

TAXATION OF EQUITY BASED CROWDFUNDING PLATFORMS*

Paya Dayalı Kitlese Fonlama Platformlarının Vergilendirilmesi

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ABSTRACT

Crowdfunding platforms appear as platforms that bring together the needs of investment and closing the financing gap and have been created to meet both needs. As a matter of fact, on the one hand, individuals or companies are looking for investors to meet their financing needs, and on the other hand, investors want to meet their investment needs by accessing projects they can trust. Crowdfunding platforms are internet-based applications that meet these needs by bringing together projects and investors. These platforms can be reward-based, debt-based, equity-based or donations based as will be discussed in detail within the scope of the study. Although these platforms make significant contributions in terms of fundraising, the operation of the funds also brings with it various legal problems. One of the most important problems is conducting fraudulent activities. In order to prevent such activities, various regulations are adopted by country legislation and the platforms themselves. At this point, it is very important to ensure transparency in the operation of the platforms. Taxing these platforms and the profits derived from them through a properly functioning system will also make significant contributions to ensuring transparency and control. Within the scope of the study, the taxation of equity based crowdfunding platforms will be discussed in detail.

Keywords: Equity based crowdfunding platforms, taxation, transparency.

* There is no requirement of Ethics Committee Approval for this study.

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ÖZ

Kitle fonlaması platformları, yatırım yapılması ve finansman açığının kapatılması ihtiyaçlarını bir araya getiren ve her iki ihtiyacı da karşılamak için oluşturulmuş platformlar olarak karşımıza çıkmaktadır. Nitekim bir yandan bireyler veya şirketler finansman ihtiyaçlarını karşılamak için yatırımcı ararken, diğer yandan da yatırımcılar güvenebilecekleri projelere erişerek yatırım ihtiyaçlarını karşılamak istemektedir. İşte kitle fonlaması platformları da proje ve yatırımcıları bir araya getirerek bu ihtiyaçları karşılayan internet tabanlı uygulamalardır. Bu platformlar, çalışma kapsamında ayrıntılı olarak ele alınacağı üzere, ödüle dayalı, borca dayalı, paya ya da bağışa dayalı olabilmektedir. Kitle fonlaması platformları, fon toplama açısından önemli katkılar sağlasa da çeşitli hukuki sorunları da beraberinde getirmektedir. Bu kapsamdaki en önemli sorunlardan birisi de dolandırıcılık faaliyetleri olarak karşımıza çıkmaktadır. Bu tür faaliyetlerin önlenmesi amacıyla mevzuat kapsamında ya da platformların kendileri tarafından çeşitli düzenlemeler kabul edilmektedir. Bu noktada platformların işleyişinde şeffaflığın sağlanması oldukça önemlidir. Bu platformların ve bunlardan elde edilen kazancın düzgün işleyen bir sistemle vergilendirilmesi de şeffaflığın ve kontrolün sağlanmasına önemli katkılar sağlayacaktır. Çalışma kapsamında, paya dayalı kitle fonlama platformlarının vergilendirilmesi konusu detaylı olarak ele alınacaktır.

Anahtar Sözcükler: Paya dayalı kitlesel fonlama platformları, vergilendirme, şeffaflık.

INTRODUCTION

Crowdfunding platforms have emerged primarily to meet the need for funds. An aspect of meeting the need for funds is making investments. In fact, in addition to the difficulty of creating or finding resources to meet the need for funds, it is equally difficult for investors to meet an idea or person that suits them or that they can trust. Crowdfunding platforms have been created as an intermediary to meet these needs.

Significant amounts of funds have been raised through crowdfunding platforms such as Kickstarter, Indiegogo and GoFundMe. In addition to the important aspects of crowdfunding platforms such as fundraising and employment, innovation, and supporting new and innovative ideas, there are also aspects that need to be addressed legally. Indeed, one of the most struggled issues regarding these platforms is fraudulent behavior. In order to prevent such fraudulent behaviors, the platforms themselves accept certain rules and Terms of Use. So platforms have some private incentives to ensure that investors do not commit abusive behaviour. However these incentives remain limited and regulations have a role to play¹.

¹ Garry A. Gabison, 'The Incentive Problems with the All-Or-Nothing Crowdfunding Model' (2016) 12 Hastings Business Law Journal 489, 518.

The subject of this study, the taxation of these platforms and the regulations adopted for this purpose, is also one of the issues that need to be addressed from a legal perspective. Taxation of platforms will provide a protection mechanism to prevent fraudulent activities, as it will ensure transparency and control of the activities of these platforms within the scope of fulfilling documentation and registration obligations. Within the scope of the study, crowdfunding platforms, the functioning and types of these platforms will be explained, and the taxation of equity-based platforms will be discussed.

I. CROWDFUNDING PLATFORMS AS A CONCEPT

Crowdfunding platforms are essentially platforms created via a website. Entrepreneurs/venture companies and investors/backers are brought together through internet-based platforms. In other words, creators or initiators of a fundraising campaign seek contributors or backers to finance their projects². Creators and backers can be an individual or a company. The project creator posts the project ideas on the host website and asks backers for funding. The host receives funds from backers and passes them along to the project creator after retaining a hosting fee³. With this feature, the platforms can be considered as intermediaries between the project creator and backers. Many small and large contributions are obtained through these platforms.

