

## The facility of disguised capital

The portion of payables generated by companies through their partners or related parties of their partners directly or indirectly to be used in the operations that are exceeding three folds of its equity at a time within the accounting period is considered as disguised capital for the concerning accounting period. Expenses that are not allowed to be deducted during the detection of corporate income are entirely listed in the Article 11 of Corporate Tax Law. Pertaining to the aforementioned article, it is not possible to deduct paid or calculated interest over the disguised capital, exchange differences or similar expenses.

Article 12 of the Corporate Tax Law arranging the facility of disguised capital indicates that; except the exchange difference over the disguised capital, interest and similar payments or calculated amounts would be deemed as distributed dividend or amount transferred to the headquarters for limited taxpayers as of the last day of accounting period in which the terms for disguised capital were realized for both the borrower and the lender, during the implementation of income and corporate tax laws. Regarding the wording contained in the concerning regulation as “in the implementation of income and corporate tax laws”; any consensus is not available on commenting this wording or in other words, whether it has a validity in terms of VAT implementation or not.

### Opinion claiming VAT correction is not required

According to this opinion; the value added tax calculated in previous periods could not be subject to correction since the interest calculated over disguised capital turns into dividend as of the accounting period’s last day and dividends are not related to the subject of value added tax. Yet, the 7th clause of Corporate Tax Law’s Article 12 both literally and rationally indicates that except the exchange difference over the disguised capital, interest and similar payments or calculated amounts would be deemed as dividend for only in the implementation of income and corporate tax laws and amount transferred to the headquarters for limited taxpayers.

### Opinion claiming VAT correction is required

Pursuant to this opinion; except the exchange difference over the disguised capital, as the requirement of considering the interest and similar payments or the calculated amounts distributed dividend as of the last day of accounting period in which the terms for disguised capital were realized for both the borrower and the lender is apparent; this outcome should also be applicable to the transaction taxes and it should not be triggering a taxable event. In other words, it must be accepted that “the dividend distribution” clearly indicated in the Corporate Tax Law cannot be qualified as a delivery or service in the nature of the ones outlined in the Value Added Tax Law.

### **Revenue Administration's opinion**

In fact, previously, the Administration's opinion on this topic was in the direction that the VAT corresponding to the disguised capital could be corrected; while all of the rulings released recently indicate that the VAT corresponding to the disguised capital cannot be subject to a correction.

### **Judicial opinion**

The Council of State has decisions in both ways, however the verdicts pointing out the impossibility of a correction have a greater share.

*This article has been published in the Economist magazine's issue 2018/17 dated 29.04.2018.*

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