CORPORATE INCOME TAX SUBJECTS IN TURKEY

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1. General Presentation of CIT in Turkey

1.1. Overview of the System of CIT

The types of tax based on income in Turkey are income tax (IT) and corporate tax (CT). The date of enactment of the Corporate Tax Law (CTL) No. 5520 which regulates the taxes of the corporations is 13.06.2006[1].

It may be possible to claim that there is a *partial* strict tax distinction in the system between corporations and partnerships. The underlying reason for this is that *having the status of legal persona is not a sine qua non for CIT subjectivity*, that *some partnerships (general partnership and limited partnership) have legal personality* (Art. 124 and Art.125 I, TTL[2]), that *some entities which are not companies, is considered as CIT subjekt* and in connection to these, *the special meaning given to the concept of "corporation" by the Turkish CTL.* That is; in terms of CTL, "**corporation**" is each one of the CIT subjects that have completely **different characteristics** from each other. Therefore, when the "corporation" is mentioned in terms of CTL, we can understand only that one of the CIT subjects is being addressed. In other words, in order to be subject to CIT, one must possess one of the legal forms prescribed by the CTL. In this sense, the corporation qualifies as a "superior concept", and it does not a have a homogenous structure.

In some of the CIT subjects (joint stock companies, cooperatives and **joint ventures,** who is **a civil law partnership** and **don't have legal personality** (Art.620 and cont., Code of Obligation[3])), the partners and the corporation are being taxed separately (opacity). These corporations pay CT for the corporate income that they generate; on the other hand, the real person-partners of the corporation pay IT and the corporate-partners of the corporation pay CT. It is obvious that this causes to economic double taxation problems. On the other hand, for some of the CIT subjects **with or without legal personality** (public economic enterprises and enterprises owned/controlled by associations and foundations), neither the separation principle, nor the principle of transparency in the meaning only the partner is accepted as a taxpayer liable for *IT* finds a field of application[4]. This is to be seen *especially* when the CIT subject has the legal form of an "enterprise" or a "partner of a partnership". The first of these reflects a situation that is frequently encountered in practice. Here, as the enterprise itself is the CIT subject, only the CT is paid, a separate IT is not paid. The latter one of these is a situation which is theoretically possible but not frequently seen in practice. Here, being subject to CIT is resulted from being a dormant partner (limited partner) to a limited partnership or due to being a partner to an civil law partnership. As the limited partnership and the civil law partnership are not subjects of CIT, the partnership income is taxed only in the partners. However, if the partner is a real person, only the IT

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[1] Law No. 5520, Official Gazette of 21.06.2006, No. 26205. Along with this, most of CTL No. 5520 arrangements have come into effect on its issue date but starting retrospectively from 01.01.2006 (Art.37 (e), CTL). It is considered that this retrospective effectiveness has not created any problem relating to constitutional legal safety principle. Because, there are not many contextual differences between CTL No. 5520, which was introduced as a "reform", and the CTL No. 5422 of 03.06.1949 (Official Gazette of 10.06.1949, No.7229) effective before it. See below footnote 26

[2] Turkish Trade Law No. 6102, dated 13.01.2011, Official Gazette of 14.02.2011, No. 27846. Although the date of entry into force of this Law is 01.07.2012, some of the provisions entered into force on 01.01.2013.

[3] Law No. 6098, dated 11.01.2011, Official Gazette of 04.02.2011, No. 27836

[4] See below 3.2.

will be paid (transparency); but if the partner is a legal person and therefore a CIT subject due to this partnership, then the legal person-partner will pay CT. As these types of CIT subjects are not "partnership" themselves, and to the contrary as they are an enterprise dependent on another legal person (association or foundation) who is not a CIT subject, or on a legal person subject to CIT (public economic enterprise), the income in which the paid CT is based on will not be distributed to the real person partners. Therefore, the taxation here is realized only for the CIT subject; the problem of economic double taxation does not arise.

In Turkey, as of the end of the year 2012, there are 573,057 limited liability companies, 79,860 joint-stock companies, 39,378 cooperatives, 1 commandite companies (/limited partnership by share)[5]. As it is seen, the most preferred legal form of enterprise in Turkish Economical Life is the limited liability company. It is followed in order by joint-stock companies, cooperatives and civil law partnerships. The demand for general partnership and limited partnership is very low. On the other hand, although it is not possible to give exact numbers, it is possible to state that in Turkey there are many economical enterprises owned/controlled by associations and foundations; and that the number of active associations as of the year 2012 is 93,922[6], and the number of foundations as of the year 2011 is 4,768[7].

In Turkey, the CT incomes have a low share in both the central management incomes[8] and general budget incomes, its amount is also low when compared with the CIT incomes. In this subject, with regard to the year 2011, it is possible to outline the table below[9] considering the fact that the Gross Domestic Product is 1,298,062,000,000 million TL[10] (Based on current prices in 1998).

	TL (1 EUR=2,3 TL)	**BUDGET SHARE**	**GDP SHARE**
Central Management Incomes	**295,862,436**	**100.0**	**23.1**
General Budget Incomes	**286,376,776**	**96.8**	**22.3**
Tax Incomes	**253,765,370**	**85.8**	**19.8**
Taxes based on Incomes and Gains	**75,799,248**	**25.6**	**5.9**
a) Income Tax	**48,806,565**	**16.5**	**3.8**
b) Corporate Tax	**26,992,683**	**9.1**	**2.1**

There are no taxes in Turkey which "look like" CIT but are distinct from CIT. However, we must specify that a "fund share" at the rate of 10% of the CIT is collected from the CIT subjects who are

[5] Revenue Administration, Uygulama ve Veri Yönetimi Daire Başkanlığı Yazısı of 23.01.2013, No. 88648695-622.03-6342. There are also 41,990 civil law partnerships, 2508 general partnerships, 186 limited partnership and 98,111 other taxpayers. The qualification of the other taxpayer refers here all taxpayers who are within the scope of any tax, other than those referred and the natural persons. Therefore, public institutions, enterprises owned/controlled by associations and foundations and joint ventures connected, are located in this number. However, the information about their exact number is not available.

[6] Ministry of Interior, Department of Associations, http://dernekler.icisleri.gov.tr/Dernekler/Kurum/FaalFesihSayilari.aspx

[7] Prime Ministry General Directorate of Foundations, http://www.vgm.gov.tr/icerik.aspx?Id=192

[8] In the Central Government Budget, the overall budget administrations, special budget administrations and budgets of regulatory and supervisory agencies are included. See the Public Financial Management and Control Law with No. 5018, dated 10.12.2003 (Official Gazette of 24.12.2003, No.25326), Art.3 (b)

[9] General Directorate of Budget and Fiscal Control, http://www.bumko.gov.tr/TR,166/merkezi-yonetim-butce-gelirleri-2006-2011.html

[10] Turkish Statistical Institute, http://www.tuik.gov.tr/PreHaberBultenleri.do?id=10895

obliged to state the annual tax statement for CIT, from the date of 01.01.1993[11] until 12.31.2003[12]. The fund share had to be paid within the payment period for the relevant CIT and it was not possible to consider them as expenditures in the determination of the CIT base or to offset them for CIT. Although in terms of assessment and collection the fund share has been subjected to the legal regime which the CIT depends on, it could not be qualified as additional CIT. Because, it was possible to provide shares to the funds established by law, from the incomes generated from the fund share and therefore to utilize their incomes only for the realization of specific purposes. This in turn partially approximated them special taxes that essentially special taxes are against the Turkish Constitution (Art. 731)[13].

