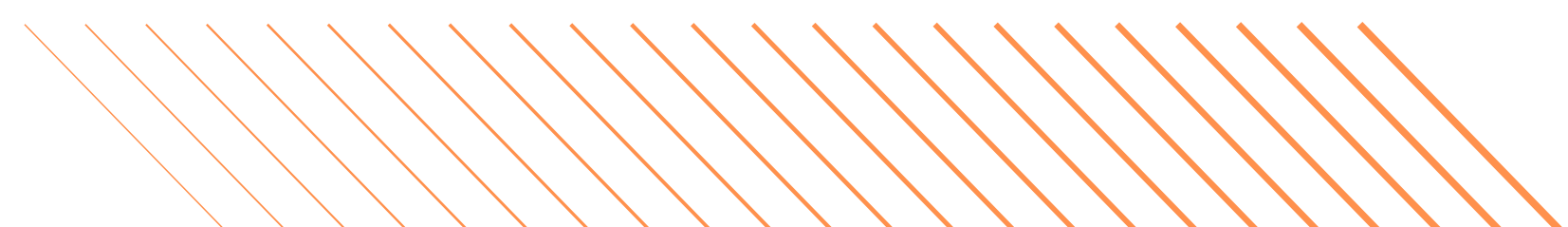
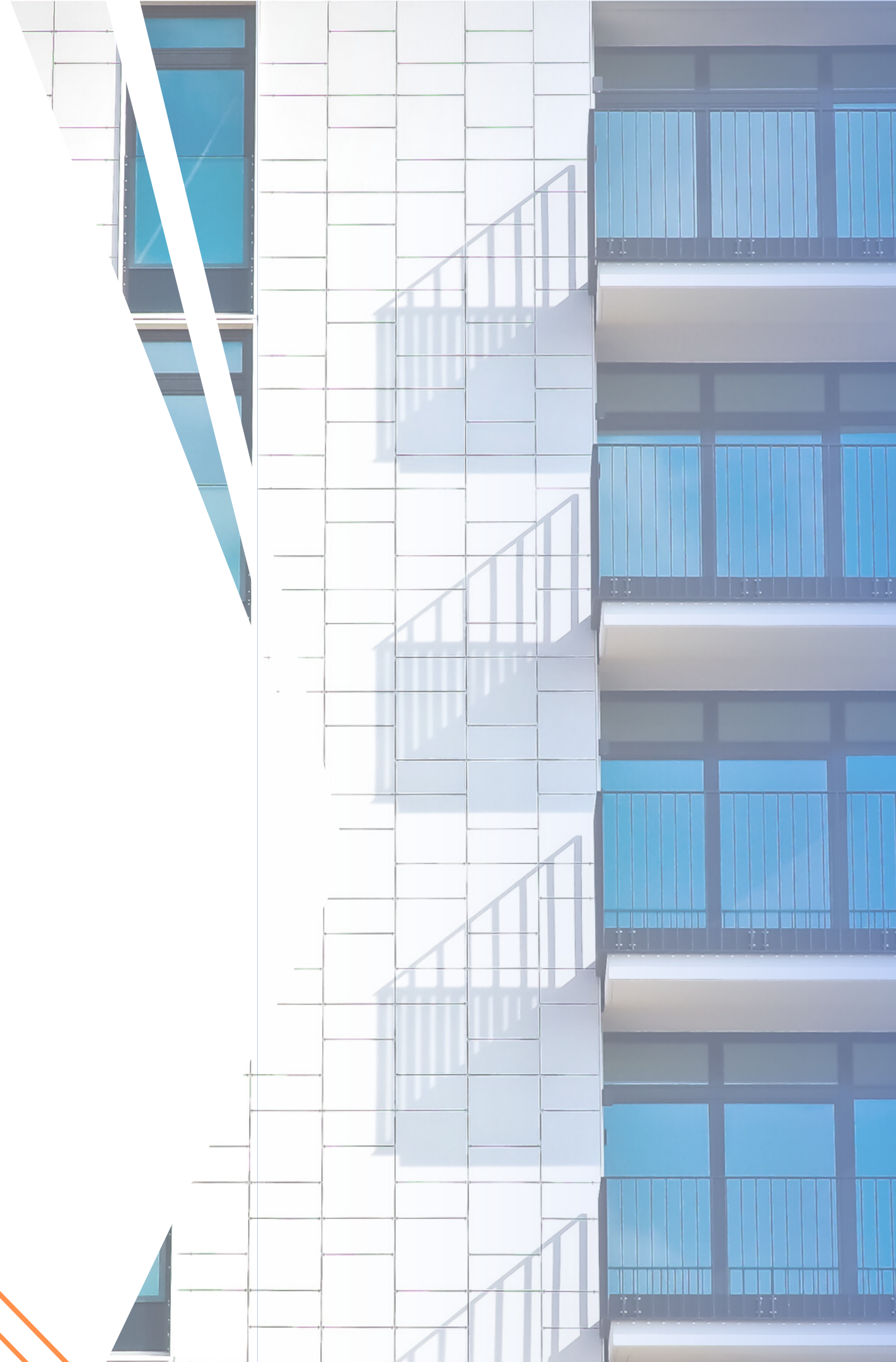


