

Turkey introduces guidelines on exemption applied on FX gains related to calculation of capital gains derived from shares

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Executive summary

The Turkish Ministry of Treasury and Finance published General Income Tax Communiqué No. 311 (the Communiqué) in the *Official Gazette* dated 27 May 2020 and it entered into force on the same day. The Communiqué introduces guidelines regarding the exemption provided under Repeated Article 81 of the Income Tax Code which is applicable to the foreign exchange (FX) gain related to the capital gains calculated in the disposal of Turkish company participation shares by nonresidents (including corporations).

Detailed discussion

Capital gains arising from the disposal of Turkish company shares by nonresidents are subject to capital gains taxation in Turkey, under certain conditions.

In the calculation of the capital gains, there are various methods used to decrease the capital gains tax base. One of the methods is the exemption applied on the gains arising from the FX rate differences, under the conditions stipulated under Repeated Article 81 of the Income Tax Code.

The Communiqué, which entered into force on 27 May 2020, provides guidelines with respect to the application of the exemption applied on the gains arising from the FX rate differences in the disposal of the participation shares.

One of the conditions to benefit from such exemption is that the acquisition value in foreign currency of the participation shares should be physically brought into Turkey or transferred to banks operating in Turkey.

Where the participation shares that were acquired by nonresident persons (including corporations) by bringing the foreign currency into Turkey are acquired by other nonresident taxpayers, and where the acquisition value is not brought into Turkey, the FX exemption corresponding to the initial acquisition value (where the foreign currency is brought into Turkey) can be utilized however, for the remaining acquisition value it would not be possible to benefit from the FX exemption.

Acknowledging that such condition of “bringing the acquisition value into Turkey” in the case of transfers between nonresidents is not clearly stipulated under the Income Tax Code; this guidance introduced by the Communiqué may lead to ambiguities in the practical application of the mentioned exemption.

Provisions of Double Tax Treaties that Turkey is a party to, without prejudice, continue to be used in the taxation treatment of the capital gains derived by nonresidents arising from the disposal of participation rights in Turkish companies.

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