These platforms have many advantages both for investors and entrepreneurs or project owners. Since crowdfunding is so effective at connecting project owners and investors, the project owner can raise money at a reduced cost of capital. New funding models could be used to confirm whether a new product is appropriate for the market. Investors can readily participate in the development and backing of new big ideas without having to deal with exorbitant expenses and get early access to the project's early phases. Furthermore, crowdfunding gives everyone involved the chance to have their investment safeguarded by exact legal provisions in the form of a crowdfunding agreement⁴.

The particular form of crowdfunding undertaken can have a significant impact on the tax results. Businesses undertaking crowdfunding may, in exchange for a contribution, offer a product or service, a token thank you item, an equity

² Cherly T. Metrejan and Britton A. McKay, 'Crowdfunding and Income Taxes' (2015) *Journal of Accountancy* <<https://www.journalofaccountancy.com/issues/2015/oct/crowdfunding-and-income-taxes.html>> accessed 4 December 2024.

³ Washington State Department of Revenue, 'Crowdfunding' <<https://dor.wa.gov/forms-publications/publications-subject/tax-topics/crowdfunding>> accessed 4 December 2024.

⁴ Federica Casano, 'Income Tax Treatment of Crowdfunding at National Level: Exploring the Suitability of the Conventional System and Scope for a New Approach' (2020) 4 *World Tax Journal* 863, 869.

interest, a debt interest or nothing⁵. So before examining the taxation of the equity based crowdfunding platforms which is the main topic of this article, it is useful to explain the types of the crowdfunding platforms. Because as a result of the success of platforms in raising funds, many types of platforms have emerged. The most popular of these are equity crowdfunding, rewards-based crowdfunding, donations-based crowdfunding, and debt crowdfunding⁶.

Firstly, to start with rewards based crowdfunding, normally, the return on investments is expected to be financial, but in rewards based crowdfunding, the return appears as a reward that the entrepreneurs specify in advance. A donor gives to a project in exchange for some existing or future tangible reward. Future products or another kind of membership may be offered as a reward⁷. Reward can also be determined as a service or benefit and there is no restriction on what the reward will be. The features of the benefit to be offered are announced through the platform⁸. Fraud and misuse are not significant issues because the award has a negligible monetary value⁹.

An alternative to rewards-based funding is equity based crowdfunding. What is meant by equity is important. Equity is essentially an ownership interest¹⁰. Equity based crowdfunding gives fund providers ownership shares in the company¹¹. This also means that funders share profits, losses or risks. Detailed information on this type of funding will be provided under the next heading.

In donation-based crowdfunding, as the name suggests, there is no financial or other compensation. Here, funds are granted without expecting anything in return. After the projects are announced through the platforms, donations are collected through crowdfunding organizations and the collected donations are delivered to the project owner¹². The absence of a compensation also makes it

⁵ Mark A. Luscombe, 'Crowdfunding and Taxes' (2017) 95 Taxes: The Tax Magazine 3, 3.

⁶ Andrew M. Wasilick, 'The Tax Implications of Crowdfunding: From Income to Deductions' 97 North Carolina Law Review 710, 712.

⁷ Joseph J. Dehner and Jin Kong, 'Equity-Based Crowdfunding outside the USA' (2014) 83 University of Cincinnati Law Review 413, 417.

⁸ Soner Yakar ve Serkan Yılmaz Kandır, 'Türkiye'de Paya Dayalı Kitlet Fonlaması İçin Bir Vergi Teşvik Önerisi' (2020) 19. Uluslararası İşletmecilik Kongresi Özel Sayısı Erciyes Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi 189, 193.

⁹ Dehner and Kong (n 7) 417.

¹⁰ James Drennen, 'An Analysis and Prediction of Federal Taxation as It Pertains to Crowdfunding' (2017) 19 Duquesne Business Law Journal 144, 159.

¹¹ Fiona Martin and Ann O'Connell, 'Crowdfunding: what are the tax issues' (2018) 20 Journal of Australian Taxation 16, 31.

¹² Selda Aydın ve Murat Zorkun, 'Doğal Afetlerin Finansal Maliyetlerinin Azaltılmasında Bağışa Dayalı Kitle Fonlamasının Etkisi ve Vergisel Boyutu' (2023) 422 Vergi Sorunları Dergisi 13, 16.

important to provide government incentives, such as tax advantages, to fund providers.

Finally, debt based crowdfunding centers on a debt instrument that pays a fixed or variable rate of interest and returns principal on a schedule¹³. So this type of crowdfunding refers to lending based on interest at a predetermined rate. In this type of crowdfunding, a contributor lends money to a promoter. In exchange for the loan, the promoter promises to reimburse the contributor for interest and to repay the principal amount after a predetermined amount of time¹⁴. This method is a suitable financing option especially for entrepreneurs who do not want to issue their shares. While one side receives attractive interest income, the other side can borrow at a reasonable cost¹⁵.

