



# **The Republic of Turkey Investment and Taxation Guidance In Terms Of Foreign Investment Perspective**

Full service legal and practical guidance  
in Turkey

**BEREKET & BALTACI**  
**Law Firm**



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## **Preface**

This booklet has included of five main sections and aims to provide the foreign investors with legal and practical guidance in relation with the investment in Turkey; formation of and/or entering a business, taxation, the key features of Turkish employment law and practice.

The information presented herein was updated as of February 2015. Each year, the regulations may change and directly affect the investment procedures. Founders are strongly advised to consult their local advisors and/or lawyers about the most recent changes in regulations.

This guide is not intended as a substitute for the advice of competent legal or other advisers in connection with any particular matter or issue, and should not be used as a substitute. While the writer has made efforts to be accurate in his factual statements contained in this guide, neither he nor his law firm or anyone connected with it make any representation or warranty in this regard.

# 1.0 Setting up a Business in Turkey

## 1.1 Formation and Registration of a Company

### 1.1.1 Introduction

Foreign investment legislations in the Republic of Turkey are based on the principle of equal treatment for the domestic and foreign investors. In accordance with Turkish Foreign Investment Law, foreign investors have the same privileges and obligations as the domestic investors. However, it should be noted that legislations regulating media service providers and the companies operating in the electricity market, civil aviation and sea transport sectors have certain restrictions for foreign investors.

Foreign investors can freely transfer abroad net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or other financial institutions.

To operate in the Republic of Turkey, companies must be entered in a commercial register at the local Trade Registry Office. In addition, established businesses, founders and company directors must register with the competent local tax authorities and obtain a tax number.

During establishment process, the valuations of international credit agencies as well as courts or competent authorities of the investor's country are accepted as valid in the determination of the share value for marketable securities that are contributed as capital in-kind.

Foreign capital entities may employ foreign personnel in Turkey, provided that the work permits are obtained from the Ministry of Labour and Social Security.

### 1.2 Principle Forms of Business Entity

Limited Liability Companies and Joint Stock Companies are the most common forms of business entities in Turkey. Foreign investors may form any type of partnership in Turkey. In the old regime, foreign investors were only allowed to form a Joint Stock or a Limited Liability Company. Now, any form of company included in the Turkish Commercial Code is acceptable for the foreign investment. This allow investors to form a company that serves their needs best.

Forms of companies included in the Turkish Commercial Code;

- Joint-Stock Company (JSC)
- Limited Liability Company (LLC)
- Commandite Company
- Collective Company
- Cooperative Company

Based on the subject of a company's operation, the form and location of the company may affect the tax obligations of the shareholders and company itself. For instance; (i) under the current legislation, real estate investment trusts are exempted from the income tax. (ii) Liaison offices in Turkey are exempted from the salary-income tax for their employees and the corporate tax and stamp tax for their activities.(iii) The income derived from the sale of goods manufactured by the license holders in the Free Trade Zones is exempted from the corporate income tax.

Limited Liability Companies are the very common type of company where shareholders would like to manage their company with ease. They have a simpler structure and may be easier to administer in long run. When the primary objective is to establish a fully-owned subsidiary with minimum capital and administrative requirement, a Limited Liability Company may be preferable.

An important advantage of Limited Liability Companies is that the liability of shareholders for third parties, exempt for fiscal liabilities, is limited to the amount that remains unpaid on their shares. Moreover, unlike Joint stock Companies, any restriction on the transfer of shares to third parties under the articles of association of Limited Liability Companies can be imposed.

A Joint Stock Company is the second common type of vehicle for conducting business in Turkey. A Joint Stock Company is especially preferable where shareholders have potentially conflicting interests. Joint Stock Companies offer far better protection in relation with tax and similar duties, levies and charges since the shareholders of Joint Stock Company(s) have limited liability for fiscal obligations, unlike Limited Liability Companies.

If the founders would like to offer shares or debentures to the public, the company type shall be a Joint Stock. On the other hand, banks, private finance institutions, insurance companies, financial leasing companies, factoring companies, holding companies, companies operating as foreign currency exchange offices, companies dealing with public warehousing, publicly held companies subject to the Capital Markets Law, companies operating in the free trade zones should be established as Joint Stock Companies as well.

Limited Liability Companies and Joint Stock Companies may be formed by one shareholder only (single member company), who may also be the sole director and secretary of the company.

### **1.3 Shareholders' Liabilities for Public Receivables**

The liability of Joint Stock and Limited Liability Companies' shareholders is only against the company and limited with their capital contribution. However, the shareholders of Limited Liability Companies are, unlike Joint Stock Companies, jointly and severally liable against public receivables (fiscal liabilities) such as taxes, duties, levies and charges if the company is unable to make the required payments.

In addition, "the legal representatives" of Limited Liability and Joint Stock Companies are personally liable for any unpaid tax and other public liability that cannot be collected from the entity.

Board members in Joint Stock Companies will not be personally liable for any unpaid taxes and other fiscal liabilities where a director(s) is appointed as a fully authorized board member to represent the company or a manager(s) is appointed to represent the company. Otherwise, the board members, as the representative of the company, would be personally liable for any unpaid taxes and other fiscal liabilities.

