



The Legal 500 & The In-House Lawyer  
Comparative Legal Guide  
Turkey: Employee Incentives

This country-specific Q&A provides an overview to tax laws and regulations that may occur in Turkey.

This Q&A is part of the global guide to Employee Incentives. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/employee-incentives/>



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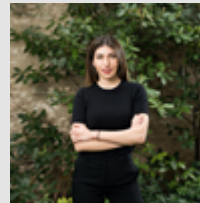
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## 1. **What kinds of incentive plan are most commonly offered and to whom?**

The most prevalent type of monetary incentive plan in Turkey is bonus paid monthly or annually. For most of the employees this bonus may be calculated as sales commission calculated upon good or services sold to customer or the employees may receive project bonuses from the work performed with their team. The highest ranked employees may also benefit from profit sharing. Some of the companies also establish

funds and trust to financially support employees.

Within the last decade with the new commercial code mostly high ranked employees as executives, key personnel so on and so forth, started having incentive plans as share options and share purchase plans. However, these options are still narrowly implied in Turkey and least popular incentive plans due to the lack of legislation. They are offered mostly by foreign companies doing business in Turkey offering shares of the foreign mother company in line with the globally implied plans and/or publicly traded Turkish companies.

## **2. What kinds of share option plan can be offered?**

In line with the lack of specific legislation Q2 and Q3 are answered in following paragraphs below.

Genuine employee stock option plans or share purchase plans are not specifically addressed under Turkish law except few provisions but they are not prohibited, either. A company may establish one of the plans applied abroad complying with tax, capital markets, employment and commercial law rules.

Foreign companies operating in Turkey or Turkish companies may design employee stock option and stock purchase plans and award stock option to their employees in Turkey in their employment contracts or supplementary employment documents describing benefits granted to employees.

As per Art. 15 of Decree No. 32 on the Protection of the Value of Turkish Currency, a foreign company can offer foreign securities and capital market instruments to the employees of a subsidiary in Turkey.

In addition to the Currency Law and the Foreign Capital Markets Law, employee financial participation is covered by different laws; the recognised forms are profit-sharing, stock options and, to a limited extent, employees share ownership. Legislation permits employee share ownership in joint-stock companies during privatisation and in private companies.

## **3. What kinds of share acquisition/share purchase plan can be offered?**

Adding to the explanations above, since there are also no genuine share purchase plans regulated under Turkish Law Provisions, mostly higher ranked employees in managerial positions are granted with equity based plans as employee stock purchase plans as imitations of the plans established abroad or other equity based incentives as phantom stock and stock appreciation rights.

#### **4. What other forms of long-term incentives (including cash plans) can be offered?**

Other forms of long-term incentives adding to the stock options (restricted stock options, stock appreciation rights, phantom stock, stock purchase plans) may be cash plans, bonus plans, profit sharing plans. There are not any specifically regulated plans under Turkish Law but different plans are applied by companies.

Adding to this, with the amendment in 2016, employees under 45 years old must be enrolled to private pension plans by the employers. The basic contribution for the plan is 3% of the employee's gross average earnings subject to social security premiums. The employee who has been automatically enrolled in a private pension plan will be entitled to withdraw from the plan within two months as of the notification of the enrolment.

#### **5. Are there any limits on who can participate in an incentive plan and the extent to which they can participate?**

There are no detailed provisions determining the parties' participation in the incentive plans.

Stock options or performance-based payment schedules of the company cannot be used for the compensation of non-executive directors.

Pursuant to Article 4.6.3 of the Communiqué on Corporate Governance of CMB no. (II-17.1) it is prohibited to use profit sharing, stock option/purchase plans, performance based plans for the salary of independent board members. Since the salary plans of independent members shall be determined in a way to not to damage their independence.

There are also some specific rules which apply for employees working in specific sectors such as banking.

#### **6. Can awards be made subject to performance criteria, vesting schedules and forfeiture?**

Awards may be subjected to performance criteria, vesting schedule and forfeiture. Such awards should be clearly determined in writing beforehand in order to prevent dispute between the parties.

**7. What are the tax and social security consequences for participants in an incentive plan including: (i) on grant; (ii) on vesting; (iii) on exercise; (iv) on the acquisition, holding and/or disposal of any underlying shares of securities; (v) in connection with any loans offered to participants (either by the company operating the incentive plan, the employer of the participant (if different) or a third party) as part of the incentive plan.**

(i) on grant;  
There are none.

(ii) on vesting;  
There are none.

(iii) on exercise;  
Please see below.