The type of crowdfunding platforms to be created is also important in terms of determining the regulations to be applied to these platforms. Therefore, it should be determined which types of platforms are accepted in terms of legislation and specific regulations should be introduced. In this sense, for example, if there is no compensation for the investment made, regulations can be envisaged to encourage this investment.

The regulations introduced are also very important in terms of preventing fraudulent actions. Crowdfunding platforms themselves can also make regulations to prevent such actions. It is seen that such regulations are mostly accepted in the form of Terms of Use documents and annexes. With the regulations in the Terms of Use, such as don't spam, don't break the law, and reserving the right to withhold funds in case of fraud, a policy regarding fraudulent activities is adopted¹⁶.

Regulations regarding the taxation of these platforms are also important in terms of preventing fraudulent activities. Indeed, compliance with the documentation system and control through tax audits will also provide protection in this sense. In addition, how taxation regulations are implemented will have important consequences for the operation of platforms. The absence of clear standards and stable regulation can dissuade creators and backers from participating, and it can lead to distortions in the marketplace as some platforms are favored through taxation¹⁷.

¹³ Dehner and Kong (n 7) 417.

¹⁴ Martin and O'Connell (n 11) 32.

¹⁵ Yakar ve Kandır (n 8) 193.

¹⁶ Kickstarter, 'Terms of Use' (Kickstarter, 2024) <<https://legal.kickstarter.com/policies/en/?name=terms-of-use>> accessed 4 December 2024.

¹⁷ Elisabetta Lazzaro and Douglas Noonan, 'A comparative analysis of US and EU regulatory frameworks of crowdfunding for the cultural and creative industries' (2021) 27 International Journal of Cultural Policy 590, 597.

Since the taxation of these platforms is a very important issue, the platforms themselves include issues related to this in their regulations. One of these platforms originating from the United States is Kickstarter, one of the largest crowdfunding platforms in the world. There are some statements related to taxation in the Kickstarter and Taxes Guideline¹⁸. According to this Guideline, in the US, funds raised on the platform are considered income and a creator can offset the income from their project with deductible expenses that are related to the project and accounted for in the same tax year. In the Guideline, it is also stated that Sales tax may be applicable in certain cases depending on the local rules. Indiegogo, another US-based crowdfunding platform, also includes some tax-related issues in its Terms of Use. According to this Terms of Use, taxing authorities may classify contributions as taxable income to the Campaign Owner and any beneficiary who will receive funds directly from the applicable Campaign¹⁹.

A. Equity Based Crowdfunding Platforms

Equity crowdfunding is a model that allows different types of investors to finance new and small businesses in exchange for shares in the company. This way, investors contribute to a company in exchange for a small share/partnership²⁰. These platforms offer significant opportunities to companies who want to invest and also ensure that the financing needed by entrepreneurs is met by finding shareholders.

Investors and entrepreneurs also have the opportunity to interact through these platforms. This allows equity investors to take part in an information exchange process with entrepreneurs via these platforms²¹. These platforms enable multiple small-volume investors or companies to conduct without the need for intermediary institutions, and enable companies that are not publicly traded to easily access financing. Their mass nature also contributes to this²².

It should be noted that investing in equity-based crowdfunding carries with it certain risks. In fact, investors acquiring shares of venture companies through this method means assuming the possible losses and risks. The equity model confronts the most serious challenge, because it holds an obvious and

¹⁸ Kickstarter, 'Kickstarter and Taxes' (Kickstarter and Taxes) <<https://www.kickstarter.com/help/taxes>> accessed 4 December 2024.

¹⁹ Indiegogo, 'Terms of Use' (Indiegogo, 2021) <<https://www.indiegogo.com/about/terms>> accessed 4 December 2024.

²⁰ Aydın ve Zorkun (n 12) 18.

²¹ Edoardo Crocco, Elisa Giacosa, Dorra Yahiaoui and Francesca Culasso, 'Crowd inputs in reward-based and equity-based crowdfunding: a latent Dirichlet allocation approach on their potential for innovation' (2022) 27 *European Journal of Innovation Management* 2250, 2254.

²² Aydın ve Zorkun (n 12) 18.

significant opportunity for loss of the entire amount contributed, including from fraud and abuse²³.

II. CROWDFUNDING PLATFORMS ACCORDING TO TURKISH LEGISLATION

In our legislation, the first regulation on crowdfunding platforms was introduced with the amendment made to the Capital Markets Law No. 6362²⁴ in 2017. Crowdfunding is defined here as the collection of money from the public through crowdfunding platforms within the principles determined by the Capital Markets Board in order to provide the funds needed by a project or venture company²⁵. According to Article 35/A of the Capital Markets Law, crowdfunding platforms are organizations that mediate crowdfunding and provide services in an electronic environment. According to the same article, it is mandatory to obtain permission from the Capital Markets Board in order to establish and start operating crowdfunding platforms.

The Capital Markets Board may determine whether crowdfunding activities through crowdfunding platforms will be carried out by collecting money from the public based on partnership or debt²⁶. From this statement, it is understood that crowdfunding platforms accepted according to the Capital Markets Law are equity based crowdfunding and debt crowdfunding.

