (any relation or marriage between the insured worker and the employer after the date of employment shall not affect their eligibility for the incentive.)

If the abovementioned conditions are present, the incentive described in this article shall not be offered.

WORKERS EMPLOYED UNDER THE PROVISIONAL ARTICLES 19 AND 20 IN LAW NO. 4447 (This article shall go into execution on 01.01.2018.)

a- From the salaries of the workers who are employed under provisional articles 19 and 20 of this Law, the amount of the income tax calculated with the gross monthly amount of minimum wage for the relevant year corresponding to the number of premium payment days, remaining after the monthly subsistence discount is applied, shall be deleted from the accrued taxes on the summarized statement to be submitted.

b- The part of the stamp tax for the documents issued for the salary payments under this article corresponding to the number of premium payment days for the monthly gross minimum pay shall not be declared and paid.

c- The premium assistance provided in this article shall be implemented for 12 months for the insured workers who are covered by the assistance, provided that the duration does not go beyond December 2020. However, this term shall be 18 months for women who are older than 18 years old as of the date of employment, for men who are older than 18 but younger than 25 years old, and for the workers who are registered as disabled at the Agency.

d- The tax incentives under this article shall be limited with the term and conditions described in the article for the employees for whom the incentive is used under the provisional article 20 of this Law, and tax incentives shall not be applied for the months when premium and salary support were not offered.

e- If the employee for whom premium assistance is paid leaves work before the end of the assistance period and is then re-employed, the assistance for this employee shall be continued for the remaining term which shall not go beyond the period described in clause three, taking into consideration the status of the employee at the time of re-employment.

f- The persons who benefit from income tax deduction under this article cannot benefit from similar income tax deduction incentives under other legislation. **g-** The terms of this article are not applicable for the workplaces owned by the institutions and organizations included in this article and in the Law no. 5335, article 30, clause two, and the workplaces operating in purchasing and construction activities under the Law no. 2886, Law no. 4734 and international conventions, and the workplaces operating in purchasing and construction activities ex-

cluded from Law no. 4734, and the employees working under social security support premiums and the employees working abroad.

MINIMUM WAGE SUPPORT

(Support offered under Law no. 6661, Article 17, and under the provisional article 68 added to the Social Securities Law no. 5510 on 28 January 2016) (This article shall go into execution on 01.01.2018).

For the employers who are subject to the provisions related to long-term insurance branches under the provisional article 75 added to the Law no. 5510 and under the article 4, clause one, paragraph (a) of this law; the total number of premium payment days will be used for the insured workers reported in the monthly premium and service documents or in the summarized and premium service statements for the current month in 2018, provided that their daily earnings serving as a basis for the premium in their monthly premium and service documents or summarized and premium service statements submitted to the Institution for the same month in 2017 does not exceed the total number of premium payment days for the insured workers who are reported at or below the amount specified by the Council of Ministers,

b) And for the total number of premium payment days for the insured workers reported by the workplaces included in this Law for the first time in 2018 shall be used, and these numbers shall be multiplied by the daily amount specified by the Council of Ministers for the period of January-September of 2018, and the resulting amount shall be deducted from the insurance premiums to be paid by the employers to the Institution.

The workplaces which have undertaken collusive transactions to benefit from the contribution of funds, such as closing an existing business and reopening it as a different title, name or business unit, or transferring employees between companies with which they have direct or indirect partnership relationship to control or manage these companies, or changing ownership of private companies, solely for the purpose of benefiting from the contributions of the Unemployment Insurance Fund and which have understated the earnings of their insured workers that serve as a basis of the premium for the period of January-September of 2018 shall refund the amounts paid by the Unemployment Insurance Fund, along with relevant late fees and late interest, and this article shall not be applicable for such workplaces.

In the event that it is understood that the employers failed to submit their monthly premium and service documents or summarized and premium service statements for the period of January-September of 2018 within the legal deadline, or failed to report employees as insured workers during audits or investigations or proceedings performed by authorized officials, or reported insured workers who are not actual employees, and that the employer has outstanding payments of premium, administrative fines and associated late fees and late interests to the Institution, the provisions in clause one, paragraph (b) of this article shall not be applicable.

However, the employers who postpone, split or workout their due payments of premiums, administrative fines and associated late fees and late interests to the Social Security Institution under Law no. 6183, article 48, will be able to benefit from this article as long as the installment plan or workout plan is maintained.

The additional article 14 of this Law shall not be applicable when implementing this article. When implementing clause one, paragraph (a), if the monthly premium and service document or the summarized and premium service statement for the same month in previous year has not been submitted, the amounts in the monthly premium and service document or summa-

rized and premium service statement that has been submitted in the first subsequent month shall be taken as a basis.

For the workplaces which were included in this Law before 2017 and which did not employ any insured workers in 2017 shall be subject to the provisions in clause one, paragraph (b). Where the insurance premiums for the shares of the insured and the employer are paid by the Government, and if the amount of the insurance premium to be paid by the employer is less than the amount to be paid by the Unemployment Insurance Fund, deduction shall be limited to the amount of the insurance premium debts.

CONDITIONS FOR BENEFITING FROM INCENTIVES WHICH WERE NOT USED IN THE PAST; (This article shall go into execution at the beginning of the month following the publication of the Law no. 7103.)

With the additional article 17 added to the Law no. 5510, the incentives and discounts offered under this law and other legislation which were not used although they could be used may benefit from these under the following conditions.

a- If all conditions are met for the months/periods when the premium incentives, support and discounts offered under this Law and other legislation could be used but were not used, and an application is submitted to the Institution within six months following the month/period when these were not used, provided that it is applicable for not more than six months preceding the application date, the unused premium incentives, support and discounts may be used or used premium incentives, support and discounts may be changed with another premium incentive, support and discount.

b- Provided that all conditions related to the period preceding the execution of this article are met, if the employees who have not benefited from the premium incentives, support and discounts offered under this Law and other legislation or who apply for a change in premium incentives, support and discounts used before the execution of this article, submit an application to the Institution within one month after the beginning of the month following the execution date of this article, they may benefit from the unused the premium incentives, support and discounts or change the used the premium incentives, support and discounts with another the premium incentive, support and discount.

c- The amount to be refunded to the employees who file an application under clause two of this article shall be calculated starting from the beginning of the month following the execution date of the article,

And for the employers who file an application after the execution date, it shall be calculated from the beginning of the month following the application date, with legal interest, and paid within three years starting in the beginning of the first calendar year following the execution date of this article.

The payment shall be made by deduction from the payable premium debts and other debts under article 88, clauses 14 and 16 of this article, and then from the other payable premium debts and other debts, including those which are covered by instalment or workout plans under relevant legislation.

However, at the end of three years, it shall be deducted in advance from the undue instalment payments under the instalment or workout plans according to relevant legislation. The employers who do not have any due debts to the Institution shall be refunded in even instalments to be paid every six months.

The amount to be calculated with the legal interest starting from the date of administrative application before the legal case shall be deducted or refunded under the terms of clause three, without requiring another application related to the legal cases in process.

The courts shall decide that there are no grounds for a verdict as the legal case has become void of a subject for the legal cases filed before the execution date of this article. The legal costs shall be paid by the administration and a quarter of the attorney's fee shall be paid.

Besides, for the verdicts made by courts of first instance shall not be appealed by the Social Security Institution, and any application made before the execution date of this article shall be deemed waived.

Best regards,

MS SELHEP OFFICE

CHARTERED PUBLIC ACCOUNTANTS CO.LTD

ACCOUNTING BOOK KEEPING

TAX CONSULTANCY LEGAL ADVISORY