

CHANGES TO THE TAX AND SOCIAL SECURITY PROCEDURE CODE

LIABILITIES OF THIRD PARTIES FOR TAXES AND SOCIAL SECURITY CONTRIBUTIONS

The changes to the Tax and Social Security Procedure Code (“TSSPC”), in force as of 4th of August 2017, broaden the scope of the persons who could be held jointly liable with the legal entity for its outstanding liabilities for taxes and social security contributions.

Liability of majority shareholders due to reduction of the assets of the liable entity

Majority shareholders (except from those who did not take part in the voting or voted against such a decision) will be liable for the outstanding liabilities for taxes and/or social security contributions.

In this relation, in the Additional provisions of the Tax and Social Security Procedure Code a definition for “Majority shareholder” was introduced. According to the definition a “Majority shareholder” is a person who exercises control and who:

- holds directly or indirectly or by agreement with another legal entity more than half of the votes in the general meeting of another entity, or
- has the ability to determine directly or indirectly more than half of the members of the management or controlling body of another entity, or
- has the ability to manage the activity of another entity, including through or together with a subsidiary, by virtue of articles of association or agreement, or
- as a shareholder in the company exercises control separately in the same company over more than half of the votes in the general meeting of that company by virtue of a deal with other shareholders, or
- may otherwise exercise decisive influence on decision-making in connection with the company's activity.

When there is no shareholder who exercises control, a majority shareholder shall be deemed any shareholder who holds 15 or more percent of the shares.

Majority shareholders shall be liable for the outstanding liabilities when they:

- make a payment in kind or cash out of the property of the taxable person, representing hidden distribution of profits or dividends, or
- dispose of property of the taxable person for free or at price, significantly below the market price; or
- encumber the assets of the taxable person to secure a third party's debt and the assets are redeemed in favour of a third party.

If a majority shareholder has voted against or has not voted when a decision for reduction of the assets has been made, he would not be held liable, even if the taxable person is not able to pay its liabilities for taxes and social security contributions.

Additional condition for ensuing shareholders' liability is those shareholders to have acted in bad faith, namely when the action is performed:

- after reporting and/or establishment of tax and social security liabilities up to one year after the reporting and/or the issue of the tax assessment act;
- after proceedings executed by the tax administration in respect of compliance of the taxable person with the tax and/or social security legislation up to 6 months from the completion of the proceedings.

The liability shall be limited to the amount of payments made, respectively up to the value of the reduction of the property.

Liability of shareholders who transfer the shares acting in bad faith

Majority shareholders shall be held liable for the outstanding liabilities for taxes and social security contributions of the taxable person when the following conditions are simultaneously fulfilled:

- the persons had the capacity of majority shareholders as at the date of occurrence of the corresponding outstanding liability;
- the shareholder is no longer a majority shareholder (i.e. it is not necessary all shares to be transferred but only in such amount that the person is no longer a majority shareholder) due to the transfer of shares;
- the shareholder has acted in bad faith being aware that the company is over-indebted or insolvent and the transfer of shares is performed before the company is declared insolvent or prior to rejecting the bankruptcy request;
- The shareholder has also acted in bad faith when the transfer of the shares is performed after proceedings executed by the tax administration for compliance of the taxable person with the tax and/or social security legislation up to 6 months from the completion of the proceedings.

The liability is proportional to the participation in the transferred part of the company's capital.

Liability of minority shareholders for outstanding liabilities for taxes and/or social security contributions

Persons, who own minority shares of the capital, except for those who hold shares in companies listed on the stock exchange, are also held liable when:

- simultaneously or successively for a period no longer than three months;
- transfer company shares in bad faith, whose total amount represents majority share of the capital;
- and the shareholders knew that the company is over-indebted or insolvent and the transfer of the shares is performed before the company is declared insolvent or the bankruptcy request has been rejected;

The liability is proportional to the participation in the transferred part of the company's capital.

Liability in case of a hidden complicity

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The changes to the Code introduced liability of each person, who in the hypothesis of a hidden complicity conducts commercial activity through an insolvent debtor.

Persons, acting in the hypothesis of hidden complicity shall be deemed jointly liable with the insolvent legal entity for the outstanding taxes and social security contributions as they would have been established for the insolvent legal entity.

Liability in case of a hidden distribution of profits

Shareholders who have received hidden profit distribution are liable for the outstanding taxes and social security contributions of the legal entity for the period during which they were in such capacity.

The liability is limited up to the amount of the revenue received in the form of a hidden distribution of profits.

If the hidden distribution of profits is declared, then those persons shall not be held liable for the tax and social security contributions.

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