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Super tax incentive for company mergers

“Bill of Law on Restructuring of Certain Receivables and Making Amendments on Certain Laws” has been presented to Grand National Assembly of Turkiye on January 27, 2023. The above bill of law is substantially a “tax amnesty” and parallel to other tax amnesties introduced in previous years.

There are interesting tax regulations in the bill of law. One of these is that the portion of the financing expenses related to participation shares and share purchases in transfer transactions can be subject to deduction in the transferee company in the Corporate Tax Law (“CTL”).

For this purpose, paragraph 3 of Article 5 of the CTL is amended as follows: “It is not accepted to deduct the expenses of corporations regarding their income exempted from corporate tax or the losses arising from their activities within the scope of the exemption from the non-exempt corporate income. In so far, the financing expenses related to the purchase of participation shares, including those incurred after the transfer transactions made within the scope of Article 19 of the Law, can be deducted from the corporate income.” Thus, “in cases where a company that participates in a company participates or merges (transfer) with the participating company (transfer), the financial expenses incurred due to the purchase of participation shares and corresponding to the transfer, can be deducted at the transferee company.

In essence, “debt push down to the participated company” is, in essence, the deduction of the credit used in the acquisition of the subsidiary by a merger (transfer) by participating in a company purchased with credit instead of equity. The parent company can be established for reasons such as the obligation of a jurisdiction to form a company to participate in the tender, and the credit is first provided to this company (special purpose company, “SPV”). However, the repayment of this loan is dependent on the operating company's transfer of dividends to the parent company, and the lower the corporate tax in the subsidiary, the higher the return on investment / payback period. That's why the SPV is transferred to the participating company and the loan interest is charged to that company.

With the bill of law, the "debt push down" process with the bill of law will enter into force on the date of publication in the Official Gazette, to be applied to the income and earnings obtained after January 1, 2023, with the approval of the law by the Parliament.

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