

DECEMBER 2019

# LAW UPDATES

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# Processing of Anonymized Personal Data



In the Decision of the Personal Data Protection Board (“Board”) dated November 7, 2019 and numbered 2019/331 (“Decision”), an insurance company which obtained the mobile phone number of the data subject from public website and made a call to data subject’s phone number for insurance activities. Although the personal data of the data subject has been anonymized by publishing on the website, the information obtained from the website has not been used for the purpose of anonymization. In the Decision, the Board imposed an administrative fine in the amount of TRY 100,000 to the data controller insurance company for calling the data subject regarding an appointment request for insurance activity, not benefitting from the professional competence. Since it is the first decision of the Board for processing of anonymized personal data, it is significant and it may be an important resolution for the matter which is considered as vague. In this context, although the information of people has been anonymized on the website, such data should be processed only for the purpose which is given for.



# Law on the Digital Service Tax and Amendment made to Certain Laws and Decree Law Numbered 375 Has Been Published in the Official Gazette

Law on the Digital Service Tax and Amendment made to Certain Laws and Decree Law Numbered 375 (“the Law”) numbered 7194 and dated December 5, 2019 has been published in the Official Gazette dated December 7, 2019 and numbered 30971.

Digital Service Tax has been regulated between Article 1 and Article 7 of the Law. Accordingly the main subject of the digital service tax is as follows;

1. Any kind of advertisement service offered in a digital platform (including advertisement control and performance measurement services, services such as transfer and management of data related to users, and technical services related to presentation of advertisement);
2. Services provided regarding sales of any audible, visual or digital content and such content to be listened, watched, played or to be recorded via electronic devices or being used in electronic devices (including computer programmes, applications, music, video, games, in game applications and similar kind of concepts mentioned here in);
3. Services of providing and operating a digital platform for users to interact with each other (Including services provided regarding sale or simplification of sale of goods and any services between users)

Revenue to be earned by brokerage services provided by digital service providers in digital platforms regarding the services mentioned above that are subject of digital service tax will also be subjected to the digital services tax.

The tax payer of the digital service tax is the digital service provider serving the services mentioned above. It does not affect the persons to be considered as a digital services tax payer whether the tax payer is also obligated as a tax payer in the scope of Income Tax Law and/or Corporate Tax Law or not a tax payer in Turkey at all.

Tax basis of digital service tax determined as a revenue earned by services subject to digital service tax that are given in a specific period of taxation, and tax rate of digital service tax is determined as 7.5%.

# Processing of the Phone Number of the Data Subject without Explicit Consent



In the Decision of the Personal Data Protection Board (“Board”) dated November 7, 2019 and numbered 2019/332 (“Decision”), a message, including advertisement, and information sent to the mobile phone of the data subject was sent by a doctor without the data subject’s explicit consent and without meeting any of the personal data processing conditions specified in the Personal Data Protection Law No. 6698 (“KVKK”). Since such personal data processing activity is performed without the explicit consent of the data subject, the Board has imposed an administrative fine of TRY 50,000 to the data controller doctor because she/he has not taken the necessary technical and administrative measures in order to prevent unlawful processing of the personal data. The Board has also indicated with the decision such fines will not be imposed solely to legal entities, but also will be imposed to real persons since they are also responsible for the obligations arise from KVKK.

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# Accommodation Tax Has Been Regulated by Law on the Digital Service Tax and Amendment made to Certain Laws and Decree Law Numbered

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Law on the Digital Service Tax and Amendment made to Certain Laws and Decree Law Numbered 375 (“the Law”) numbered 7194 and dated December 5, 2019 has been published in the Official Gazette dated December 7, 2019 and numbered 30971.

Abrogated Article 34 of Expenses Tax Law has been amended by the Law and Accommodation Tax has been newly regulated.

According to the Article 9, overnight stay service provided in accommodation facilities such as hotels, motels, holiday camps, boarding house, apart hotels, guesthouses, camping, chalets, mountain houses and any and all other services provided by accommodation facility sold with the accommodation service (such as food, beverage, activities, entertainment services and usage of facilities similar to pool, sport areas, thermal) will be subject to accommodation tax. It would not affect the taxation, even if the overnight stay service is given at facilities such as fitness center and entertainment center.

Service providers providing services which have been mentioned in the previous paragraph will become a tax payer in terms of the accommodation tax by April 1st, 2020. The tax base of the accommodation tax is determined as the sum of the; money and goods that are received or borrowed for these services regardless of any condition, excluding value added tax, and other surpluses benefits, services and values which can be expressed as an amount of money received in return of the services are subject to the accommodation tax. As per Article 42 of the Law, The rate of accommodation tax will be applied as 1% until December 31st, 2020 and 2% after such date. The President is authorized to increase this rate up to one-fold, to reduce it to half and to determine different rates within those limits. Services provided to students in dormitories, student boarding houses and camping, and foreign state’s diplomatic representation in Turkey, consulates and members of these institutions that has diplomatic rights (with condition of reciprocity), international organizations having a tax exemption due to international agreements and members of these organizations are exempt from the accommodation tax.

