

### CLIENT ALERT

EMPLOYMENT | TURKEY

NOVEMBER 2023

#### FINANCIAL ASSISTANCE PROVIDED TO EMPLOYEES

It is a common practice for Turkish employers to offer financial assistance to employees in need. This assistance is in the form of a payment made to the employee before the salary date, or separate from the salary. It is made at the request of the employee and is considered a loan. The amounts paid to the employee are repaid to the employer through deductions from the employee's salary, or the parties may agree on a different payment plan. The nature of such payments, their repayment or deduction from salary by the employer can often result in disputes.

Under Turkish Labour Law, a salary advance and employer loans are considered two different institutions. In addition to an advance on the salary, we will also briefly touch on the issue of advancing expenses to an employee.

##### (1) **Salary Advance**

According to the general definition provided by Article 32 of Labour Law No 4857 (the "**Labour Law**"), the salary is the amount of money paid in cash to a person in return for work performed. Salary payments are generally made to the employee at the end of each month, though shorter payment periods may be determined in collective service agreements or employment agreements.

Although salary advances are not regulated in the Labour Law, Article 406 of the Turkish Code of Obligations No 6098 (the "**TCO**") stipulates that the employer is obliged to make an advance payment to an employee under certain conditions. These conditions include both the existence of a serious and pressing need of the employee and the employer's financial situation being sufficiently good to make the payment requested by the employee. If these conditions are met, the employer will not be able to deny the employee's reasonable and justified request for an advance payment.

According to the case law of the Court of Cassation, an advance payment should not exceed the employee's monthly salary. According to the same case law, if an amount exceeding the monthly salary of the employee is paid, it is considered a debt/loan that can be paid by the employer at its sole discretion.

##### **Reimbursement of a salary advance – Deduction from salary**

An advance payment is repaid to the employer by deducting it from the monthly salary of the employee in the month in which the advance payment is made. Pursuant to Article 37 of the Labour Law, the payslip records of the employee must mention the advance payment as well as the deduction from salary.

The amount of the salary advance to be paid to the employee is subject to social security premiums for the month in which the advance payment is made.

Furthermore, under Article 94 of Income Tax Law No 193 ("ITL"), income tax is deducted and paid from the advance amount to be paid to the employee based on the payment period, in the same way as it would be on a salary payment. Therefore, income tax deduction will be applied on the advance amount to be paid to the employee based on the payment period.

## (2) **The nature of loans in amounts exceeding the monthly salary of the employee**

A payment exceeding the monthly salary of the employee cannot be considered as a salary advance. Amounts exceeding the monthly salary are considered a loan given by the employer to the employee within the scope of the provisions on loan agreements under Article 386 of the TCO.

Since lending for interest is subject to various regulations, the employer will only be able to request the reimbursement of the payment made to the employee, and will not be able to obtain any additional income, such as interest, etc. Otherwise, the employer might be subject to legal sanctions.

The amounts paid by the employer to an employee as a loan will not be included in the payslip of the employee and therefore no income tax or social security premiums will be deducted for these amounts.<sup>1</sup>

### **Reimbursement of the loan amount to the employer**

The parties can freely determine the conditions regarding the reimbursement of the financial support to be provided by the employer to the employee (maturity, amount to be paid, deduction from salary, due date in the event of the termination of the employment agreement, etc.). However, unlike the salary advance, since the rate of deduction from the monthly salary of the employee cannot exceed  $\frac{1}{4}$  of the salary, as per the legal regulations, a mixed repayment method – i.e. a direct payment together with a deduction from salary – is usually advisable.

Considering the risk of the employment relationship terminating during the reimbursement period, determining the reimbursement conditions, including a deduction from salary, in a written agreement will guide the parties and the court in the event of a potential dispute between the employee and the employer.

## (3) **Expense advance**

If an employee incurs expenses on behalf of the employer (for example while on a business trip) then, pursuant to Article 416 of the TCO, these must be reimbursed and paid together with the subsequent salary each time, unless a shorter period has been agreed upon or there is a local custom. However, if an employee regularly incurs expenses in order to perform their contractual obligations, they should be given an appropriate advance at regular intervals, at least once a month.

Pursuant to Article 443 of the TCO, upon the termination of the employment agreement, each party is obliged to return the things received from the other, or from a third party for the account of the other, in connection with the employment relationship. In addition, the employee is

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<sup>1</sup> Tax issues arising from the employer's free of charge loan to an employee are a matter of debate and are not discussed here.

obliged to return, in particular, any motor vehicles and traffic permits, as well as any advances on salary and expense, to the extent that they exceed the employee's receivables.



*In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.*

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