1.2. Historical evolution of CIT

As the Islamic Law was in force during the Ottoman Empire, the religious taxes were being applied also in the field of taxation; these taxes were being complemented by customary taxes[14].

The taxation under one roof, of the commercial and industrial incomes, (and self-employment incomes) of both real persons and the legal person merchants, firstly started with the "dividend tax" which was put into practice in the year 1907[15]. This tax based on the method of presumption, has been withdrawn in 1914 due to the difficulties in its application. In lieu of it, the new dividend tax[16] which also covered the foreign merchants and which was effected by the French Patent Tax has been enacted, however it did not have a long life, and it was abrogated upon the enactment of the "Profit Income Tax (PIT)" in the first years (1926) of the Republic of Turkey.

The Profit Income Tax Law No. 755 dated 27.02.1926, covered *"All real and legal persons within the borders of the Republic of Turkey dealing with trade, arts and crafts, or with affairs and activities mentioned in this Law*" (Article 1), "non-commercial cooperatives", benevolent associations and enterprises owned only by the government and their plants were exempt from taxation (Art. 2, PITL)[17].

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[11] Art.18-Art.20 of Law No.3824, dated 25.06.1992, Official Gazette of 11.07.1992, No.21281

[12] Art.37 III of Law No. 4842, dated 09.04.2003, Official Gazette of 24.04.2003, No.25088

[13] Under Turkish Law, funding is a financial liability which we encountered especially after 1980 and which is used in different contexts. Eg. taxes collected from foreign tobacco and cigarettes during the importation, Tobacco Fund in terms of Turkish Constitution (AY), Art. 167 II was an "additional fiscal obligation", whereas Housing Development Fund and the Defense Industry Support Fund is rather in the nature of a "special tax". See BAŞARAN Funda, Anayasa Temelinde "Benzeri Mali Yükümlülük" Kavramı, Prof. Dr. İmregün'e Armağan, İstanbul, 1998, p.857 and cont. (880)

[14] This situation began to change with the Tanzimat Period; a large number of taxes were abolished in the period between Tanzimat to Meşrutiyet, as religious tax *aşar-tithe* (a tax received in cash or in kind calculated on the basis of the value of the agricultural product, in the Republican Period it has been removed.), *cattle tax-ağnam* resmi (a wealth tax received for the animals in kind, later in cash; in 1856 converted into an income tax levied on the revenue provided by the animal and applied until 1962) and *cizye-poll tax* (except for women, children, elderly, disabled and clergy this tax was collected from non-Muslims, it was removed in 1856); as civil tax *ancemaatin* tax (a wealth tax taking into account the ability to pay or if engaged in trade an income tax); customs duties were also collected. For information on taxes collected in Ottoman Empire and in the first years of the Republic see. BULUTOĞLU Kenan, Türk Vergi Sistemi, 4.B, İstanbul, 1971, p.1 and cont.; EROĞLU Onur, Osmanlı Devleti'nin Son Dönemlerinden Cumhuriyet'in İlk Yıllarına Kamu Maliyesi, DEÜHFD, C.12, Özel Sayı, 2010, p.57 and cont.; NADAROĞLU Halil, Kamu Maliyesi, 11.B, Istanbul, 2000, p.345 and cont.

[15] Müstakil Temettü Vergisi Nizamnamesi dated 21.12.1907 (ÜÇÜNCÜ Nihad Ali, Kazanç Vergisi Şerh ve İzahları, C.I, İstanbul 1943, p.XV-XVI); See also Minutes of the Grand National Assembly of Turkey, Term: IV, Volume: 20, Assembly Year: III, 28th Assembly, 17.03.1934, (http://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d04/c020/tbmm04020028.pdf, p.25-26); Foreigners were exempt from this tax until the beginning of the First World War in 1914, due to the capitulations. See. EROĞLU, p.62

[16] Temettü Vergisi dated 13.12.1914 (ÜÇÜNCÜ, p.XV); See also Minutes of the Grand National Assembly of Turkey, Term: IV, Volume: 20, Assembly Year: III, 28th Assembly, 17.03.1934, (http://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d04/c020/tbmm04020028.pdf, p.26-27)

[17] Minutes of the Grand National Assembly of Turkey, Term:II, Volume:21, Assembly Year:III, 47th Assembly, 01.30.1926 (http://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d02/c021/tbmm02021047.pdf, p.9 and cont.)

However, many hardships in relation to this tax[18], including the determination of the taxpayers and the scope of tax, have resulted in the enactment of the new Profit Income Tax Law[19] No. 2395 dated 22.03.1934. The taxpayers for the new income law, which levied taxes on both the real persons and the legal persons in the same way as the taxes prior it, consisted of four groups. In the first group, "*general partnership, limited partnership, cooperative and joint stock companies, public offices and institutions with an appendant and private budgets and utility enterprises with commercial purposes"* were present. (Art.1 I (A), Law No. 2395)[20]. The foreign enterprises resident in Turkey were also subject to this tax (Art.2, Law No. 2395).

The subjecting of incomes of the real persons and corporations to different taxes, has been accepted in Turkey for the first time upon the radical changes made in the Turkish Tax System in the year 1949. The Profit Income Tax has been abrogated in June 1949 and Income Tax Law No. 5421[21] and Corporate Tax Law No. 5422 were enacted in lieu of them[22]. According to this law, the CIT subjects were the joint stock companies, cooperatives, public economic enterprises, and the enterprises owned/controlled by associations and foundations; the joint venture has been added to this list in the year 1986[23]. The reason for the enactment of a new CT was explained to be because of the fact that the structural differences between the real persons and corporations required the following of different principles and rules in the taxation of the incomes of real persons and corporations and the application of different taxation methods[24]. Moreover, the corporations had a financial power separate from that of the real persons that make them up.

The CTL No. 5422 has been abrogated by the CTL No. 5520 (Art. 36) in the year 2006, for the purpose of realization of "an innovative understanding that does not turn its back on the requirements of the long term goals of Turkey and the facts of the new age that we live in, enabling a broad-based, low rate, viable tax environment blending and harmonizing these matters within sound economic, financial and legal perspectives, and which supports growth at the same time, observes the voluntary compliance of the taxpayers, and strengthens tax security", within the framework of the primary objective of "creating a legal infrastructure in accord with the requirements and facts of the century"[25]. As the new CTL which is still in force, has taken over the regulations in relation to the taxpayer base and identification, almost exactly in the same way as they were in the –former- CTL No. 5422, there were no radical changes in terms of the personal scope of CIT[26].

