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NEWSLETTER

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Amendments Regarding the Withholding Tax

Presidential Decree numbered 842 (the “**Decree**”) has been published in the Official Gazette numbered 30721 and dated 21 March 2019 and entered into force at the same date. Accordingly, the withholding tax rates applied to the bonds issued abroad by a Turkish corporation are amended to be applicable as follows;

- 7% (instead of 10%), for bonds having an original maturity of less than one year
- 3% (instead of 7%) for bonds having an original maturity of at least one year and less than three years, and
- 0% for bonds having an original maturity of three years and more, whilst the withholding tax rate for bonds having an original maturity of three years and less than five years used to be 3% before the amendment by Decree.

Concerning subordinated debts and securitization transactions, the withholding tax rate payable over the interest under the subordinated loans (approved as per the Banking Law numbered 5411) and financings obtained by banks or other corporations by way of securitization abroad is revised as 0%, instead of 1%.

These new rates are applicable starting from March, 21st.

In addition, the withholding rate applied to foreign currency accounts are increased. Such tax rates are set depending on maturity of the accounts, which are as follows:

- 20% for notice and drawing accounts or accounts with maturity of one year or less, and
- 18% for accounts with maturity over one year.

Such increased rates are applicable to foreign currency accounts opened or renewed as of maturity on or after March, 21st.

Amendments to the Decree on Treasury Support for Credit Guarantee Institutions

Decree on Treasury Support for Credit Guarantee Institutions numbered 2016/9538 which was published in the Official Gazette numbered 29896 and dated 22 November 2016 (the “**Treasury Support Decree**”) normally sets forth the terms and conditions of financial

guarantees provided by the Treasury. The Treasury Support Decree had already been amended from time to time in order to raise the allocation ceiling to TRY 25 billion and functionalizing the Treasury support. On 28 February 2019, a Presidential Decree amending the Treasury Support Decree (the “**Amendment Decree**”) has been published in the Official Gazette numbered 30700 and entered into force on the same date.

As per the Amendment Decree, Article 4 of the Treasury Support Decree stating the general conditions regarding the the Treasury support has been amended. Accordingly, credit guarantee institutions are allowed to collect commission on the amount of surety at the surety date and in the following years over the outstanding surety amount at a rate up to 2% which is payable by the beneficiaries and lenders. Before the amendment, such commission used to be collected for one time only at the maximum rate of 0,03%. With the Amendment, it is also foreseen that the commission rate and amount to be transferred to the related credit guarantee institution (which shall not exceed 10% of the commissions to be collected) shall be determined by the protocol to be signed between the Ministry of Treasury and Finance and such institution. It is stated that these terms shall also be applicable for the sureties under the restructured loans.

Amendment Regarding the Membership to the Central Registry Agency

Regulation on Incorporation, Operation, and Supervision of the Central Registry Agency (the “**CRA**”) (the “**Regulation**”) has been amended by a regulation published in the Official Gazette on 6 March 2019 (the “**Amendment Regulation**”) and entered into force upon its publication. In particular, the Amendment Regulation includes the definition of the Central Dematerialized System (the “**CDS**”) and provides certain rules as to the procedures and requirements for cancellation of membership.

Under the Amendment Regulation, the CDS is defined as the system that dematerialized capital market instruments and the rights attached thereto are monitored in an electronic portal as per each member and right holders. The Regulation had already stipulated that institutions intending to be a member should employ sufficient and qualified personnel to execute CDS transactions. The Amendment Regulation provides that such institutions may execute transactions through another member of CRA if they have notified the CRA in this respect so.

Moreover, the Amendment Regulation clarifies that in order for voluntary termination of membership, the relevant issuer(s) should not have any existing dematerialized capital markets instruments and investment institutions should not have any active account. These terms are also valid for the cancellation of membership by the CRA.

The Amendment Regulation has amended Article 24 of the Regulation regarding suspension and cancellation of membership by the CRA.

With the Amendment Regulation, the cases where memberships shall be cancelled by the CRA have been revised. It is outlined that membership status shall be cancelled by the CRA if one of the following cases occurs:

- Termination of monitoring activity by the decision of the Capital Markets Board for dematerialized capital market instruments issued or in respect of which the issuance application has been made to the Capital Markets Board,
- Cancellation of custody license of an investment institution,
- Termination of the legal entity status of a member, or
- Liquidation of the investment funds in total that have been founded by the investment fund founders.

Communiqué Amending (No. III-52.1.c) the Communiqué on Principles Regarding Investment Funds (No. III-52.1)

The Communiqué Amending the Communiqué on Principles Regarding Investment Funds (the “**Amendment Communiqué**”) has been published in the Official Gazette No. 30712 on 12 March 2019 and entered into force upon publication. With the Amendment Communiqué, a number of amendments have been made under the Communiqué on Principles Regarding Investment Funds published in the Official Gazette No. 28702 on 9 July 2013 (the “**Communiqué**”) and additional paragraphs have been added to certain provisions.

With the Amendment Communiqué, Article 15/6 of the Communiqué regarding the sale and purchase of participation shares is amended to remove 20% threshold for the participation shares to be included to the portfolio of the founders themselves.

Accordingly the provision of Article 15/6 is revised as follows:

“Purchase and redemption of participation shares are essentially carried out by the founder and/or manager in the name of the fund. The founder may include the participation shares in their own portfolio and an advance payment may be granted by the founder and / or manager prior to the commencement of the sale of the participation shares.”

Furthermore, in relation to the limitations of assets to be included in the fund portfolio under Article 17, the Amendment Communiqué added that the limitations thereunder would not be applicable for the issuances by Turkish Sovereign Wealth Fund.

With the Amendment, it is clearly included under Article 24 that the Capital Markets Board may set forth different minimum and/or maximum rates for assets and transactions to be included in the fund portfolio as well as the upper limit of the management fee depending on type of fund.”

The Communiqué on Amendment of Communiqué Regarding Decree 32 on the Protection of Value of Turkish Currency

The Communiqué on Amendment of Communiqué Numbered 2018-32/48 Regarding Decree 32 on the Protection of Value of Turkish Currency (the “**Communiqué 2018-32/53**”) has been published in the Official Gazette No. 30703 on 3 March 2019 and entered into force on the same date.

As so known, Communiqué numbered 2018-32/48 Regarding Decree 32 on the Protection of Value of Turkish Currency had already set forth the requirement to transfer the export amounts to the intermediary bank or bring the export revenues to Turkey. As a general rule, this process must be completed within 180 days, and a minimum of 80% of the export revenues are required to be sold to a bank.

This new Communiqué 2018-32/53 has extended the applicable term of the previous Communiqué outlined above and has ruled that the provisions of the previous Communiqué 2018-32/53 shall be applicable for one year (instead of 6 months) following 4 September 2018.

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This newsletter has been prepared only for information purposes. Please do not hesitate to contact us if you need assistance or more detailed information.

Yours faithfully,
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