### **1.4 Real Properties**

Companies incorporated in Turkey by foreign investors (or companies with foreign shareholders) can only acquire and use real properties in order to conduct the activities stated in their articles of association. These real properties cannot be in military or private security zones. Moreover, Petroleum Law, Encouragement of Tourism Law, Banking Law and the Industrial Zones Law may limit foreign companies in acquiring real property in particular circumstances.

### **1.5 Regulations of Limited Liability Companies (LLC)**

**Founders, share holders.** Limited liability Companies may have a minimum of one shareholder (single member company) and a maximum of fifty shareholders. There is no nationality or residency restriction.

The shareholders of Limited Liability Companies are liable to the company only with the amount of subscribed capital and in proportion to their capital contribution with regards to third party receivables.

The shareholders are jointly and severally liable against fiscal liabilities such as taxes, duties, levies and charges if the company is unable to make the required payments.

Unlike Joint Stock Companies, any restriction on the transfer of shares to third parties can be imposed under the articles of association.

**Capital.** Minimum authorized share capital is 10.000 TL. At least 25% of the capital contribution must be paid in during the establishment of the company. Unpaid capitals must be paid in a period of two years following the establishment. Capital contributions may be in the form of moveable assets, machinery, patents, domestic monetary prospects etc.

**Management.** Principally, all shareholders of a Limited Liability Company are also directors and they are collectively entitled and obligated to manage the company affairs and the company. Limited Liability Companies may be managed by their general manager(s) as well.

One or several managers are permitted. Real and legal entities are allowed to be selected as a company manager. In old regime, individuals were only allowed to be the manager of a company. The minimum number of directors in a private company is one while there is no limitation for maximum number. One of the managers is required to be shareholders. Where more than one manager is appointed, the board of directors has to be established. There is no nationality or residency restriction for the managers.

“The legal representatives” of a Limited Liability Company are personally liable for any unpaid taxes and other fiscal liabilities that could not be collected from the entity.

In case, a corporate body becomes a manager or a board member, an individual shall be appointed to act on behalf of the corporate body and this individual shall also be registered with the local Trade Registry.

**Board of directors.** The board of directors must be formed where more than one manager is appointed by the general assembly. The one of the directors shall be chosen from the shareholders. The chairman shall be appointed by the general assembly. There is no nationality or residency restriction for the directors.

**Taxes and fees.** There are no taxes on incorporation and capital increase. The costs of establishing a company in the Trade Registry and of notarizing the articles of association depend on the company's capital and the page amount of the articles of association. For the taxes that a company will be subject to, after the establishment, please refer the tax overview section of this guidance.

**Types of shares.** The shares of a Limited Liability Company, unlike Joint Stock Companies, cannot be represented by negotiable share certificates.

**Dividends.** Resident corporations are subject to a 15% withholding tax when dividends are paid out to shareholders; however, dividends paid by resident corporations to resident corporations are not subject to the withholding tax. Tax treaties often provide discounted rates of withholding for shareholders who are the residents of treaty countries.

No profit shall be distributed to shareholders unless the legal and statutory reserves and the amounts which are required to be allocated by law or under the articles of association are first allocated.

An amount equal to 5% of after-tax annual profits must be placed in a legal reserve account until the reserve reaches 20% of equity capital. If the company's capital rate decreases, the reserve account should continue to be allocated.

## 1.6 Regulations of Joint Stock Companies (JSC)

**Capital.** Minimum authorized capital is 50,000 TL. At least 25% of capital contributions must be paid in during the establishment of the company. Unpaid capitals must be paid in two years following the establishment. Other capital contributions can be in the form of moveable assets, machinery, patents, domestic monetary prospects etc.

**Founders, shareholders.** One person can establish a Joint Stock Company. There is no nationality or residency restriction.

Unlike Limited Liability Companies, the shareholders of Joint Stock Companies are not personally liable for any unpaid taxes and other fiscal liabilities that cannot be collected from the entity.

**Control.** A majority of %25 is sufficient to approve most actions; a majority of more than 50% is required for major decisions including the change of the articles of association. A minority of 10% of equity capital (5% in public company(s)) can call an extraordinary shareholders' meeting or add topics on the agenda of shareholders' meetings. A single shareholder may request an extraordinary shareholders' meeting or add topics on the agenda of the shareholders' meeting irrespective of his capital contribution, provided that the request is approved by the board of directors or the local court.

**Board of directors.** One or several board members can be appointed. The general assembly may appoint the board members for up to 3 years and may re-appoint for additional terms. At least one of the board members is required to be Turkish citizen and the resident of Turkey. There are no restrictions for the other board members on the nationality and residency. Board members are not required to be shareholders. Real and legal entities are allowed to be selected as a board member.

"The legal representatives" of Joint Stock Companies are jointly and severally liable for any unpaid taxes and other fiscal liabilities that cannot be collected from the entity. Where a director(s) is appointed as a fully authorized board member to represent the company or a manager(s) is appointed to represent the company, the directors in the board would not be personally liable for any unpaid taxes and other fiscal liabilities.

The physical presence of board members is not required for board meetings; The commercial code allows board meetings to be held in an electronic environment and board resolutions may also be approved via electronic signatures.

In case, a corporate body becomes a board member, an individual shall be appointed to act on behalf of the corporate body and this individual shall also be registered with the local trade registry.