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[18] Minutes of the Grand National Assembly of Turkey, Term:IV, Volume:20 Assembly Year:III, 28th Conclusion, 03.17.1934 Justification of the Income Tax, General Information (http://www.tbmm.gov.tr/tutanaklar/TUTANAK/TBMM/d04/c020/b028/tbmm040200280080.pdf)

[19] Official Gazette of 25.03.1934, No. 2362

[20] For a comprehensive description of this tax see. ÜÇÜNCÜ Nihad Ali, Kazanç Vergisi ve Tatbikatı, İstanbul, 1938, p.2 and cont.

[21] Acceptance date :03.06.1949, Official Gazzette of 09.06.1949, No.7228

[22] Official Gazette of 10.06.1949, No.7229. While CTL No. 5422 which came into force in 1950 was being prepared- impact of German scientists as at Fritz NEUMARK who were in Turkey at that period- more influenced by 1925 dated German KStG.

[23] Art. 71 and Art. 72 of Law No. 3239 dated 04.12.1985, Official Gazette of 24.12.1985, No.19014

[24] See Justification of Law No. 5422, http://www.gib.gov.tr/fileadmin/user_upload/Gerekceler/5422_sayili_kanun_gerekcesi.pdf; KOCAHANOĞLU Osman Selim, Gerekçeli-Açıklamalı Türk Vergi Kanunları, KVK Art.1, p. 259-260

[25] See Justification of Law No. 5520, http://www.gib.gov.tr/fileadmin/user_upload/Gerekceler/5520_Sayili_Kanun.pdf

[26] The most significant differences between them are the change of systematic (i.e. combining the definition of taxpayers into one article whereas it was defined in five separate articles before; the arrangement related to the taxation of full tax liability and limited tax liability is arranged in different parts of law), simplification of the language used and adapting it to modern-day Turkish, first arrangement of controlled foreign corporate earnings (Art. 7) and of disguised profit distributions by transfer pricing (Art. 13), different arrangement of hidden contribution (Art. 12) and exemption on foreign investment income from (Art.5), placing of withholding tax on some corporate income in CTL (Art. 15) and the decreasing of CT rate from 30 % to 20 (Art.32 I).

2. Legislative technique

2.1. Sources

The CIT subjects and the regulations in relation to them are found in the first and second articles of the CTL. These articles are found in Section I entitled "object and subjects" of Part I entitled "liability" of the CTL, which consists of four parts. Firstly, in Art. 1 subtitled "object of the tax" of the CTL, it is being specified whose incomes are object to corporate tax, and therefore the Corporate Taxpayers are being –indirectly- specified; and subsequently these taxpayers are being identified in turn in Art. 2 subtitled "taxpayers" of CTL. Other than these two articles, it must be specified that full and limited liabilities (definition and scope) are being regulated by Art. 3 of CTL, and the taxpayers who are exempt from CTL (catalog classification) are being regulated by Art. 4 found in Part II of Section I of the CTL; and that in addition there regulations in relation to CIT subjects in some of the temporary articles[27] (t-Art.1, t-Art.2 and t-Art.4, CTL).

However, as the taxpayers are not defined completely[28] in Art. 2 of the CTL which is the central article in relation to our scope of examination, in addition to the CTL, other provisions of Laws, especially the Turkish Trade Law, Income Tax Law and Cooperatives Law[29] and Code of Obligations also find fields of application in the identification of the taxpayer. Therefore, especially the mentioned laws shall be taken into consideration in the determination of whether there is a CIT subject in the concrete case or not, according to their relevancy. Therefore, these laws do complete the CTL.

The legal regulations at the second level for identification of the CIT subjects, are the general regulatory procedures of the executive branch; that in terms of the CIT subjects (in relation to the identification and CTL exemption of the subjects) it is faced with the communiqués[30]. It must be mentioned that; although the communiqué in Turkish Law is a means[31] intended for the regulation of the internal operation of the administration, in practice the Ministry of Finance is performing almost all of its regulatory operations by means of communiqués. In case of the finding of new rules in the communique -which are considered as supplemental sources of law-, that affect the legal statuses of the taxpayers (giving rise to rights and/or obligations), this situation results[32] in the consideration of these as regulations –which are binding sources of law and which are regulated in Art. 124 of the Constitution– and them being subjected to its legal regime. The meaning of this is that they should be published in the Official Gazette in order to gain a legal status.

In conclusion, the judicial decisions that are primary (binding) or secondary (supplementary) sources of law depending on the situation, have a role in the identification of the CIT subjects. The Decision of the Unifying Council of the State Council (DİBKK) dated 1994[33] as primary source[34], is directly in relation to one of the CIT subjects and to the concept of "enterprise" in this context. As the Judicial decisions other than the Unified Decisions of the Supreme Courts are binding only for the parties of

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[27] Temporary articles are applicable only during the period they are prescribed for, namely, they are the legal regulations which have limited legal effects for a certain period.

[28] See below 3.2.

[29] Law No. 1163, dated 24.04.1969, Official Gazette of 10.05.1969, No. 13195

[30] Corporate Tax General Communiqué serial number 1, Official Gazette of 03.04.2007, No. 26482; Corporate Tax General Communiqué Serial Number 2, Official Gazette of 22.04.2008, No.26855; Corporate Tax General Communiqué Serial Number 3, Official Gazette of 20.11.2008, No.27060; Corporate Tax General Communiqué Serial Number 4, Official Gazette of 13.08.2009, No.27318; Corporate Tax General Communiqué Serial Number 6, Official Gazette of 05.05.2012, No. 28283. In addition depending on the type of the CIT subject in the concrete event, the overall regulatory administrative procedures within the complementary legislation will find application area.

[31] See GİRİTLİ/BİLGEN/AKGÜNER/BERK, İdare Hukuku, 5.B., İstanbul, 2012, p.207 and cont.; GÖZLER Kemal, İdare Hukuku Dersleri, 10.B., Bursa, 2010, p.442 and cont.

[32] GİRİTLİ/BİLGEN/AKGÜNER/BERK, p.209; GÖZLER, p.444

[33] DİBKK of 16.06.1994, E.1992/2, K.1994/2, Official Gazette of 03.04.1995, No. 22247 (ARSLAN/DÜNDAR, Danıştay İçtihadları Birleştirme Kurulu Kararları, 1933'den Günümüze, Ankara, 2002, p.394 and cont.)

[34] Art. 40 (b) of State Council Law No.2575, dated 06.01.1982 (Official Gazette of 20.01.1982, No.17580): *"To these decisions the State Council departments and committees and the administrative courts and the administration must abide by."*

the dispute, they direct the concerned persons only as a supplementary source of law. It must be mentioned that there are numerous Council of the State Decisions in relation to the topic of being subject to CIT.

2.2. Legal drafting

The Legislator has preferred the enumeration principle in the identification of CIT subjects, and it has enumerated the CIT subjects one by one completely in Art. 2 of the CTL. This enumeration is not exemplary, but limiting (numerus clausus). Therefore, as a rule, the method of identifying the CIT subjects through a general criteria or criterion has not been utilized in the Turkish Law.

On the other hand, it is possible to reach to the common criteria or criterion by coming from the opposite end, in other words by coming from the corporations that are specified as taxpayers in Art. 1 and Art. 2 of the CTL. That is, all of the CIT subjects are essentially enterprises regardless of their legal structures. In other words, not all of the commercial enterprises are subjects of CIT, but all CIT subjects are ultimately commercial enterprises and depending on this, they emerge from the simultaneous presence of all of these elements: 1. The presence of an activity based on labor and predominantly on capital[35], 2. The activity being done for the purpose of achieving a receipt, 3. The activity being continuous, 4. The activity being independent, and 5. The performance of the activity within an organization.

