# Section 6

## Corporate liability: Typology of administrative sanctions and requirements for their imposition – Criminal liability of representatives

### I. Drawbacks of the current Greek legal framework on corporate liability

The role of legal persons-corporations in the spread of economic criminality and corruption is internationally recognized as significant. Promoting economic activities via legal entities-corporations contributes directly or indirectly to the concealment of individuals' responsibilities, through the diffusion of accountability to more persons, whose individual liability varies; it is also important that legal persons-corporations have become (particularly in the last decades) vehicles for the internationalization of the discussed phenomena, allowing, for example, the uncomplicated and rapid transfer of large capital funds through the financial system.

For quite some time, the Greek legislature considered the liability of legal persons a secondary issue compared to that of natural persons. Several factors influenced that choice: the structure of Greek economy long favored (and largely still does) small and medium-sized partnerships, making it relatively easy to identify the "principal offender" (natural person), to whom the relevant sanctions are imposed. At an institutional level, the Greek legal order prioritizes the repression of financial criminality and corruption through criminal law, which does not envisage liability for legal persons.

In this context, one could identify three main problems in Greek legislation, which produce subsequent issues for the adoption of a comprehensive model to tackle financial crime and corruption:

(i) Lack of systematic dealing with the liability of legal persons, accompanied for a long time by a corresponding lack of coherent rules for envisaging threatened sanctions. This is largely because the provision of such penalties in Greece was the product of international legislative initiatives (particularly at a European level), which were transposed in national law without a consistent "backdrop" to incorporate them. A shift has taken place recently through the annulment of individual provisions and their accumulation into a single statute now included in the law on money laundering.

(ii) Partly a consequence of the first, the second problem is related to the connection of the legal person's liability to that of its representatives. So far, no coherent (and equitable) model has been developed for assigning such accountability from one part to the other and vice versa. As to the assignment of liability to the legal person, one can distinguish between administrative sanctions imposed against legal persons "directly" or "indirectly": the prior are imposed without requiring affirmation of criminal responsibility on a natural person, while the latter require and result from a criminal offense committed by a representative of the legal entity. Regarding the accountability of representatives, major deficiencies exist in the relevant provisions of Articles 20 of Law 2523/1997 and 25 of Law 1882/1990. The first establishes

criminal liability for specific persons based on an array (heterogeneous) of potential principal criminal behaviors not specified in the law, while broadening accountability for participation to persons not bearing the standardized properties. The second is not sufficiently sensitive to specify omission according to objective prerequisites (which may reveal a factual capability to act), thus verging on strict liability

(iii) The third -and perhaps most crucial- problem deals with the effectiveness of threatened (administrative) sanctions for legal persons, which relates not only to their type or magnitude, but to a large extent to their enforcement procedure. Indeed, the concurrent initiation of criminal and administrative proceedings for the same case and the latter's inherent delays considerably impair the effectiveness of threatened penalties, ultimately overemphasizing the deterrent effect of criminal sanctions against natural persons.

**II. Establishing corporate criminal liability?**

Introducing corporate criminal liability is diachronically refuted by Greek legal theory, which mainly plays the card of unconstitutionality to favor the traditional choice of addressing the contribution of corporations and businesses to criminality through administrative sanctions.

Embarking from doctrinal shores, one could refer to actus reus, mens rea, and sentencing.

In relation to sentencing, the debate involves two separate issues: a) discrimination of sanctions, and b) criminal and administrative wrongdoing. The threat of administrative sanctions may well aim to protect legal interests also safeguarded by criminal law provisions, though the objectives and functioning of administrative law suggest broader purposes, including especially the smooth functioning of public administration through citizen compliance. These developments, and especially the extension of the scope of administrative sanctions, dictate a redefinition through criminal law, in light of new legislative data, ECHR case law, and pertaining constitutional aspects.

Another crucial issue is whether the objectives of a criminal sanction may be materialized with the threat of its imposition against legal entities-corporations. The essential function of a penalty consists in expressing a particular disapproval by countering-retaliating crime (hardly the case for legal entities-corporations), while aims such as general prevention can be served by reprimanding representatives of legal entities. Of course, the introduction of corporate criminal liability in several legal orders seems to have contributed to the embedding of a "self-compliance" culture in many big corporations and under the requirements of the law, somehow satisfying special prevention. However, nothing prevents the realization of this goal through a system of threatened and imposed administrative penalties against legal persons which may be combined with criminal sanctions against individuals whose acts or omissions fulfill the legal requirements of specific offenses.

The doctrinal reservations on the unfeasibility to fulfil the requirements for actus reus and mens rea for legal persons-enterprises are acuter. For example, linking the

"acts" of a corporation with the acts of its representatives contradicts the rule against dual criminal liability for a single conduct. This is a serious doctrinal issue that exceeds the ne bis in idem principle, and is linked to the core of criminal retribution. In any case, establishing criminal corporate liability would require a new perception of the term (criminal) "act" and an acceptable distinction between acts perpetrated by legal persons (carrying their own, independent social connotation) and by natural persons comprising the prior. In the same spirit, there are constitutional obstacles to surpass (Art. 7 § 1) before allowing the introduction of punishability without the participation of a natural person.

