

Revolutionary judgment by the CJEU on provisions on joint and several liability of management board members

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The Court of Justice of the European Union (CJEU) today issued a landmark judgment (Case C-277/24 Adjak) challenging the model adopted in Poland of joint and several liability of management board members for the company's tax arrears.

Which provisions raised doubts?

In Poland, members of the management board are jointly and severally liable for the company's tax liabilities incurred during their tenure. This liability occurs when:

- errors were found in the company's tax settlements,
- enforcement against the company's assets proved ineffective,
- the management board failed to file a bankruptcy petition within the statutory deadline.

One of the main issues faced by management board members is that in joint and several liability proceedings they do not have the ability to challenge the findings of the tax authorities made in prior proceedings against the company. They also are not recognized as a party in such proceedings. The tax decision against the company becomes prejudicial and a member of the management board cannot effectively challenge its content.

These Polish regulations and the practice of the authorities led the Voivodship Administrative Court in Wrocław to refer the question to the CJEU for a preliminary ruling.

What did the CJEU hold?

The CJEU ruled that, in proceedings involving joint and several liability for the company's tax arrears, a board member must be granted:

- the right to effectively challenge the findings made by the tax authorities in proceedings against the company; and
- access to the case files from those proceedings.

In the CJEU's view, only such safeguards ensure for an adequate exercise of the board members' right of defence.

What are the implications of the CJEU judgment for members of management boards?

The CJEU judgment is of **fundamental significance** for the conduct of proceedings concerning joint and several liability of management board members. **The judgment may have a direct impact on all completed and pending proceedings!**

Impact on completed proceedings

Board members can apply for the resumption of proceedings conducted on the basis of the contested liability model, which gives them the chance to challenge previous findings on their joint and several liability.

Impact on ongoing proceedings

Board members in ongoing proceedings should have the ability to:

- demand access to the company's file,
- challenge the findings of the tax authorities concerning the company's liabilities, which may affect their legal position and exclude their joint and several liability.

What taxes does the CJEU judgment concern?

The judgment directly pertains to value added tax (VAT), but its effects may also extend to other taxes covered by the liability regime for members of the management board.

Short deadlines for action!

The CJEU judgment creates an opportunity to reopen completed proceedings but there are short deadlines for making such requests:

- **1 month** from the publication of the judgment in the Official Journal of the EU for the resumption of proceedings before the tax authorities,
- **3 months** from the publication of the judgment for reopening proceedings before administrative courts.

The judgment is expected to be published within 1-2 months. Board members should now analyse the possible effects of the judgment and take measures to safeguard their interests.

Summary - key opportunities after the CJEU judgment

The CJEU judgment is an opportunity for management board members to:

- resume completed proceedings before tax authorities and courts,
- challenge decisions on joint and several liability,
- reclaim amounts previously paid by management board members,
- access to the company's dimension file,
- effective defence in ongoing joint and several liability proceedings.

📅 PUBLICATION OF THE TSUE JUDGMENT COMING SOON! ACT FAST TO PROTECT YOUR INTERESTS!

In case you are interested in the above information and its impact on your business, please contact:

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