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Konu : Payment in TRY and ban on foreign currency in some transactions in Türkiye

## Payment in TRY and ban on foreign currency in some transactions in Türkiye

A Communiqué has been issued on the scope and exemptions of the requirement for drawing up contracts between persons resident in Turkey in TRY.

As is known, the Presidential Decision no 85 on Amendment to the Decree no 32 on Preservation of the Value of Turkish Currency stipulates that the prices of certain contracts entered into between persons resident in Turkey and payment obligations arising from such contracts may not be determined in any foreign currency or foreign currency indexed as from September 13<sup>th</sup>, 2018.

Pursuant to the provisional article 8 incorporated in the said Decision; it is also stipulated that the prices of previous contracts within this scope, which were determined in a foreign currency, shall be re-determined in TRY no later than 30 days as from September 13<sup>th</sup>, 2018, except for the cases stated by the Ministry.

“Communiqué (Communiqué No: 2018-32/51) on Amendment to the Communiqué (Communiqué No: 2008-32/34) regarding the Decree No. 32 on Preservation of the Value of Turkish Currency” prepared by the Ministry of Finance and Treasury and published in the Official Gazette dated 6 October 2018 and no 30557 stipulates the scope and exemptions of the contracts in foreign currency and the foreign currency indexed contracts.

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### **A. Contracts within the scope of Foreign Currency Ban**

Persons residing in Turkey may not determine contract prices for below-described contracts to be entered into between themselves or other payment obligations arising from such contracts in any foreign currency or as foreign currency indexed:

- i. Real estate sale or lease contracts including dwellings and roofed workplaces, the subject of which is real estate located within the country including the free zones;
- ii. Employment contracts (*except for the ones executed abroad*)
- iii. Service contracts including consultancy, intermediary and transportation services except for those which are listed below:
  - Service contracts to which the persons who have not bond of citizenship with the State of the Republic of Turkey are parties,
  - Service contracts entered into within the scope of exportation, transit trade, sales and deliveries considered as exportation and foreign currency earning services and activities,
  - Service contracts entered into within the scope of the activities which the persons residing in Turkey will carry out in abroad,

- Service contracts regarding the electronic communication, which the persons residing in Turkey will sign between themselves and which starts in Turkey and ends in abroad and starts in abroad and ends in Turkey.
- iv. Independent contractor agreements other than contracts for construction, repair and maintenance of ships described in the Turkish International Ship Registry Law no 4490 and in the Law on Amendment to the Decree No. 491
- v. Vehicle sales and rental contracts including the construction equipment

## **B. Contracts within the scope of Exemption**

Below-listed contracts are included in the scope of exemption and their contract prices and other contractual payment obligations may be determined in a foreign currency or as foreign currency indexed:

- *Sales and rental contracts for movable property* (all kinds of goods, machinery, equipment, computers, etc.) other than vehicle sales and rental contracts including the construction equipment.
- Sales contracts regarding the software produced in abroad and licence and service contracts regarding the hardware and software within the scope of the information technologies, which will be entered into between persons residing in Turkey
- Leasing contracts regarding the ships described in the Turkish International Ship Registry Law no 4490 and in the Law on Amendment to the Decree no 491
- Leasing contracts to be entered into within the scope of the articles 17 and 17/A of the Decree No 32
- Labour contracts the parties to which are persons residing in Turkey, who have not citizenship bond with the State of the Republic of Turkey
- Contracts other than real estate sales and real estate lease contracts, the parties to which are public institutions and organizations and the Turkish Armed Forces Foundation companies
- Contracts other than real estate sales, real estate lease and labour contracts, which will be entered into between contractors and third parties, provided that they will be within the scope of performance of the procurements, contracts and international treaties in foreign currency or the foreign currency indexed, a party to which is a public institution or organization.
- Contracts entered into with banks in connection with the transactions made by the Ministry of Treasury and Finance within the scope of the Law no 4749 on Regulation of Public Financing and Debt Management
- Labour and service contracts entered into with Turkey branches, representation offices, offices, liaison offices of persons residing abroad or companies in Turkey, with at least 50% of its shares being directly or indirectly held by any person residing abroad, or companies located in the free zones within the scope of the activities within the free zone

Also, following exemptions have been provided:

- It is possible for the capital market instruments (including foreign capital market instruments and depositary receipts and foreign investment fund shares) to be created, issued, purchased and sold and the obligations regarding the transactions made to be determined in foreign currency within the framework of the Capital Market Law and the regulations made based on this Law.
- It is possible for the commercial airport enterprises which are located in Turkey and which are engaged in passenger, freight or mail transportation activity; the companies which provide technical maintenance service for the air transportation vehicles, motors and their components and parts; the institutions at the status of public or private legal entity which have obtained work permit or have been authorized to perform the ground handling services at the airports within the scope of the civil aviation legislation and the enterprises and companies established by the mentioned institutions and the partnerships which they directly or indirectly have at least 50% share ratio in their capitals to sign the contracts except for the real estate sales, real estate lease and labour contracts which include prices in foreign currency or foreign currency indexed prices with the persons residing in Turkey.

