

## **Assessment on the requirement of redefining forex contracts in TL with regard to stamp tax**

A new regulation has been made by adding the sub-clause (g) to the Article 4 of the Decision No. 32 regarding the Protection of the Value of the Turkish Currency through the Decision No. 85 published in the Official Gazette dated 13 September 2018. With this amendment, to be effective from 13 September 2018, it was indicated that contract value and the other payment obligations arising from these contracts concerning the purchase sale of movables and immovable, leasing of all sorts of movables and immovable including vehicles and financial leasing, service and work contracts executed by and between Turkish residents cannot be determined in foreign currency or indexed to foreign currency except the cases identified by the Ministry.

Also, pursuant to the provisional Article 8 added to the Decision no.32 through the same Decision, the requirement of redefining values set in foreign currency on running contracts previously concluded that are stated in the concerning sub-clause in Turkish currency by the parties within 30 days as of 13 September 2018 was indicated, excluding the cases identified by the Ministry.

The aforementioned regulation has been put into practice for the purposes of supporting particularly the retailers positioned as tenants, to preserve the value of the Turkish Lira and to provide predictability by targeting the fluctuations in exchange rates over the recent period.

However, redefining values set within the contracts in foreign currency or indexed to foreign currency brings about several problems. Therefore, first of all the Treasury and Finance Ministry has issued a press announcement dated 17 September 2018 concerning the Decision and then clarifications were made by outlining the details about contracts that are permitted and unpermitted to be executed in foreign currency or indexed to foreign currency through the Communique no.2018-32/51 dated 6 October published in the Official Gazette.

However the current state of the regulation may lead to various debates on the basic principles of taxation. Following the introduction of the requirement for setting the contract value and other payment obligations arising from these contracts in Turkish Liras; Turkish residents will have to amend the concerning contracts through modifications, additional protocol and addendum in Turkish Liras. The requirement of changing the contracts rises the questions as which exchange rate will be used, whether any stamp tax will be applied or not. The Article 14 of Stamp Tax Law contains a provision as "In case of modification of contracts of a given amount, the amount of the increase shall be liable to duty at the same rate. As per the first clause, for the contracts subject to tax with maximum amount, without any change in other provisions, this term will not apply concerning the increased value if the value rises only. In case of transfer the duty to be collected shall one quarter of the duty on original contract". Within that context, additional stamp tax will have to be calculated over the increased cost. The taxpayer will have to undertake an unpredictable stamp tax burden subsequently for this situation resulting from the arrangement performed unavoidably.

The arrangement related to redefining the contracts concluded in foreign currency in Turkish Liras is mainly a non-tax regulation targeting the negative developments and fragility in the economy. Besides, as long as the Stamp Tax Law and attached tables are not amended, it has a potential to create additional tax and work load regarding the contracts executed previously.

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