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New Communiqué on Export Revenues

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On 4 September 2018, the Ministry of Treasury and Finance issued the Communiqué No. 2018-32/48 Regarding the Decree No. 32 on the Protection of the Value of Turkish Currency (on Export Revenues) whose purpose is to ensure the entry of export revenues into the country and to have the major portion of the foreign currency revenues sold to banks. This new piece of legislation imposed several obligations and liabilities that are being criticised by the actors in the exportation sector.

With the amendments[1] made to the Decree No. 32 on the Protection of the Value of Turkish Currency (the "**Decree**") on 8 February 2008, export revenues *(ihracat bedeli)* were freely disposed of by the exporters until recently. However, the Ministry of Treasury and Finance (the "**Ministry**") was authorized to impose restrictions on this free disposal principle. Using this authority, the Ministry recently issued the Communiqué No. 2018-32/48 Regarding the Decree No. 32 on the Protection of the Value of Turkish Currency (on Export Revenues) (the "**Communiqué**")[2], which imposes on Turkish-resident exporters the obligations of (i) bringing the export revenues into the country within certain time periods, (ii) selling the export revenues to banks, and (iii) closing the export accounts within certain time periods. The Communiqué entered into force upon its publication. Non-compliance with the provisions of this Communiqué shall lead to the imposition of certain sanctions under the Law on Protection of the Value of Turkish Currency[3].

Scope:

Although there is no explicit definition of *export* in the Communiqué, we understand that the Communiqué aims also to cover the sales and deliveries deemed as exportation as defined under the Communiqué No. 2005/2 Regarding the Sales and Deliveries Deemed as Exportation[4], and the services and operations generating foreign currency income as defined under the Stamp Tax Law[5] and the Law on Duties[6]. It should also be noted that the Communiqué will not apply to free-trade zones, which are excluded from the exchange legislation *(kambiyo mevzuatı)*[7].

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1 Published in the Official Gazette No. 26781 and dated 8 February 2008.

2 Published in the Official Gazette No. 30525 and dated 4 September 2018.

3 Published in the Official Gazette No. 1433 and dated 25 February 1930.

4 Published in the Official Gazette No. 25709 and dated 27 January 2005.

5 Published in the Official Gazette No. 11751 and dated 11 July 1964.

6 Published in the Official Gazette No. 11756 and dated 17 July 1964.

7 Please see Article 6 of the Law on Free Trade Zones, published in the Official Gazette No. 18785 and dated 15 June 1985.

Time Periods and Sale Obligation:

Accordingly, Turkish-resident exporters are required to bring the export revenues into Turkey within 180 days following the actual date of exportation and to sell at least 80% of the export revenues to a bank.[8]

For certain types of exportations, however, the time period to bring the export revenues to the country are regulated differently:

- 365 days for the exportations made by contractors (müteahhit firmalar),
- 180 days following the definitive sale for consignment sales,
- 180 days following the closure of the international event for goods sold in those events (e.g. fairs, expositions, etc.),
- 90 days following the expiry of the export term or the sale of the goods subject to temporary exportation, and
- 90 days following the due date of the relevant instalment for the exportation subject to sale on credit or leasing.

Concerning the exportations whose prices are paid in a foreign currency in a lump-sum of cash *(peşin döviz)*, the Communiqué requires the export to be realized within 24 months. It also limits the period of utilisation of such cash amounts with the term of the "inward processing license" *(dahilde işleme izin belgesi)* or the "tax, duty and charge exemption certificate" *(vergi, resim ve harç istisna belgesi)* for the exportations, sales and deliveries deemed as exportation, and the services and operations generating foreign currency income as defined under the relevant license or certificate. The foreign currency export revenues in cash that are not returned in a lump sum or exported in due time will be deemed as pre-financing.

Discount Requests and Responsibilities of the Intermediary Banks:

The main responsibility concerning the implementation of the Communiqué is imposed on the exporters; they are liable for bringing the export revenues to the country in due time, realizing the sale of 80% of the export revenues to banks, and closing the relevant export accounts in a timely manner. However, the Communiqué also imposes on the export intermediary banks the duty of monitoring the entry of export revenues and required sales.

The intermediary banks are required to notify the tax authorities within 5 business days of the accounts that are not duly closed within the required time period, so that the tax authorities can initiate the relevant procedure, including the grant of time extensions for closure in the event of force majeure or existence of other justified situations.

Furthermore, banks are empowered to examine and conclude the discount requests with respect to the export revenues, in relation to, *inter alia,* the followings:

- freight, insurance, commission, warehouse, custom, and factoring expenses,
- weight and quality discrepancies, and
- importation and capital movement costs, and invisible transaction expenses.

[8] It should be noted that there are no clear provisions under the Communiqué on whether such amounts can be freely re-converted to foreign exchange or not. Since there are no restrictions with this respect, the exporters should be able to re-purchase foreign exchange.

Closure of Exportation Accounts:

The closure procedure for the exportation accounts and the force majeure events allowing time extensions for closure are detailed under the Communiqué. In principle, the relevant accounts are required to be closed once the export revenues are brought into the country. However, in certain cases, the accounts can be closed without having the entirety of the export revenue brought into the country:

- If there is a missing portion up to 10% of the exportation revenue indicated under the relevant declaration or form and provided that such missing portion is equal to or less than USD 100,000, the relevant exportation account will be directly closed by the banks;
- If such amount is between USD 100,000 and USD 200,000, closure of those accounts will be under the authority of tax departments, subject to the force majeure events;
- If, however, the missing portion amounts to USD 200,000 or more, requests for closure are required to be made to the Ministry. The Ministry shall review those requests taking into consideration the force majeure events and justified situations.

Effectiveness:

The Communiqué will be in force for six months as of the date of its publication. The Communiqué also provides that even after its expiry, it will remain applicable to the export activities realized during the period in which it was in force.

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