



**CIRCULAR NO: 2022/160eng**

**August 11, 2022**

## **GENERAL COMMUNIQUÉ ON THE REPATRIATION OF CERTAIN ASSETS HAS BEEN PUBLISHED**

With Article 50 of the Law No. 7417 published in the Official Gazette no. 31887 of July 5, 2022, a new regulation on the repatriation of assets was introduced to the provisional Article 15 of the Corporate Tax Law (CTL), and the said regulation entered into force on July 5, 2022. Our circular [no. 2022/132 of July 5, 2022](#) provided information about the legal framework regarding the practice of repatriation of assets. The provisional Article 15 added to the Corporate Tax Law No. 5520 with the General Communiqué on the Repatriation of Certain Assets into the Economy (hereinafter referred to as the “Communiqué”) published in the Official Gazette No. 31918 of August 9, 2022 stipulates the procedures and principles for the implementation of the provisions of paragraphs 1 to 12 of the provisional Article 15 (hereinafter referred to as the “article”) added to the Corporate Tax Law No. 5520. The Communiqué entered into force on August 9, 2022. This circular provides information about the regulations introduced by the said Communiqué.

### **1. Procedure for Assets Located Abroad**

As known, as per paragraph 1 of Article 15(1) of the CTL, real persons or legal entities will be able to benefit from the opportunities provided by the establishment of the repatriation of assets i.e., money, gold, foreign currency, securities and other capital market instruments located abroad, provided that they fulfill the conditions such as declaration, bringing the assets in question to Turkey, payment and registration.

## 1.1. Declaration of Assets Located Abroad

Money, gold, foreign currency, securities and other capital market instruments located abroad may be declared to banks or intermediary institutions in Turkey until March 31, 2023 (including this date) within the framework of the provisions of the article. Declarations may also be made by authorized proxies or legal representatives.

Real and legal persons will be able to declare such assets to banks or intermediary institutions (exclusively for securities and other capital market instruments) from July 5, 2022 until March 31, 2023 (including this date) with the **form no.1** (Annex-1) attached to the Communiqué. **No declaration will be made by real and legal persons to the tax authorities regarding their assets located abroad.** Assets used to close foreign loans and capital advances should also be reported to banks and intermediary institutions.

Although it is essential to submit a single declaration for assets located abroad, since each month in which the declaration is made is considered as a different taxation period in the implementation of the article, it is possible to submit more than one declaration until March 31, 2023 (including this date). The method to be employed for the declarations to be made following the initial declaration for error correction or for reducing or increasing the assets subject to declaration is explained in Article 3 of the Communiqué through examples.

## 1.2. Bringing Assets Located Abroad to Turkey

Assets located abroad must be brought to Turkey **within three months from the date of declaration** or transferred to an existing or newly opened account in banks or intermediary institutions in Turkey. In these transfer transactions, it is not objectionable that the account holder making the declaration and the person transferring the asset from abroad are different persons.

Provided that the assets located abroad are deducted from the book records, if they are used to close the loans used from banks or financial institutions located abroad in accordance with paragraph 2 of the article, the condition of bringing to Turkey will not be sought for the assets used in the payment of the debt. However, in any case, those who benefit from the provision of this paragraph are required to attach to their declarations a copy of the certifying documents obtained from banks or financial institutions located abroad.

It is possible to bring assets located abroad but not covered by the law (e.g. immovables) to Turkey within the framework of the provisions of the said article by converting them into assets covered by the law until March 31, 2023.

### **Bringing assets located abroad to Turkey means;**

- a) Bringing money, foreign currency, gold, securities and other capital market instruments physically to Turkey or transferring these assets to an account to be opened in banks or intermediary institutions in Turkey,
- b) Declaration to intermediary institutions of securities and other capital market instruments that cannot be physically brought to Turkey or transferred to an account to be opened at intermediary institutions.

In the event that money, gold, foreign currency, securities and other capital market instruments located abroad are transferred to an existing or newly opened account in banks or intermediary institutions in Turkey, **bank receipts or intermediary institution transaction result forms can be used to certify that the assets have been brought to Turkey.**

Provided that it is notified to banks or intermediary institutions until March 31, 2023, the **documents received from the Customs Administration** in reference to the declaration/notification made during the physical bringing of the said assets abroad to Turkey **can be used to certify that the assets have been brought to Turkey.**

### **1.3. Transactions by Banks or Intermediary Institutions and Payment of Tax**

Real persons and legal entities shall notify banks or intermediary institutions of their assets located abroad with the form in Annex-1, which they shall prepare in duplicate. A copy of the form shall be returned to the relevant bank or intermediary institution together with the bank receipts or transaction result forms issued after the information regarding the account opened due to the declaration, if any, is written and certified.

