

Collection of Limited Liability Company's Tax Debts from Shareholders is Now Easier

The liability arising out of the failure to pay the company debts directly belongs to the company itself since it has a separate legal entity. Therefore, the application is made to the legal entity first for the unpaid tax debts of the limited liability company, and if it is determined that the debt cannot be collected from the company, the application is directed to the legal representatives or to the shareholders. This is being the rule; the company itself is responsible for its unpaid debts primarily whereas the legal representatives and the shareholders are responsible from the same secondarily.

Nevertheless, Turkish Council of State's General Assembly on Unification of Judgments recently decided that the due tax debt, which could not be collected in whole or in part or which is understood to be uncollectible from the company itself, can be collected from the shareholders of the limited liability company directly in proportion to their share capitals without any need to apply to legal representatives first.

Liability of Legal Representatives for Public Debts in Limited Liability Company

In accordance with the reiterated Article 35 of Law on Collection Procedure of Public Receivables numbered 6183 ("**Law no 6183**"), that sets forth the liability of the legal representatives from public debts; total amount of public receivables, which are determined to be uncollectible from the assets of the company, are collected from the personal assets of legal representatives regardless of whether they acted in fault or not.

On the other hand, pursuant to Article 10 of Tax Procedural Law numbered 213 that purports a special provision for the tax debts, which are included within the scope of public receivables; the total amount of tax and its receivables, which cannot be obtained in whole or in part from the assets of the company as the taxpayer, will be collected from the legal representatives who acted in fault while fulfilling this legal duty.

Liability of Shareholders for Public Debts in Limited Liability Company

According to Article 35 of the Law no 6183, the shareholders of the limited liability company are directly responsible from the public receivables, which could not be collected or which are understood to be uncollectible from the company, in proportion to their share capital.

What does the Decision on Unification of Judgments Rule?

Turkish Council of State's General Assembly on Unification of Judgments ("**Council of State's General Assembly**") decided to unify the contradictory judgments about whether the tax debts of the limited liability company can be collected directly from the shareholders without any need to apply to the legal representatives or not. The Council of State's General Assembly rendered its decision, which is dated December 11, 2018 and numbered 2013/1 E., 2018/1 K. and published in the Official Gazette numbered 30807 and dated June 20, 2019, and stated that there is no

order of priority for the collection of limited liability company's tax debts from the shareholders in proportion to their share capital or from the legal representatives.

The Council of State's General Assembly concluded that there is not any explicit provision in the legislation on whether the tax debts, that are understood to be uncollectible from the company, should be collected from the legal representatives or from the shareholders first; Article 35 of the Law no 6183 regarding the liability of limited liability company's shareholders aims to ensure that the applications can be directly made to the shareholders for the company's tax debts without applying to the legal representatives; and the purpose of this provision is to protect the public receivables and to ensure the rapid collection of the same.