(iv) on the acquisition, holding and/or disposal of any underlying shares of securities; and

As a general rule, the taxable event for employment income is triggered once the employee legally and economically has the right to dispose of the benefit or to receive payment.

Having said that regarding stock option plans, income tax is imposed upon exercise on any spread on the shares, which is the excess of the fair market value of the shares on the exercise date, over the aggregate exercise paid price.

When an employee sells its share to a third party, the share is acquired by payment of the share price. As per the repeating Article 80 of Income Tax Law, the gain obtained from the sale of the securities, except the ones belonging to the fully-taxable entities and which are held for more than two years, is considered as value increase gain.

(v) in connection with any loans offered to participants (either by the company operating the incentive plan, the employer of the participant (if different) or a third party) as part of the incentive plan.

These loans to participants may be offered in two ways to participants. First as advances given to employees as a benefit in the payroll to be paid later in instalments without interest or typical loans to be

paid back with interest.

In the first scenario, as per Tax Law advances are included in the broad meaning of the term salary and subject to income tax. In other words advance payment becomes subject to income tax right at the moment the advance is paid to the employee. Employer shall deduct income and pay the income tax in advance.

On the other hand if company is granting a loan rather than an advance to be paid back with the interest, the company will be invoicing this amount and participant will have no tax duty.

## **8. What are the tax and social security consequences for companies operating an incentive plan?**

(i) on grant;

(ii) on vesting;

(iii) on exercise;  
Please see below.

(iv) on the acquisition, holding and/or disposal of any underlying shares of securities;

If local subsidiary of a company abroad does reimburse the global company in exchange of the shares provided by the global company stock option spread on exercise is likely to be treated as employment income, giving rise to an income tax liability for the employee which must be withheld by the employer. The spread on exercise will become subject to employee social security (to the extent that the employee has not exceeded the maximum cap) and this must also be withheld by the employer.

If local subsidiary of a company abroad does not reimburse the global company the employee himself/herself should declare the taxable gain through their annual income tax return. In the event that a tax return declaration is made, the purchase price shall be deducted from the share sale price and remaining earning amount shall be included in the tax return declaration and the tax accrued to be calculated on the following Income Tax Tariff shall be paid. There will be no tax or social security obligations for the employer.

(v) in connection with any loans offered to participants (either by the company operating the incentive plan, the employer of the participant (if different) or a third party) as part of the incentive plan.

These loans to participants may be offered in two ways first as advances given to employees as a benefit in the payroll to be paid later in instalments without interest or typical loans to be paid back with interest.

In the first case scenario, company is obliged to withhold the income tax amount and pay it to the authority and share the stamp tax duty with the employee.

When it comes to the second scenario, the company shall invoice the amount calculating the interest. However it is actually forbidden for companies to loan money to other persons if this is not included in their area of business as financial institution under Decree No. 32.

## **9. What are the reporting/notification/filing requirements applicable to an incentive plan?**

There are no general reporting/notification/filing requirements applicable to incentive plans however requirements with respect to publicly held companies are briefly explained under Q13.

## **10. Do participants in incentive plans have a right to compensation for loss of their awards when their employment terminates? Does the reason for the termination matter?**

There is a risk of employees claiming that they are entitled to compensation for loss of rights under any plan when their employment is terminated. In this case the rules primarily agreed between the parties regulating the incentive and termination reason will determine the decision of the court.

## **11. Do any data protection requirements apply to the operation of an incentive plan?**

There are no specific data protection requirements to operation of an incentive plan however, since incentive plans are also considered as salary in broad sense the information regarding salary is also personal data of the employee and shall be subject to data protection under the relevant provisions.

Employers are under the obligation to process employee's data lawfully and in good faith. Employer cannot disclose the personal data about their employees, which the employee has a valid interest to keep confidential and employers may use employee's personal data as long as it is related to the employee's

apitude to the work or to the extent that it is necessary for the execution of the service/employment contract.

**12. Are there any corporate governance guidelines that apply to the operation of incentive plans?**

There are no corporate governance guidelines that apply specifically to operation of incentive plans. However, Communiqué on Corporate Governance no. (II-17.1) of CMB, regulating corporate governance of publicly traded companies and listed institutions, brings high standards for shareholders and employees are shareholders in these companies. This communiqué actually enables these companies and institutions provide equity compensation plans and incentives.

**13. Are there any prospectus or securities law requirements that apply to the operation of incentive plans?**

As a general rule, pursuant to Turkish capital markets legislation, all capital market instruments to be publicly offered must be registered with the Capital Markets Board of Turkey.

