PRIMETAX GUIDE:

CORPORATE RESTRUCTURING UNDER TURKISH LAW: A COMPREHENSIVE LEGAL AND TAX ANALYSIS

Introduction

Corporate restructuring transactions, including mergers, demergers, share-for-share exchanges, legal form conversions, and liquidations, represent essential mechanisms by which corporations can reorganise their operations, streamline ownership structures, achieve regulatory compliance, or improve operational efficiency. In Türkiye, these transactions are regulated through a combination of the Corporate Tax Law No. 5520 ("KVK"), the Tax Procedure Law No. 213 ("VUK"), the Value Added Tax Law No. 3065 ("KDVK"), and the Turkish Commercial Code No. 6102 ("TTK").

Unlike many tax systems where reorganisations result in immediate taxation unless specific exemptions apply, Turkish law provides statutory frameworks for tax-neutral corporate restructurings, provided that certain substantive and procedural conditions are satisfied. These regimes enable corporate groups, including multinational enterprises operating in Türkiye, to realign their structures without incurring tax costs that would otherwise deter economically efficient transactions.

1. Legal and Tax Framework of Corporate Acquisitions

Corporate acquisitions in Türkiye can take two primary forms:

- Share acquisitions, in which the buyer acquires equity interests in a company, and
- Asset acquisitions, in which the buyer acquires assets (and optionally liabilities) of the target entity.

1.1 Share Acquisitions

In a share acquisition:

- The legal identity of the acquired company remains intact.
- Contracts, licenses, permits, and tax positions continue uninterrupted.
- There is generally no corporate tax or VAT at the time of the share purchase (with exceptions such as limited company shares, which may require notarization and registration under TTK Article 595).
- The target's tax losses and incentive rights remain with the company. Still, future use is subject to Article 9 of the KVK, which allows the tax authority to deny loss carryforwards if a company's control and business activity substantially change.

No capital gains taxation arises within the Turkish company if it is the acquiring party. For sellers, capital gains taxation depends on the seller's residency, holding period, and participation exemption rules (Article 5(1)(e) of the KVK).

1.2 Asset Acquisitions

Asset sales may trigger:

- Corporate tax on gains realised (difference between net book value and sale price),
- Value Added Tax (VAT) under Article 1 of the KDVK, unless an exemption applies,
- Stamp tax if contracts are documented in writing.

Asset acquisitions do not transfer historical tax losses or incentives. The buyer begins a new depreciation schedule for each acquired asset based on the acquisition cost.

To avoid these consequences, companies may consider tax-exempt merger or demerger structures.

2. Tax-Free Mergers (Birleşme)

The Turkish Corporate Tax Law permits certain mergers to be conducted without triggering taxation, known as "birleşme" or tax-free mergers, which are regulated under Articles 19 and 20 of the KVK.

2.1 Legal Classification of Mergers

Under Turkish law, a merger occurs when:

- *One company absorbs another and continues its legal existence (ordinary merger), or*
- *Two or more companies merge to form a new company (new incorporation merger).*

In both cases, the absorbed or dissolved company transfers all of its assets and liabilities in full to another company.

2.2 Conditions for Tax-Free Merger (Article 19/1-a of KVK)

To qualify as a tax-free merger, the transaction must meet the following conditions:

- *Both entities must be Turkish tax residents at the time of the merger,*
- *The absorbing company must take over all assets and liabilities,*
- *The transfer must be based on book value (no revaluation or fair market value adjustment),*
- *The absorbing company must continue business operations after the merger.*

If these requirements are met:

- No corporate income tax is assessed on gains arising from the transfer of assets,
- The transfer is exempt from VAT under Article 17/4-(c) of the KDVK,
- The merger documents may be exempt from stamp tax, provided they are properly drafted to invoke the tax exemption under Article 19 of the KVK and associated stamp tax legislation.

Failure to meet these criteria results in full taxation under general rules, including the realisation of hidden reserves.

3. Tax-Free Demergers

Turkish tax law permits two types of demergers—full (tam bölünme) and partial (kısmî bölünme)—each with unique rules and tax treatment under Articles 19 and 20 of the KVK.

3.1 Full Demerger

A full demerger involves the transfer of all assets and liabilities of a company to one or more new or existing entities, and the original company is dissolved without liquidation. If performed in accordance with the rules of Article 19/2 of the KVK, this transaction is tax-neutral.

Key advantages:

- Tax assets, including carried-forward losses, may be transferred to the recipient companies.
- The transaction is exempt from VAT and corporate income tax if assets are transferred at book value.
- The transferee companies inherit the tax basis and depreciation history of the transferred assets.