One of the aspects that differentiates this practice of repatriation of capital from previous practices is that banks and intermediary institutions collect advance tax on the value of the declared assets on a progressive basis according to the date range in which the declaration was made. Accordingly, banks and intermediary institutions, as taxpayers, shall declare the tax to be collected in advance in accordance with the following percentages until the afternoon of the fifteenth day of the month following the declaration to the tax office to which they are affiliated with the declaration in Annex-2 in accordance with the procedures and principles specified in the General Communiqués No. 340 and 346 of the Tax Procedure Law;

**1%** for declarations made until **September 30, 2022**,

**2%** for declarations made **between October 1, 2022 and December 31, 2022 (including this date)**,

**3%** for declarations made **until March 31, 2023 (including this date)**.

Taxes levied by the tax authorities on the values of the declared assets shall be paid by the banks and intermediary institutions as tax responsible within the declaration period.

#### 1.4. Refund of Collected Taxes to the Declarant

One of the important advantages of the recent establishment of the repatriation of capital is that the taxes collected by banks and intermediary institutions and paid to the tax office as tax responsible are refunded to the persons who make the declaration, provided that certain conditions are met. In this context, **if the assets located abroad and subject to declaration within the scope of the article are transferred to accounts in banks or intermediary institutions in Turkey or kept in these accounts for at least one year from the date they are brought from abroad and deposited in these accounts, the tax rate to be applied within the scope of the article over the value of the declared assets will be considered as 0%.**

In this case, the taxes collected by the banks and intermediary institutions and paid to the tax office as tax responsible will be refunded to the relevant person upon the application of the **declarant to the tax office within the correction limitation period with the form in Annex-4**. The application shall be made to the tax office to which the head office of the bank or intermediary institution making the deduction is affiliated. Those who will request a refund must attach to the application forms in Annex-4 documents (such as bank receipts, passbooks, intermediary institution transaction result forms) certifying that the assets they have declared were deposited in banks and intermediary institutions and kept in these accounts for at least one year. The said applications can be made electronically through the Interactive Tax Office or the relevant form can be submitted to the relevant tax office by hand or by mail.

Declarants may request a refund in cash within the scope of the article, or request a refund by set-off for their tax debts. In this case, the refund request shall be fulfilled based on the date on which the form in Annex-4 is submitted to the tax office in full.

In order for a refund to be made to the declarant, the taxes calculated over the value of the assets declared under the article must have been paid by the tax responsible.

The refund transactions of the declarants will be carried out in accordance with the provisions of Article 23 of the Law No. 6183 of July 21, 1953 on the Procedure for Collection of Public Receivables and Article 88 of the Social Insurance and General Health Insurance Law No. 5510 of May 31, 2006.

**In the beginning of the one-year period for the refund, the date on which the assets subject to declaration were transferred to the accounts opened in banks and intermediary institutions in Turkey or brought from abroad and deposited in these accounts will be taken into account.** We would like to remind you that taking the date of declaration as the starting date in the calculation of the one-year period would result in an erroneous transaction.

The assets that are subject to declaration and transferred or deposited to the accounts opened in banks and intermediary institutions within this scope will not affect the calculation of the one-year period for the refund of assets in different deposit, participation and investment accounts in banks and intermediary institutions. Thanks to this regulation, the assets subject to declaration are evaluated by banks or intermediary institutions and the declarants are offered the opportunity to benefit from the return on these assets.

## **2. Declaration of Assets Located in Turkey and Payment of Tax**

### **2.1. Declaration to be Made by Income and Corporate Taxpayers**

Money, gold, foreign currency, securities and other capital market instruments and immovables owned by income or corporate taxpayers and located in Turkey, but not included in the legal book records, can be declared directly to **the tax offices affiliated in terms of income or corporate tax** with the declaration in Annex-3 until March 31, 2023 (including this date) or can be declared electronically in accordance with the procedures and principles specified in the General Communiqué on Tax Procedure Law No. 340. As can be understood from the Communiqué, no notification will be made to banks and intermediary institutions for the declaration of assets located in the country.

Taxpayers who are obliged to submit their annual income or corporate tax returns electronically are also obliged to submit their returns in Annex-3 electronically in accordance with the procedures and principles specified in the Tax Procedure Law General Communiqués No. 340 and 346.

