

Circular

Istanbul, 8 October 2018

Circular No: 104

Subject: Contracts with and without the requirement to be set in Turkish Lira have been defined.

The Decision No. 32 Regarding the Protection of the Value of the Turkish Currency had been amended through the Presidential Decision No. 85 published in the Official Gazette dated 13 September 2018.

In sum, through the concerning Decision;

- To be effective from 13 September 2018, it was ensured that contract value and the other payment obligations arising from that contract concluded among Turkish residents will not be set in foreign currencies or foreign currency indexed,
- Regarding the contract values set in foreign currencies or foreign currency indexed prior to the same date shall be redefined in Turkish currency by the parties within 30 days.

The Decision enacted as of 13 September also contained a provision indicating that the circumstances that are not considered within the scope of the above mentioned requirement will be identified by the Treasury and Finance Ministry of Turkey.

Through the Communiqué no.2018-32/51 published in the Official Gazette dated 6 October 2018, the contracts that may be concluded in foreign currencies or foreign currency indexed and the contracts that are not allowed to be set in foreign currencies or foreign currency indexed have been determined by the Ministry as follows:

A. Situations that contract value and other payment obligations arising from these contracts cannot be set in foreign currency or foreign currency indexed terms:

1. Sales and rental contracts to be concluded among Turkish residents regarding the real estates including residence and offices located in Turkey (including the free zones),
2. Employment contracts to be concluded among Turkish residents except for the works to be performed abroad,
3. Service contracts to be concluded among Turkish residents including consultancy, coordination and logistics except the ones mentioned below,
 - a) Service contracts where the parties to the service contract are not Turkish citizens,
 - b) Service contracts for exportation, transit commerce, sales and deliveries that are deemed as exports and foreign exchange revenue generating services and activities,
 - c) Service contracts for the activities of Turkish residents outside Turkey,
 - ç) Service contracts to be concluded among Turkish residents regarding electronic communication which (i) start in Turkey and end abroad (ii) start abroad and end in Turkey.

4. Work contracts, except the ones on the construction, repair and maintenance of the ships defined in the Turkish International Ship Registry Code no. 4490 and the Law Requiring Amendments to the Statutory Decree no. 491),

5. Vehicle sales and leasing contracts including engineering vehicles to be concluded among Turkish residents (There is not a requirement to redefine the contract value and other payment obligations arising from these contracts in Turkish currency regarding the vehicle leasing contracts (including engineering vehicles) concluded prior to 13 September 2018). It is not possible to determine the values on legal instruments to be drafted within the context of above mentioned contracts in foreign currencies or foreign currency indexed.

The values on the contracts in which the contract value and other payment obligations arising from these contracts are not allowed to be set in foreign currencies or foreign currency indexed should be redefined in Turkish currency by the parties within 30 days as of 13 September 2018.

B. Situations that contract value and other payment obligations arising from these contracts can be set in foreign currency or foreign currency indexed terms:

1. Contracts to be concluded among Turkish residents for sales and rental of the movables (except vehicles and the engineering vehicles),

2. Sales contracts to be signed for the software produced abroad within the scope of information technologies, licence and service contracts for hardware and software to be concluded among Turkish residents,

3. Financial leasing contracts for ships defined in the Turkish International Ship Registry Code no. 4490 and the Law Requiring Amendments to the Statutory Decree no. 491 (As per the Article 17/A within the Decision no.32, the value may not be set as foreign currency indexed) ,

4. Financial leasing contracts to be concluded within the scope of articles 17 and 17/A of the Decision no.32. (Values on these contracts may be set in foreign currencies but foreign currency indexed values are not allowed),

5. Employment contracts where the parties to the contract are not Turkish citizens but resident in Turkey,

6. Employment and service contracts concluded by branches, representatives, offices, liaison offices, companies owned by non-residents (shareholding rate must be at least 50% or over directly or indirectly) in Turkey and companies in free zones that are party for their activities in free zones.

7. Except for the real estate sales and rental contracts, contracts to be concluded by the public institutions and organizations and Turkish Armed Forces Foundation companies,

8. Provided that they are within the scope of the execution of tenders in foreign currency or foreign currency indexed, contracts and international agreements in which the public institutions and organizations are party to; contracts other than real estate sales, real estate leasing and employment contracts to be concluded by contractors with third parties,

9. Contracts in which banks are parties regarding the transactions performed by the Treasury and Finance Ministry within the scope of the Law for the Regulations on Public Finance and Debt Management no.4749.

Apart from these contracts, also, provided that the terms of the Decision no.32 are reserved, it is possible to determine the capital market instruments (including foreign capital market instruments and depositary receipts and foreign investment fund shares) in foreign currency, issuance, purchase and sale, to set the liabilities concerning the performed transactions in foreign currency under the Capital Markets Law no.6362 and arrangements based on this Law. The Commercial airline businesses whose activities are passenger, cargo or mail transport; companies providing technical maintenance services for air transport vehicles, engines and parts thereof; under the scope of civil aviation legislation, public or private legal entities that have been or are authorized to perform ground handling services at airports, the enterprises and companies established by the said institutions, partnerships directly or indirectly have at least 50% shareholding in their capital, which are resident in Turkey, could conclude contracts with persons resident in Turkey, in foreign currency or indexed to foreign currency, except for the real estate sales, real estate leasing and employment contracts.