There are similar reservations as to the affirmation of guilt for legal persons or corporations. Arguably, it is inconceivable to accept any "internal" association of the wrongful deed (regardless of its definition) to a legal person-subject, in a way that justifies its indictment. Thus, punishability stops restricting criminal liability, therefore losing its warranty function and especially its vital ontological foundation.

Consequently, corporate criminal liability would require a redefinition of actus reus and mens rea, thus equipping them with a minimum warranty function.

Apart from doctrinal issues, the discussed prospect is linked to the current international circumstances. Most legal orders globally (moreover in Europe) have established such liability. The pressure towards that path will pile up, with emphasis given on areas of international criminality, such as financial crime and corruption. However, the counter-arguments can also be convincing, especially in view of the option to introduce special provisions on judicial cooperation in the relevant field.

Lastly, and with a reference to legislative policy, corporate criminal liability seems to have offered a substantial motive in many legal orders for the cooperation of corporate representatives with the competent authorities, regarding especially access to otherwise unreachable evidence. The proper adaptation and utilization of criminal and criminal procedural law institutions in a system of administrative sanctions can account for the usage of these tools, especially if they specifically require the affirmation of (administrative) liability and co-formulate a joint procedural framework allowing for a complementary interaction between criminal and administrative liability.

Hence, it appears that establishing corporate criminal liability (though internationally favored to a significant degree) is neither inevitable nor linked to an added value in tackling financial crime and corruption in the public sector, which supposedly cannot be achieved otherwise. Moreover, it would entail major reforms in the national legal framework, causing more problems than it would resolve.

### III. Administrative liability through functional substitutes – Imposition of administrative sanctions by criminal courts?

The current sanctioning system in Greece discriminates between criminal and administrative proceedings, largely stemming from the constitutional distinction between criminal and administrative *jurisdiction*. This model, although doctrinally "pure", causes practical problems, as it not only undermines the economy of trial,

but also segments the subject of each case in a manner far from ensuring the effective administration of justice.

A procedural "integration" according to the German model (i.e. the capacity of criminal courts to impose administrative sanctions) could be sufficiently beneficial.

However, such a prospect would not be uncomplicated. A vital problem could be the lack of familiarity of Greek criminal judges with legal particularities related to the affirmation of corporate liability and to the imposition of respective sanctions. Such deficits should never be underestimated, as the failure of the criminal justice system (in its current structure) to smoothly accommodate an administrative sanctioning system could practically cancel any reformative initiative. Moreover, one cannot ignore objections on grounds rooted in the constitutionally guaranteed distinction between administrative and criminal jurisdiction. Therefore, it is more sensible to solve the abovementioned problems through other interventions, and particularly: (a) by designing requirements for establishing a corporate criminal liability merging with respective natural person accountability, and (b) by selecting appropriate and dissuasive sanctions for legal persons and corporations. Following that, the material competence should be clarified regarding the imposition of administrative sanctions on legal persons-corporations.

**IV. Requirements for establishing corporate liability**

The central issue relating to corporate liability refers to the prerequisites of affirmation that leads to the imposition of sanctions.

According to Art. 51 of the current Law 3691/2008, the imposition of administrative sanctions against legal persons requires the cumulative contribution of the following conditions:

(i) Commission of money laundering or any predicate offense mentioned in points c, d and e of Article 3 Law 3691/2008;

(ii) Commission of any of the above acts by a natural person acting either individually or as a member of a legal person's body and having director's status due to his/her power of representation or authority to make decisions on its behalf or exercise control within it;

iii) Commission of the act "in favor of" the legal person by each individual offender.

This format raises specific issues, particularly as to the connection of corporate liability with the (criminal) liability of natural persons and as to the requirement for a "benefit" incurred for the legal person. The following observations can be made:

First of all, the abovementioned provision refers to the imposition of administrative sanctions for legal persons, without dealing with entities lacking legal personality. It would be appropriate to introduce a provision that also covers associations without legal personality, since such entities play a vital role in Greek economy, instigating problems similar to those regarding the assignment of corporate liability.

As to the systematic inclusion of provisions allowing for administrative sanctions against legal persons, the Greek legislator (as recently expressed via the amendment of Art. 51 of Law. 3691/2008 in Law 4254/2014) opted to group them in a single provision now included in the law on money laundering.

However, including a similar general provision in the law on money laundering stirs a consideration in terms of systematic cohesion. One is left with the impression that the so-called "predicate offenses" -particularly those contained in the provision for corporate liability- are viewed in any case as ancillary to money laundering, while the threat of administrative sanctions against legal persons arguably refers to cases of non-confluent perpetrations to money laundering. On the other hand, grouping the conditions for administrative sanctioning cannot be seen negatively by default. Nevertheless, it would be more appropriate to isolate them in a special administrative provision to which criminal law may refer, instead of appending it within a criminal statute with an inherently "special" scope.

