

BÜLTEN/BULLETIN

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Company Executives' Responsibility Deriving From Tax Penalties Directed To Companies

Tax penalties and their related public claims arising from the tax investigations or administrative transactions of the tax authorities could be directed to the board members and company executives in Joint-Stock Companies (A.Ş.) and Limited Liability Companies (Ltd. Şti.). In another saying, it can be said that board members in Joint-Stock Companies and company executives in Limited Liability Companies can be under personal liability for tax penalties directed to the company and become responsible with their personal wealth. With our article on this issue, we will be touching upon the conditions and limitations on this principle.

1. Liability Of Limited Liability Company Executives and Shareholders From The Tax Penalty Notifications

According to the Law on Collection of Public Claims No: 6183, Article 35, company executives in Limited Liability Companies are liable for collection of the claims that are directed to the company in case unfruitful action is proved by the end of confiscation of wealth proceedings, in proportion to their initial capital contribution to the company. The execution and collection procedures are conducted according to the Law said above.

Shareholders in the company are also liable for collection, deriving from the repetitive provision, Article 35, in context of the same Law on Collection of Public Claims.

On the other hand, in relation to the tax penalties, shareholders and company executives in a Limited Liability Company are deemed responsible under the principles of "liability without fault" in Turkish legislations. The proceedings that are to be conducted by the Tax Authority are not processed in relation with their fulfillment of other duties regarding the company.

In practice of the Turkish legislation, it is common to encounter an order of payment directed to a company partner or a company executive. These orders of payments are drafted on behalf of the names of such executives and conducted through confiscation orders for their personal wealth.

However, to deem these company executives or shareholders liable from the tax penalties, there are some conditions and limitations set forth by Turkish Council of State and the aforesaid Law. The orders of payments that are drafted without meeting the requirements set forth in these provisions can be swiftly canceled/removed by court orders upon application in front of the Turkish courts.

According to these conditions, the legal entities or individuals holding shares of the company are liable from tax penalties and requested payments, deriving from the previous financial periods of the company by law. To deem a shareholder/partner of a company or a company executive liable from these Public Claims, firstly, the order of payment created by the Tax Authority must be sent and received in line with the notification legislation, by the company.

The payment orders must include the clear phrase of the statement that the company executive/partner will be held liable from the public claims directed to the company. After the receipt of said payment orders, the recipient has the right to opt either to challenge orders or to pass without a challenge set forth from the responsible company.

Further to check if the recipient of the notification is the right party, the time for notification should also be controlled. After this examination, the legal entity representing the company (the legal personality of the company itself) must be included in execution proceedings conducted by the Tax Authority, in accordance with Law on Collection of Public Claims Article 54, 55 and following articles. These proceedings include research on company assets, proceedings towards the confiscation of these assets and prove to be unfruitful in the end.

After all, the Tax Authority may deem company shareholders or executives liable and commence execution proceedings towards them. In these proceedings, there is no order of responsibility among executives and shareholders of the company, but company executives are responsible for the debts with their full ownership on all their properties/assets while the shareholders could be under the same threat.

If these conditions and requirements that are provisioned and put upon the Tax Authority to fulfill for the granting of personal liability are not met, the orders of payments can be made subject to a lawsuit before the Tax Courts of turkey.

2. Liability of Shareholders and Board Members From Tax Penalties in Joint-Stock Companies

According to Turkish Commercial Code, shareholders of the joint-stock companies in Turkey can only be liable for their initial capital contribution debts towards the company. With that in mind, there are no regulations to be found which indicate that the shareholders of a joint-stock company are under liability from the Law on Collection of Public Claims or any other regulation. Therefore, execution/confiscation proceedings cannot be conducted on the personal property and assets of the shareholders of joint-stock companies.

However, board members of a joint-stock company, according to the aforesaid Article 35 of Law on Collection of Public Claims, can be subject to execution/confiscation proceedings that derive from the payment orders directed to the joint-stock company, which in the end prove to be unfruitful.

In this issue, our explanations that are made regarding the liability of company executives in Limited Liability Companies will be applicable. Therefore, for the pursuit for confiscation of personal assets by the Tax Authority, it can only be made by meeting the conditions set forth in the aforesaid regulations. Only after these conditions are met, payment orders must prove the debts due to tax penalties to be uncollectible from the company. The liability of a board member is limited to the debts that derive from the period that he was acting as a board member actively within his responsibility. In that sense, defining the role and responsibility of the executives with a well-structured company documentation is very important for corporate compliance issues.

3. Conclusion

As it is explained in detail above, according to the Law on Collection of Public Claims, the liabilities from public claims and debts that could not be collected solely from the assets of the legal entity of a Limited Liability Company or a Joint-Stock Company can be directed to a company executive, company shareholder or a board member.

Orders of payments that are drafted to ensure the collection of these payments can only be directed to these company officials above if the certain requirements are met and assets connected or owned by the company are not adequate for full collection of the tax penalties/debts.

The challenges to these orders that are received lawfully, can be made to Executive Directorate's ("İcra Müdürlükleri" in Turkish) until they are finalized. After the finalization of orders of payment with the cancellation of the challenges or passing of a time period, the challenges can be made to an authorized Tax Court in Turkey. This court is also competent for the lawsuits regarding these orders of payments and legal relationships that arise from them.