### **C. Principles regarding Conversion**

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For the contracts involving prices or contractual payment obligations in a foreign currency or as foreign currency indexed, which should not have any price or payment obligation in a foreign currency or foreign currency indexed, the parties shall re-determine the prices in TRY. Re-determination shall be made according to the following principles:

- If no agreement can be reached between the parties during re-determination of contract price in TRY; the prices determined in foreign currency or as foreign currency indexed in the contracts signed are determined by increasing the TRY equivalent of the mentioned prices calculated by using the effective selling rate of the Central Bank of the Republic of Turkey (TCMB), which has the characteristic of an indicator, determined on 2/1/2018 by taking as basis the monthly change rates of CPI (consumer price index) from 2/1/2018 until the date when the prices are re-determined.
- The prices which are determined in foreign currency or as foreign currency indexed in the dwelling and roofed workplace lease contracts signed before the effective date of this article shall be determined in TRY for a period of two years. However, if no agreement can be reached while the rent which is determined in TRY is determined by the parties, it is determined by increasing it by taking as basis the monthly change rates of CPI from the date of determination until the end of the rental year within which the determination is made, provided that it will be valid for one year as of the end of the rental year within which the determination is made in TRY. If no agreement can be reached while the rent in TRY for the next rental year is determined by the parties, it is determined by increasing the rent which is valid for the previous rental year by taking as basis the monthly change rates of CPI and the rent in TRY is valid until the end of the period of two years specified in this paragraph.

- The scope of conversion described above is not applicable to the collected or delayed receivables in the contracts that may not be determined in foreign currency or as foreign currency indexed.
- Contracts entered into before 13.09.2018, which is the effective date of the regulation regarding the transactions within the scope of exemptions, are not needed to be converted to TRY.
- Again, conversion is not compulsory for vehicle rental contracts including construction equipment entered into before 13.09.2018.

## D. Other Provisions

The Communiqué also stipulates the following provisions:

- It is not possible for the prices, which are set forth in the valuable papers to be issued within the scope of the contracts the contract price of which and the other payment obligations arising from these contracts may not be determined in foreign currency or as foreign currency indexed, to be determined in foreign currency or as foreign currency indexed.
- The contracts which are indexed to precious metals and/or commodities the price of which is determined in foreign currency in the international markets and/or which are indirectly indexed to foreign currency are considered as the foreign currency indexed contracts.
- The companies in which the persons residing in Turkey have branches, representation offices, offices, liaison bureaus in abroad, funds operated or managed by them, fifty percent and above share ownerships and the companies which are directly or indirectly under their ownership are considered as residing in Turkey.
- At the discretion of the parties, the prices of contracts within the scope of exemption may be determined in TRY.

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## E. Recent Amendments

TRY payment necessity is eased for some transactions with a Circular published in Official Gazette in February 28th, 2024.

- As explained above in detail contract and payment in other currencies are strict in Türkiye starting from 2018 with a Presidential Decree. In time, there are some exemptions and ease but this legislation is still very crucial.
- As you can read more detail below, other than vehicle sales, firms are able to deal and sign contract in other currencies. But even in this case, payment must be made in TRY. There are some exemptions. Those exemptions are clarified with a new Circular.
- In April 2022 a new Circular was announced and payment with Turkish Lira is necessary event the contract is in foreign exchange:
  - With a revision in the Communiqué number 32-34 Turkish Lira should be used in payments. Ministry of Finance shed lights on some questions below:

- Payment obligations regarding negotiable instruments indexed to a foreign currency (e.g. checks) issued within the scope of contracts concluded before April 19, 2022 might be fulfilled in a foreign currency.
- Payment obligations regarding invoices issued before April 19, 2022 may be fulfilled in a foreign currency.
- Purchase and sale transactions regarding precious metals and precious stones carried out in a foreign currency and payment obligations within the scope of settlement of such transactions in the Precious Metals and Precious Stones Market of Borsa İstanbul A.Ş., may be fulfilled in a foreign currency.
- In February, 2024 a new Circular is published and some exemptions are announced in terms of the payment in TRY.
- Those are the invoices before April 19th, 2022, payment in free zones and payment between the specific export mediation firms.

Please do not hesitate to contact us if you need further information in this respect.

Kind Regards,  
**Şaban Küçük**