PURCHASING A REAL - ESTATE PROPERTY IN TURKIYE PROCEDURE, TAXATION AND LEGAL PROTECTION

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ABSTRACT

Foreign individuals may obtain real – estate properties in Türkiye, subject to certain regulations and limitations. Although there are certain additional procedures for a foreign individual to obtain a real – estate property, compared to a Turkish citizen, foreign investors will enjoy the same tax regime and legal protection Turkish citizens are subject to.

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I. APPLICABLE LEGAL REGIME

In accordance with the Turkish Civil Law no. 4721, art. 997 and the following articles, a real – estate property can only be obtained by registration to the deed registry. Similarly, real rights established over a real – estate property, such as “right of passage”, “right of use” etc. are also established by registration to the deed registry.

In addition to the Turkish Civil Law, which establishes the “property ownership”, the Deed Law no. 2644 is applicable to all real – estate property acquisitions. According to the Deed Law, there are certain limitations for foreign individuals. For example, a foreign individual cannot purchase more than 30 hectares of area, and the purchased area cannot exceed the 10% of the total area subject to private property, in any given district.





II. PROCEDURE FOR ACQUISITION



In accordance with the Turkish Civil Law and Deed Law, contracts regarding the sale of real – estate properties can only be made before the deed registry. However, contracts regarding “promise to sell” a real – estate property can be made before notaries. In accordance with the Regulation. Agreements for Promise to Sell a Real Estate with Pre – Payment, any “Promise to Sell” contract made without the approval of a notary is null and void. However, in accordance with the applicable jurisprudence, if the buyer has fulfilled a “considerable amount” of their payment obligations, then the seller cannot rely on the fact that the contract is null and void due to the requirement of conformity. In any case, the final contract that results with the title deed transfer is always signed before the deed registry.



The “Promise to Sell” contract is an important step for buying a real – estate property. In practice, most of the real – estate projects that foreign individuals wish to purchase from are under construction. Thus, the relevant real – estate may not be transferred at the spot. To reinforce the verbal agreement between Parties, a “Promise to Sell” contract will need to be signed before a notary so that the buyer may enforce their right to purchase the real – estate in question. Furthermore, such an agreement may be annotated to the deed title of the relevant real – estate, preventing the sale of said real – estate to other parties.

Even though acquisition procedure is straight forward, there are some additional documents required for the foreign individuals. A foreign individual must provide (i) Passport translation, (ii) an identity declaration form issued by the Deed Registry Management Authority, and (iii) a currency exchange certificate for the transfer to be facilitated.

The “currency exchange certificate” is a recently introduced document. As of February 2022, all foreign individuals who wish to acquire a real – estate property in Türkiye must provide a certificate indicating that the buyer has sold foreign currency to the Turkish Central Bank via banks operating in Turkey, corresponding with the amount subject to the sale of the real – estate property. This requirement is based on the “Capital Movements Communiqué” issued by Turkish Central Bank, and the “Communiqué on Currency Exchange Certificate” issued by Deed Registry Management Authority.

In brief, since February 2022, it has become mandatory for the foreign individuals to exchange foreign currency via Turkish Central Bank, corresponding with the amount subject to sale, to be able to purchase a real – estate. It must be reinstated that this certificate must be provided regardless of a citizenship application. If the buyer wishes to make a citizenship application, there are other documents that will also be required. Provided that citizenship acquisition via real – estate property acquisition is a standalone subject, this article will not delve into the details of said regime but focus on legal regime and protections regarding real – estate property ownership.