# Registration Period for VERBIS has been extended



Personal Data Protection Board (“Board”) announced on its website that the registration Data Controllers’ period for Registry (“Registry”) to VERBIS has been extended with the Decision (“Decision”) numbered 2019/387 and dated December 27, 2019. It has been concluded with the Decision,

- The deadline for registration and declaration obligation to Registry for real and legal person data controllers with an annual number of employees of more than 50 or annual balance sheet value of more than TRY 25 million is extended to June 30, 2020,
- The deadline for registration and declaration obligation to Registry for real and legal person data controllers residing abroad is extended to June 30, 2020
- The deadline for registration and declaration obligation to Registry for real and legal person data controllers with an annual number of employees of less than 50 or annual balance sheet value of less than TRY 25 million and whose core area of activity is processing special categories of personal data is extended to September 30, 2020,
- The deadline for registration and declaration obligation to Registry for public institutions and organizations is extended to December 31, 2020.



# Valuable Housing Tax Within The Scope Of Current Regulations

With the Law on the Digital Service Tax and Amendment made to Certain Laws and the Decree Law Numbered 375 (“The Law”) published in the Official Gazette dated December 7, 2019, and numbered 30971, certain amendments have been made to Valuable Housing Tax which is regulated under Real Estate Tax Law numbered 1319, published in the Official Gazette dated August 11, 1970 and numbered 13576.

According to the Law, valuable housing tax will be paid for residential real estates having a value of TRY 5,000,000 and above. However, non-residential real estates (hotels, storehouses, shops, stores, shopping malls, factories, etc.) will not be subject to valuable housing tax.

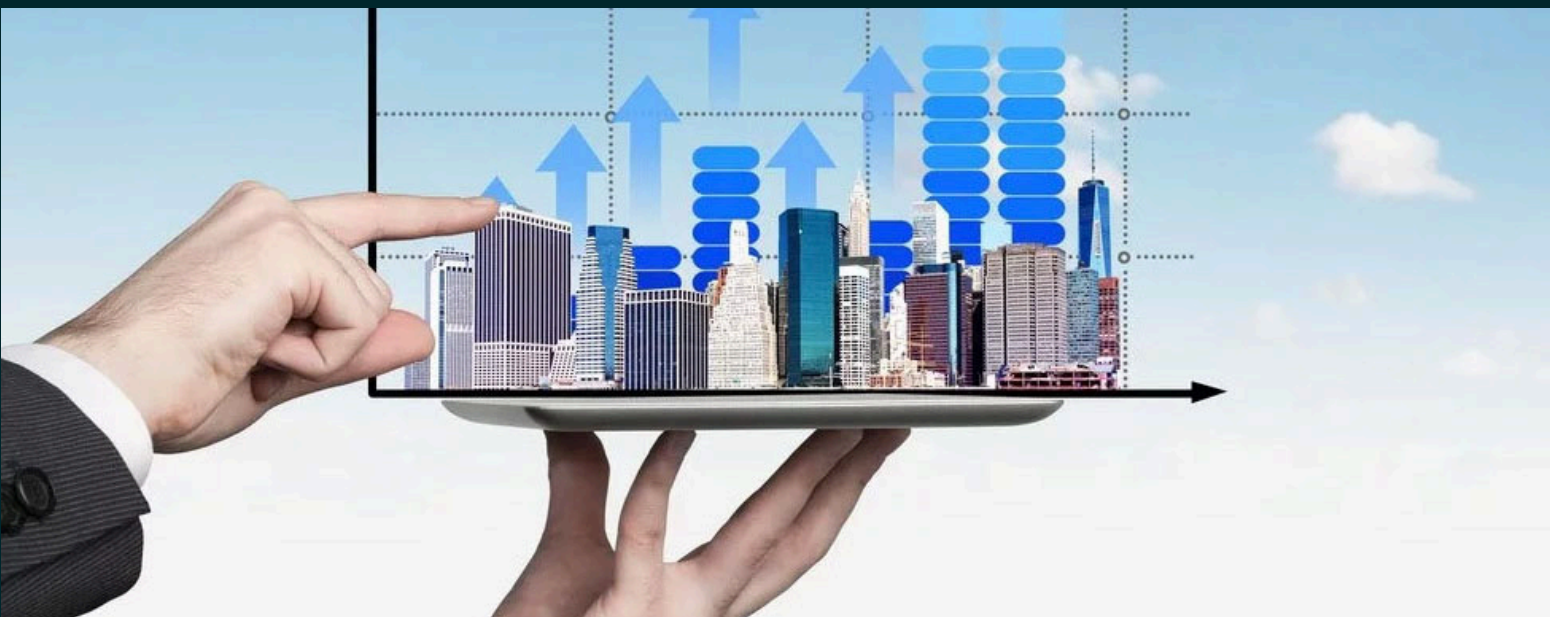
The value of the real estates subject to valuable housing tax will be determined by the General Directorate of Land Registry and Cadastre.

The General Directorate of Land Registry and Cadastre will publish the tax value determined on its website and serve on the relevant person. The relevant person will be able to object to the General Directorate of Land Registry and Cadastre within 15 days from the date of notification.

The valuable housing tax rate will be;

- i. 0.3% for the real estates having a value from TRY 5,000,000 to TRY 7,500,000.
- ii. 0.6% for the real estates having a value from TRY 7,500,001 to TRY 10,000,000.
- iii. 1% for the real estates having a value of TRY 10,000,001 and above.

The regulations regarding valuable housing tax will enter into force on April 1, 2020.



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Please visit our web site at [www.kavlak.com.tr](http://www.kavlak.com.tr) for further information on our legal team and practice areas.

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