**Independent auditors.** Companies are not obliged to have an internal auditor as a statutory organ. Companies to be subject to independent auditing are determined by the Cabinet of Ministers. Companies exceeding the following limits of at least two criteria among three criteria in two successive fiscal periods shall be subject to independent audit.

Total Assets	: min. TRY 150 million
Net Sales	: min. TRY 200 million
Employee number	: min. 500

Furthermore, a minority of 10% or shareholders owning 1 million TL equivalent shares can request a special audit provided that the founders or directors act against the rights and/or interest of the company and shareholders.

**Taxes and fees.** There are no taxes on incorporation and capital increase. The costs of establishing a company in the trade register and of notarizing the articles of association depend on the company's



capital and the page amount of the articles of association. For the taxes that a company will be subject to, after the establishment, please refer the tax overview section of this guidance.

**Types of shares.** The shares could be represented via share certificates or temporary share certificates; which could either be in the form of bearer share certificate or registered share certificate. The shares are transferable unless the transfer is explicitly restricted in the articles of association. It should be noted that the restrictions may be only imposed in limited circumstances allowed by the commercial code.

In compliance with the requirements of Turkish Capital Market Law and respective legislation, Joint Stock Companies may issue various types of securities (equity or debts).

**Dividends.** Resident corporations are subject to a 15% withholding tax when dividends are paid out to the shareholders; however, dividends paid by resident corporations to resident corporations are not subject to withholding tax. Tax treaties often provide discounted rates of withholding for shareholders who are the residents of treaty countries.

No profit shall be distributed to partners unless the legal and statutory reserves and the amounts that are required to be allocated by law or under the articles of association are first allocated.

An amount equal to 5% of after-tax annual profits must be placed in a legal reserve account until the reserve reaches 20% of equity capital.

### 1.1.7 Establishment Process and Customary Time Period

The registration and establishment of a company in Turkey can be completed in a few days after required documentations are duly prepared. Founder(s) shall submit 3 copies of signed and notarized articles of association together with the below listed documents to the Trade Register located at the province where the entity will be established.

The company can start to operate its business activity after the approval and the registration of the Trade Register. Company registrations and participations are announced to the third person or related parties by the publication of Turkish Trade Registry Gazette.

No pre-approvals required for company establishments in Turkey. However, the foundation of banks, special financial institutions, insurance companies, leasing companies, factoring companies, foreign exchange dealers, and public companies subject to the Capital Market Law and founders and operators at free trade zones are subject to the prior permission of the Ministry of Industry and Commerce.

#### List of Necessary Documents for a Company Establishment

- Company establishment petition
- Articles of association including notarized signatures of founders
- Founders' statement proving that all shares constituting the registered capital have been subscribed by the founders
- Chamber of commerce registration form
- Notarized copy of the signatures of persons with the authority to represent and bind the company.
- Notarized translation of passport in case the foreign shareholder is a real person;
- In case the foreign shareholder(s) is a legal entity; the original copy of the Certificate of Activity issued by the competent authorities and approved by the relevant Turkish Consulate or apostilled and its notarized translation
- Bank letter proving that the share capital has been deposited

- Bank receipt indicating that 0.04% of the company capital has been deposited to the account of the Turkish Competition Authority
- Potential tax identification number
- Tax identification numbers of the founders and foreign directors
- Lease contract indicating company's legal address
- In case there are any rights and movable and immovable assets to be put in as capital for the company to be established; the expert report of the assessment made to ascertain the value of these and the related court decision for the expert assignment

Republic of Turkey is a signatory to the Hague Convention. According to the Convention, legalization is not necessary with respect to public documents issued in a country which is a signatory to the Convention. Documents only need to be certified in the form of an apostille by that country's authority. If the documents are executed in a non-signatory country, they must be legalized by the Turkish Embassy or a diplomatic representative office of Turkey representing the interests of Turkey in the home country of the founder.

## **1.2 Branch of a Foreign Corporation**

Foreign companies may also operate through branches in Turkey. For establishing a branch, a permit from the Undersecretariat of Treasury Foreign Investment Department (FID) must be obtained before the registration to the Commercial Registry Office.

The registration and establishment of a branch can be completed in a period of two week after required documentations are completed. In addition to the documents afore-listed, the following documents are also needed to obtain permission from the Ministry of Industry and Trade. Branches can start to operate their businesses activity after the approval and registration of the Trade Register.

- Company's resolution to open a branch
- Original copy of the company's articles of association
- Establishment and current status documents showing the registration and current legal status of the company
- Power of attorney drawn by the company in favor of its resident representative, assigning full representation and accountability.

Furthermore, after the establishment, an establishment notification has to be sent to the Treasury. A data form regarding the branch's operations and information on payments made to the equity accounts of the branch have to be submitted periodically to the Treasury as well.

The legal representative of the branch is required to be the resident in Turkey.

The income of a branch derived in Turkey is taxed in the same way as resident corporations.

## **1.3 Liaison Offices**

Alternatively, foreign companies can also establish liaison offices in Turkey. Liaison offices can only be involved with non-commercial activities. In other words, liaison offices cannot issue invoice or proforma invoices.

While carrying out their activities, liaison offices in Turkey may benefit from the corporate tax and stamp tax exemption for their activities and salary-income tax exemption for their employees since all of liaison office employees are, in principle, exempt from the salary-income tax, which is one of the most crucial points that make liaison offices attractive for foreign investors in Turkey.

