

**CIRCULAR**  
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**Subject:**

**REGULATION MADE CONCERNING THE OBLIGATION (PROVISIONAL / FOR SIX MONTHS) FOR BRINGING EXPORT PROCEEDS INTO TURKEY**

The regulation made through the Communiqué on the Decree No. 32 on the Protection of the Value of Turkish Currency (On the Export Proceeds) (Communiqué No. 2018-32/48) published in the Official Gazette No. 30525 of September 4, 2018, made it obligatory to transfer or bring the proceeds concerning export transactions carried out by persons resident in Turkey to the bank intermediating the export **directly and without a delay following the payment made by the importer. The proceeds should be brought into the country no later than 180 days as of the actual export date. It will be obligatory to sell at least 80% of the said proceeds to a bank.**

As known, a similar regulation on the repatriation of the export proceeds within a given time and selling some of the said proceeds to the banks was implemented until February 8, 2008. As per the Resolution of Council of Ministers No. 2008/13186, disposition of export proceeds is made free and the practice of repatriation and selling to the banks thereof is terminated.

The Communiqué **entered into force on September 4, 2018 and will be valid for 6 months.** We would like to express our opinion that the provisions of the Communiqué shall apply for the exports carried out as of September 4, 2018 since the Communiqué is effective as of this date, while the practice adopted before the Communiqué shall apply verbatim as to the exports carried out before this date. Also, we would like to remind that the **provisions of this Communiqué hereby shall apply** in the event that the period for **the repatriation of the proceeds concerning the export transactions actually carried out by persons residing in Turkey within the validity period of the Communiqué** expires after the Communiqué ceases to have effect.

**The Communiqué in question** is published by the authority stipulated in **Article 8 on export** of the Decree No. 32 on the Protection of the Value of Turkish Currency. There is a regulation in Article 11 of the Decree concerning **foreign exchange earning transactions**. When two articles are evaluated together, it is understood that services provided abroad are out of the scope of the Communiqué.

***"Export  
Article 8***

***(1) Export proceeds shall be freely disposed. The Ministry is authorized to make regulation related to the repatriation of the export proceeds, as may be required."***

***"Foreign exchange earning transactions***

*Article 11- Residents in Turkey may freely dispose their foreign exchange earnings stemming from all services (including contracting services) rendered in Turkey or abroad to non-residents or on their behalf, as well as foreign exchange obtained in return for expenses incurred on behalf of and for the account of non-residents."*

The regulations included in the Communiqué are as follows.

### **1. Repatriation of the Export Proceeds**

Proceeds of export transactions performed by residents in Turkey **will be transferred or brought directly and without a delay to the bank** intermediating the export upon the importer's payment. **The proceeds should be brought into the country no later than 180 days as of the actual export date. It will be obligatory to sell at least 80% of the said proceeds to a bank.**

In Article 4 of the Export Regulation, **export** is defined as "**Taking a good out of Turkey's customs territory or to the free zones in compliance with the export legislation and customs legislation in effect or other operations to be considered as export by the Undersecretariat.**"

In this regard, we believe that the companies the legal headquarters of which is located in the free zone should be outside the scope of the regulation.

Proceeds of export transactions can be repatriated according to one of the following payment methods:

- a) Payment Against Letter of Credit,
- b) Cash Against Documents,
- c) Cash Against Goods,
- d) Payment Against Acceptance Credit,
- e) Payment Against Documents with Acceptance Credit,
- f) Payment Against Goods with Acceptance Credit,
- g) Advance Payment.

Repatriation of the export proceeds in the declared Turkish currency or foreign currency is essential. It is possible to bring foreign currency in exchange of export carried out in Turkish currency.

In case the export proceed is effectively repatriated in the company of a passenger, it must be declared to customs administrations.

## 2. Advance Foreign Exchange

**It will be obligatory for the export to be performed in 24 months in return of advance foreign exchange.** Within the scope of the Inward Processing Authorization Certificate and the Taxes, Levies and Charges Exemption Certificate, tenure for advance foreign exchanges obtained in respect of foreign exchange earning services and activities through exports and sales and deliveries considered as export will be equal to that of the document (including the additional time).

