

# Stamp Tax Requirements Concerning Currency Conversion Contracts

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Authors: [Dr. Cem Çağatay Orak](#) and [Nigar Özbek](#)

The Revenue Administration Department of the Ministry of Treasury and Finance issued Circular No. DV-22/2018-1 on 22 November 2018 (“**Circular**”) concerning the amending contracts/protocols signed for the conversion of currencies into Turkish Lira in accordance with the recent foreign currency restrictions.

## A. Background

On 13 September 2018, Presidential Decision No. 85 restricted the determination of foreign currency-based contract prices as well as foreign currency-based payment obligations under certain types of contracts executed by Turkish residents and Turkish companies (the “Foreign Currency Restriction”). Exemptions to these restrictions were provided by the Communiqué Concerning the Protection of Value of Turkish Lira in the Official Gazette on 6 October 2018, which was amended by a communiqué published in the Official Gazette on 16 November 2018.

Concerning contracts that are subject to the Foreign Currency Restriction, an amending contract is required to be executed for the conversion of the contract price/payment obligations into Turkish Lira (the “Amending Contract”).

Pursuant to Article 1 and Table 1 of the Stamp Tax Law No. 488<sup>1</sup> (the “Stamp Tax Law”), all documents related to contracts which include a monetary amount shall be subject to stamp tax except for those listed in Article 9 and Table 2 of the Stamp Tax Law or other provisions of laws which provide specific exemptions.

## B. Stamp Tax Exemption for the Amending Contracts

The Amending Contracts shall be exempt from the stamp tax requirement if the following requirements are all met:

- (i) No revision is made to the main contract other than the conversion of the currency.

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<sup>1</sup> Published in the Official Gazette No. 11751 dated 11 July 1964.

- (ii) The total amount to be determined after conversion into Turkish Lira shall not exceed the amount to be calculated based on the Turkish Republic Central Bank's exchange selling rates on the date of the Amending Contract.
- (iii) Reference to the main contract shall be made clearly in the Amending Contract.

### **C. Maximum Stamp Tax Amount**

Article 10 of the Stamp Tax Law provides that the stamp tax shall be calculated in accordance with the type of the relevant contract either as a lump-sum amount or as a proportional amount based on the contract price. Concerning the proportional amounts, Article 14 of the Stamp Tax Law sets a maximum limit. This maximum amount is updated for each year and currently is TL 2,135,949.30.

Article 14 of the Stamp Tax Law further states that if the price of a contract that was subject to the maximum stamp tax amount is increased, no additional stamp tax shall apply for the increase provided that other provisions of the contract are not amended.

Therefore, even though the Circular is silent on this issue, if the maximum stamp tax amount was imposed for a main contract, no stamp tax should be imposed for its Amending Contract that increases the contract price, provided that the Amending Contract amends only the contract price/payment obligations.

### **D. Replacement of the Main Contract**

In the case where (i) provisions other than contract price/payment obligation provisions are also amended or an Amending Contract completely replaces the related main contract or (ii) the relevant contract type does not have a specific stamp tax exemption, the stamp tax shall be imposed based on the total contract price/payment obligations under the Amending Contract (not based on only the increased amount). This is because the Amending Contract will be treated as a new contract in such a case.

### **E. Stamp Tax Calculation**

If the conditions stated in Section B above do not exist concurrently, the Amending Contracts shall be subject to the stamp tax (unless they are otherwise exempt based on a specific stamp tax exemption). In such a case, the stamp tax will be calculated based only on the increased amount. The Circular provides the following examples of calculations:

- 1) The contract price is USD 100.000 and it is converted into Turkish Lira on 14 September 2018 when the Turkish Republic Central Bank's USD exchange selling rate is 6,3681:
  - a. If the value agreed under the Amending Contract is higher than TL 636.810 (100.000 x 6,3681) after conversion, the stamp tax will apply for only the amount exceeding TL 636.810.
  - b. If 60% of the payment obligations under the main contract have already been fulfilled, then conversion into Turkish Lira will be made for only 40% of the contract price/payment obligations. In this case, if the value is higher than TL 254.724 (40.000 x 6,3681) after the conversion of the outstanding obligations, the stamp tax will apply to the amount exceeding TL 254.724.

- 2) Concerning contracts that include periodical payments, the extension of the payment period may also be subject to stamp tax if such extension results in additional payment requirements. For example, if a contract that requires a USD 10.000 payment for each year is extended by an Amending Contract for 1 year, this would require an additional USD 10.000 payment under the main contract. Therefore, the stamp tax will be calculated based on the increased amount, which is USD 10.000.

### **Çakmak Avukatlık Ortaklığı**

Piyade Sokak, No. 18  
C Blok, Kat:3, 06550  
Çankaya, Ankara - Turkey

Zorlu Center, D Lobisi, T3 Katı,  
Daire 348, Levazım Mahallesi,  
Koru Sokak No:2 34340  
Beşiktaş İstanbul - Turkey

**T +90 312 442 4680**

**T +90 212 939 7560**

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