

Turkey's Council of State Rules on Collection of Uncollectible Tax Debts of Limited Companies from their Legal Representatives and Shareholders

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Turkey's Council of State has recently ruled that commencing execution proceedings against limited companies' legal representatives is not mandatory in order to collect from the shareholders the tax debts that cannot be collected from the company itself.

According to article 10 of the Tax Procedure Law number 213 (the "**Tax Procedure Law**"), tax debts or other debts related to taxes can be collected from the assets of a legal entity's legal representatives, in case they cannot be partially or entirely collected from the assets of the legal entity who has tax liability.

Besides that, article 35 of the Law on Collection Procedure of Public Receivables no. 6183 (the "**Law number 6183**") stipulates that limited companies' shareholders are directly liable for the public debts that are uncollectible from the assets of the company, pro-rata to the percentage of the shares they own. Therefore, execution proceedings can be commenced against the shareholders of limited companies, in these cases.

However, neither the Tax Procedure Law nor the Law number 6183 stipulates whom the creditor should apply first in order to collect the uncollectable taxes of limited companies.

Within this context, uncertainty rose whether there is a requirement to apply to the legal representatives before applying to shareholders for tax debts of limited companies. The Assembly on Unification of Judgements of the Council of State (the "**Assembly**") decided to settle the uncertainty between different Council of State chambers.

The Assembly ruled that:

- Tax debts that are completely or partially uncollectible from the assets of the company are sufficient for a creditor to take legal proceedings against the shareholders of the company for the collection of the tax debts.
- Within this context, it is not mandatory for the creditor to take legal proceedings against the legal representatives of the company before applying to shareholders.

The Council of State indicated in the preamble of the decision that:

- *Ratio legis* of the legislation regarding the shareholders of limited companies stipulated under article 35 of the Law number 6183 is protecting the public receivables and ensuring the tax debts are collected expeditiously from the assets of the shareholders before applying to the legal representative of the company.
- Within this context, tax debts being completely or partially uncollectible from the assets of the company is sufficient for creditors to take legal proceedings against shareholders of the company.

Please see this [link](#) to read the full text of the Assembly's decision dated 11 December 2018 and numbered 2018/1, which was published in Official Gazette numbered 30807 on 20 June 2019 (only available in Turkish).

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