In terms of the topic of being a subject of CIT, it is hard to determine a common element in relation to the "legal structure" of an enterprise. Because, as discussed below, firstly, the presence of the legal person is not a common element; some commercial enterprises which are not legal persons have well been considered CIT subjects. Secondly, even though the partnerships (general partnerships, limited partnerships and civil law partnerships) are not considered CIT subjects, partnership to a general partnerships, limited partnerships or civil law partnerships may well result in becoming a CIT subject. This in turn, in my opinion, means leaving the backdoor halfway open to the partnerships. The only definite point in relation to the legal structure of the CIT subjects is that, the real persons cannot be CIT subjects.

The fact that the legislator has preferred the catalogue method instead of the definition method while identifying the CIT subjects shows to us that it is having a hard time determining common elements. The tax law cannot and/or does not want to determine the CIT subject by detaching from the civil law, and by basing it on ability to pay and the principle of equality through this. However, this situation undoubtedly results in conflicts with the principle of equality in many forms.

3. Domestic entities

3.1. First approach

The domestic entities that are subject to CIT in Turkey are the following (Art. 1 and Art. 2, CTL): companies, cooperatives, public economic enterprises, enterprises owned/controlled by foundations and associations, and joint ventures.

The domestic entities that are not subject to CIT are the civil law partnerships –except for joint ventures- and the other partnerships (general partnerships and limited partnerships)[36].

Since the acceptance of the CT, in the Turkish –financial and tax law- academic literature, the introductory sections of the statements in relation to the CT always consisted of the discussion of whether there is a need for a CT separate from the IT or not, in other words, the reasons for the

[35] In fact, in the justification of first CTL No. 5422 (see above footnote 24), from the point of being a CIT subject, it is stated that the "capital" element is held at the forefront.

[36] About possibility of becoming subject to CIT by partnership in a civil law partnership or limited partnership see above 1.1. and below 3.2.2. and 3.2.3.

legitimacy of the CT[37]. On the other hand, a general discussion in relation to the reasons why some enterprises are considered as CIT subjects and some of them not, has not been made, in other words, an evaluation over the big picture has not been carried out. From the reasoning of the CTL No. 5422, it being understood that the corporate tax is being considered as a **company tax,** (that in the Justification of CTL, the cooperatives are also considered companies), and on the other hand, the **public economic enterprises, and the enterprises owned/controlled by associations and foundations are being considered as CIT subjects**[38]-almost as an exception-**, in order to ensure equality in competition.** The underlying reason for this approach which continues in the CTL No. 5520 , lies in the fact that *the capital* is important for the company, and the attributes which qualifies the company as a *legal person*, but the partners as to be having *limited liabilities*. The legal personality allows the company to have rights and obligations that are independent of the partners and therefore allows it to be regarded as a person separate from the partners; and the limited liability (with the capital that is provided or undertaken) of the partners against the creditors of the company bolsters up this situation. On the other hand, even though the general partnerships and the limited partnerships also have legal person status, the partnership and the partners are considered as "one" due to the reasons that *the partners* but not the capital is at the forefront in these; that the company is managed, represented and audited by the partners but not by the organs of the company; and that the partners (dormant partner in limited partnerships) have *limited liability* against the creditors of the company. It is believed that the tax law shall take over this approach found in civil law in exactly the same way as it is in the civil law, and that it shall form the taxation over a such distinction, and that in this framework it should levy taxes on companies according to the principle of opacity, and for the general partnerships and limited partnerships according to principle of transparency.

However, in positive law, the presence of CIT subjects that can by no means be included in companies shows that it is not possible anymore to accept the above mentioned views, which are far away from the reality and thus the needs of modern tax system.

3.2. Special Issues

3.2.1. Link between company law and tax law

Art. 2 I of CTL regulates the companies from among the CIT subjects completely with reference to TTL[39]. That is; the joint stock companies, limited liability companies and commandite companies whose capital is divided into shares that are established according to the provisions of TTL, are prescribed as "companies". Therefore, in order to be a CIT subject-company, the presence of the compliance with the following articles of TTL is required: compliance with Articles 329-355 for joint stock companies, 573-588 for limited liability companies, and 564-569 for commandite companies (in many topics, references are made to the regulations in relation to the joint stock companies).

It may be specified that during the creation of CTL, the existence of a link between the limited liability of shareholders/partners and the personal scope of CIT has been accepted. However, this cannot be put

[37] These are general arguments for legitimization, which are also put forward in other countries. For example, the legal person having an ability to pay separate from the real person that constitutes it; the fact that also the legal persons have to pay for the government services that they utilize; the requirement for them to pay for the privileges (longevity, competitive capacity, opportunity for more growth with less risk etc.) granted by the corporate legal status; the fact that it is a good source of income for the government (profitable tax); the requirement for the taxation of the income that is not distributed to the partners. See, for example KIZILOT Şükrü, Kurumlar Vergisi Kanunu ve Uygulaması, C.I, Ankara, 2000, KVK Art.1, p.14 and cont.; NADAROĞLU, p.348 and cont.; TURHAN Salih, Vergi Teorisi ve Politikası, Istanbul, 1987, p.151 and cont.

[38] See Justification of Art.1 of CTL No. 5422 (Above footnote 24, and KOCAHANOĞLU, KVK Art.1, p.260-261); KIZILOT, KVK md.1, p.35; please compare TURHAN, p.149-150 and MUTLUER Kamil, Vergi Özel Hukuku, İstanbul, 2007, p.200

[39] The funds that are subject to the regulation and supervision of Capital Markets Board are also included in the companies (Art. 2 I, sentence 2, CTL). In addition, a cooperative subject to CIT is also being identified with reference to other laws by being defined as "Cooperatives that are established according to Cooperatives Law or special laws" (Art. 2 II, CTL).

forward as a general rule; because such a link exists only for the companies and cooperatives. On the other hand, such a rule does not exist in the joint ventures, public eceonomic enterprises, and the enterprises owned/controlled by associations and foundations: All of the partners of joint venture as a type of civil law partnership bear the loss equally as long as it is not otherwise agreed in the Agreement (Art. 620 II, Art.623 I, Code of Obligations)[40]. An enterprise controlled by associations and foundations can be encountered also when the association or foundation is a partner to a civil law partnership (Art. 620 I, Code of Obligations) or when these solely own an enterprise. Because of the fact that partners of the civil law partnership and the owners of the enterprise have unlimited liability against the creditors of partnership/enterprise (Art. 623, Art.635 and Art.643, Code of Obligations), the link between the personal scope of CIT and limited liability of partners are severed in such cases. This situation is not any different also for the public eceonomic enterprises that have similar legal structures.

As joint stock companies and limited liability companies are permitted to be established by a sole person with the new TTL (Art. 338, Art. 573, and Art. 574 II), it is currently possible for them to be CIT subjects, since July 1, 2012.