Advance foreign exchange which is not returned at once or not exported in due time will be subject to pre-financing provisions. In case the export commitment performance period for advance foreign exchange, which are subject to pre-financing provisions, is extended within the scope of the relevant legislation's provisions, the tenures will be considered as extended as the granted additional time, provided that the purchaser agrees.

## 3. Special Export

**It will be obligatory for the proceed of export to be performed by contractor companies to be repatriated and sold to a bank in 365 days.**

**It will be obligatory to bring and sell to a bank the proceeds of export on consignment in 180 days following the final sale whereas it will be obligatory to bring and sell to a bank the proceeds of goods sent to be sold at international fairs, exhibitions and weeks in 180 days following the end of fairs, exhibitions and weeks in question.**

In Article 4 of the Export regulation, **Export on Consignment** is defined as "Sending goods to buyers and brokers, branches or agencies of the exporter in foreign countries, the final sale of which is to be conducted later"

According to the provisions of the relevant legislation, in the event the **temporary exported goods are not repatriated or are sold within the given time or additional time, it will be obligatory to repatriate and sell the proceed of the sale to a bank within 90 days** from the expiration date or the date of final sale.

Within the scope of the current Export Regime and Financial Leasing Legislation, it will be obligatory for the proceed of exports on credit or exports by means of leasing to be **repatriated and sold to banks within 90 days** following the maturity dates stipulated in the sale on credit or leasing agreement.

## 4. Responsibility in Export Transactions

**Exporters will be responsible** for repatriation of the proceed of the exported goods within due time and selling thereof to banks and closing the export account in due time.

In the event that the banks or factoring companies undertake the commercial risk by way of purchasing the right to claim, Ministry of Treasury and Finance will be authorized to determine who is responsible for the repatriation of the proceeds of export.

**Banks intermediating the export will be liable to monitor the repatriation and selling of the proceeds of export.**

## **5. Deductions from Proceeds of Export**

1) **Banks will examine and conclude** the requests for offsetting deductions from export proceeds for such expenses as discount costs not exceeding freight, insurance premium, commission, warehouse, storage, storehouse, customs duty, fees and factoring expenses and interest rates in effect in international money markets and the transport, safeguarding, maintenance and fumigation, manipulation, sale and similar expenses regarding goods exported on consignment or the requests for foreign exchange transfer within the scope of invisible transactions.

2) If the sales agreement or the letter of credit requires weighing and analyzing at the destination as necessitated by business practices, **banks will examine and conclude the requests** for offsetting from the proceed of goods the weight deficiency and quality difference detected as a result of such weighing and analysis and survey and arbitration fees and manipulation expenses (including the fees for outward inspection companies) or requests for foreign exchange transfer within the scope of invisible transactions.

3) **Export proceeds repatriated** within the repatriation periods may be **offset** by banks within the said periods with the exporter's **import proceeds, payments regarding capital movements**, expenses regarding **invisible transactions** and **purchase price of transit trade**.

4) **In export and import of goods** carried out within the scope of the foreign trade legislation, it will be possible for **the banks to offset the proceeds of export and import of goods on the condition that the parties are the same persons** and export proceeds are repatriated in due time.

5) The Ministry of Treasury and Finance will examine and conclude the requests except for the cases stated in the above-mentioned paragraphs three and four. In cases offsetting in export proceeds is allowed, the export proceeds will be considered to be repatriated in the due time. Documents for foreign exchange purchase and sale will be drafted over the buying rate of exchange of the offset date for the part subject to offsetting.

## **6. Account Closing, Notice and Additional Time**

As to the export of goods for commercial purposes, the accounts regarding the export, the proceed of which is repatriated in due time, will be closed by the intermediary banks.

**The intermediary banks will give written notice in 5 business days to the relevant Directorate of Tax Administration or Tax Office about the export accounts which are not closed in due time, in a way to express the stages of the proceeding.**

The relevant Directorate of Tax Administration or Tax Office will send a **90-day warning** to those concerned within 10 business days following the notice in order for the accounts to be closed. The accounts need to be closed and the force majeure and justified reasons stipulated in Article 9 of the Communiqué need to be documented within this period.