Practical challenges:

- The TTK lacks specific procedural provisions on full demergers, causing legal uncertainty.
- No model articles or standard demerger agreements are widely accepted in practice.

3.2 Partial Demerger

A partial demerger involves:

- Transfer of specific business units or participations to another company (existing or newly formed),
- The transfer is treated as a capital in-kind contribution, reflected in the equity of the receiving company.

Conditions for tax neutrality:

- The transferred participation shares must have been in the balance sheet for at least two years,
- The demerger must be made at book value, not market value,
- The demerger must not be aimed at avoiding taxation or misrepresenting income.

Unlike full demergers, tax losses are not transferable in a partial demerger.

Recent rulings and Revenue Administration circulars have clarified that Turkish branches of foreign companies may also carry out partial demergers into Turkish-resident transferees, provided all statutory conditions are met.

4. Share-for-Share Exchanges (Tax-Free Share Swaps)

Under Article 19/3 of the KVK, the acquisition by a capital company of the shares of another capital company, in a manner that enables it to obtain the management and majority of the shares of that company, and the issuance of its own shares representing its capital to the shareholders of the acquired company in exchange, is regarded as a tax-free share exchange.

4.1 Requirements for Tax-Free Share Swap

- The acquiring company must obtain more than 50% of the share capital or voting rights of the target,
- The transaction must be carried out entirely with shares (The payment in cash of up to 10% of the nominal value of the participation shares to be granted to the shareholders of the acquired company shall not preclude the transaction from being considered a share exchange),

- *The exchanged shares are recorded at book value, preserving cost basis.*

Tax implications:

- *No corporate tax or capital gains tax is triggered at the time of the swap,*
- *The acquiring company steps into the shoes of the transferor regarding the shareholding period and tax cost basis.*

This mechanism is advantageous for:

- *Restructuring multi-tiered shareholding structures,*
- *Facilitating intragroup reorganisations,*
- *Preparing for initial public offerings or strategic joint ventures.*

5. Legal Form Conversions (Nev'i Değişikliği)

Article 19/1-b of the KVK provides that changes in the legal form of a company (e.g., limited company to joint-stock company) are not taxable events when they meet the same conditions applicable to tax-free mergers.

Conditions for tax neutrality:

- The transaction must be treated as a continuation of the same entity,
- All assets and liabilities are transferred at book value,
- The company must continue its business activity in the new form.

From a legal perspective, TTK Articles 180–194 govern such conversions, requiring:

- A conversion plan and report,
- General assembly approval,
- Notarization and trade registry filings.

This mechanism is often used to:

- Meet eligibility criteria for capital markets activities,
- Prepare for attracting strategic or institutional investors,
- Align with international governance standards.

6. Corporate Liquidations

Corporate liquidation entails the dissolution of a company and the distribution of its net assets to its shareholders. It is governed by TTK Articles 636–651 and applicable tax laws.

6.1 Tax Aspects of Liquidation

Liquidation introduces a unique tax treatment:
- Each year during liquidation is treated as a separate tax period,
- Upon liquidation, the company must file:
  - Opening liquidation return (tasfiye başı beyannamesi),
  - Annual liquidation returns,
  - Final liquidation return (tasfiye sonu beyannamesi).

6.2 Asset Realisation and Gains

- Gains from the sale of assets are subject to corporate tax,
- The difference between total liquidation proceeds and paid-in capital is treated as retained profit, taxed under corporate income tax rules,
- In case of overpaid taxes (due to estimated profit declarations), refunds may be claimed.

To avoid disputes, companies must:
- Maintain comprehensive asset inventories,
- Ensure the proper valuation and classification of liquidation gains,
- Notify all relevant authorities, including the tax office, trade registry, and SGK (Social Security Institution).

Conclusion

Turkish tax and corporate law offer a coherent and structured framework for corporate acquisitions and restructurings. Through the application of tax-free mergers, demergers, share swaps, legal form conversions, and structured liquidations, companies can reorganise with minimal tax cost, provided they adhere to the relevant legal and procedural requirements.

These mechanisms are not merely formalities—they are highly technical processes involving extensive documentation, valuation, and tax planning. Errors in implementation can result in the loss of tax neutrality, penalties, or retroactive taxation.

For sophisticated investors and multinational groups, careful pre-transaction structuring, thorough legal due diligence, and, where appropriate, advance tax rulings (özelge) from the Turkish Revenue Administration are crucial to ensure the intended tax treatment.

As Türkiye continues to align with OECD standards and enhance investor confidence, the legal infrastructure supporting corporate reorganisations remains a critical component of the country's business law landscape.

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