

# BDO TAX BULLETIN



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**WITH THE AMENDMENT IN THE CIRCULAR LETTER ON CAPITAL MOVEMENTS, THE BLOCKAGE REGIME IN THE SHARE PAYMENTS OF FOREIGN INVESTORS IN ESTABLISHING A COMPANY IN TURKEY OR IN CAPITAL INCREASES OF THE ESTABLISHED COMPANIES HAS BEEN AMENDED.**

With the letter of the Turkish Ministry of Treasury and Finance dated 11.05.2020 and numbered 267896, some amendments were made in the Circular Letter on Capital Movements.

In this context:

1. Bank blockage regime has been amended regarding share payments in the participation of foreign investors as co-founder in Turkish companies or in capital increases made in these companies.
2. The company capital increases have been subjected to separate procedures in accordance with whether they are public companies or non-public companies.
3. Regulations have been made regarding convertible debt contracts.
4. Amendments have been made regarding the loans that are received from abroad or domestically which are not dependent on foreign currency income criteria.

Among these the amendments regarding the capital share payments of foreign investors will be explained below.

## BDO Yayıncılık A.Ş.

Eski Büyükdere Cad. No.14  
Park Plaza Kat:4  
34398 Maslak/İstanbul  
Turkey

Tel: +90 212 365 62 00  
Fax: +90 212 365 62 02  
e-mail: bdo@bdo.com.tr  
[www.bdo.com.tr](http://www.bdo.com.tr)

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## **AMENDMENTS REGARDING THE CAPITAL SHARE PAYMENTS:**

In case of capital increases or establishment of joint stock companies; at least twenty-five percent of the nominal values of shares must be paid before registration to trade registry, and the rest must be paid within twenty-four months following the registration to trade registry.

Such cash payments before the registry shall be deposited in a bank's private account to be opened on behalf of the company and in a way that only the company can use it.

It has been amended in the Circular Letter that, in case of company establishment and capital increase cases; where more capital than the 25% requirement are paid by the foreign investor, the exceeding amount also shall be blocked in a way that only the company can use.

There is no blockage liability in capital payments for limited liability companies in any case.

## **AMENDMENTS REGARDING THE CAPITAL INCREASE PROCEDURE:**

### **2.1. In General**

The regulations regarding the capital share payments were the same for the public and non-public joint-stock companies before the last amendment. With the amendment made in Article 6 of the Circular Letter, separate procedures have been implemented for these companies.

### **2.2. In Terms of Non-Public Companies**

Within the scope of Article 6/3 of the Circular Letter, the procedure of capital increases of non-public companies shall be performed as follows:

- a) Re joint stock companies before the registration; at least twenty-five percent of the nominal value of the in-cash shares undertaken by real or legal persons participating in the capital increase shall be blocked in the bank account opened on behalf of the company and in a way that only the company can use. In case the deposited amount is more than twenty-five percent, all the amount shall be blocked in a way that only the company can use as well.
- b) A letter from a bank that indicates that such minimum amount has blocked shall be submitted to the trade registry office along with other documents, and thus, the capital increase will be registered.
- c) Upon submission of the letter to be received from the trade registry office, which states that the capital increase has been registered, such blocked amounts will be paid by the bank only to the company.

- c) In the case that the registration regarding capital increase will not be fulfilled within three months following the capital increase decision of the general assembly -or the capital increase decision of the board of directors in the companies that adopt the registered capital system- such amounts shall returned to the owners by the bank upon the submission of the letter, which will be received from the trade registry office confirming this issue, to the bank.
- d) Regarding the f/x amounts which are introduced to Turkey through capital increase declaration by non-public companies, it is obliged to increase the capital and to document the capital increase within three months at the latest. If the f/x introduced is not added to the capital and the capital increase is not documented during this period, the incoming foreign currency shall be returned to its owners by the bank. According to the Circular Letter prior to the amendment, these amounts were automatically considered as loans. With the amended version, in the case that it was sent as capital payment and the capital increase is not realized within the specified three-month period, these amounts will be treated as loans only if it is requested by the company. This issue is significant in terms of Resource Utilization Support Fund (RUSF).

### 2.3. In Terms of Public Companies

Within the scope of Article 6/5 of the Circular Letter, the capital increase procedure of public companies has been regulated. In this context, separate explanations are given for companies whether they adopt the registered capital system or not.

These procedures are detailed, and if necessary, more detailed information about the Circular Letter shall be provided upon request by our clients.

One of the significant amendment is that regarding the f/x amounts which are introduced to Turkey through capital increase declaration by non-public companies, it is obliged to increase the capital and to document the capital increase within three months at the latest (or it could be documented that the Capital Markets Board (CMB) review process continues). If the f/x introduced is not added to the capital and the capital increase (or the continuation of the CMB process) is not documented during this period, the incoming foreign currency shall be returned to its owners by the bank.

These amounts not added to the capital before the amendment were automatically accepted as loans.

### 2.4. Amendments Regarding in which Case the Amount in the Blocked Account to be Returned to the Foreign Shareholder will not be Considered as a Loan

One of the significant amendments made in the Circular Letter is the regulation regarding in which cases the capital payments are considered as loans.

Accordingly, the amount is kept in the blocked account by the bank until the documents regarding the capital increase are submitted to the bank. If the

f/x introduced within three months is not added to the capital and the capital increase or the continuation of the investigation on capital increase are not documented, such fees will be returned to the owners by the bank.

If the owners of the f/x amount wants such amonunts to be treated as loan, they sall apply the intermediary banks to review whether such amount is eligible to be treated as loan. After the approval such amounts could be recorded as a loan.

The amounts in the blocked account to be returned to the foreign shareholder shall not be considered as loans. Before the amendment, such amounts were treated as loans until they were returned to the shareholder.

Kind regards.