

Legal and taxational aspects of capital increase, capital decrease and simultaneous capital decrease and increase

Companies may need to increase or decrease the capital amount over time due to various reasons. The increase, decrease of corporate capital or performing these two transactions simultaneously is possible under the terms indicated in the Turkish Code of Commerce no. 6102. Accordingly, the joint stock companies and limited liability companies may increase capital in three ways through capital commitments, from internal sources and contingently; while reduction is possible through repayment of capital to the shareholders or deduction of losses (balance sheet deficits) or decrease and increase may be performed simultaneously which is frequently implemented. As the terms and methods of these procedures may be differing, taxational impacts may also show differences in terms of transactions and the qualifications. As well as the Turkish Code of Commerce is the main legislation to comply with; the secondary legislation arrangements released by the Ministry of Customs and Trade, tax laws and rulings of the Revenue Administration should also be considered.

In this article we will be providing context on the terms and rules applied for adding cash/capital in kind elements in the circumstance that the capital is increased through commitment, whether cash capital increase is possible or not if the balance sheet contains the funds permitted by the legislation, in case the capital increase is intended to be performed through the usage of certain internal resources existing within the corporate assets, the conditions that should be met for using those resources, in what way the capital advances considered as specific internal resources and shareholders' receivables from the company can be used in capital increase, secondary legislation of the Ministry of Customs and Trade, capital increase through share issue with premium, contingent capital increase arranged among the ways of capital increase in joint stock companies although that is not so common in implementation.

Regarding the section on capital decrease, differences between decrease aimed at repayment of capital to the shareholders and decrease performed through the deduction of losses, although any specific regulation on tax legislation does not exist, since the procedure of decrease also concerns taxation essentially, specific matters that the implementers should pay attention in line with the Revenue Administration's approach on which elements of the capital forms the reduced portion, how taxation should be made if cash or capital in kind payments by the shareholders or certain items added to the capital without being subjected to tax are withdrawn from the company through capital decrease are the other matters to be dealt in this article. Finally, specific situations to be taken into account in case these procedures are handled simultaneously are also elaborated.

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