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Secure Mobile Payment System Providing by Tax Procedural Law General Communique

The Tax Procedural Law General Communique (the Communique) issued by the Revenue Administration was published in the Official Gazette dated 01.06.2019 and numbered 30791. In order to harmonize the tax legislation with the developments in information - communication and technology areas, the Ministry of Treasury and Finance issued the Communique emphasizing the importance of security of collections in the sale of goods and services and introduced the Secure Mobile Payment and Electronic Document Management System. The procedures and principles to be followed during the presentation and use of the sales, collection and electronic document applications related to the collection of the fees for the sale of goods and services and the creation of financial documents in electronic media by the authorized institutions and organizations have been determined.

It has become mandatory to convert the payment transactions and financial documents related to those transactions into electronic documents within the scope of the Communique and to retain and forward to the addressees. Payment accepting vehicles (such as POS devices) must provide the necessary information to be included in the electronic documents and ensure their system security. In order to serve taxpayers within the scope of the application; required technical, software and infrastructure preparations should be made in writing to the Presidency. The financial institutions will apply this application with the special integrator which will cooperate with them in preparing e-documents; the manufacturers of payment recording devices shall cooperate with the bank, electronic money institution or payment institution and private integrator which they will cooperate.



Current Decisions of the Personal Data Protection Board

The Personal Data Protection Board has announced its new decisions on companies and individuals that violate data security. In its decision dated 14.02.2019 and numbered 2019/23, the Board imposed a fine of 150.000 TL for the data responsible company providing technical services. In the case in question, because the query numbers given to the users who left their devices to the technical service are consecutive numbers, when the search is made by changing the last digits of numbers, the name, last name, address and device information of other users is accessible. Therefore, it was found that it is contrary to Article 12 of the Law on Protection of Personal Data. A further administrative fine of 50,000 TL was decided against the company which did not eliminate the illegality against the Board decision.

In the case of the Board's decision dated 01.03.2019 and numbered 2019/47, the applicant claimed that the person whom he complained had access to the information about himself and his family by unlawful way and transferred to the judiciary and third parties without his consent and that the said information was illegally accessed through the directorate of executive. As a result of the examination, it was determined that the sharing of personal data consisted of petitions written to official authorities, that the complained person was not found to do a data processing activity and therefore could not be considered as data responsible, that there were no transactions to be made under the Personal Data Protection Law regarding the claim and that it should be evaluated within the scope of Turkish Criminal Code.

In another decision of the Board dated 25.03.2019 and numbered 2019/82; in the text of the illumination, it is stated that personal data (such as information on trade union / association / foundation memberships, criminal convictions, data on security measures, sexual life, biometric data and health status) can be processed and it has been determined that a market which supply to retail consumers food and necessities does not make the processing of special personal data related to the purpose, limited and measured, and it is decided that the inconsistencies between "Membership and Consent Statement" and "Illumination Text" should be eliminated. In addition, the Board underlined that, under the anonymization of the data, personal data cannot be associated with any specific or identifiable natural person, even by pairing with other data.

On the Board decision dated 02.05.2019 and numbered 2019/122 related to T.C. Ziraat Bank A.Ş.; requests under the rights specified in Article 11 of the Personal Data Protection Law, complaints filed by the relevant person who communicated to Ziraat Bank A.Ş. but whose application was not answered within the thirty-day period regulated by the Law, and that the data of the person responsible for data did not meet the conditions stipulated in the legislation, were evaluated. As a result of the review, it was decided to apply disciplinary proceedings against those responsible. Besides, the Bank has been instructed to comply with the obligations of responding and to comply with the provisions of the legislation, to clearly state the legal conditions on which the personal data processing purposes in the illumination text are based, and to align the text with the Communique on the Procedures and Principles to be Followed in the fulfilment of the Obligation to Lighting.

Change of Tax Regulation in Foreign Exchange Sales Transactions

Pursuant to the Decision of the annex of the President's Decision no. 1106 published in the Official Gazette dated 15.05.2019 and numbered 30775, the decision of the Council of Ministers regarding the determination of the bank and insurance transaction tax rates in Article 33 of the Expense Taxes was amended. According to the decision, the tax on foreign exchange transactions abolished in 2008 was brought back. In foreign exchange sales transactions, the bank and insurance transactions tax shall be charged at a rate of 1 per thousand and in addition, the following tax has been removed in foreign exchange transactions, which are considered as exceptions below:

- 1- Foreign exchange sales between banks and authorized institutions between themselves or each other,
- 2- Foreign exchange sales to the Ministry of Treasury and Finance,
- 3- Exchange sales to the borrower by the bank that uses or mediates the foreign currency loan for the payment of the foreign currency loan.



Regulation on the Procedure for Starting the Legal Proceedings of Receivables Due Arising from Subscription Agreement



Regulation on the Procedure for Starting the Legal Proceedings of Receivables Due Arising from Subscription Agreement published in the Official Gazette dated 29.05.2019 and numbered 30788 which entered into force as of 01.06.2019 (“Regulation”) regulates the follow-up and foreclosure transactions for receivables arising from subscription agreements through the Central Tracking System (MTS) established within the scope of National Judicial Network Information System (UYAP). The regulation covers the subscription agreements issued in the Consumer Protection Law and other legislation. Also, it covers the receivables that are subject to enforcement proceedings without judgment arising from the goods and services that are made available to the consumer for the purpose of performing these agreements and whose cost is reflected to the invoice and followed by a lawyer.

In accordance with the new follow-up procedure introduced by the Regulation, the creditor’s lawyer will initiate enforcement proceedings by requesting follow-up via MTS. The automatically issued payment order will be sent to the debtor via electronic notification. When all of the debts subject to follow-up are paid to the account number specified in the payment order with the collection channels, the follow-up is terminated by MTS. In addition, the debtor may apply to any execution department within seven days of notification of the payment order and object to the payment order. In cases where the payment order is not objected or the objection is dropped from the provision, the lawyer may continue the forced execution through MTS or inquire whether the debtor has the goods, rights or receivables through UYAP without prior foreclosure. In case the debtor’s assets, rights or receivables are determined, foreclosures may be requested through UYAP.

Changes in the E-Commerce Tax Exemption Regulation Abroad

The Decision on the Amendment of the Decision on the Application of Certain Articles of the Customs Law No. 4458 was published in the Official Gazette dated 15.05.2019 and numbered 30775. In accordance with the decision, the tax exemption granted to goods with a value of less than 22 Euros sent by mail or cargo from abroad within the scope of electronic commerce was abolished and this exemption was granted to books or similar publications provided that the value does not exceed 150 Euros per shipment. At the same time, from the goods purchased through e-commerce provided that the value does not exceed 1500 Euro and the goods brought with the passenger above the legal quantity / weight limits, 18% tax if arriving directly from European Union countries and, 20% tax if it comes from other countries will be charged.



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Please visit our web site at www.kavlak.com.tr for further information on our legal team and practice areas.

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