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INFORMATION NOTE ON THE PRACTICE REGARDING THE IMPLEMENTATION OF THE EXEMPTIONS TO THE FOREIGN CURRENCY PAYMENT PROHIBITIONS

A. INTRODUCTION

As you may know, in the Official Gazette dated 6 October 2018, the Ministry of Treasury and Finance (the “**Ministry**”) has published a communiqué providing for certain exemptions to the foreign currency payment prohibitions, and following the issuance thereof, the Ministry has published another communiqué in the Official Gazette dated 16 November 2018 regarding the exemptions to the foreign currency payment prohibitions (the “**Exemption Communiqué**”). Although the scope of the relevant prohibitions and the transactions that are exempted therefrom have been specified in the Exemption Communiqué, various uncertainties have occurred with respect to certain definitions and transactions set forth under the Exemption Communiqué.

In order to clarify these uncertainties, the Ministry has published a frequently asked questions guideline¹ (“**Guideline**”) on its website. Please see below our brief explanations regarding the Guideline.

B. EVALUATION OF THE AGREEMENT TYPES WITHIN THE SCOPE OF THE COMMUNIQUÉ

It was unclear how to define certain types of agreements under the Exemption Communiqué. The Guideline aims to clarify this matter in the following manner:

1. Service Agreements

Although the Exemption Communiqué states that service agreements cannot be denominated in foreign currency, certain service agreements have been exempted from this prohibition. However, since *the definition of the service agreement has not been made* under the Exemption Communiqué, various uncertainties have occurred in this respect.

The Ministry has clarified the definition of the service agreements in the Guideline and stated that all agreements other than those relating to delivery, to other situations which are considered as delivery, or import of goods shall be considered as service agreements within the scope of the Exemption Communiqué.

¹ <https://www.hmb.gov.tr/duyuru/turk-parasi-kiymetini-koruma-hakkinda-32-sayili-karara-iliskin-teblig-2018-32-52-kapsaminda-hazirlanan-sikca-sorulan-sorular-hakkinda-duyuru>

In respect of the denomination of carriage and transportation service agreements in foreign currency, as the Exemption Communiqué **allows** the service agreements which start in Turkey and end abroad, or start abroad and end in Turkey or start and end abroad, to be denominated in or indexed to foreign currency, the carriage and transportation service agreements that fall under this scope **can be denominated in or indexed to foreign currency.**

With respect to the employment and service agreements that will be carried out in harbours, it is stated that in case the harbours are deemed as **bonded custom areas in Turkey**, then these agreements can be **denominated in or indexed to foreign currency.**

Furthermore, it is stated in the Guideline that the agreements which *will be executed with the pilots* shall be considered as **an employment agreement** under the Exemption Communiqué. Therefore, except for the employment agreements to be executed between pilots and the *parties residing abroad or have directly or indirectly 50% or more shareholding or joint control and/or holds control of a company in Turkey* or the agreements to be performed abroad, the employment agreements which will be executed with pilots must be denominated in Turkish lira.

2. Mixed Agreements

The Exemption Communiqué does not regulate whether the mixed agreements that have the elements of different types of agreements can be denominated in foreign currency or indexed to foreign currency. According to the Guideline, if all types of agreements that a mixed agreement includes are exempt from the prohibition, then the mixed agreement as a whole will be exempt from the prohibition.

C. EXPLANATIONS REGARDING THE EXEMPTIONS PROVIDED UNDER THE EXEMPTION COMMUNIQUÉ

1. Explanations Regarding the Sale of Goods

The Exemption Communiqué refers to “vehicles”. Regarding the definition of vehicle, the Guideline provides that the vehicles should be understood as defined in the Highway Traffic Code numbered 2918, namely as *motor and non-motorized vehicles for transporting people, animals and cargo* on the highways.

As for the sale of construction equipment, the Guideline regards the sale of construction equipment as **sale of goods**. Therefore, as per the Guideline, **it is possible** to denominate agreements regarding the sale of construction equipment in foreign currency or indexed to foreign currency.

The phrase **hardware** specified in the eleventh paragraph of the Exemption Communiqué refers to the components construing the physical structure of the computer, in other words the mechanical and electronic components that form the computer such as "main board", "processor", "storage" and "peripheral units (data storage units and other peripheral units consisting of input, output and communication units)". Therefore, the computer hardware encompasses mechanic and electronic components of a computer that cannot perform its function independently on its own, and requires a computer system and connection. In this respect; provided that machines such as counterfeit machines, photocopiers, cheque readers can perform their functions without the need for a computer

system and connection, they must be considered as individual electronic devices, rather than a piece of hardware belonging to the computer and hence be among the prohibited foreign currency payments.

