Turkish residents can no longer borrow revolving loans from non-resident lenders

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The Central Bank prohibits revolving loans by amending the Capital Movements Circular (CMC)

1) What does the new rule say?
Before amendment to the CMC on 6 May 2014, no explicit rule prohibited Turkish borrowers borrowing from non-Turkish residents by way of revolving loan agreements. This recent CMC amendment, however, prohibits revolving loan agreements.

What is a revolving loan?
A revolving loan facility (aka, evergreen loan, revolving loan) provides a borrower with a maximum aggregate amount of capital (pre-approved credit limit), available over a specified period of time. However, unlike a term loan, the revolving loan facility allows the drawdown, repayment and re-drawing of the available capital during the term of a loan advanced to borrowers. Each loan is borrowed for a set period of time, after which time it is technically repayable. The amount of available credit decreases and increases as funds are borrowed and then repaid. The borrower makes payments based only on the amount they’ve actually used or withdrawn, plus interest. The borrower may repay over time (subject to any minimum payment requirement), or in full at any time.

2) What is the policy rationale of the new CBT rule?
Although no formal statement has been made by the CBT as to the policy rationale of the new CBT rule, we believe the main purpose of the amendment is to ease the CBT’s statistical tracing of borrowings by Turkish residents from non-Turkish lenders. We understand the CBT faces difficulties tracing such borrowings, particularly in the case of revolving loans.

3) Which transactions shall be effected with this new CBT rule from the tax point of view?
Based on the Stamp Duty Law (Table II, IV/23), loan agreements signed by banks, foreign financial institutions or international institutions are exempt from stamp duty. This exemption from stamp duty shall apply irrespective of a loan agreement having characteristics of a revolving loan or not. Thus, where the lender qualifies for such exemption, the new CBT rule does not have an effect on stamp duty payable. Nonetheless, stamp duty shall arise where the lender does not qualify for such exemption.

4) What does the Turkish Stamp Duty Law say about revolving loans?
Based on Article 11 of the Stamp Duty Law, unless a maximum aggregate amount of capital (pre-approved credit limit) is specified in the agreement, each loan used within such an overdraft type of transaction, shall separately be subject to stamp duty. Accordingly, from a stamp duty point of view, it was thus far common practice to use revolving loan facility agreements, rather than separate contacts for each and every loan. Conversely, under the new CBT rule it is legally not possible to use consolidated revolving facility agreements, and stamp duty must now be applied for each and every separate contract, unless a Stamp Duty exemption applies.

The new CBT rule does not effect foreign banks or financial institutions for tax purposes.
5) Does this new CBT rule have any other Turkish tax implications?

This new CBT rule does not have any direct effect on other Turkish tax implications (e.g., withholding tax, VAT, RUSF), which are dependent on the form of a loan agreement rather than the status of the lender and/or the term of the loan. For example, no such implications shall arise where a lender is a bank, an international financial institution or a foreign corporation authorized in its own jurisdiction to customarily lend and in fact, actually lends, not only to its related parties but also to third party individuals and legal persons. Similarly, the term of a loan will not raise any new Turkish tax implications (inter alia, the RUSF rate remains 3% where the term of the loan is less than one year; 1% if it is one year and/or more than one year, but less than two years; 0.5% if it is two years and/or more than two years, but less than three years; and 0% if it is three years or more).