

# The Tax Implications of a Merger

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The merger of companies has become even more important with the increase in competition and the number of markets that are traded internationally. Companies may decide to merge for a variety of reasons. While every merger is unique and has different benefits, a few of them can be summarized as; strengthening the position in the market, reducing general expenses, extending the customer network, and for tax purposes.

The mergers of companies are regulated under Articles 146-151 of the Turkish Commercial Code (“TCC”) and refers to the merger of two or more commercial companies, resulting in the establishment of a new company (fusion) or the absorption of one or more companies into another company (transfer).

The merging companies should be of the same type, that is joint stock companies can only merge with joint stock companies, and limited companies can only merge with limited companies. The merging companies must also take the decision to merge in accordance with the procedures and principles specified in the articles of association. Merging companies must assemble and announce balance sheets. The acquiring company must declare a payment plan for its debts.

## Mergers under the Corporate Tax Code

Mergers and acquisitions are defined and explained under Articles 18 and 19 of the Corporate Tax Code no. 5520 (“CTC”).

Regulated under Article 18, a merger is also referred to as a taxable merger, since a merger is equivalent to liquidation under this article and the profits from the merger are taxed as liquidation profits. Under Article 17, liquidation profits are described as the positive difference between the value of assets at the end of the liquidation period and the value of assets at the beginning of the liquidation period.

According to Article 21 of the CTC, liquidation profits must be declared to the merged company’s tax office within thirty (30) days of the registration of the resolution of the general assembly.

Unlike the TCC, the CTC handles mergers and transfers separately and states that certain merger operations are equivalent to transfers (tax-free mergers) in

cases where certain conditions are present. Transfers of companies shall be tax-free if the following conditions are true;

- If the registered head office of the merging companies is in Turkey, and
- If the balance sheet of the dissolved company is transferred in its entirety to the post-merger company.

It is defined as tax-free because balance sheets are transferred in their entirety, thus creating no income. As a result, there will be no liquidation profit to tax.

## Conditions for Tax-Free Mergers

In transfers where the conditions specified in Article 19 of the CTC are fulfilled, only the profits derived by the dissolved entity until the date of transfer will be taxed and the profits resulting from the merger will not be taxed. In order to relieve the merger profits from tax, the following conditions should be fulfilled in accordance with Article 20/1 of the CTC.

“a) The date when the company’s authorized board registers the transfer decision in the Trade Registry constitutes the date of transfer.

1) The acquired company’s corporate tax return is to be prepared as of the transfer date and jointly signed by the acquired and acquiring companies,

2) and, if the transfer is realized between the month the fiscal period closes and the end of the month when the corporate tax return is submitted, the corporate tax return of the acquired company is to be prepared with respect to the previous fiscal period and jointly signed by the transferring and acquiring companies and filed to the tax office of the acquired company within thirty (30) days of the declaration of the merger in the Trade Registry Gazette.

b) With a commitment to be filed by the acquiring company with the corporate tax return which will be submitted due to the merger, the acquiring company will undertake to pay the acquired company’s tax debts which have accrued or will accrue and to fulfill other liabilities of the acquired company. The highest fiscal director of the location may also demand a guarantee from the acquiring company concerning the matter.”

Under these conditions, the dissolved company will be liable for the applicable taxes until the date of the merger. The conditions mentioned above are unique and all should be fulfilled.

### Other Tax Exemptions in Tax-Free Mergers

#### Value Added Tax

Under Clause 17/4(c) of the Value Added Tax Code

no. 3065 (“VAT”), transfer operations performed in accordance with the CTC are exempt from VAT. Therefore the operations performed will not cause any VAT liabilities.

#### Stamp Tax

Under Paragraph IV-17 of Table 2 annexed to Stamp Tax Code no. 488, papers issued due to transfers conducted in accordance with the CTC are exempt from stamp tax.

Therefore, papers prepared in transfer operations, such as the transfer contract, articles of association, balance sheet, income statement, etc. are not subject to stamp tax.

#### Fee Application

Under Article 123 of Fees Act no. 492, operations conducted for the transfers of joint stock and limited companies will not be subject to any fee.

### Taxation in Share Transfers

According to Article 19/3 of the CTC, a fully accountable equity company may take over company stocks without taxation. The conditions of this are as follows;

- The transferor company must be fully accountable.
- Majority of the shares and control must belong to the transferor as a result of the transfer of shares.
- Transferor company’s participation shares must be given to the transferee company’s shareholders in return for their company’s shares.
- Share transfers must be executed between equity companies.