

The liability of managing directors of limited-liability company (GmbH)



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The limited-liability company (GmbH/Gesellschaft mit beschränkter Haftung) is a very popular legal form for one or more shareholders who intend to set up a business in Germany. According to Art.13 (2) of the special law for GmbHs the liability of shareholders is generally limited to its contributed capital as agreed upon in the article of associations.

However, in the recent years, an increasing number of court decisions show that creditors (incl. the tax authorities) are allowed to claim their rights directly against managing directors (and shareholders) of GmbHs so that they are responsible with their private property. Yet, when scrutinizing these cases, one realizes that jurisdiction extends the responsibility mainly to managing directors due to wrong conduct by negligence or willful misconduct. No excuse will be accepted by courts even in the case of different spheres of competence of several managing directors.

According to a recent decision of the finance court in Cologne, managing directors of a GmbH can be held liable personally for willful or negligent non-compliance of tax rules of the company. In the particular case, the finance court in Cologne decided that the managing directors of the GmbH were liable because the wage taxes of the company could not be assessed properly or in time due to the unreported salaries.

If employees are not registered properly by the company and therefore the employees receive unreported salaries (illegal earnings), consequently wage tax returns will be incorrect and incomplete. The company will most likely have a financial advantage which is not justified. This will be considered as tax evasion for which the managing director has to assume the responsibility.

This court decision might be a rather special case. However, managing directors should pay very high attention to those taxes which are not assessed by the local tax office but have to be calculated and filed by the company (wage tax, VAT). Even in situations with no intention of tax evasion the offence of

trifling with taxes (leichtfertige Steuerverkürzung / airy handling of taxes) might be committed. In addition to being liable for any damage of the tax authorities the managing director might be fined.

Please note : Managing directors in this context are not only the formally registered managing directors in the commercial register (Handelsregister) but also so called factual managing directors.

Factual managing directors have - without being registered - a dominant influence on the decisions of business operating. They will be personally liable as well when the company is not compliance with the German tax laws and regulations.

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