The Notification on Equity-Based Crowdfunding was published in the Official Gazette dated October 3, 2019 and numbered 30907. As its name suggests, this Notification only introduced regulations regarding equity-based crowdfunding. However, the relevant Notification was abolished and the Notification on Crowdfunding²⁷ was published in the Official Gazette. In this Notification, equity-based crowdfunding is defined as raising money from the public via platforms in exchange for a share. And debt crowdfunding is defined as raising money from the public via platforms in exchange for a crowdfunding debt instrument.

A. Establishment of Platforms

In order for the establishment of platforms to be permitted by the Capital Markets Board, the conditions are as follows; being a joint stock company, limits regarding capital and equity being met, shares being registered, the trade name containing the phrase “Crowdfunding Platform”, the subject of the business being stated as mediation in crowdfunding activities based on equity

²³ Dehner and Kong (n 7) 418.

²⁴ Official Gazette Date: 30.12.2012 Official Gazette Number: 28513.

²⁵ See art. 3 of Law no: 6362.

²⁶ Article 35 of Law no: 6362.

²⁷ Official Gazette Date: 27.10.2021 Official Gazette Number: 31641.

and/or debt in the Convention of association and the Board of Directors being composed of at least 3 persons. In addition, the founders, partners and board members must not be bankrupt, must not have declared composition or have been subject to a postponement of bankruptcy decision, must not have a final conviction for crimes listed in the law and must have the honesty and reputation required by the business²⁸.

According to the Notification on Crowdfunding, all funds collected from the investors should be paid in cash and the campaign process begins when a venture company or entrepreneur applies to any platform with a request to collect funds in exchange for a debt instrument or shares (equity).

B. Functioning of the Platforms in General

Investors who want to invest through equity-based crowdfunding must become members of a platform that operates in this field. This membership process must be carried out electronically. A membership agreement must be concluded between the relevant equity-based crowdfunding platform and the members. The minimum content of this agreement is regulated in the annex of the Notification on Crowdfunding²⁹. Similarly, a Crowdfunding Agreement is concluded between the entrepreneurs and the platform³⁰.

Venture companies submit campaign applications. According to the Notification on Crowdfunding, the platforms have the right to reject the campaign applications of venture companies or entrepreneurs before submitting them to the investment committee. The platforms must create a campaign page for each project and announcements regarding the funded company are made periodically on this page for the five years following the calendar year in which the campaign takes place.

According to the Notification on Crowdfunding, the campaign process begins when an entrepreneur or venture company applies to any platform with a request to raise funds in exchange for a share. On the other hand, the campaign period begins on the date the information form approved by the investment committee is published on the campaign page. This period cannot exceed sixty days. After this process, it is important to collect the targeted fund amount. If the fund amount is collected before the end date of the campaign period, the campaign period may be terminated early. If funds are collected in excess of the fund amount, the return of the excess amount to investors must be carried out considering equality between investors.

²⁸ Article 5 and 6 of the Notification on Crowdfunding.

²⁹ See Annex 5 of the Notification on Crowdfunding

³⁰ Article 11 of the Notification on Crowdfunding. Minimum content of the Crowdfunding agreement can be found in the Annex 4 of the Notification on Crowdfunding

C. Capital Markets Board's List

In order for equity-based crowdfunding platforms to carry out their activities, they need to be listed by the Capital Markets Board. The listing process creates the Board's list of permits to operate.

One of the most important conditions for being listed is to have formed at least one investment committee³¹. This investment committee must consist of at least 3 members, one of whom is a board member of the platform, and the majority of the members must have at least 5 years of experience in areas such as finance, entrepreneurship, business, legal consultancy, technology, industry and trade. At least one member must have a Capital Market Activities Level 3 License³².

In order to be included in the list, it is also required to establish an internal control and risk management system and an accounting and operations unit. A sufficient number of personnel must be employed in the responsible unit that will carry out the document, record and accounting transactions. In order to ensure that the operational transactions of the crowdfunding activity are carried out, a contract must be signed with the Central Registry Agency and the escrow authority. The Central Registry Agency must establish the infrastructure that will provide mutual data flow with the Investor Risk Monitoring System. In addition, members must establish the infrastructure on the platform where they can communicate electronically with the venture company officials³³. Providing this interaction is one of the most important features of the platforms.

Another important condition for being included in the list is the establishment of a written conflict of interest policy. This policy must be linked to the decision of the board of directors³⁴.

Apart from these, it is also mandatory to comply with the issues stipulated in Article 6 of the Notification on Crowdfunding and under the title "A. Establishment of Platforms", such as the partners and members not being bankrupt, not having declared composition or not having a postponement of bankruptcy decision, in order to be included in the list.

D. Fundraising and Investment Restrictions

It is very important to clarify the process of transferring funds obtained from investors to entrepreneurs. The transfer of funds collected through equity-based crowdfunding is subject to detailed rules.

³¹ Article 5 of the Notification on Crowdfunding.

³² Article 9 of the Notification on Crowdfunding.

³³ Article 5/5 of the Notification on Crowdfunding.

³⁴ Article 5/5 of the Notification on Crowdfunding.

First of all, a new joint stock company must be established by the entrepreneurs. The company establishment must be completed before the funds collected are transferred. Funds can only be transferred to the venture company in exchange for shares to be issued through capital increase. Funds cannot be collected by selling existing shares of the venture company. All funds obtained from investors in exchange for the shares of the venture company must be paid in cash³⁵.