As mentioned above, it is not necessary to enjoy legal personality to be subject to CIT. The joint venture does not have a legal personality, and in addition, according to Art. 2 VI of CIT, which makes proportional the rules provided by civil law in relation to the concept of entity, *"For public eceonomic enterprises and for enterprises being owned/controlled by the associations or foundations, having the following qualities have no effect over their tax liability: not seeking profits; its activities being among the duties given by the law; not having a legal personality; not having an independent accountancy and a capital reserved for themselves or not having an office. The situation that the price of goods or services only meets the costs, no profit has been made or the profit has been allocated for the purposes of establishment, does not change their commercial qualifications."*

Corporations (for company law purposes) may not be outside the scope of CIT. However, by exception, it must be mentioned that through CTL Article 4 I(k), *"Only the establishments that are established within the framework of financial and technical cooperation agreements made with foreign states or international finance institutions, for the purpose of obtaining collateral surety, adding the incomes generated through these activities to the collateral liability fund, and depositing funds that it owns to banks and institutions which grant loans, without distributing them to its shareholders"* are being exempted from CT.

3.2.2. Charitable organizations and associations

Charitable organizations and associations[41] cannot be subjects of CIT. The legislator has not accepted[42] associations and foundations as taxpayers in the CTL No. 5422 based on the reasoning that "Turkey is not ready yet", and although the continuation of a situation of Turkey not being ready cannot be in question anymore, this situation has been retained[43] in the CTL No. 5520. However, it is possible for the associations and foundations, who are civil law persons, to operate commercial enterprises for the purpose of reaching to their objectives (Art.56 I and Art.101 I of Turkish Civil Code[44]; Art.2 (a) of Associations Law[45]; Art. 31 V of Foundations Regulation[46]; Art. 4 of Foundations Law[47]; Art.20 IV of By-Law in Relation to the Foundations Established According to the Provisions of

[40] Art.623 III of Code of Obligations: *"The agreement in relation to the subject of a partner sharing only the profit and not the loss, is effective only for the partner who has put his labor as share of capital.*."

[41] According to Art.2 V, sentence 2 of CTL, *"In the application of this law, the unions are considered associations, and the congregations are considered foundations."*.

[42] For Justification see above footnote 24 and KOCAHANOĞLU, KVK Art.4 ve Art.5, p.266-269

[43] For criticism, see BAŞARAN YAVAŞLAR Funda, Kurumlar Vergisi Mükellefi "Ticari İşletme", Vergi Sorunları Dergisi (VSD), S.268 (Ocak 2011), p.93

[44] Law No 4721, dated 22.11.2001, Official Gazette of 08.12.2001, No.24607

[45] Law No.5253, dated 04.11.2004, Official Gazette of 23.11.2004, No.25649

[46] Dernekler Yönetmeliği, Offical Gazette of 31.03.2005, No.25772

[47] Law No 5727, dated 20.02.2008, Offical Gazette of 27.02.2208, No.26800

Turkish Civil Code[48] ; Art. 37 of Foundations Regulation[49])[50]. As mentioned above, only the "enterprises controlled by them" can be CIT subjects. The conditions required for being a CIT subject in such a way, can be briefly explained as follows[51]:

a) The presence of a commercial, industrial or agricultural enterprise: Not all kinds of economic enterprises, but commercial, industrial or agricultural enterprise, which are sub types of economic enterprises, are accepted as CIT subjects. An economic enterprise which not deals with a commercial, industrial or agricultural activity (e.g. deal with self-employment activity) cannot be subject to CIT. For the presence of a commercial, industrial and agricultural enterprise, the presence of the above mentioned elements[52] and the element of "the income targeted to be realized, exceeding the level prescribed for the tradesman"[53] is a must[54].

b) Commercial, industrial or agricultural enterprise not being organized as a company or cooperative: If an enterprise is organized as a capital company or cooperative, it will be a taxpayer as a company or cooperative, not as an enterprise under control of/owned by an association or foundation.

c) Commercial, industrial or agricultural enterprise being under the control of/owned by an association or foundation. Being owned means dependency in terms of capital; being under control means dependency in terms of administration (Corporate Tax General Communiqué serial No. 1). A criteria intended for specifying ownership or dependency is not present in the CTL.

These conditions required for being a CIT subject are not identical to those used in the context of VAT liability. Because, VAT liability in Turkey is tied to 1) delivery of goods or performance of services in

[48] Decision No.7/1066, dated 25.07.1970, Offical Gazette of 21.08.1970, No.13586

[49] Offical Gazette of 27.09.2008, No.27010

[50] The associations and foundations which operate an enterprise for accomplishing its goals are considered "merchants" by Art.16 of TTL. On the other hand, "the associations for the benefit of the public" and "foundations which spend more than half of its profit to public works", will not be considered merchants, even if they operate a commercial enterprise directly, or through a legal person being managed and operated according to the provisions of public law (Art. 16 II, TTL).

[51] For comprehensive information, see BAŞARAN YAVAŞLAR, VSD, S.268 (Ocak 2011), p.91 and cont.

[52] See above 2.2.; It must be mentioned that according to the justifications of Laws No. 5422 and No. 5520 (see above footnote 24 and 25), and according to the Ministry of Finance (Corporate Tax General Communiqué serial No. 1), an enterprise would be present only if "an activity about the presentation of a goods or service continuously to a third person against a consideration" is being carried out. It does not matter whether this activity is being carried out for the purpose of making a gain or not. On the other hand, DIBKK of 16.06.1994 (see above footnote 33), which is the source of binding law, considers "the purpose of making an income" and "continuity" as main elements. Because of the fact that "the purpose of making an income" is a subjective element and therefore hard to detect, the Council of the State tries to detect the presence of this purpose by looking at other external elements. In this framework, the presence of the purpose of making an income has been searched by reviewing "whether the activity has a social purpose or not", "whether a good or service has been sold against a price in the framework of the activity or not", or "whether there is a balance which can be defined as "profit" is left after the generated income has been legally transferred to a specific place or not", "whether the activity has taken place within an organization or not", and finally "the size of the generated income, and in connection to this, whether it requires independent accounting or not" and even by taking into consideration "continuity". However, it is possible to specify that in many disputes the Council of State looks at the "result", in other words, it evaluates the generation of net income within the scope of the activity carried out as an indication for "the purpose of making a gain". See for example Dan. 3.D., dated 30.10.2003, E.2001/2269, K.2300/4800 (www.danistay.gov.tr); Dan. 4. D., dated 30.11.2005, E.2005/1787, K.2005/2351, www.danistay.gov.tr; Dan. 4. D., dated 08.12.2005, E.2005/126, K.2005/2382, www.danistay.gov.tr

[53] The border between the commercial enterprise and tradesman is displayed through the Decision of the Council of Ministers No. 2007/12362 dated 21.07.2012, which was enacted pursuant to TTL Article 11 II.