Liaison offices in Turkey provide an advantageous way to promote parent company's business activities. They are generally established, by foreign entities, for representation and to gather information on behalf of the parent company in the related sector and the country. Alternatively, foreign investors may also use liaison offices for regional management centers, research and development, technical supports, audit and supervision of their distributors and suppliers, testing the newly developed products, laboratory services, research analysis, training & education of the employees.

### Establishment

The General Directorate of Foreign Investment is empowered to authorize the legal entities established abroad to open a liaison office in Turkey by issuing an establishment permit. An original copy of "Certificate of Activity" and operational report or balance sheet and income statement of the main company are required during the application.

The Ministry shall evaluate the liaison office opening permit applications of newly established foreign companies within the context of; the field of activity, capital and number of personnel employed. The applications made for the establishment permit shall be finalized by the authority within five (15) business days from the submission date provided that the required documents are complete.

It should be noted that the establishment process might be also subject to the applicable sector-specific legislations based on the sector of the liaison office.

Liaison offices, in their first applications, are granted operation permits of 3 years at most. For extensions, the liaison offices are required to make an application before the expiration of their permissions.

Liaison offices shall send the data form including their activities and their accompanying documents to the Ministry every year latest until the end of May, so as to inform the Ministry about their operations of the previous year.

Liaison office expenses shall be covered by the funds transferred from abroad.

## **2.0 Buying an Existing Turkish Company or Part Ownership Thereof**

The General Directorate of Foreign Investment shall be officially informed about any share transfer to the foreign investors.

Please note that buying an existing company or part ownership requires a detailed due diligence, tax planning and well-structured contractual terms to protect the buyer's interest and to minimize the legal risks you may confront. For this reason, please do not hesitate to contact us for further-detailed guidance in Turkey.

### **2.1 Share transfers in Limited Liability Companies**

In order to complete a share transfer in a Limited Liability Company, the parties have to comply with a rigid procedure. The notarization of the share transfer agreement and the approval of share transfers by the general assembly with the affirmative votes of majority of the shareholders are required. In addition, the registration and announcement of the new share transfer at the local trade registry office is also required.

Any restriction on the transfer of the shares to third parties or the other shareholders can be imposed under the articles of association.

The purchase of the shares is subject to the stamp tax (%0.95) and VAT (%18). VAT would be excluded where the transferor had possessed the related shares for a period of at least two years.

New shareholders of a Limited Liability Company are jointly and severally liable against previously unpaid public receivables such as taxes, duties, levies and charges if the company is unable to make the required payments.

### **2.2 Share Transfers in Joint Stock Companies**

In order to complete a share transfer in a Joint Stock Company, the endorsement and transfer of share certificates (in the bearer form) are required. If the company has not issued any share certificates, the transfer of the shares shall be completed within the share ledger of the company.

The notarization of the share transfer agreement as well as the registration and announcement of the new share transfer at a local trade registry office is not required.

Joint Stock Companies can disapprove the transfer of the shares (that are not quoted on the stock exchange) by using their takeover right.

A company can only reject the transfer of shares that are quoted on the stock exchange where the articles of association explicitly restrict the transfer exceeding a given limit.

Moreover, Joint Stock Companies can reject a share transfer where the transferee's ability to pay is doubtful, or the transferee has not paid the requested deposit to the joint stock company.

The transfer of share certificates is exempted from stamp tax and other duties and charges except for VAT (%18). Where the transferor has held the related shares for a period of at least two years, VAT will be excluded.

For shares quoted on the stock exchange, there are no tax liabilities including VAT, as a result of the transfer of the shares.

Unlike Limited Liability Companies, the shareholders of Joint Stock Companies are not personally liable for any unpaid taxes and other fiscal liabilities that cannot be collected from the entity.

“The legal representatives” of a Joint Stock Company are personally liable for any unpaid taxes and other fiscal liabilities that cannot be collected from the entity. Not only the legal representatives who are in office at the time a public receivable is due but also those who were in the office at the time of the occurrence of the fiscal obligation would be jointly and severally liable.

Where a director(s) is appointed as a fully authorized board member to represent the company or a manager(s) is appointed to represent the company, the directors in the board of directors would not be personally liable for any unpaid taxes and other fiscal liabilities.

## **2.3 Investing in Stock Market**

Where international or bilateral treaties are in place between Turkey and the investor's country of origin, the related terms of that treaty will principally be applied, to the extent possible.

In accordance with the Turkish Double Taxation Acts, the investors residing in Holland, USA and Belgium are exempted from the income tax liability arising out of the gains derived in the stock exchange.

Investors who are the residents of England, Germany and France may only be liable for the income tax provided that they had possessed the shares for a period of less than a year.

## **2.4 Squeeze out**

### **In Private Companies**

Where shareholders directly or indirectly own and hold at least 90 % of capital shares and voting rights in a capital company, the controlling shareholders may apply to the court for the squeeze out of the minority shareholder(s), if the minority shareholder(s) prevents the company from running its business, do not act in good faith, create perceptible disruption or act in a reckless manner.

Since the squeeze out right can solely be implemented by a court decision, %90 percentage must be preserved until the date of the court decision. The share value to be paid to the minority shareholder(s) will be determined by the court. The controlling shareholders may purchase the shares of the minority shareholders at stock-exchange value. If such a value does not exist the share value may be determined through the net value (the balance sheet value), or through a value to be determined based on a commonly accepted method.