2. Explanations Regarding the Lease Agreements

Under the sixteenth paragraph of the Exemption Communiqué, with respect to the projects that will be carried out in the context of tenders, agreements and international treaties to which a public institution and organization is a party, it is possible to denominate the lease payments and other payment obligations arising from the lease agreements to be signed in the framework of said projects in foreign currency or indexed to foreign currency. In accordance with the Guideline, natural and legal persons that carry out **Public-Private Partnership (PPP) projects** will be considered under this scope and will be able to **denominate** real estate lease agreements in foreign currency or indexed to the foreign currency. In addition, it is provided that the parties carrying out the PPP projects can denominate all agreements in foreign currency or index to foreign currency with the exceptions of real estate sales agreements and employment agreements,

It is provided in the Guideline that the bonded warehouse leases will be regarded the same as the real estate leases specified in the Exemption Communiqué **provided that** they are located in Turkey.

Also according to the Guideline, if a real estate is leased by a company domiciling in Turkey (the first lessor) to an intermediary company domiciling in Turkey, the first lessor cannot ask the intermediary company pay the lease in a foreign currency or indexed to a foreign currency, even if the intermediary company leases the real property to another company (the final lessee) more than fifty per cent of whose shares is owned directly or indirectly by persons residing abroad, since each leasing would need to be assessed separately with respect to the parties.

3. Other Explanations

The Guideline provides that the phrases **fifty per cent and more direct or indirect shareholding in Turkey by people residing abroad or joint control and/or control over companies**, do not exactly mean holding minimum fifty per cent of the shares or direct and indirect shareholding over fifty per cent but rather refer to **holding the privileged shares** or **disposing over the majority of voting rights based on the agreements executed with the other shareholders** or **appointing enough numbers of members of Board of Directors that can provide the quorum of decision through any means** or **having joint control and / or control of the company by holding the power of dismissal**.

In accordance with the Exemption Communiqué, *as for agreements for work that involves costs in a foreign currency*, it is possible to denominate the agreement fee and other payment obligations arising from such agreement in foreign currency or indexed to foreign currency. However, The Exemption Communiqué lacks any explanation as to the ratio of such costs. It is provided in the Guideline that payment obligations can be denominated in a foreign currency or indexed to a foreign currency provided that any cost of the work is made in a foreign currency **regardless of any rate and condition**.

As stated in the Guideline, domestic issuance of **debt instruments** denominated in foreign currency within the framework of the eighteenth paragraph by the private sector is prohibited, since there is no provision allowing the private sector to issue a debt instrument denominated in foreign currency in Decision No. 32.

D. TRANSITION PROCESS AND CHANGES IN THE PRACTICE FOLLOWING THE EXEMPTION COMMUNIQUÉ

As you may know, in accordance with the legislation in force for the period between **13.09.2018** and **16.11.2018**, due to the fact that there was no exemption for the real estate leases, it was mandatory to convert agreement values into Turkish lira. In the aforementioned period, if the lease agreement regarding lease of the real estate has been converted into Turkish currency, it is not possible to demand the value of the agreement in foreign currency which has been previously converted into Turkish currency, **without the consent of the lessee** on the grounds that the lease agreements have been exempted after 16.11.2018.

Furthermore, **it is not mandatory** to convert the financial leasing agreements concerning goods and real property and executed before the Provisional Article 8 of Decision 32 entered into force, namely **13.09.2018**, into Turkish Lira.

Finally, the advance deposits in foreign currency paid in the context of real estate lease agreements executed as denominated in foreign currency or indexed to the foreign currency before **13.09.2018**, are not required to be converted into Turkish Lira.

E. OBLIGATION TO CONVERT EXPORT REVENUES INTO TURKISH LIRA

Furthermore, the Ministry has increased time period for exporters residing in Turkey to comply with the obligations of

- bringing the export revenues collected in foreign currency into the country within certain time periods;
- selling the export revenues collected in foreign currency to banks; and
- closing the export accounts within certain time periods.

from 6 (six) months imposed by starting from 4 September 2018 to 1 (one) year with the Communiqué Regarding the Amendments to Communiqué Concerning the Decree No. 32 on the Protection of the Value of Turkish Currency (on Export Revenues) (Communiqué No. 2018-32/48) (Communiqué No: 2019-32/53) (the “**Communiqué**”) published on the Official Gazette dated 4 March 2019.

Pursuant to the Communiqué, the exporters are obligated to comply with the above-mentioned obligations by 4 September 2019.

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Should you have any queries, please do not hesitate to contact us.

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