[54] On the other hand, pursuant to temporary Article 2 I (a) of CTL, in case the incomes generated by associations or foundations consists exclusively of incomes from real estate lease, from purchase and sale of securities, and by holding and repayment of securities, that are taxed by withholding method, it is prescribed that an enterprise under control of association or foundation will not come into presence due to these incomes between the dates of 01.01.2008 and 31.12.2015. Withholding is a method of tax collection. Therefore, it is against the law to decide whether there is personal liable for tax or not by looking at the method of tax collection. This same evaluation is valid for subparagraphs b and c of the same article.

the framework of commercial, industrial, agricultural and self-employment activities, 2) import of all kinds of goods and services, 3) delivery and services arising from the activities that are enumerated one by one in the VATL (Art.1, VATL). The party liable to tax, as a rule, are the persons who are performing these works (Art.2, VATL)[55].

Criteria of for-profit entities are identical for domestic and foreign entities (Art.2 V, sentence 1 of).

3.3.3. Miscellaneous on CIT subjects

Art.2 I of CTL, accepts the **funds** subject to the regulation and supervision of the Capital Markets Board (CPM) as "companies" and therefore as CIT subjects, although they are *not* legal persons. It is hard to evaluate these within the legal forms that are present in Turkish Law, and they are sui generis entities. They can be established by banks, insurance companies, non-bank intermediaries, unemployment funds and pension funds. The matters in relation to these are regulated through Capital Markets Law[56], Personal Pension Savings and Investment System Law[57] and the administrative regulatory procedures in connection to these. There are four funds that are subject to the management and supervision of CPM: investment funds (securities investments funds, stock exchange investment funds, hedge funds, and foreign investment funds), private pension funds, housing finance funds, and asset finance funds[58]. Mutual funds are established in the form of **open-end** investment companies in Turkey and they are defined as the collections of assets which have been established with the money to be collected from the public in return for participation certificates with the purpose of managing portfolios on capital market instruments, gold and precious metal on the account of the holders of these certificates on the basis of principle of risk distribution and fiduciary ownership[59].

As the **securities investment associations** which are handled in conjunction with the mutual funds in Art. 5 I (d) (1) of CTL can be established as joint stock companies (Art. 48 I, Capital Markets Law), they happen to be CTL subjects with their current legal status. However, through Art. 5(d) 1 of CTL, their incomes have been exempted from taxation.

Secret partners on the other hand do not have a specific legal structure in Turkey. Art. 14 of TTL handles the topic as "*the operation of a commercial enterprise without a permit or license although the license or permit of another person or official authority is required, and by acting against a legal or judicial prohibition in respect of their occupation or duty or their personal situation or the nature of the task that it carries out.*", and it orders a person operating a commercial enterprise in this way to be considered "merchant", with the condition of punitive and disciplinary liability arising from its action being reserved. The Supreme Court of Appeals is applying this rule by extending it as to include the secret partnership to a company[60]. There are no regulations in relation to secret partners in the CTL. Based on Art. 9 II of TPL (Tax Procedure Law)[61], which reads *"The prohibition of the chargeable event, by laws, does not eliminate the tax liability … ."* This approach of the commercial law is valid also for the tax law in exactly the same degree. Regardless of whether the secret partnership arises due to some prohibitions or not obtaining the required permits, or due to completely personal reasons, the taxes will be levied in compliance to the form that is tied to the legal

[55] In addition, optional tax liability is also possible (Art. 2 I (i), VATL).
[56] Law No. 2499, dated 28.07.1987, Official Gazette of 30.07.1981, No.17416
[57] Law No. 4632, dated 28.03.2001, Official Gazette of 07.04.2001, No. 24366
[58] From among these, the incomes from the securities investments funds, the incomes generated through the portfolio management of investment funds or their partnerships based on gold and precious metals whose portfolio is being traded in exchange markets based in Turkey, incomes of venture capital investment funds or their partnerships, incomes from private pension funds and incomes from housing finance funds and asset finance funds has been excluded from CT (Art.5 I (d), CTL).
[59] CPM, Funds, Brief Guide, http://www.cmb.gov.tr/indexpage.aspx?pageid=9&submenuhenoader=4
[60] See and compare 13th Circuit of Supreme Court of Appeals dated 11.04.2002, E.2002/3700, K.2002/3939 (http://www.akcan.av.tr/gizli-ortaklik/)
[61] Law No.213, dated 04.01.1961, Official Gazette of 10.01.1961, No.10703-10705

consequences of that form; in other words the partnership will be approached in a way as if it is "not secret but open" (Art. 73 I of Constitution, Art. 3/B I of TPL)[62].

There are no explicit regulations with regard to the **silent partnership** in CTL or in TTL. From the perspective of general partnership and limited partnership, this is not possible because in TTL (Art. 226 I and Art. 309 I), it is provided that each partner have the right to at least one vote and it is mandatorily regulated that a contract that is in violation of this shall have no effect. This regulation applies to the commandite partner in commandite companies in exactly the same way (Art. 565 CTL). On the other hand, although it is stipulated that shareholders of joint stock and limited liability companies and dormant partners of commandite companies have the right to vote (Art.434 II, Art.618 I and Art.565, CTL), a regulation which states that contracts that limit this shall be ineffective does not exist in TTL; and it is stated that in the limited liability companies, the provisions which are set apart from the legal regulation in relation to the voting rights found in the articles of association are binding; therefore, in fact, a tacit approval has been given to silent partnerships in limited liability companies. However, the subject certainly needs to be evaluated by lawyers specialized in trade law. If the silent partnership is considered possible from the perspective of commercial law, then it shall be considered possible (Art.2 I, CTL) also from the perspective of tax law, and a taxation process shall be established according to the legal structure of the silent partner. If the silent partnership is not considered possible from the perspective of commercial law, tax law must solve the taxation problem according to the Art. 3/B I of TPL.

Public enterprises, as mentioned above when necessary, are considered as CIT subjects (Art. 1 and Art. 2 III, CTL). The reason for this is to realize competitive equality between the private sector enterprises and public sector enterprises. Nevertheless, the long list exemption found in Art. 4 of CTL, restricts the realization of the targeted competitive equality.

Pursuant to Art. 2 III of CTL, public eceonomic enterprises are, *"the commercial, industrial and agricultural enterprises, other than the ones included in the first and second paragraphs, whose activities are continuous and which are under the control of the state, provincial special administrations, municipalities, other public administrations and institutions."* The most renowned of the enterprises owned by public administrations and institutions are the "government business enterprises (GBE)", which are regulated by Art.125 of the Constitution[63]. The GBE, which is being regulated by Decree No. 233[64] is being considered as the common name for the "government-owned corporation (GOC) and the "public economic organization" (PEO) (Art. 2, Decree No. 233). GOC are the government business enterprises whose capital is completely owned by the government, established for the purpose of operating in accordance with the commercial principles in the field of commerce and which can be established also in the form of a joint stock company; PEO are the government business enterprises whose capital is completely owned by the government and which is established for the purpose of producing and marketing the goods and services which qualify as a monopoly and whose products and services are considered to be privileges due to the public service undertaken by it. Both of them are qualified as legal persons and they are subject to the provisions of the civil law in the matters outside of the ones regulated by the Decrees and their liabilities are limited with their capital. In addition, there are enterprises whose capital is completely or partially owned by GOC or PEO, and these are institutes, affiliate companies, subsidiaries and enterprises (Art. 2, Decree No.233[65]). Due to the fact that only the public eceonomic enterprises that are not organized as

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[62] Art. 73 I of Constitution: *"Everybody, …., is liable for paying tax according to his ability to pay";* Art. 3/B I of TPL: *"In taxation, the real nature of the chargeable event and the transactions in relation to this event are essential."*

[63] According to Metin GÜNDAY (İdare Hukuku, 9. B., Ankara, 2004, p. 472), public economic enterprises, are today gathered under the concept of government business enterprises.