### **In Public Companies**

Controlling shareholders holding 95 % of the total voting rights of a publicly held company possess the right to squeeze out the minority shareholders.

Controlling shareholders shall exercise squeeze-out right within a period of three months upon having the % 95 ownership of voting rights. Where the three months period is over, the controlling shareholders' right to squeeze out terminates and an additional share purchase is needed to renew the squeeze-out right.

For listed entities, the squeeze-out price is determined based on the arithmetical average of the 30 days weighted average of the stock price. For unlisted entities, a valuation report shall be prepared to determine the fair value of the squeeze-out price.

Upon the approval of the Capital Market Board and the payment of squeeze out price, BIST will resolve the delisting of the listed entity. For publicly held companies that are not listed on the BIST, the shares shall be submitted to the corporation by the shareholders, and duly cancelled.

The squeeze out right can be exercised by minority shareholders against controlling shareholders as well.

## 3.0 Tax Compliance Overview

As corporate entities, the net incomes of Joint Stock and Limited Liability Companies are subject to the corporation tax. Besides, they can be subject to the value added tax, excise and other transaction taxes depending on the scope of the company.

### 3.1 Accounting, Filing and Auditing Requirements

The tax assessment period is the calendar year. The corporate taxes in Turkey are assessed on an annual basis, but the advance payment is required in quarterly installments (in May, August, December and February).

A final tax return generally must be filed by 25 March of the following year. Fines are imposed for unauthorized late payments.

Employers are responsible for the withholding tax on remuneration paid to their employees. The tax must be withheld on a monthly basis for all employees.

Companies exceeding the following limits of at least two criteria among three criteria in two successive fiscal periods shall be subject to independent audit.

Total Assets	: min. TRY 150 million
Net Sales	: min. TRY 200 million
Employee number	: min. 500

### 3.2 Corporate Income Tax

The net income of corporations generated from their commercial activities in Turkey is subject to corporate income tax at a rate of 20%. It should be noted that the incentive programs in Turkey may provide reduced corporate tax rates for the income from certain investments in certain sectors.

The Corporate tax in Turkey is assessed on an annual basis, but advance payment is required in quarterly installments.

Dividends received from participations outside Turkey are exempt from corporate taxation if certain conditions are met. These are, in general, that; (i) the participation rate has to be at least 10 %, (ii) the participation should have been held at least for 1 year, (iii) the foreign tax burden is at least 15 %, and (iv) the gain should be transferred to Turkey until the date filing of the corporate tax return of the fiscal year in which the relevant gain obtained. Capital gains upon the disposal of shares in foreign participations are not covered under this exemption.

Dividends received by a Turkish company from a resident corporate taxpayer are not taxed in the hands of the recipient company. The exemption is also available to the non-resident companies to the extent that dividends are attributable to a Turkish permanent establishment or branch.

### 3.3 Value Added Tax (VAT)

The transfer of all goods and the rendering of all services including importation the same into Turkey are, in general, subject to VAT. The generally applied VAT rate varies between 1%, 8%, and 18% depending on the type of goods or services. For instance, the rate of VAT on the lease payments of financial lease arrangements in relation to investment (non-consumer) goods (including those provided by non-resident financial lessors via cross-border financial leasing) is 1% whereas the increased rates of VAT (18%) is charged on the sale of some luxury goods and cars.

VAT is ultimately borne by the final consumer, who is not allowed to deduct VAT. To compute VAT liability, a VAT entrepreneur must determine the total output VAT within a reporting period. From this total, the entrepreneur deducts the input VAT, which is the VAT paid to suppliers on the supply of goods and services and the VAT liable on intra-community acquisitions and imports of goods. The positive difference between output VAT and input VAT is paid to the tax authorities. There are a number of formal requirements for the deduction of input VAT, e.g. concerning the content of the invoices received.

VAT entrepreneurs in Turkey must calculate their VAT liability and file preliminary VAT returns to the Turkish tax authorities either on a monthly basis or a quarterly basis.

Where a nonresident VAT entrepreneur carries out services that are taxable in the Republic of Turkey to other VAT entrepreneurs, the reverse charge mechanism applies, meaning that the recipient of the service will be liable for VAT.

In accordance with the Value Added Tax Law, following transactions are exempted from the VAT liability.

- The export of goods and services
- Roaming services rendered in Turkey for customers outside Turkey (i.e. non-resident customers)
- Petroleum exploration activities
- International transportation
- Deliveries made to diplomatic representatives, consulates and international organizations with tax exemption status and to their employees
- Supply of machinery and equipment, including importation, to persons or corporations that are VAT taxpayers and that have an investment certificate issued by the relevant authority
- Services rendered at harbors and airports for vessels and aircrafts
- Social and other exemptions apply to deliveries made to the government and other related organizations for cultural, educational, health and similar purposes
- Banking and insurance transactions are exempted from VAT as they are subject to a separate Banking and Insurance Transactions Tax at a rate of 5%
- Research and development allowances
- Deductions from the tax base of corporations related to certain donations, aid or sponsorship expenditures for sport activities

### 3.4 Stamp Tax

The stamp tax in Turkey is levied on certain documents evidencing legal transactions such as contracts, notes payable, letters of credit and letters of guarantee, financial statements and payrolls. Documents evidencing such transactions are recorded and become legally enforceable only if they are stamped to show that the proper amount of stamp tax has been paid.

