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Original Contribution

THIN CAPITALISATION CONCEPT IN TURKISH TAX LAW

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ABSTRACT

Thin capitalisation is capital, considered foreign and amenable to taxation. Usually institutions hide their gains by sham transactions whose effect evades any tax assessment. In response to this the Turkish government has developed the concept of thin capitalisation as a check against tax evasion. The basic aim of this concept is the prevention of decreased taxation of the partner's landing money during the investment process, thereby increasing the interest accruing there from.

Key Words: Tax, Turkish Tax Law.

INTRODUCTION

Government gets complementary tax from its citizens to cover public expenses. Tax which is one of the public's dependable income sources is a financial means that interests every part of the society and has some social quality. Most considerable measure to obtain the expected result is a policy commensurate with economic and financial policy goals. Tax preparations should not include lacks and should be understandable. Taxes taken for the features, psychology of the society, and conditions of the day meet their aim. Today, accelerated globalization processes, opportunities in free trade volume, and outcome of increased commercial relationships, give rise to regular tax system changes by governments.

Financial resources of public became complex by increasing commercial relationships. Thus, government needs trustworthy tax foundations in order to prevent tax evasion and fraud. One of these is the concept of thin capitalization. Thin capitalisation is dissuasive for tax-payers inclined towards tax evasion of fraud.

Institution's fundamental aim is to obtain interest and source for this interest is the capital invested by partners. The entire capital institutions need to get interest and carry on their activities to be supplied by equity as well as foreign resources by indebting. It is possible to get interest from the capital invested by partners. The reason for this is interest revenue can be obtained in this condition. Indebting in the part of the partner to be considered as normal indebting, applying anatocism and deduction from tax assessment reveals the existence of thin capitalization and in this way, tax assessment is aimed at being reduced in the extent that tax paid is reduced.

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The Reason Why The Term Thin Capitalization Came To Existence?

Subject of corporate tax is institutional incomes (1). Corporate tax is the tax taken from the incomes of legal entities. Law authority gives the opportunity of being claimant to people as well as some individuals and property groups. Also Law Authority gives the same chance to people and property groups to organize rules of law around the aim (2). According to TTL (Turkish Trade Law) 136, collective, commandite, anonymous and cooperative companies are considered commercial companies. According to TTL 137, trade companies have legal entities. They are subject to corporate tax (1).
The main aim of thin capitalization which is a prepared tax guarantee measures in CTL (Corporate Tax Law) is to prevent unjust deduction of tax assessment.

For this reason, tax measures mentioned in 5520 number CTL(3) are: thin capitalization, thin gain distribution through transfer pricing and struggle with foreign institutions and tax havens. In preparation at

5520 number CTL, thin capitalization and profit foundations comprise different provisions from previous preparations. With the preparations made, thin capitalization and profit foundation is made harmonious with OECD guide that provide more active monitoring of the international transfer pricing applications (4),

Institutions may enrol interest they pay to lenders, delay interest which is a kind of interest and exchange difference and also other expenses related to indebting as expenditure. Foreign indebting can be made from third parties as well as from their own partners. However, it is really possible to misuse this method. Company can show the funds of equity capital as loan from partners and the accrued interest income or payments can be enrolled as expenditure. In this condition, corporate tax basis of the company decreases (5).

Reason for indebting instead of capital increase is getting interest income. In this way, considering loans from partners as normal credit contracts and assessing interest than deduce from corporate tax assessment reveals the existence of thin capitalization and hence tax assessment aimed to be reduced in the extent that tax paid is reduced. Direct and indirect relationships between companies with companies and companies with individuals produce capitals, good and service dealings, administrations, auditions and with numerous other ways.

As financial life is a compound of exchange in a broader sense, every real or legal entity will produce direct or indirect affinity with others. These interactions may be considered not as ordinary but that of beneficial to definite people illegally and produced collusively. Even the institution and the partner of the institution are different legal subjects, as a conclusion, for partners are nothing more than a gain source, economic interests of both are in the same direction. Because of this condition of common benefit, interrelations of corporate law and code of obligations can too often and easily be intermingled and create problems of producing thin capitalization based on tax (6). For instance, as there is no need for loaning, in order to provide benefit to some certain people, supplying this requirement by loaning when there is a need for capital increases. Here, the aim is: either obtaining benefit to one of the partners to be disadvantageous to others or corroding tax assessment by paying interest to loans produced like thin capitalization. Thinking this condition as a requirement of financial life is impossible (7). Therefore, legislation has designed thin capitalization more fastidiously.

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