In case of presence of force majeure, the relevant Directorate of Tax Administration or Tax Office will grant additional time in six-month periods during the course of the force majeure.

In the presence of justified reasons except for force majeure, the relevant Directorate of Tax Administration or Tax Office will examine and conclude in three-month periods the requests for additional time up to six months for the closure of accounts upon the written statement of the companies with regard to their justified reason, whereas the Ministry of Treasury and Finance will examine and conclude the requests for additional time after the six-month period.

## **7. Force Majeure and Certification Thereof**

Cases to be considered force majeure are listed as follows in the Communiqué:

- a) Importing and exporting company's dissolution, bankruptcy, declaration of concordatum or suspension of activities permanently, decision for postponement of bankruptcy of the company, death of the company owner for the private companies,
- b) Strikes, lockouts, and sea damages,
- c) Impossibility of the closure of accounts due to decisions and transactions of public authorities of the exporting or importing country or procedures of correspondent banks,
- ç) Natural disasters, wars and blockades,
- d) Loss of goods, damages to goods or destruction of goods,
- e) Initiation of court or arbitration proceedings due to disputes.

Certification of force majeure:

The force majeure in (a) and (e) must be certified by documents obtained from competent authorities, (b) and (ç) by the documents obtained from official authorities of the exporter's country or from the purchaser or importing company on the condition that it is certified by the local chamber (excluding wars and blockages), (c) by the documents obtained from the official authorities of the Republic of Turkey, official authorities of the exporter's country or the correspondent banks, (d) by the documents obtained from insurance companies, international inspection companies or the official authorities of the relevant country.

**The documents** related to the force majeure **to be obtained from foreign countries** should be approved by our foreign missions or as per the provisions of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents prepared within the scope of the Hague Conference on Private International Law.

## 8. Dissolution

On the basis of each customs declaration,

a) **Export accounts with shortage of up to 10% of the proceed (including shortage arising from the insurance amount) stated in the declaration or the form, not exceeding USD 100,000 or the equivalent thereof, regardless of the presence of force majeure and method of payment, will be closed directly by the banks,**

b) Open accounts with shortage of **up to 10% of the proceed** stated in the declaration or the form, not exceeding USD 200,000 or the equivalent thereof, considering the force majeure stipulated in Article 9 of the Communiqué will be closed by the relevant Directorate of Tax Administration or Tax Office

by way of dissolution.

On the basis of each customs declaration, the Ministry of Treasury and Finance will examine and conclude the dissolution requests regarding the open accounts with a shortage exceeding USD 200,000 and equivalent thereof by considering the force majeure and justified reasons stipulated in Article 9 of the Communiqué.

## 9. Authority

In order to ensure the enforcement of the Communiqué, the Ministry of Treasury and Finance is authorized to take any measure it deems necessary, evaluate and conclude the justified reasons, eliminate uncertainties, examine and conclude the special cases outside the scope of the cases stipulated in the Communiqué, expand the durations for bringing foreign exchange, partially or completely revoke the obligation of bringing foreign exchange, determine and change the amounts and durations stipulated in the Communiqué hereby.

We would like to state that there are many question marks in terms of both the content of the regulation and how it will be implemented by the banks. In particular, how the deductions mentioned in "Deductions from Proceeds of Export" will be made and which documents will be requested are not clear. Therefore, we are waiting for the **Central Bank of the Republic of Turkey to publish their remarks on the way of implementation and the necessary documents, which will remove such hesitations.**

Sincerely,

**DENGE İSTANBUL YEMİNLİ  
MALİ MÜŞAVİRLİK A.Ş.**

**ANNEX:**

Communiqué on the Decree No. 32 on the Protection of the Value of Turkish Currency (On the Export Proceeds) (Communiqué No. 2018-32/48)

(\*) The descriptions included in our circulars are for information purposes only. We recommend you to consult an expert before making any final transactions in any matter when you have any hesitations; and our office will not have any liability for any loss arising from transactions that are made relying solely on statements in our circulars.

(\*\*) Please contact our experts for your opinions, comments, and questions about our circulars.

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