The stamp duty is levied as a percentage of the stated value on the document at rates ranging from 0.189% to 0.948. However, exemptions are available in relation to certain transactions, such as cross border financing, issuance and transfer of securities, exportation, etc., provided that such exemptions are explicitly granted by law.

#### Stamp tax rates:

Agreements (general rate)	0.948%
Rental/Lease agreements	0.189%
Documents related to wage payments	0.759%
Maximum obtainable Stamp tax over each original document	1,487,397 TL



### 3.5 Special Consumption Tax

The sale of certain goods such as cars, cigarettes, oil, energy and natural gas is also subject to additional excise and special consumption taxes that could be as high as 50 %.

There are four main product groups that are subject to special consumption tax at different tax rates:

- Petroleum products, natural gas, lubricating oil, solvents, and derivatives of solvents
- Automobiles and other vehicles, motorcycles, planes, helicopters, yachts
- Tobacco and tobacco products, alcoholic beverages
- Luxury products

Unlike VAT, which is applied on each delivery, special consumption tax is charged only once.

### 3.6 Banking and Insurance Transaction Tax

All revenues of resident banks, finance and insurance companies, such as interest, commission, premiums and other fees and charges, are subject to the banking and insurance transaction tax ("BITT") between 5% and 1%.

### 3.7 Real Estate Sale and Purchase Tax

The sale and purchase of a real estate are levied at a rate of 3.3% over the sale and purchase price, half of which is payable by the seller and the other half by the purchaser. It is possible, however, to cap the sale and purchase price at the amount of minimum real estate values declared periodically by the municipalities.

Buildings, apartments and land owned in Turkey are subject to real estate tax ranging at a rate between 0.1% and 0.6%, while contribution to the conservation of immovable cultural property is levied at a rate of 10% of this real estate tax.

### 3.8 Wage Tax and Social Security Contributions

Social security contribution is a contribution towards government benefits such as retirement pension, unemployment and incapacity benefits. Prior to the commencement of the work, newly established companies must be registered with the local labour office as an employer. Moreover, employers must inform the Social Security Institution (SSI) about each employee that works in their workplace for whom employers will be paying social security premiums. Companies must ensure that employers' and employees' contributions to the Social Security are paid on monthly basis.

Employers have to pay the social security premium (approximately 34.5 percent) and unemployment social security fund payment (2 percent) on the gross wages. Moreover, under the provisions of the Income Tax Law, employment incomes are taxed through withholding. Employers are obliged to withhold the income tax before disbursing employee salaries.

The social insurance in Turkey covers industrial accidents, occupational diseases, illness, maternity, disablement and death.

### 3.9 Withholding Tax

A withholding tax, also called a retention tax, is a government requirement for the payer of an item of income to withhold or deduct the tax from the payment, and pay that tax to the government.

Typically the withholding tax is treated as a payment on account of the recipient's final tax liability. It may be refunded if it is determined, when a tax return is filed, that the recipient's tax liability to the

government that received the withholding tax is less than the tax withheld. Additional tax may be due if it is determined that the recipient's tax liability is more than the withholding tax.

The withholding taxes on the selected payments of resident corporations are as following;

- Dividends are subject to 15%
- Interest on treasury-bill and treasury bonds derived by resident corporations is subject to 0%
- Interest on other bonds and bills derived by resident corporations is subject to 0%, bank deposits are subject to 10%-18% (for bank deposits opened after January 2, 2013)
- Profit shares paid by participation banks in consideration of participation accounts are subject to 10%-18% (for participation accounts opened after January 2, 2013)
- REPO agreements are subject to 15%.

Withholding taxes on the selected payments of non-resident corporations;

- Dividends are subject to 15%
- Interest on treasury-bill and treasury bonds derived by non-resident corporations is subject to 0%
- Interest on other bonds and bills derived by non-resident corporations is subject to 0%, bank deposits are subject to 10%-18% (for bank deposits opened after January 2, 2013)
- Profit shares paid by participation banks in consideration of participation accounts are subject to 10%-18% (for participation accounts opened after January 2, 2013)

Double taxation agreements may exist between Turkey and the country of which the investor is a resident. In that case, the provisions of any relevant treaties will be applied for the withholding taxes.

### **3.10 Personal Income Tax**

He personal income tax in Turkey is based on a progressive scale ranging from 15% - 35% depending on the amount of income earned by the individual. The 15% rate is applicable to all residents earning below 12,000 Turkish lira per annum, while the highest tax bracket (%35) applies to those earning more than 66,000 Turkish lira a year.

Resident taxpayers have to include 1/2 of gross dividends received from a resident company in their taxable income. The withholding tax paid at source, however, is wholly creditable against tax calculated on the return.

Where international or bilateral treaties are in place between Turkey and the investor's country of origin, the related terms of that treaty will principally be applied, to the extent possible.

### **3.11 Double Taxation Relief**

Turkey has a broad tax treaty network, with most treaties following the OECD model treaty. Treaties generally provide for relief from double taxation on all types of income, limit the taxation by one country of companies resident in the other and protect companies resident in one country from discriminatory taxation in the other. Turkey's treaties generally contain OECD-compliant exchange of information provisions.