As investors acquire shares of the venture company, certain partnership rights will also arise. According to the Article 16/3 of the Notification on Crowdfunding, partnership rights arising from the shares to be given to investors and the privileges related to these shares must be clearly stated in the information form. However, no privilege difference can be created between the shares to be given to investors. Qualified investors are an exception to this.

The Notification on Crowdfunding also provides for certain limitations regarding investment. Whether the investment limits are exceeded is checked by the Central Registry Agency. According to this, individuals who are not qualified investors can invest a maximum of 50,000 Turkish Liras in a calendar year. This limit can be applied as 10% of the annual net income declared by the investor. In any case, this limit should not exceed 200,000 Turkish Liras.

The Capital Markets Board must approve the prospectus for capital market instruments to be offered to the public or traded on the stock exchange, and the issuance document for capital market instruments to be issued without being offered to the public³⁶. According to the Notification on Crowdfunding, entrepreneurs can raise funds through platforms through a maximum of two campaigns in any twelve-month period. The amount of funds that can be collected during this period cannot exceed the issuance limit, which is exempted from the obligation to prepare a prospectus by the Board and announced each year through the Board Bulletin. Additional funds can be collected up to a maximum of 20% of the requested fund amount. However, for fund requests exceeding 1,000,000 Turkish Liras, in order for the targeted fund amount to be considered collected, an amount corresponding to at least 5% of the targeted fund must be provided by qualified investors. This amount must be provided within the campaign period.

III. TAXATION OF EQUITY BASED CROWDFUNDING PLATFORMS

Since crowdfunding platforms have three parties: the platforms themselves, the investors and the venture companies, the taxation of these platforms should be evaluated separately from the perspective of these three parties.

³⁵ Article 16/1,2 of the Notification on Crowdfunding.

³⁶ Sermaye Piyasası Kurulu, 'İzahname ve İhraç Bilgisi Onayı', <<https://spk.gov.tr/hakimizda/gorev-yetki-ve-sorumluluklar/izahname-ve-ihrac-bilgisi-onayi>> accessed 4 December 2024.

A. Taxation of Equity Based Crowdfunding Platforms As a Joint Stock Company

The regulations in the Notification on Crowdfunding are very important in terms of addressing the issue of taxation of equity based crowdfunding platforms. Indeed, as a result of correctly determining the legal characteristics of these platforms, how these platforms will be taxed will also be correctly determined. At this point, it is useful to re-emphasize the issues mentioned in the previous headings.

Crowdfunding platforms must be established as a joint stock company with the Board of Directors being composed of at least 3 persons, they must meet the limits regarding capital and equity shares being registered. According to the Corporate Tax Law³⁷, joint stock companies are subject to corporate tax. Accordingly, corporate tax is collected on the corporate profits of these companies. Therefore, corporate tax shall be collected on the corporate income of equity based crowdfunding platforms such as fees, commissions and deductions³⁸.

According to the Value Added Tax Law³⁹, deliveries and services made within the scope of commercial, industrial, agricultural activities and self-employment activities in Türkiye are subject to Value Added Tax⁴⁰. According to the Article 6 of aforementioned law, in determining net corporate income, the provisions of the Income Tax Law⁴¹ on commercial income are applied. In this regard, the activities of platforms which act as intermediaries between entrepreneurs and investors and provide consultancy to entrepreneurs should be examined in terms of Value Added Tax.

At this point, the structuring of crowdfunding platforms gains importance again. Indeed, as explained before, these platforms are established as joint stock companies. Since it is stipulated that the provisions regarding commercial income are applied in determining net corporate income, Value Added Tax should be collected on the consultancy service earnings of the platforms⁴².

Another tax that should be considered in terms of the activities of the platforms is the stamp duty. According to the Notification on Crowdfunding, in order to be able to carry out crowdfunding transactions, investors must become members of the relevant platform electronically. As stated in the heading titled “B. Functioning of the Platforms in General”, a membership agreement is

³⁷ Official Gazette Date: 21.06.2006 Official Gazette Number: 26205.

³⁸ Article 11 of the Notification on Crowdfunding.

³⁹ Official Gazette Date: 02.11.1984 Official Gazette Number: 18563.

⁴⁰ Article 1 of Value Added Tax Law

⁴¹ Official Gazette Date: 06.01.1961 Official Gazette Number: 10700.

⁴² See article 11 of the Notification on Crowdfunding.

concluded between the platform and the members in an electronic environment. Similarly, a crowdfunding agreement is signed between the venture company or entrepreneur and the platform. And according to the Stamp Duty Law⁴³, the papers listed in Table (1) annexed to this Law are subject to Stamp Duty. This table includes papers related to contracts.

Annex 4 of the Notification on Crowdfunding regulates the minimum elements of the crowdfunding agreement to be conducted between the venture company or entrepreneur and the platform, and Annex 5 regulates the minimum elements of the membership agreement to be conducted between the platform and the members. These minimum elements include fees, commissions or other benefits to be received.