### **2.2. Declaration to be Made by Non-Income and Corporate Taxpayers**

It is also possible for those who are not liable for income and corporate tax to benefit from the provision of the article by making a declaration for their money, gold, foreign currency, securities and other capital market instruments and immovables in Turkey. These persons are obliged to deposit their assets other than immovables in accounts opened in banks or intermediary institutions as of the date of declaration and to prove this situation with certifying documents.

For those who are not liable for income and corporate tax, the declaration shall be made to the tax office affiliated to their place of residence is located.

### **2.3. Status of Sole Proprietorships and Ordinary Partnerships**

Sole proprietorships and ordinary partnerships are not liable for income or corporate tax, but are liable for withholding and value added tax. In this context, it is also possible to make declarations on behalf of sole proprietorships and ordinary partnerships, and due to the declared assets, sole proprietorships and ordinary partnerships will be able to benefit from the possibility of tax inspection and assessment in terms of value added tax and partners will be able to benefit from the possibility of tax inspection and assessment in terms of income or corporate tax.

### **2.4. Payment of Tax**

Tax authorities will levy a 3% tax on the value of assets declared to the tax authorities. The tax calculated in this way shall be paid until the end of the month following the month of assessment.

### **3. Status of Assets Appearing in the Name of Legal Representatives, Partners or Attorneys of Companies**

According to the amendment to Article 9 of the Communiqué, regarding the assets of legal representatives of companies, partners or those who are authorized to evaluate the assets covered by the article on behalf of the company or company's shareholders based on a power of attorney or representation agreement drawn up by authorized institutions before July 5, 2022, which are located abroad or in Turkey, it is possible to benefit from the provisions of the article by subjecting the assets of the company to the declaration and notification on behalf of the company within the framework of the explanations made in this Communiqué.

In addition, the assets belonging to the company or the company's shareholders, but disposed of by persons other than the legal representatives, partners or proxies of the company, will be subject to notification or declaration on behalf of the company within the framework of the provisions of the article in question, and it will be possible to benefit from the provision of the article. Moreover, it is also possible to benefit from the provision of the article if the assets belonging to real persons but held by companies abroad in which these persons are shareholders or legal representatives are subject to notification or declaration on behalf of the relevant real persons. However, during the inspection to be made for reasons other than notification or declaration, it must be proved that the assets in question belong to the company or company partners or real persons.

### **4. Declaration Value of Assets**

The valuation criteria for assets to be subject to declaration or notification are set out in Article 10 of the Communiqué. Both in the declaration of assets located abroad to banks or intermediary institutions and in the declaration of assets located in Turkey to

tax offices, the assets will be valued with the following valuation criteria as of the date of declaration or notification:

- a) Money in Turkish lira, at its nominal value.
- b) Gold, at fair value.
- c) Foreign currency, at the foreign exchange buying rate of the Central Bank of the Republic of Turkey.
- ç) Securities and other capital market instruments;
  - 1) Share certificates, if any, at stock exchange value, if there is no stock exchange value, at fair value, if this price cannot be determined, at purchase price, if the purchase price is not determined, at nominal value.
  - 2) Debt instruments such as bonds, bills, Eurobonds, if any, at stock exchange value, if there is no stock exchange value, at fair value, if this price cannot be determined, at purchase price, if the purchase price is not determined, at nominal value.
  - 3) Mutual fund shares at the closing price determined in the relevant market.
  - 4) Derivative instruments such as futures and options contracts, if any, at stock exchange value, if there is no stock exchange value, at fair value, if this price cannot be determined, at purchase price, if the purchase price is not determined, at nominal value.
- d) Immovables, at fair value.

Notifications or declarations shall be based on the Turkish lira equivalent value of the assets in question.

In the implementation of the Communiqué, the fair value is the purchase and sale price determined as of the date of declaration or notification of the assets in question, and this price must reflect the actual situation. When determining the stock exchange value of the assets to be valued with the stock exchange value, the values formed in the domestic or foreign stock exchanges where such assets are traded on the date of declaration or notification shall be taken into consideration. For assets denominated in foreign currency, the foreign exchange buying rate of the Central Bank of the Republic of Turkey on the date of declaration or notification will be taken into account. For the corrections to be made after the declaration until March 31, 2023 in order to correct the errors made or to reduce the assets subject to the declaration, the values of the assets on the date of the first declaration will be taken as basis.

## **5. Transferring the Notified or Declared Assets to Legal Book Records**

The assets declared or notified must be recorded in the legal books by the taxpayers who keep books in accordance with the Tax Procedure Law (TPL) No. 213 of January 4, 1961.