Turkey has comprehensive double taxation agreements in force with 63 countries. The list of agreements in force is as follows: Albania, Algeria, Azerbaijan, Austria, Bahrain, Bangladesh, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, China, Croatia, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Korea, Kuwait, Kyrgyz Republic, Latvia, Lebanon, Lithuania, Luxembourg, Macedonia, Malaysia, Moldova, Mongolia, Montenegro, Morocco, New Zealand, Norway, Oman, Netherlands, Cyprus, Norway, Pakistan, Poland, Portugal, Qatar, Romania, Russia,

Saudi Arabia, Serbia and Montenegro, South Africa, South Korea, Singapore, Slovakia, Slovenia, Spain, Sudan, Syria, Sweden, Tajikistan, Thailand, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Yemen, United States of America and Uzbekistan.

In accordance with the treaties, where a company is already paying taxes in the treaty country, the income arising out of Turkey may be exempted from taxation. In order to benefit from exemption, the applicant must prove that the taxes are paid in the country of origin. Usually, the certificate of taxation from the foreign taxation authority is necessary.

### 3.12 Tax Incentives

Turkey aims to encourage production and export activities, fasten the entrance of foreign capital and technology in Turkey and develop the international trading activities through the grant of incentives to the investors.

In the light of that, the local and foreign investors have equal access to the investment incentives system in Turkey. The investment incentives system has been comprised of four different schemes.

- General Investment Incentives Scheme
- Regional Investment Incentives Scheme
- Large-Scale Investment Incentives Scheme
- Strategic Investment Incentives Scheme

New businesses established in less developed 39 provinces are granted tax incentives given that they generate new employment for at least 10 people. Such investments are held exempt from withholding tax and employer's social security contribution up to 100%. The provision of land as well as 20% relief on electricity costs for certain sectors in least developed regions is another incentive program of the treasury.

Incentive type	For companies in OIZs and industrial zones	Others
Income tax relief	100%	80%
Compensation for the employers social security contribution	100%	80%
Energy support	20% – 50%	20% – 40%
Free land allocation	Available	Available

### Free Trade Zones

Free Trade Zones (FTZ) in Turkey provide infrastructure, open and covered warehousing and ready-to-use factory sites to investors.

Free Trade Zones are outside customs territory and hence, neither tariffs nor duties apply to goods that are imported into Free Trade Zones. Companies registered at Free Trade Zones can stock their goods for unlimited period of time. Manufacturing companies operating in free trade zones enjoy exemption from the corporate tax, VAT, employee income tax and stamp tax. Sales from free trade zones to the domestic market are permitted.

There are 20 free zones in Turkey operating close to the EU and Middle East markets adjacent to major Turkish ports on the Mediterranean, Aegean and Black Seas, with easy access to international trade routes.

The following incentives are granted to investors investing into Free Trade Zones;

- The income derived from the sale of goods manufactured by the license holders in the Free Trade Zones is exempted from corporate income tax.

The corporate income tax exemption does not cover the dividend distributions. The dividends of a company in Free Trade Zones are subject to the dividend withholding tax at the standard rate of 15% at source when they are paid to an individual shareholder (resident or non-resident) or to non-resident corporations.

Where international or bilateral treaties are in place between Turkey and the investor's country of origin, the related terms of that treaty will principally be applied, to the extent possible.

- The salary payments made by taxpayers operating in Free Trade Zones to employees are exempted from the income tax, provided that the taxpayers export at least 85% FOB values of annually produced goods. It should be noted that the Council of Ministers is authorized to decrease this rate down to 50%.
- Documents and transactions regarding the operations in Free Trade Zones are exempted from the stamp tax and charges.
- In addition to the above incentives, the delivery of goods and performance of services in Free Trade Zones are excluded from VAT without any time limitation.

### Organized Industrial Zones

Organized Industrial Zones are designed to allow companies providing goods and services to operate within approved boundaries with the necessary infrastructure, techno parks, and social facilities. The infrastructure provided in the zones includes roads, water, natural gas, electricity, communications, waste treatment, and other services.

There are 251 Organized Industrial Zones in 81 provinces throughout Turkey. The government provides following incentives to support the companies operating in organized industrial zones:

- 100 % exemption from income tax for employed workers
- 100 % exemption from the employer's share of social security costs
- Up to 50 % support for electricity costs
- Exemption from real estate tax, waste-water charges, building construction duties, and the use-of-building

## 5.0 Dealing with Employees: Key Features of Turkish Law and Practice

Employment laws in Turkey apply to Turkish nationals and foreign nationals alike. In addition, special provisions exist which regulate the employment and residence permits of foreign nationals who intend to work in Turkey.

Prior to the commencement of the work, the newly established companies in Turkey must be registered with the local labour office as an employer. Moreover, the employer must inform the Social Security Institution (SSI) about each employee that works in his workplace for whom the employer will be paying social security premiums. Under the social security laws, each employee becomes insured from the first day of work. Employees must ensure that employers' and employees' contributions to the Social Security are paid in monthly basis.

Employers have to pay the social security premium (approximately 34.5 percent) and unemployment social security fund payment (2 percent) on the gross wage. Moreover, under the provisions of the Income Tax Law, employment income is taxed through withholding. Employers are obliged to withhold the income tax before disbursing employee salaries.

