

Management board liability another important CJEU judgment

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On 30 April, the Court of Justice of the European Union (CJEU) issued a significant judgment concerning the Polish regulations governing joint and several liability of management board members for a company's tax arrears (Case C-278/24 Genzyński).

This judgment challenges the entire model for pursuing proceedings against management board members and has a direct impact on all ongoing and concluded proceedings in this area.

Which provisions raised concerns?

The CJEU addressed three key concerns related to joint and several liability:

1. Liability regardless of good faith or fault

Currently, management board members may be held jointly and severally liable for a company's tax liabilities without first determining whether they acted in good or bad faith, or whether they exercised due diligence—in other words, whether the tax arrears were caused by their actions. The current law does not allow for exemption from such liability in cases where failures were caused by circumstances beyond the board member's control.

2. Expectation to file for bankruptcy even if it is invalid

Polish regulations establish a limited list of conditions that may release board members from joint and several liability. One such premise is the filing of a bankruptcy petition by the company at the right time. Simultaneously, under the provisions of the bankruptcy law, such a motion may be filed if the company has a minimum of two creditors. According to the current legislation, if a company has only one creditor, a bankruptcy petition against it will have no legal effect. Despite this, the tax authorities expected the members of the management board to file such an application, despite its invalidness.

3. Unequal treatment based on the number of creditors

As the referring court has observed, the consequence of such an interpretation of the legislation leads to unequal treatment of members of the management board depending on the number of creditors of the company which they manage. This means that only board members of the company with at least two creditors can be released from this liability.

These three issues led the Provincial Administrative Court (WSA) in Wrocław to question whether the Polish regulations provided adequate procedural safeguards for board members, including respect for the right to defence. Consequently, the court referred three preliminary questions to the CJEU.

What did the CJEU decide?

The CJEU ruled that Polish legislation restricts the rights of board members to defend themselves. As the judgment states:

- Board members should be able to provide evidence that they have acted with due diligence in the conduct of the company's affairs..
- The tax authorities cannot expect a company to file for bankruptcy if, on the basis of objective circumstances (existing at the time of the board member's office), the company could not be considered insolvent.
- Board members should have a real (and not just an illusory) right to prove that, in the event of the company's insolvency, the bankruptcy petition was not filed through no fault of their own.

What does this mean for board members?

Impact on concluded proceedings

Board members may seek to reopen previously concluded tax and administrative court proceedings concerning joint and several liability and challenge their outcomes.

Impact on ongoing proceedings

In current cases, board members have gained an additional tool to defend themselves—demonstrating that they acted with due diligence. This includes the right to submit supplementary explanations and evidence in support of their position.

Which taxes are affected by the CJEU judgment?

While the ruling specifically concerned VAT, the conclusions drawn by the CJEU should also apply to proceedings involving board member liability in relation to other taxes and public levies.

Short deadlines for action!

The CJEU judgment forms the basis for reopening closed proceedings that were based on the now-challenged liability model.

For tax proceedings, the deadline to file a motion for reopening is one month from the publication of the judgment in the Official Journal of the EU.

For administrative court proceedings, the deadline is three months from publication.

Also in ongoing proceedings, it is important to take action as soon as possible to help exclude liability.

The judgment is expected to be published in the Official Journal within 1–2 months. However, it is essential to already begin analysing how it may affect your pending or closed joint liability cases.

Summary – what opportunities does the CJEU judgment create?

The CJEU ruling offers management board members the opportunity to:

- ✓ Reopen closed proceedings before tax authorities and administrative courts;
- ✓ Challenge final decisions and judgments concerning joint and several liability;

- ✓ Overturn decisions and recover amounts already paid by board members;
- ✓ Contest findings made by tax authorities in ongoing liability proceedings.

📢 THE JUDGMENT WILL BE PUBLISHED SOON – BE READY TO ACT QUICKLY!

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

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