There is not a requirement of converting to the Turkish Lira within 30 days for the contracts provided above where there is an opportunity to set in foreign currency and concluded prior to 13 September 2018.

C. Scope for persons resident in Turkey

Turkish residents' branches, representatives, offices, liaison offices, funds operated or managed, companies with a shareholding rate of at least 50% or over and the companies that they own directly or indirectly abroad are also considered as Turkish resident within this implementation.

D. The scope of foreign currency indexed contracts

U Contracts indexed to precious metals, determined in foreign currency in international markets and / or commodities and / or indirectly indexed to foreign currency are considered as foreign exchange indexed contracts within the scope of the aforementioned implementation.

E. Exchange rates to be used for converting foreign currency or foreign currency indexed contracts to TL

The provisional Article 8 of the Decision no.32 contains a term indicating the requirement of redefining the contract values and other payment obligations regarding the running contracts concluded in foreign currency or foreign currency indexed prior to 13 September 2018 in Turkish currency within 30 days as of 13 September 2018.

If an agreement cannot be reached by the parties while redefining the concerning values in Turkish currency; values set in contracts shall be redefined using the effective selling exchange rate of the Central Bank of Turkey at the date of 02.01.2018, and such Turkish Lira amount calculated with the exchange rate of 02.01.2018 to be increased based on Turkey Statistical Institute's consumer price index (CPI) determined for each month starting from 02.01.2018 to the re-determination date.

The values in contracts concluded before the effective date of the provisional Article 8 related with lease of residence and roof topped workplaces in foreign currencies or foreign currency

indexed amounts should be redefined in Turkish currency for a period of two years as provided above. However, to be effective for 1 year term starting from the lease yearend; the Turkish Lira lease amount re-determined in accordance with the referred paragraph, if the parties cannot agree, then starting from the re-determination date until the lease year-end the amount shall be increased based on Turkey Statistical Institute's consumer price index (CPI) determined for each month. For the next year if the parties cannot agree on the Turkish Lira re-determination, the effective lease amount applicable for the previous year shall be increased based on Turkey Statistical Institute's consumer price index (CPI) determined for each month and this amount will be applicable until the end of 2 years term indicated in the clause.

The provisions of these paragraphs will not be applicable for the amounts already received or overdue receivables regarding the contracts that cannot be concluded in foreign currency or foreign currency indexed in terms of contract value and other payment obligations arising from these contracts.

As per this article, if the parties whom the exception is granted demand in mutual agreement that the new contracts to be concluded in Turkish Lira or the existing foreign currency or foreign currency indexed contracts to be re-determined in Turkish currency, pursuant to the temporary article 8 of the Decision no. 32, the price in the contracts shall be determined in Turkish Liras.

F. Spreadsheet

The table containing summarized information on whether certain contract types considered as significant may be concluded in foreign currency or foreign currency indexed or not is provided below.

Contract subject	Redefined contract value (set as of 13.09.2018 and later)	Previous contract value (set prior to 13.09. 2018, running)
Domestic real estate sales / rental contracts	Cannot be set in for. cur. or for. cur. indexed	Should be converted to TL until 13 Oct.
Employment contracts (excl. the ones executed abroad)	Cannot be set in for. cur. or for. cur. indexed	Should be converted to TL until 13 Oct.
Service contracts (excl. exemption in the article, incl. consultancy, coordination and logistics)	Cannot be set in for. cur. or for. cur. indexed	Should be converted to TL until 13 Oct.
Works contracts (excluding ship building, repair maintenance under scope of Law no.4490)	Cannot be set in for. cur. or for. cur. indexed	Should be converted to TL until 13 Oct.
Vehicle sale contracts (including engineering vehicles)	Cannot be set in for. cur. or for. cur. indexed	Should be converted to TL until 13 Oct.
Vehicle leasing contracts (including engineering vehicles)	Cannot be set in for. cur. or for. cur. indexed	No requirement for converting to TL.
Sale and leasing contracts for movables (exclu. engineering vehicles and vehicles)	Can be set in for. cur. or for. cur. indexed	No requirement for converting to TL.
Sales contracts for the software produced abroad within the scope of information technologies, licence and	Can be set in for. cur. or for. cur. indexed	No requirement for converting to TL.

service contracts for hardware and software		
Leasing contracts for ships defined in Law no.4490	Can be set in foreign currency.	No requirement for converting to TL.
Financial leasing contracts (within articles 17 - 17/A of Dec. No32)	Can be set in foreign currency.	No requirement for converting to TL.
Employment contracts (Turkish residents who are not a citizen of Turkish Republic)	Can be set in foreign currency or foreign currency indexed.	No requirement for converting to TL.
Employment and service contracts concluded by non-residents who have branches, representatives, offices, liaison offices, companies with a shareholding rate of at least 50% or over	Can be set in for. cur. or for. cur. indexed	No requirement for converting to TL.
Contracts to be concluded by the public institutions and organizations and Turkish Armed Forces Foundation companies (excl. sale and leasing of immovables).	Can be set in for. cur. or for. cur. indexed.	No requirement for converting to TL.

Our explanations provided above include general information on the issue. No responsibility can be claimed against EY and Kuzey YMM ve Bağımsız Denetim A.Ş. due to the implications arising from the context of this document or emerging with respect to its context.

Best Regards,

KUZEY YMM VE BAĞIMSIZ DENETİM A.Ş.