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NEW RUSF TREATMENT FOR EXTENSIONS OF FOREIGN CURRENCY LOANS

The Turkish tax authorities have decided to change the Resource Utilization Support Fund ("RUSF") treatment in cases of extensions of foreign currency loans obtained abroad.

Loans obtained by Turkish residents from foreign creditors may be subject to an additional tax burden known as the RUSF. The RUSF applies irrespective of whether the creditor is a bank/financial institution or a company within the borrower's group. The rate varies between 0% and 3% depending on the currency denomination, the business of the creditor and the maturity of the loan concerned.

For instance, foreign currency loans obtained abroad by Turkish banks and financial institutions would in any case benefit from a reduced 0% RUSF tax rate. However, for other taxpayers, the applicable RUSF rate, the basis of which is the principal of the loan, is determined on a declining scale depending on the maturity of the loan (see the chart below).

Maturity of the Foreign Currency Loan *(Fiduciary transactions are excluded)*	**Applicable RUSF Rate**
Up to 1 year	3%
Average maturity between 1 year (inclusive) and 2 years	1%
Average maturity between 2 years (inclusive) and 3 years	0.5%
Average maturity of 3 years (inclusive) or more	0%

This being said, there had been controversy over how the above rates would apply under Turkish tax practice in the case of an extension of the initial loan term. Pursuant to an application from the Banks Association of Turkey (writ dated 13 February 2014), the Turkish Revenue Administration ruled that an extension would constitute a new loan. Thus, regardless of the overall term of the loan, additional RUSF would need to be calculated based on the maturity of each relevant extension.

This approach, which sparked heavy criticism, appears to have been recently abandoned. A writ addressed to the Banks Association of Turkey on 12 August 2015 stated that, although the Turkish Revenue Administration continues to treat each extension as a new loan, it has now adopted a more liberal calculation method regarding the RUSF rates applying thereto:

- The RUSF shall be levied on the initial foreign currency loan obtained abroad in accordance with the RUSF regulation effective on the date on which loan was utilized.

- **For foreign currency loans obtained abroad with an initial average maturity of less than 3 years and on which the RUSF has been levied:** In case of extension of such loan, irrespective of whether the overall average maturity of the loan exceeds 3 years, no RUSF shall be levied *provided that the extension remains aligned with the initial loan*. Nevertheless, any RUSF levied before the extension shall not be reimbursed.

- **For foreign currency loans obtained abroad with an initial average maturity of 3 years or more and on which no RUSF has been levied:** In case of extension of such loan, given the fact that the average maturity would remain above 3 years irrespective of the term of the extension, no RUSF shall be levied thereon *provided that the extension remains aligned with the initial loan*.

- Should the foreign currency loan obtained abroad be repaid prior to the maturity date (for credits with extension, the extended maturity date shall be taken as reference), and provided the time period between the date of utilization of the loan and repayment remains below 3 years, the RUSF should be levied based on the average maturity to be calculated between these two dates; furthermore, a tax penalty would apply.

This new approach in the RUSF treatment of foreign currency loans obtained abroad could be considered as a positive development given the fact that, as a general matter of principle, no additional RUSF should be levied on loans in the case of an extension.

However, this latest writ from the Turkish Revenue Administration remains unclear regarding what should be understood by the expression "*provided that the extension remains aligned with the initial loan*". This may be prone to different interpretations by Turkish tax officials as regards whether or not any amendment made to the interest rate or loan amount under an extension could be deemed to be "*not aligned with the initial loan*". In this respect, further clarification from the Administration's end would be of crucial importance.

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