However any offer related to equity based incentive plan is not likely to trigger any prospectus requirements or clearance from the Capital Markets Board of Turkey, provided that

- the plan is operated outside of Turkey
- the stock option is not granted in a way to constitute a “public offering” and
- the information to be provided to the employees does not include indications of a public offering

Under the CMB corporate governance principles, with respect to public companies listed on the Istanbul Stock Exchange, principles of remuneration of the members of the board and senior managers must be stated in writing, published on the company website and be submitted to the information of the shareholders in shareholders’ meetings.

Also remuneration and all benefits provided by the public companies to the members of their boards and senior managers should be disclosed to public through annual activity report.

Furthermore, under the Turkish capital markets public disclosure rules, persons with administrative responsibility in a public company as well as their related parties must publicly disclose all transactions

conducted in relation to the securities of the relevant company, irrespective of the amount of securities purchased/sold.

**14. Do any specialist regulatory regimes apply to incentive plans?**

There is not any specialist regulatory regime to supervise the application of such incentive plans other than conditions referred regarding equity based benefits provided by publicly held companies.

**15. Are there any exchange control restrictions that affect the operation of incentive plans?**

Residents of Turkey may only purchase shares (or beneficial interests therein) traded in markets outside of Turkey through banks or authorized institutions licensed in Turkey or other duly authorized intermediary institutions. If the employee does not make a payment to acquire the shares (eg. options using a cashless settlement method) these exchange controls should not apply on the acquisition of shares. If cashless settlement is not used, employees must remit funds to purchase shares through an approved intermediary bank when they exercise their option rights.

**16. What is the formal process for granting awards under an incentive plan?**

There is no specific formal process; companies follow their own structures. In practice, premiums are usually agreed under individual employment agreements. However, if the employer regularly pays premiums to its employees (i.e. three years in a row) although such payment is not agreed under the employment agreement, these payments become a mandatory contractual entitlement as standard workplace practice.

In principle, premium/bonus payments are peculiar to each employee and employer can set specific criteria for employees' entitlement to incentive compensation. However, the equal treatment principle should be taken into account in implementation of the determined criteria among the employees and in payment of incentive compensation.

If equity based incentive plans are chosen by publicly held companies, publicly held companies have to obtain the approval of the CMB when the employees purchase the company stocks. Employee stock purchase is also required to be notified to the Public Disclosure Platform by the publicly held company.



**17. Can an overseas corporation operate an incentive plan?**

Yes an overseas company can participate in an incentive plan.

**18. Can an overseas employee participate in an incentive plan?**

Yes an overseas employee can participate in an incentive plan.

**19. How are share options or awards held by an internationally mobile employee taxed?**

An internationally mobile employee resident or non-resident will be subject to Turkish tax consequences and be liable to taxation which will depend on the type of income (e.g. employment income, capital gains or dividends) and whether there is a Double Taxation Agreement (DTA). Non-residents will only be taxed on their Turkish sourced income and treated as a limited taxpayer.

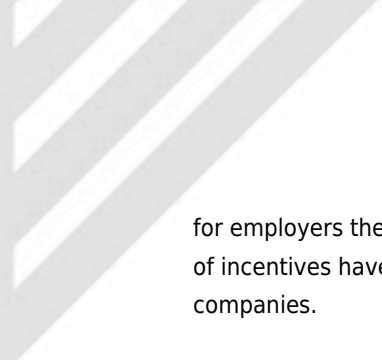
**20. How are cash-based incentives held by an internationally mobile employee taxed?**

Cash based incentives will most probably be treated as income generated in Turkey and will be subject to income tax with consideration of double taxation treaties.

**21. What trends in incentive plan design have you observed over the last 12 months?**

With the development of start-up and informatics industries and most of the employees but only the managerial employees started to be treated as key personnel in firms, equity based incentives are becoming more popular in the future.

It is believed that if detailed legislation and monetary (especially tax based) incentives are to be prepared



for employers there will be more employers preferring equity based incentives in Turkey since these types of incentives have benefits as raising employee commitment to company and easily raising funds for companies.

**22. What are the current developments and proposals for reform that will affect the operation of incentive plans over the next 12 months?**

There are provisions regarding stock options of employees envisaged to be in force in the future in the draft Income Tax Law. These provisions include stock options and stock purchase plans for employees also under the broad definition of salary eliminating doubts regarding them. Draft law also foresees when the employees deem acquired the stocks or options if they are granted with such incentives; amount to be taxed.