The yearly income tax rates for the year of 2015 are as follows:

TRY 0 to 12,000	: 15%
TRY 12,001 to 29,000	: 20%
TRY 29,001 to 106,000	: 27%
More than TRY 106,000	: 35%

Overtime work is defined as the working hours exceeding 45 hours in a week. Wages to be paid for the overtime work are calculated by increasing the hourly normal working wage by 50 percent for each hour. Days on which overtime work is done cannot exceed 270 hours a year.

A working week in Turkey consists of a maximum of 45 hours. A weekly normal working period may be distributed unevenly for the working days in a month with the mutual agreement of the parties, provided that the daily working period shall not exceed 11 hours. It is obligatory to hold a holiday, one day in a week.

The Turkish Labor Law sets a minimum wage, which is checked against inflation once or twice a year. As of 01.01.2015, the gross monthly minimum wage is TL 1201,00 (approximately, \$461). After deducting a worker's share of the social security premium, income and stamp tax, unemployment security fund payment, the net wage stands at TL 949.07 (approximately, \$365).

High skilled workers' pay depends on sector and also personal skills and experience, which is often at comparable levels with EU countries depending on the position. However, the wages of less-skilled workers and fresh university graduates are relatively low.

Employers with more than 50 or more employees are required to employ disabled and ex-convict employees in workplaces.

There is no regulation mandating or allowing the establishment of a work council in the workplace in Turkey. Nevertheless, collective labour regulations stipulate the formation of industry-wide based labour unions.

## 5.1 Employment Contracts and Annual Leaves

In principle, employment contracts are not subject to a certain form requirement. However, employment contracts with a period of one or more years are required to be executed in writing.

Employment contracts are considered as contracts with indefinite periods unless the employment relationship is bound with a definite period. The employment contract renewed more than once shall be accepted as an employment contract with indefinite period from the beginning.

The maximum probationary period may be two months. Such term may be extended to four months only in the collective bargaining agreements.

Employees who have worked for at least one year, including the probationary period, can be granted the right to annual leave. The period of annual leave shall be 14 days for employees working for a period of one to five years; 20 days for employees working for a period of five to 15 years.

Certain benefits such as lunch, transportation and private health insurance may be granted to the employee through the employment contract.

The parties' choice of law in an employment agreement bearing a foreign element is valid and enforceable on the condition that the minimum standard of protection ensured by the laws of the country where the work is being performed is reserved. Where the parties have not explicitly chosen an applicable law, the laws of the country where the work is performed is applicable.

## 5.2 Termination of Employment

Both the employees and employers are entitled to terminate employment contracts by following certain minimum notification periods, depending upon the length of the service of employees, without indicating any reason. Any party that fails to fulfill the notification obligation should pay compensation (ie, notification payment or lieu of notice, equivalent to the wages corresponding to the notification period).

Notification Periods	Length of the Service of Employees
Two weeks	Less than six months
Four weeks	Six to 18 months
Six weeks	18 months to three years
Eight weeks	More than three years

As per the Labour Law, in cases where an employee contract is terminated with notification by the employer (other than cases an employee contract is terminated after at least one year for reasons which are incompatible with morals and goodwill and similar circumstances) the employer pays the employee a severance payment at the rate of 30 days' wages for each full year as of the date of the employment.

The employer's right to terminate the employment contract for just cause such as serious misconduct or malicious or immoral behavior of the employee is reserved by the law. Either employees or employers can terminate the employment relationship without having to comply with the legal notice periods. A just cause gives the parties the right to effect immediate termination without a severance payment.

The notice of the termination should be given by employers in written form, including the reason for the termination which must be specified in clear and precise terms. The employment of an employee engaged under a contract with indefinite term should not be terminated for reasons related to the

employee's conduct or performance before he is provided with the opportunity to defend himself against the allegations.

Where the length of the service of an employee is at least six months and there are at least 30 employees working at the workplace, then an employer is obligated to provide a valid reason either relating to the efficiency, behavior of the employee or the requirements of the enterprise, workplace or the work in order to terminate the contract. Otherwise, under the Turkish Labour Code, employees have the right to sue the employer for the reinstatement to work.

In case of collective payoff the employer must inform the names and qualifications of employees to the relevant Labour Office along with a reason for their dismissal at least one month following the date of dismissal.

### **5.3 Employment of Foreigners**

Foreign capital entities can employ foreign personnel in Turkey, provided that the work permits are obtained from the Ministry of Labour and Social Security.

Individuals who want to work in Turkey must first apply for a visa at Turkish embassies in their home countries, unless employer-specific "facilitations" apply. To obtain a work permit from the local authorities, a prospective employee must present a valid residence permit and a completed work permit application signed by the future employer.

A real person will be considered as fully tax liable if they are a Turkish citizen or a resident of Turkey. In this regard, foreign nationals who have been living in Turkey for a period of more than six months will be considered to be a resident in Turkey. These people are fully liable for the income tax and obliged to pay it on all sources of income.

Double taxation agreements may exist between Turkey and the country of which the employee is a resident. In that case, the provisions of any relevant treaties will be applied.

# Contacts and Links

To find out how our professionals can help you in your part of the world, please contact us at the office or through the “contact us” link on [www.bereket-baltaci.com](http://www.bereket-baltaci.com).

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