Considering these agreements and the minimum content of the agreements, it can be stated that the contracts concluded are subject to stamp duty. The question that comes to mind here is that the Notification on Crowdfunding stipulates that the membership contract will be concluded “electronically”. However, this situation does not create a problem in terms of collecting stamp duty. In fact, according to Article 1 of the Stamp Duty Law, the term “papers” in this Law includes documents created in magnetic media and in the form of electronic data by using electronic signatures.

Another tax that should be considered for equity based crowdfunding platforms is the digital service tax. In fact, in the Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services published by the European Commission on 21.03.2018, it is envisaged that a digital services tax may be applied to crowdfunding platforms⁴⁴. According to the Law No. 7194 on the Digital Service Tax and Amendment of Certain Laws and Legislative Decree No. 375⁴⁵, the revenue obtained from the provision and operation of digital environments where users can interact with each other and the intermediary services provided by digital service providers in the digital environment for the services listed in the Law are subject to the digital service tax. The taxpayer of the digital service tax is the digital service providers. In this case, crowdfunding platforms which as stated before are structured as a digital platform and provide interaction and intermediary services between entrepreneurs and investors should be considered as liable for digital service tax.

⁴³ Official Gazette Date: 11.07.1964 Official Gazette Number: 11751.

⁴⁴ European Commission, ‘Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services’ (Taxation Customs, 2018) <https://taxation-customs.ec.europa.eu/system/files/2018-03/proposal_common_system_digital_services_tax_21032018_en.pdf> accessed 4 December 2024.

⁴⁵ Official Gazette Date: 07.12.2019 Official Gazette Number: 30971.

A final assessment of the taxes that equity based crowdfunding platforms must pay can be made in terms of the banking and insurance transaction tax. According to Article 28 of the Expenditure Tax Law⁴⁶, all money received in cash or on account by banks and insurance companies in their favor, regardless of the name, due to all transactions they have made are subject to the banking and insurance transaction tax⁴⁷. The money received by bankers in cash or on account, regardless of the name given, for their own benefit due to the banking transactions and services they perform, is also subject to banking transaction tax. Therefore, the taxpayers of the banking and insurance transaction tax are banks, bankers and insurance companies. Since the Joint stock companies that are considered as crowdfunding platforms according to the Notification on Crowdfunding, cannot be considered as a bank or banker within the meaning of this Law, they are not subject to banking and insurance transaction tax.

B. Taxation of Investors

The issues regarding the taxation of the platforms themselves can be summarized as above. Looking at the issue from the perspective of investors, taxation of investors will be subject to different regulations depending on whether the investor is an income tax payer or a corporate tax payer. Therefore, taxation of investors who are income tax and corporate tax payers will be discussed under separate headings.

1. Taxation of Income Tax Payer Investors

1.1. Taxation of Dividends

Investors earn dividends from the venture company by investing in it through an equity based crowdfunding platform. Therefore, the first thing to consider is how these dividends will be taxed.

The dividends obtained by investing in the venture company will be subject to income tax as earning on movable assets. Indeed, according to the first subparagraph of the second paragraph of Article 75 of the Income Tax Law, dividends from all types of stocks are considered as earning on movable assets. Therefore, the shares obtained by investors /backers subject to income tax will be considered as dividends and will be subject to income tax as earning on movable assets.

In case of dividend distribution, the venture company is obliged to make withholding tax on the distributed dividends. According to the article 94/1-6-b-i of the Income Tax Law, tax will be withheld from dividends distributed by fully taxpayer corporations to fully taxpayer individuals, those who are not subject to

⁴⁶ Official Gazette Date: 23.07.1956 Official Gazette Number: 9362.

⁴⁷ Transactions made in accordance with the Financial Leasing Law are excluded.

income or corporate tax, and those who are exempt from these taxes.

According to Article 22/3 of the Income Tax Law, half of the dividends obtained from fully taxpayer institutions is exempt from income tax. Withholding is made on the exempted amount and the entire withheld tax is offset against the tax calculated on the annual return if the dividend is declared with an annual return. For taxpayer real persons, if the dividend, together with other income items subject to declaration, does not exceed 330,000 Turkish Liras for 2025, no annual declaration will be submitted. If this amount in the second line of the income tax tariff is exceeded, no annual return will be submitted. In this case, the withheld tax will be offset against the tax calculated on the annual return⁴⁸.

Moreover, individual participation investors who are full taxpayer real persons can deduct 75% of the shares from their annual income and profits in the period in which the shares are acquired, provided that they hold the shares of the full taxpayer joint stock companies they have acquired for at least two full years⁴⁹. This rate is applied as 100% for some individual participation investors specified in the Law. Accordingly, if fully liable individual participation investors hold the shares of the fully liable venture company for at least two years through equity-based crowdfunding platforms, 75% of the share amounts can be deducted.

1.2. Taxation In Case of Disposal of Shares

Investors can dispose of their venture company shares. In this case, it should be clarified how taxation will be made in the event of share disposal.