Taxpayers who keep books on the balance sheet basis shall open a special fund account in liabilities for the assets that are subject to declaration or notification in accordance with the article and recorded in their legal books. The said account shall be considered as a part of the capital, shall not be withdrawn from the enterprise until two years after the date of declaration or notification, and shall not be used for any other purpose other than addition to the capital.

On the other hand, these amounts will not be taxed if the business is liquidated. These amounts held in the fund account will not be taxed in cases of transfer and spin-offs in accordance with Article 81 of the Income Tax Law and Articles 19 and 20 of the CTL.

Taxpayers who keep books on the basis of self-employment earnings book and business account will also indicate the said assets in their books.

Assets brought to Turkey by taxpayers keeping books in accordance with the TPL and assets recorded in the legal books by income or corporate taxpayers will be included in their businesses without being taken into account in the determination of the income for the period and can be withdrawn from their businesses without being taken into account in the determination of taxable income and distributable income for corporations, provided that two years have passed from the date of declaration or notification.

No fees will be charged as per the Law on Fees No. 492 of July 2, 1964 for the transactions to be made in the land registry regarding the transfer of the immovables to be subject to declaration within the scope of the article and to be included in the business records. In addition, in the transfer of these immovables to the enterprise, the provisions of the value increase gain in Article 80 of the Law No. 193 shall not be applied.

## **6. Circumstances in which Inspection and Assessment will Not be Made**

Pursuant to the provisions of the article, no tax inspection and tax assessment will be made for the amounts corresponding to the assets located abroad or in Turkey and subject to declaration or notification. In order to benefit from this provision;

a) Assets subject to notification located abroad;

1) Must be brought to Turkey or transferred to an account to be opened in banks or intermediary institutions in Turkey within three months from the date of notification,



2) The tax levied on the declared assets must be paid in due time,

3) The assets subject to declaration must be recorded in the legal books by the taxpayers who keep books in accordance with the TPL, a special fund account in the liabilities for these assets recorded in their legal books (or showing them on the relevant pages of the legal books) must be opened, this fund account and assets must not be withdrawn from the business until two years have passed and the fund account must not be used for any other purpose other than adding to the capital,

b) Assets located in Turkey and subject to declaration;

1) The assets subject to the declaration must be recorded in the legal books by the taxpayers who keep books in accordance with the TPL, a special fund account in the liabilities for these assets recorded in their legal books (or showing them on the relevant pages of the legal books) must be opened, this fund account and assets must not be withdrawn from the business until two years have passed and the fund account must not be used for any other purpose other than adding to the capital,

2) Must be certified with documents showing that it is deposited in accounts in banks or intermediary institutions (except immovables) by those who are not taxpayers of income or corporate tax,

3) The tax levied on the assets declared within the scope of the article must be paid in due time.

In the event that there is a tax base difference about the taxpayers who have made a declaration or notification within the scope of the article due to tax inspections or referral to assessment procedures initiated for other reasons other than the declared or notified assets;

a) If it is determined that the tax base difference arises due to the assets subject to declaration or notification and if the amount of assets declared or notified is equal to or more than the tax base difference, no assessment will be made in terms of income or corporate tax and value added tax.

b) In the event that it is determined that the tax base difference arises due to the assets subject to declaration or notification, if this difference is more than the amount of the declared or notified asset, tax assessment will be made only on the difference amount in terms of income or corporate tax and value added tax.

In the event that a declaration or notification is made based on the provision of the article after the date of the tax inspection or referral to the assessment commission, it will not constitute an obstacle to tax assessment over the tax base differences found based on the tax inspection and the decision of the assessment commission, and the amounts subject to the declaration or notification will not be subject to offset.

## **7. Overhead and Depreciation**

The provisions of the TPL regarding depreciation shall not apply to the assets that are subject to declaration or notification and transferred to the legal book records.

Losses arising from the subsequent disposal of these recorded assets will not be recognized as an expense or deduction in determining income or corporate income for income or corporate tax purposes. Gains and revenues arising from the holding and disposal of these assets will be taken into account in the determination of income or corporate income within the framework of general principles.

Taxes paid due to the declared or notified assets cannot be written off as an expense and cannot be offset against any other tax.

Sincerely,

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

## **APPENDIX**

General Communiqué on the Acquisition of Certain Assets into the Economy

(\*) The remarks in our circulars are for information purposes only. We recommend that the opinion and support of a qualified counsellor be sought before taking final action on questionable matters. Our company shall not be held responsible for any damages to be incurred as a result of transactions to be made solely on the basis of the statements in our circular.

(\*\*) For opinions, criticism and questions about our circulars, please contact our experts below.

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