[64] Decree On Government Business Enterprises dated 06.08.1984, Official Gazette of 18.06.1984, No.18435 (mükerrer).

[65] According to the same regulation, the ***establishment*** that we see in the framework of GBE, are "**the enterprise or group of enterprises** that are dependent on a government enterprise whose capital is completely owned by the government or a public economic organization"; ***affiliate company*** is the "**joint stock companies** consisting of the enterprise or group of enterprises whose more **than fifty percent of capital** is owned by government

companies can be CIT subjects according to Art. 2 III of CTL, a GOC cannot be a CIT subjects in the legal structure of public eceonomic enterprises, if it is a joint stock company (Art. 4 and Art. 16, Decree No. 233).

Art.2 of CTL also allows the presence of public eceonomic enterprises other than GBEs. Due to this reason, the conditions and statements specified above[66], in relation to the topic of "enterprise under control of/owned by association or foundation" being a CIT subject, are valid to a large extent in terms of the matter of public enterprise being a CIT subject. The commercial, industrial and agricultural enterprise only has to be under control of/owned by the state, provincial special administrations, municipalities, other public administrations and institutions; and not by an association or foundation.

The tax liability is tied to "legal residence or main office of the company being situated in Turkey" (Art. 3 I, CTL) and this rule has been strictly abided by. Therefore a situation such as "companies belonging to a group no longer enjoy full tax personality" is not in question for Turkey.

3.3.4. Partial implementation of CIT

In Turkey, the **limited partnership** which qualifies as a legal person. (Art. 124 II, TTL) is being defined in Art. 304 I of TTL as "*A partnership which is established for the purpose of operating a commercial enterprise under a trade name, whose one or several partners' liabilities against the creditors are not limited and other partner's or partners' liabilities have been limited with a specific capital."* In the limited partnership there are two types of partners; one is the partner whose liability is not limited (commandite partner) and the other is the partner whose liability is limited (dormant partner) (Art. 304 II, TTL). The partnership may be established as a minimum with these two partners. The situation of commandites with unlimited liabilities is exactly similar to that of the partner of the general partnership; its liability against the creditors of the partnership is unlimited (but in secondary degree) and joint. The management of the partnership belongs only to them (Art. 309 II, TTL). On the other hand, the situation of the dormant partners resembles that of the partner of a company; its liabilities are of secondary degree and limited to the amount of capital that they give or undertake to give.

A limited partnership is not a CIT subject because it is not listed among the taxpayers in CTL; it does not pay CT. The partners of the partnership pay taxes over the shares of profit that they generate from the partnership. As only the real persons can be commandite partners, (Art. 304 II, TTL), the commandite partners shall pay IT over the income that they generated from the company (Art. 304 II, TTL)[67]. The *dormant partners* can be real persons as well as being *legal persons* (Art. 304 III, TTL). If they are real persons, then the profit share that they generate will be subject to IT as an income from capital investment (Art.75 II (2), ITL). If they are legal persons, then it must be scrutinized who this legal person is. If the legal person is a CIT, or if it is subject to CIT due to this partnership, then in this case the profit share that is generated will be subject to CT. (Art. 1 and Art. 2, CTL). If such a case (CIT subject) does not exist, a liability neither for IT nor for CT will arise, the generated income will not be subject to taxation. The limited partnership is a rarely utilized company type in Turkey, therefore a comment in relation to this case has not been made by the judiciary or the doctrine. However, it is obvious that this situation is against the principle of ability to pay in taxation and the principle of legal structure neutrality.

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owned corporation or public economic organization"; ***subsidiary,*** is **"joint stock companies whose capital's minimum fifteen percent and maximum fifty percent** is owned by government owned corporations or public economic organizations or their affiliate companies", and ***enterprise*** is "the **good and service producing plants and other units** of establishments and affiliate companies."

[66] See 3.2.2.

[67] As a rule, the share being obtained from the partnership income is income from trade or business (Art. 37 III, ITL), however, if the partnership is dealing with self-employment activities, then in this case the commandites are considered to be having self-employment income (Art. 66 II (3), ITL, Law No. 193, dated 31.12.1960, Official Gazette of 06.01.1961, No.10700).

The **general partnership** can be established only by *real person* partners; therefore the principle of transparency finds a complete field of application for these. The income of the general partnership is subjected to IT only in the partners, as an income from trade or business, or –as an exception- as self-employment income (Art. 37 III, Art. 66 II (3), ITL).

On the other hand, a **civil law partnership** which can be established both by legal and real persons, is not a CIT subject as a rule; however, a **joint venture** which is a civil law partnership by exception is an **optional** CIT subject . Because, according to Art. 2 VII, sentence 1 of CTL, joint ventures are the ones who request the establishment of a CT liability as joint venture, *"from the partnerships which they have established among themselves or with personal partnerships or real persons for the purpose of jointly undertaking the performance of a work and sharing the profit"*. These are established for the purpose of performing only a specific work and all of the partners are jointly liable for the performance of the work in accordance with the law. From the perspective of a joint venture, there is opacity. In the civil law partnership other than the joint ventures, the taxation varies according to the partner being a real person or a corporation. The real person pays IT, the corporation pays joint CT.

The statements in relation to the public economic enterprises, enterprises controlled/owned by associations or foundations; and the CIT subject status of funds, have been made above[68] in detail in the relevant sections.

3.3.5. Tax planning

In Turkey, although the general partnerships and limited partnerships also have legal person statuses, the most commonly preferred type of en enterprise in order are the limited liability company and the joint stock company. In this preference, the reasons related to taxes play a role as much as the reasons arising from partnerships/company law[69]. That is; although the IT is a progressive tax with four tax brackets ranging from 15 % to 35 % , the rate of CT which is a flat tax is 20 %, since 2006. The problem of economic double taxation is being tried to be eliminated through the shareholder-relief-system[70]. With regard to the tax obligations which cannot be collected from the company itself, the *shareholders of the joint stock company* have limited liability only to extent of capital they gave or undertook to give[71]. The scope of the deductible expenditures to be taken into consideration in the determination of the CT base is larger than that of a partnership.

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[68] See above 3.2.1., 3.2.2. and 3.2.3.

[69] Three of the most important of these reasons are the fact that partners of partnerships (excluding dormant partner) have unlimited liability in secondary degree towards the partnership/company creditors and the shareholders of a company have limited liability; that especially the possibility of establishing a limited liability company with a capital of 10,000 TL (approximately 4,350 EUR) which is a very low capital amount; and that the possibility of establishing a limited liability company and joint stock company by only one person (in the former TTL a limited liability company could be established at least by two people and an joint stockcompany could be established at least by five people).