Since the shares of the venture company that provides resources for its project through equity-based crowdfunding are not traded on Borsa Istanbul and there is no sale transaction in the secondary market, the sale of these shares may take a certain period of time⁵⁰. When the provisions of the Notification on Crowdfunding regarding this issue are examined, according to the 7th paragraph of Article 12, which regulates the activities that platforms cannot perform, platforms cannot mediate secondary market transactions regarding equity or debt instruments. However, it is also stipulated that allowing members to communicate among themselves through the websites of platforms does not constitute a violation of this provision⁵¹. As mentioned in the heading titled “C. Capital Markets Board’s List”, according to the Notification on Crowdfunding, The Central Registry Agency must establish the infrastructure that will provide mutual data flow with the Investor Risk Monitoring System. Moreover, members must establish

⁴⁸ Article 22/3 and 121 of the Income Tax Law

⁴⁹ Provisional Article 82 of the Income Tax Law.

⁵⁰ Hakan Boztaş ve Ayşe Sümer, ‘Girişimciliğin Finansmanında Yeni Bir Model: Paya Dayalı Kitle Fonlaması ve Vergisel Boyutu’ (2023) 499 Vergi Dünyası Dergisi 21, 31.

⁵¹ Boztaş ve Sümer (n 50) 31.

the infrastructure on the platform where they can communicate electronically with the venture company officials⁵². In this way, platforms will be able to help investors who invest in the campaigns they mediate sell their dividends through their own websites, which will make it easier for investors who want to sell their dividends⁵³.

Returning to the issue of taxation, in accordance with the duplicate article 80 of the Income Tax Law, gains from disposal of securities or other capital market instruments, except for those acquired without consideration and shares belonging to fully taxpayer institutions and held for more than two years, are subject to income tax as capital appreciation. Accordingly, income tax will be charged on disposal of dividends held for less than two years. Since the same article stipulates that the capital appreciation obtained in a calendar year, excluding those obtained from the disposal of securities and other capital market instruments, are exempt from income tax up to 120,000 TL, this exemption cannot be used in the event of the sale of shares. Therefore, if shares held by the investors for less than two years are sold, there is no exemption and tax will be charged.

Net profit in capital appreciation is found by deducting the cost of the goods and rights disposed of and the expenses incurred due to the disposal and the taxes and duties paid, from the amount of all kinds of benefits provided by the money and in kind received in return for the disposal and that can be represented by money. In case of disposal of goods and rights, the acquisition price is determined by increasing the wholesale price index determined by the State Institute of Statistics, excluding the month in which the goods and rights are disposed of. In order for this indexation to be made, the increase rate must be 10% or more⁵⁴. In this case, the amount found by deducting the purchase price subject to indexation from the sales price of shares held for less than two years should be declared as capital appreciation by investors⁵⁵.

It is possible for tax payers with more than one income and revenue element to offset losses arising from certain sources of income in the annual declaration against gains arising from other sources⁵⁶. However, losses arising from disposal of shares in the venture company cannot be offset by investors⁵⁷.

⁵² Article 5/5-g,ğ of Notification on Crowdfunding.

⁵³ Boztaş ve Sümer (n 50) 31.

⁵⁴ Duplicate article 81 of the Income Tax Law.

⁵⁵ Murat Mutlu ve Halit İslam Ekmen, 'Paya Dayalı Kitle Fonlaması ve Vergisel Boyutu' (2021) 399 Vergi Sorunları Dergisi 91, 98.

⁵⁶ Mualla Öncel, Ahmet Kumrulu, Nami Çağan ve Cenker Göker, Vergi Hukuku (30th edn, Turhan Kitabevi 2021) 338.

⁵⁷ Article 88 of Income Tax Law.

2. Taxation of Corporate Tax Payer Investors

The situation is slightly different for investors or backers who are subject to corporate tax in equity-based crowdfunding platforms. In case the investor institutions obtain the dividends of the fully liable enterprise companies and participate in their capital, the profits obtained are exempted from corporate tax. In fact, according to subparagraph a of paragraph 1 of article 5 of the Corporate Tax Law, the profits obtained from the participation in the capital of another institution subject to full liability are exempted from corporate tax.

Moreover, 75% of the profits arising from the sale of investment fund shares that corporations have held in their assets for at least two full years are exempt from corporate tax. Therefore, if companies sell the shares of the venture company after keeping them in their assets for two years, 75 percent of the profit is exempted. This exemption is applied in the period in which the sale is made, and the part of the sales profit that benefits from the exemption is kept in a special fund account until the end of the fifth year following the year in which the sale is made. The sales price must be collected by the end of the second calendar year following the year the sale was made. Otherwise, tax loss is considered to have occurred for taxes not accrued on time⁵⁸. Moreover, the earnings that should be kept in a special fund account by companies should not be transferred from the fund account to another account should not be withdrawn from the business, and should not be transferred abroad by limited taxpayer institutions within five years. Otherwise, taxes that are not accrued on time due to the applied exception will be collected together with tax loss penalty and late payment interest. This also applies if the company enters the liquidation process. In fact, if the company enters liquidation by the end of the fifth year following the year of sale, the profit that should be kept in the fund account will be considered to have been withdrawn from the business⁵⁹.

