

## Tax advantages of attendance fee payment

The tax advantages of the attendance fee payment, which is determined as a reward for the efforts of the shareholders of capital companies as board members, have been evaluated within the scope of this article and a comparison has been made between the attendance fee payment and the dividend payment.

The Turkish Commercial Code No. 6102 (“TCC”) regulates the payment of attendance fee to the members of the board of directors, provided that the amount is determined by the articles of association or by the decision of the general assembly. In accordance with the Income Tax Law No. 193 (“Income Tax Law”), it has been declared that attendance fee is in nature of a wage.

In this context, if the person receiving attendance fee is a real person, the relevant attendance fee payment is subject to income tax in accordance with the Income Tax Law, and the relevant attendance fee payment can be deducted by being considered as a general expense incurred in obtaining commercial profits for the company. It should be noted here that attendance fee payments must be appropriate to the financial structure of the entity at a reasonable level. Otherwise, it will not be possible to deduct the attendance fee from the corporate income due to transfer pricing criticism by the tax administration. In addition, since the shareholders who serve on both the boards of directors of joint stock companies and the boards of directors of limited companies are considered 4/b insured within the scope of Law No. 5510, payroll will be prepared every month and income tax and stamp duty will be deducted on behalf of these people without deducting the insurance premium from the attendance fee.

If the person receiving attendance rights is a legal entity, corporate tax will be calculated for the shareholder who is a legal entity, based on the attendance fee payment to be paid. Additionally, in this case, the payment obtained within the scope of attendance fee must be subject to VAT at the legal entity shareholder. Therefore, the attendance fee payment must be billed on an accrual basis and with VAT to the company of which the board member is a member.

Another issue that needs to be considered regarding attendance fee payments is that the attendance fee payment is obtained from a single company. If the real person to whom payment is made within the scope of attendance fee payment made to real persons receives attendance fee payment only from one company, if the relevant attendance fee payment does not exceed the amount in the 4th income bracket of the tariff written in Article 103 of the Income Tax Law within the scope of subparagraph (b) of the 1st paragraph of Article 86 of the Income Tax Law (3,000,000 TRY for the year 2024).

For real persons who receive wage income from more than one company, within the scope of Article 86/1.b of the Income Tax Law, the total of the wages received from the company after the first one is the amount in the 2nd income bracket of the tariff written in the Income Tax Law (230,000 TRY for the year 2024) and the total Taxpayers whose wages do not exceed the amount in the 4th income bracket of the tariff (3,000,000 TRY for 2024), all of which are taxed through deductions, will not be declared in the annual declaration. However, if the total of the fees subject to withholding received from the first company exceeds 230,000 TRY, all of the fees (including the fee received from the first company) will need to be included in the annual declaration.

Dividend payment, which can be considered as an alternative to the attendance fee, is not taken into account as an expense in determining the corporate income. In general terms, within the scope of Article 22 of the Income Tax Law, dividend payment made to a shareholder individual is considered as return on stocks and bonds and half of the dividend amount is exempt from income tax. The declaration is made based on half of the dividend payment. The entire withholding tax made by the company distributing dividends is deducted from the tax calculated in the declaration. In addition, the gross dividend amount distributed is taxed through withholding tax and paid by the company.

As a result, in our study, the tax aspects of the attendance fee payment to company shareholders who are members of the board of directors or directors who aim to make a profit within the scope of the capital they have invested, are detailed and it is stated that the attendance fee payment and dividend distribution should be evaluated by taking into account the tax advantages specific to the company.

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