[70] The *whole* of the income (profit share/ dividend) distributed to the fully liable taxpayer real persons by the fully liable corporations is subject to withholding tax at a rate of 15 % in every circumstance. (Art. 94 I, (6) (b) (i), ITL). However, whether this withholding tax is the final taxation or not varies according to on whether the profit share is subject to declaration or not. As half of the distributed income is exempted from income tax (Art. 22 II, ITL), if the remaining other half is not subject to declaration (this is the case when the remaining part alone or in conjunction with other income elements does *not* exceed the amount found in the second income bracket of rated tariff in Art. 103 of ITL (Art. 86 (1) (c), ITL), then it is the final taxation. On the other hand, if the other remaining part of the distributed income is subject to declaration, then in this case the all of the withholding tax will be deducted from the amount to be calculated over the income tax specified in the declaration; if the amount which is set off is higher than the income tax to be paid, then the difference will be returned to the taxpayer (Art. 121 I and II, ITL).

[71] On the other hand, the partners of the limited liability company "are directly responsible from the public receivable which cannot be wholly or partially collected from the company or is understood to be uncollectible, in proportion to their shares" (Art.35 I, Law No. 6183, dated 21.07.1953, Official Gazette of 28.07.1953, No.8469).

It is not researched, whether there is any government interest on the neutrality of taxation with respect to the choice of legal structure. This subject, which is directly related to benefits of taxpayers in basis of principle of equality, is not discussed in the academic literature, as well[72].

3.3.6 Others

Submission to CIT does not have other tax side-effects. In this context, it doesn't have an impact on the possibility for the taxable income to be assessed on a lump-sum basis.

In Turkish Tax Law, the rules in relation to the tax procedure are found in the Tax Procedural Law dated 1961 (TPL), and rules in relation to the collection of the tax is found in the Law on Collection Procedure of Public Receivables[73] dated 1953. These regulations are valid for all kinds of taxpayers, independent from any kind of tax. Except for the special circumstances arising from the unique structures of corporations (for example, the CIT assessment must be made to the name of public legal persons or associations or foundations which they are controlled by for public economic enterprises and enterprises owned/controlled by foundations; to the name of the founder of the fund in the funds; and to the name of the managing partner or partners to be jointly liable for the payment of the tax in the business partnerships (Art. 16 IV, CTL)), these rules find area application in exactly the same way also for the CIT subjects.

4. Cross-border situations

The foreign companies in Turkey operating under different sectors[74] can be CIT subjects just like the domestic enterprises, provided that it fulfill the conditions of having a form (/type) of one of the companies stipulated in CTL and making a profit in Turkey, which is the chargeable event (CTL Art. 1 and Art. 6 I, CTL; Art. 8 I and Art. 19 I TPL). The foreign enterprises, essentially, may perform activities in Turkey within the framework of Foreign Direct Investments Law (FDIL)[75] and its connected regulations [76] and the Law On Work Permits of Foreigners[77]. Pursuant to Art. 3(a) of FDIL, *"unless it is otherwise prescribed by international agreements and provisions of special law; 1-It is free for the foreign investors to make direct foreign investments in Turkey, 2-The foreign investors are subject to equal procedures with the domestic investors"*. This equal treatment approach is also dominant in CTL.

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[72] See BAŞARAN YAVAŞLAR Funda, Gelir Vergilendirmesinin Temelleri, 2.B., Ankara, 2011, p. 125 and cont. for a study in which this issue is mentioned and discussed.

[73] Law No. 6183, see above footnote 70

[74] According to International Investments with Foreign Capitals Evaluation Report dated 22.08.2011 by International Investors' Association (IIA), the direct foreign investments in Turkey in 2011 has been realized at most in the service sector (in order, finance, retail and wholesale trade, construction, real estate leasing activities, transportation-warehousing-communication), followed by industrial sector (in order, manufacturing, electricity-gas-water, mining) and a minimum in the agriculture, forestry and fishing industry.

[75] Dated 06/05/2003 and Law No. 4875, Official Gazette dated 17.06.2003, p.25141. Pursuant to Art. 2 of this Law, *"Foreign direct investment: includes the following that are brought in the country 1) From abroad such as; -Cash capital of convertible currency which is bought/sold by the Republic of Turkey Central Bank, -Company securities (Treasury bonds excluded), - Machinery and equipment,- Industrial and intellectual property rights; 2) Includes the following that are obtained within country;- Profit, earnings, money receivable used in re-investment or other interest with financial value related with investment,- Interest in the exploration and extract of natural resources,*
Through financial assets: i) Establishment of new company or branch ii) Partnership with an existing company by share purchase outside stock exchanges or by getting at least 10% of shares or voting rights at the same amount in stock exchanges, … ."

[76] Governing Regulation of Foreign Direct Investments Law, Official Gazette of 20.08.2003, No. 25205

[77] Law No. 4817, dated 27.02.2003, Official Gazette dated 06.03.2003, No.25040

Art. 2 of CTL prescribes the clear application of a resemblance test for its first four CIT subjects. That is, according to CTL Article 2 I-V, sentence1[78] ;

(1) Companies: Joint stock company, limited liability company and commandite company according to the provisions of the Turkish Trade Law No. 6762 dated 29.06.1956 and ***foreign institutions with similar characteristics*** *are capital companies. In the implementation of this Law, the funds that are subject to the regulation and supervision of the Capital Markets Board and the* ***foreign funds that are similar*** *to these funds are considered capital companies.*

(2) Cooperatives: Means the cooperatives established according to Cooperatives Law No. 1163 dated 24.04.1969 or according to special laws and the foreign ***cooperatives with similar characteristics****.*

(3) Public enterprises: The commercial, industrial and agricultural enterprises, other than the ones included in the first and second paragraphs, whose activities are continuous and which are under the control of the state, provincial special administrations, municipalities, other public administrations and institutions."

(4) The commercial, industrial and agricultural enterprises that are ***controlled or owned on by foreign governments, foreign public administrations and institutions****, and which are excluded from the first and second paragraphs of this article are evaluated as public eceonomic enterprises.*

(5) Commercial enterprises owned by associations or foundations: The commercial, industrial and agricultural enterprises and ***foreign enterprises with similar characteristics****, other than the ones included in the first and second paragraphs, whose activities are continuous and which are under the control of/owned by associations or foundations. In the application of this law, the unions are considered associations, and the congregations are considered foundations."*

A similar regulation for a joint venture is not included in Art. 2 VII of CTL. However, in order to carry out a specific work in Turkey, it is possible to establish a business partnership abroad, similar to the one defined in Art. 2 VII of CTL. In this case, this establishment shall be considered as CIT subject[79]. There is no reasonable cause for the legislator not to apply its approach of "treating equally to domestic and foreign firms" to the joint venture.

There are no other criteria prescribed for the CIT subject status of foreign corporations.

Foreign entities, just like the domestic corporations, acquire the legal status of tax liable at the moment they realize the chargeable event. They may not opt to be treated as either transparent or opaque. However, it must be accepted that foreign joint ventures also have the right of choice for becoming a CIT subject, just like domestic joint ventures.

[78] The highlighted texts in the arrangement belong to the writer.
[79] Compare KIZILOT, KVK md. 6, p. 291