

Amendments to the Free Trade Zone Law and Several Other Laws and Statutory Decrees

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The Law No. 6772 Amending the Free Trade Zone Law and Several Other Laws and Statutory Decrees (the “Amending Law”), which was initially proposed in the beginning of 2015, was published in the Official Gazette No. 29989 dated 24 February 2017 and has entered into force on the same day. While the main focus of the amendments is to facilitate the smooth operation and quick establishment of free trade zones along with incentives to conduct free trade in these areas, the Amending Law also includes amendments to other legislation, which are the Real Estate Tax Law¹, the Law on the Establishment and Duties of the Turkish Exporters’ Council and Exporters’ Associations², and the Decree on the Organization and Duties of the Ministry of Economy³.

1. Amendment to the Free Trade Zone Law

The expansion of free trade zones and the amendment of current legislation on free trade zones is on the Ministry of Development’s agenda in its Medium Term Development Program (2017-2019) in order to improve Turkey’s balance of payments and further assist economic production and growth. In this pursuit, under the Amending Law, brand new decision and policy making powers are bestowed upon the Council of Ministers, which is known for its ability to take quick executive actions. Mainly, these powers can be summarized as follows:

- *Deciding on the urgent expropriation of land to be used as a free trade zone:* Currently, Article 5 of the Free Trade Zone Law⁴ stipulates that necessary land and facilities for free trade zones can be obtained in accordance with the provisions of the Expropriation Law⁵. Article 27 of the Expropriation Law states

¹ Law No. 1319 Published in the Official Gazette dated 11/08/1970 and numbered 13576

² Law No. 5910 Published in the Official Gazette dated 03/07/2009 and numbered 27277

³ Decree No. 637 Published in the Official Gazette dated 08/06/2011 and numbered 27958 (Repeated Edition)

⁴ Law No. 3218 Published in the Official Gazette dated 15/6/1985 and numbered 18785

⁵ Law No. 2942 Published in the Official Gazette dated 8/11/1983 and numbered 18215

that urgent expropriation can only take place if (i) the Council of Ministers decides on the necessity or urgency of urgent expropriation regarding the application of the National Defense Obligation Law⁶, or (ii) if it is envisaged in a specific law for extraordinary circumstances. The Amending Law provides the legal foundation under the second exception. As such, if the Council of Ministers decides on the urgent expropriation of a land or facility for utilization as a free trade zone, all transactions other than the valuation of the land or facility in question will be completed at a later stage, and the value ascertained by an expert will be paid to the owner in seven days following the relevant administration's request, thus concluding the urgent expropriation. Within this scope, the amendment also gives the Council of Ministers the authority to make the operator requesting the expropriation of the land or facility bear the other costs of the expropriation, which are normally covered by the relevant administration pursuant to Article 29 of the Expropriation Law.

- *Determining the location and boundaries of the free trade zones:* The Amending Law expands the definition of free trade zones in Article 6 of the Free Trade Zone Law to include land or a facility designated by the Council of Ministers (the sole executive body which can decide which land or facility will be allocated as a free trade zone).
- *Private Account Fees:* The Amending Law includes provisions regarding the cancelling out, differentiating, or increasing to statutory level of the rates of private account fees according to sectors, fields of activity or investment types in order to carry out strategic, large-scale or preferential investments and investments declared to be endorsed on a project basis due to their subject, sector, and nature. Private account fees are fees that shall be paid in accordance with Article 7/1/b⁷ of the Free Trade Zone Law when goods brought to the area from abroad which are subject to fees and goods produced by users who are also manufacturers are sold within the area and are later removed from the free trade zone to be traded in Turkey. Although the entire purpose of free trade zones is to facilitate a tax-free trading environment, it is stated in the reasoning of the Amending Law that these fees are still necessary for the sustenance of the free trade zone. Previously, the rates of the fees collected by the relevant administration were fixed and no party had the authority to alter them. With this amendment, the ability to alter these rates is given to the Council of Ministers as a policy tool in order to direct and control the operations of the area.
- *Issuance of Operation Licenses:* Pursuant to a new provision in the Amending Law, upon the Ministry of Economy's request, operation licenses can be re-issued for free trade zones whose operation licenses have expired for up to forty-nine years in accordance with the Law on Privatization Practices⁸. The methods and principles regarding the implementation of this article will be further regulated by a regulation.
- *Establishing free trade zones overseas:* One of the additions under the Amending Law gives the Council of Ministers the authority to choose the countries in which Turkey would like to establish free trade zones, exclusive areas, foreign trade centers, and logistical centers; permit the establishment and operation of such areas by companies situated in Turkey; determine the procedures and principles regarding the establishment, operation, and disposal of said areas; and determine the government subsidies pertaining to the investments that will be made to these areas by companies situated in Turkey.

2. Amendments to the Real Estate Tax Law

The amendments to alter the scope of tax exemption of several operations within free trade zones and adds free trade zones to the list of immovables which are temporarily exempt from real estate tax for 5 years after the completion of their construction.

⁶ Law No. 3634 Published in the Official Gazette dated 16/6/1939 and numbered 4234

⁷ Article 7/1/b: prepaid fees for goods brought to the area from abroad (one per mil of the CIF values of the goods) and goods removed from the free trade zone to be traded in Turkey (nine per mil of the FOB value of the goods)

⁸ Law No. 4046 Published in the Official Gazette dated 27/11/1994 and numbered 22124

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