III. TAX REGIME ASSOCIATED WITH REAL – ESTATE PROPERTIES

There are various taxes a buyer may face when purchasing the real – estate property, and after purchasing it. The regime for taxation is the same for the foreign individuals and Turkish citizens, The first tax/duty will arise will be the deed tax and duty during the title transfer. In accordance with the Law, the buyer and seller shall pay 2% each as deed tax, calculated based on the sales price of the real – estate. In practice, the buyers pay all the 4% of the deed tax. However, this can be a point of negotiation between the buyer and seller, like the price itself. In addition to this tax, there is a deed duty of TRY 1.298,5 for the year 2023.

Secondly, the real – estate itself will be subject to VAT. Depending on the status of the real – estate project, the VAT amount may change between 1% - 18%. This rate is calculated based on multiple parameters. Whether the real – estate is a residence or workplace, or if it an empty field; whether the area is bigger than 150 m2 or not, and other variables come into play when deciding on the specific VAT rate applicable to the real – estate.



Thirdly, a “real – estate property tax” and “environmental tax” will be applicable after obtaining the real – estate property. These taxes are collected by the relevant municipality and are accrued yearly and paid in two installments. The amount of these taxes is considerably minimal. To briefly explain, real – estate property tax is equivalent to the %0.2 - %0.4 of the “appraised” value of the real – estate in question. The “appraised value” is a value calculated by the relevant municipality, but this value is always much lower than the actual “real” value of the real estate.



The final tax that an ordinary property owner may face is the “income tax”, arising from the “increase of the value” of the real – estate. Income tax will be accrued if the real – estate is sold in 5 years from the date of acquisition. The tax will be applied to the amount between the buying price and selling price. The rate of this tax will be gradually increasing between 15% - 40% based on the amount of income.





IV. LEGAL PROTECTIONS FOR REAL – ESTATE PROPERTIES

The legal protections extended to real – estate properties are the same for foreign individuals and Turkish citizens, and property rights are protected by the constitution, the Turkish Civil Law, Supreme Court jurisprudence and jurisprudences of European Court of Human Rights, which Türkiye recognizes.

In brief, a property right cannot be infringed by a third – party, without due justification based on the law. A property right may only be infringed by a third – party in very specific cases, that are foreseen by the law, and once decided by a court. Even then, the courts will decide on a fair compensation for the party whose property rights are infringed by another. The circumstances where such an event occurs are very specific and will not be discussed in the article hereby. Instead, legal protection towards unjustified infringements will be explained.



Firstly, the Turkish Civil Law protects a real – estate property and its owner from third – parties. Another individual or entity may not occupy or otherwise invade another individual's real – estate property. In case of an unjustified occupation, the property owner may request from the municipal authorities to remove the occupier by use of law enforcement. In addition to this administrative protection, a lawsuit may be petitioned before a court to request the end of occupation, and a just compensation for the occupation.



Secondly, the Law on Expropriation protects a real – estate property against unjust expropriation by an administration. In accordance with the Turkish Constitution and the jurisprudence in place, property rights may only be infringed in accordance with the law, and for the greater good of the public and in return of a fair and just compensation. Indeed, an administration may decide on expropriation of a particular real – estate, so that they may proceed with a specific project. For example, the General Directorate of Highways may expropriate a real – estate fully or partially, based on a highway project. Even in such cases, the property owner has the right to challenge the decision. If all else fails, the property owner will be entitled to the real value of their real – estate property.



Aside from these protections regarding the “ownership” of the property, the Code of Obligations regulate the rental and lease agreements concerning the real – estate properties. The applicable regime depends on the nature of the real – estate. Specifically, the applicable articles and regime will depend on whether the real – estate in question is a residence or workplace with a closed roof, or an open – air workplace or a field. Whereas regular lease regime is applicable for the latter, a much stricter regime is applicable for residences and workplaces with closed roofs. To briefly explain, the law strictly protects a tenant against unjust evictions and undue increases in rent amounts.

Türkiye allows foreign individuals to obtain real – estate properties, and once obtained, applies the same taxation regime and legal protections that it applies to Turkish citizens.

The buyers will enjoy legal protections against unjust occupation or expropriation, same as a Turkish citizen. The only difference a foreign individual will face will be the acquisition procedure and this difference will simply be about document requirements, as well a currency exchange certificate.

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