C. Taxation of Venture Companies

When looking at the operation of crowdfunding platforms, the primary focus should be on the issuance of shares by venture companies and how this will be taxed. In this regard, the expenses of issuance of securities can be deducted from the revenue. In fact, according to subparagraph a of the first paragraph of Article 8 of the Corporate Tax Law, taxpayers are allowed to deduct the expenses of issuing securities from the revenue in determining the corporate income.

It should be noted at this point that it is also possible to capitalize these expenses and amortize them in equal amounts within 5 years⁶⁰.

⁵⁸ Article 5/1-e of Corporate Tax Law.

⁵⁹ Corporate Tax General Notification (Serial No: 1), Official Gazette Date.: 03.04.2007 Official Gazette Number: 26482

⁶⁰ Article 282 and 326 of Tax Procedure Law, Official Gazette Date: 10.01.1961 Official Gazette Number: 10705, Boztaş ve Sümer (n 50) 30.

According to the Income Tax Law and Corporate Tax Law, a tax withholding should be made in case of dividend distribution by the venture company. Since this issue has also been addressed under the heading “1.1. Taxation of Dividends”, it will not be discussed again.

As explained, before the funds collected are transferred, these funds must be transferred to the funded company only in return for the shares to be issued through capital increase. Funds cannot be collected by selling the existing shares of venture companies. In addition, all funds provided from investors in return for the shares of the funded company must be paid in cash. And according to the subparagraph (1) of the first paragraph of Article 10 of the Corporate Tax Law, taking into account the weighted annual average interest rate applied to commercial loans in TL issued by banks announced by the Central Bank of the Republic of Türkiye, on the cash capital increases of capital companies or the part of the paid-in capital covered by cash in newly established capital companies, 50% of the calculated amount can be deducted from the corporate income until the end of the relevant accounting period. The cash capital increase here is the cash increases in the paid or issued capital amounts registered in the trade registry within the relevant accounting period by venture companies that raise funds through crowdfunding platforms, and the part of the paid capital in newly established companies that is covered in cash⁶¹.

Thus, venture companies can benefit from the discount provided in the Article 10/1-I of Corporate Tax Law in case of a capital increase. This discount is used separately for the accounting period in which the decision regarding the capital increase is registered in the trade registry and for the four accounting periods following this period. In case of a capital decrease during these periods, the reduced capital amount is not taken into account in the discount calculation⁶².

CONCLUSION

Crowdfunding platforms have become increasingly popular. Therefore, the legal status of these platforms needs to be determined. When considered in terms of the Turkish legislation, there are important provisions in the Capital Markets Law and Notification on Crowdfunding on this issue.

Taxation of equity based crowdfunding platforms requires the correct determination of the legal status of the platforms. In this context, first of all, the provisions in the Capital Markets Law and Notification on Crowdfunding are examined and it is determined that the platforms shall have the status of a joint-stock company. In this context, it has been stated that crowdfunding platforms themselves are liable for corporate tax, value added tax, stamp duty and digital service tax.

⁶¹ Corporate Tax General Notification (Serial No: 1).

⁶² Article 10/1-I of Corporate Tax Law.

If the issue is addressed in terms of taxation of investors or backers who are liable for income tax, it should be stated that the shares obtained by investors / backers subject to income tax will be considered as dividends and will be subject to income tax. Half of the dividends obtained from fully taxpayer institutions are exempt from income tax. Withholding is made on the exempted amount and the entire withheld tax is offset against the tax calculated on the annual return if the dividend is declared with an annual return.

Since the gains from disposal of securities or other capital market instruments, except for those held for more than two years, are subject to income tax, income tax will be charged on disposal of shares held for less than two years. And in case that fully liable individual participation investors hold the shares of the fully liable venture companies for at least two years through equity-based crowdfunding platforms, 75%⁶³ of the share amounts can be deducted.

When it comes to investors or backers who are subject to corporate tax, in case the investor institutions obtain the dividends of the fully liable enterprise companies and participate in their capital, the profits obtained are exempted from corporate tax. Also, 75% of the profits arising from the sale of investment fund shares that corporations have held in their assets for at least two full years are exempt from corporate tax.

And considering the venture companies, the third party in equity-based crowdfunding, the expenses of issuing securities can be deducted from the revenue. And a tax withholding should be made in case of dividend distribution by the venture company. In addition, it is possible to benefit from deductions if the cash capital increase conditions in accordance with Article 16 of the Crowdfunding Notification and Article 10/1-1 of the Corporate Tax Law are complied with.

The basic regulations regarding the taxation of crowdfunding platforms can be summarized as above. As can be seen from the aforementioned regulations, there is no direct provision in our legislation regarding how crowdfunding platforms will be taxed or what kind of tax incentives will be offered to these platforms. Therefore, the issue of how these platforms will be taxed has been evaluated within the framework of general provisions. Similarly, the tax incentives that platforms can benefit from have been determined based on general regulations.

In this context, it should be noted that it is beneficial to specifically regulate the incentives to be provided to crowdfunding platforms in order to encourage these platforms. In this sense, it can be suggested to define tax incentives such as the regulations regarding the tax advantages granted to angel investors. Similarly, it is suggested that the advantages and incentives provided to venture capital funds should also be envisaged for crowdfunding platforms.

⁶³ 100% for some individual participation investors specified in the Law.

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