Recent amendments to stamp tax law in Turkey

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Stamp tax in Turkey is only applicable to transactions that take place in within Turkish borders. In transactions where the deal volume is high, stamp tax can often be a hindrance since it can be a real burden on the parties. Stamp tax is regulated by the Stamp Tax Code (Numbered 488) and applies to a wide range of papers such as agreements, surety, guarantee and pledge documents, settlement letters or bills of lading. The term "paper" within the scope of Stamp Tax Code means any paper which is written, signed, marked or created as electronic data through a magnetic medium by using electronic signature and which will be used to prove a specific matter.

Even papers signed in foreign countries or the papers signed in foreign embassies, legations and consulates in Turkey may be subject to stamp tax if they are submitted to governmental authorities.

Stamp tax has a wide application area, therefore the amount of stamp tax that is applied to a transaction is of great importance both for national and multinational investors in Turkey.

The amount of the stamp tax is regulated by the Stamp Tax Law. Accordingly, there are two types of stamp tax: (i) proportional stamp tax and (ii) fixed stamp tax. Stamp Tax Law lists the papers which are subject to proportional or fixed stamp tax and the proportional or fixed amounts that must be applied to those papers. In proportional stamp tax, according to the type and essence of the paper, stamp tax is calculated as a proportion of the amount of money written in the paper whereas in fixed stamp tax only the essence of the paper is taken into account and the fixed amount specified by the Stamp Tax Law is applied.

Although the Stamp Tax Law specifies the amounts to be applied for calculation of proportional stamp tax, there have previously been controversies regarding the amount to be taken as the basis for the calculation of the stamp tax. Usually, the highest amount (which sometimes appear to be the penalty clause or a target sales amount) on the paper is considered as the basis. As a consequence, such an uncertainty sometimes prevents the signing of agreements containing especially high monetary amounts as it can lead to unanticipated high transaction costs that exceed the essence of the transaction for the parties.

Another problematic issue used to be the repetitive stamp tax arising from each signed copy of a paper. Therefore, parties tended to sign their agreements in as fewer copies as far as possible to limit the stamp tax expenses.

On August 9th, 2016, the Law Amending Certain Laws for Improvement of the Investment Environment (Numbered 6728), hereafter referred to as "Amendment Law", came into force. The Amendment Law aims to remove burdens on investors and introduces important amendments to a number of laws including the Stamp Tax Law. As per the Amendment Law, the below issues were introduced and clarified:

- Repetitive stamp tax collected from each copy of a paper will be ceased for the papers subject to proportional stamp tax. Meaning that stamp tax will be collected only once - no matter if the parties agree on execution of the agreement in more than one copy.
- Unless the commitments, which are regulated as a sanction of an agreement such as down payment, forfeit, penalty clause, are directly subject of the agreement, stamp tax will not be calculated based on the amounts of these commitments.
- In case of an amendment to an agreement subject to stamp tax over the highest value determined by law, no stamp tax should be applied if the amendment is only made to the value of the agreement, but the remaining provisions of the agreement remain unchanged.
- The authority of the Council of Ministers for determination of the stamp tax rate has been expanded to decrease the stamp tax rate to zero for the proportional stamp tax. Also, Council of Ministers has been authorized to determine the stamp tax rate for the papers within the scope of banking legislation in addition to their authorities for the papers within the scope of capital market legislation.
- With the amendment concerning the insurance agreements and papers for payment of insurance premiums, insurance commitment clauses written in the same papers are also included within the scope of stamp tax exemption and thus it is intended to collect the stamp tax over the main agreement value.
- Individual retirement agreements will also be exempted from stamp tax.
- Papers for share transfers of joint-stock companies, limited liability companies and partnerships limited by shares will be exempted from stamp tax.
- Stamp tax exemption will be applied for sale and purchase agreements made by real estate investment trusts and real estate portfolios for their real estate portfolio and preliminary sale agreement for real estate.

Concluding remarks

Stamp tax obligation arising from execution of contracts may be an issue when parties do not consider it in advance as it may create a big expense item in transactions when not duly planned. Moreover, the ambiguities in Stamp Tax Law and the tendency of the tax officers to apply the stamp tax over the highest figure on the contract has been argued and sometimes deemed an important barrier for concluding agreements in Turkey. These ambiguities also played a role for parties to find ways to circumvent the law. The Amendment Law aims to remove these barriers and sets forth stamp tax exceptions and clarifies certain issues arising from the application of stamp tax.

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