As to the connection with a particular offense, the current provision requires commission of any of the envisaged acts by a natural person acting either individually or as a member of a legal person's body and having director's status due to his/her power of representation or authority to make decisions on its behalf or exercise control within it. Therefore, a model of "derivative" corporate liability is adopted, based on the so-called "alter ego" theory, where the bodies or representatives of a legal person are identified with the legal entity itself, according to the system promoted by the EU. One could also advocate for an "original" corporate liability model, assigned directly to the legal person and associated with its operations. Even in this case, though, corporate liability could not be understood as completely independent of a conduct typified as an offense. Nonetheless, the censurable conduct may result from combined actions of several representatives of the legal person, in a way that all prerequisites for individual criminal responsibility cannot be affirmed for each one. Moreover, depending corporate liability from its natural person counterpart is a potential source of problems when the individual perpetrator cannot be identified or prosecuted, thus rendering even the incidental reasoning as to his/her criminal responsibility unclear.

Consequently, it is clear that it would be better to select a sanctioning system for legal persons-corporations on the basis of independent criteria relating to a typified (criminal) behavior against legal rights that are also attributable to the legal entity itself. Instead, a model of corporate administrative liability could settle for an affirmation of dangerous business practices, which permits criminal conduct within the legal person, without recognizing a kind of corporate "collective knowledge" and "collective will". Still, such models are effective primarily (or exclusively) in a system acknowledging corporate criminal liability.

Such a corporate (administrative) liability system also would not require for an association of the perpetration to a "benefit" incurred for the legal person, as envisaged by the current Art. 51 of Law N. 3691/2008.

In any case, even if such a connection remained as a condition for affirming corporate liability, it might be sensible to further clarify it for reasons of avoiding

purely subjective interpretations and to establish it on concrete evidence proving the tangible benefit gained by the legal person or enterprise.

With these in mind, one could formulate the following criteria, which should test out independently, i.e. in relation to the legal entity or corporation itself:

- Criminal infringement of legally protected interests of third parties (: not belonging to the legal person itself) as a starting point for affirming administrative liability. The disengagement from the requirement to establish criminal liability of a specific natural person does not imply detachment from typified criminal violations, but may (and should) require the infringement of legal interests in the manner and under the circumstances described in the relevant criminal provision. Thus, the law could call for a breach of public property via fraudulent conduct by joint acts of a legal entity's executives.

- Opting for administrative corporate liability mitigates the need to adopt a system of derived liability that faithfully responds to the offense structure under the criminal law doctrine. However, compliance to the constituent elements of actus reus for each offense could be required as a bare minimum, even when violations are formulated through the combined acts of several individuals. Beyond that, extending certain defences (in favor of the natural person) in the field of corporate liability could be a possibility, if their application is justified by the circumstances of the case.

- An equitable system monitoring the conduct of collective entities should establish objective criteria allowing for the attachment of accountability based on the overall functioning of the "defendant" legal person. One could refer to a "dangerous modus operandi" of legal persons or enterprises, setting the grounds for the manifestation of illegal conduct within it. In this sense, precarious functioning could include decisions or instructions for the perpetration of offenses, poor organization, deficiencies in monitoring, failure to assume preventive measures, or even diversion of the legal person-enterprise from its purpose. This requirement could be the basis for recording a series of business practices jeopardizing legal interests, including several of the practices involving offshore companies.

- Regarding the imposition of administrative penalties against legal persons or enterprises, a causal link should exist between the dangerous modus operandi (as previously described) and the violation of legal interests to which this should have led, or at least have contributed by actually facilitating it.

Finally, one could consider the opportunity to release the legal person from the discussed liability when it pleads and proves an inability to comply with its obligations in the given case. This possibility should be envisaged in an explicit provision, as the affirmation of the above conditions does not include (negatively) instances such as decision making under force majeure, and because asserting the above requirements will create a "presumption of administrative accountability" that may be rebutted only if it appears that the entity-business could properly adapt its operations in the specific case (for reasons evading the intervention capacity of its directors).

**V. Typology of (administrative) sanctions against legal persons-enterprises**

The threat of imposing (exclusively) administrative sanctions against legal persons is in line with Greece's international commitments. International practice up to now accepts almost categorically the capacity of legal orders to autonomously determine the nature of the sanctions, according to the assumptions of their legal systems.

What all relevant international instruments demand is the threat of effective and dissuasive sanctions that are proportionate to the infringement. In turn, the effectiveness evaluations emphasize on "functional equivalence" between criminal and "non-criminal liability", verifiable through empirical data (inter alia).

In relation to Greek legislation's special administrative penalties against legal persons for economic criminality or corruption in the course of their operations, the following comments could be made:

- *Administrative fine*: Given the sanctioning nature of administrative fines imposed on legal persons, they cannot be aggregated with the corresponding (pecuniary) sanctions against natural persons, with both types of penalties imposed separately, as dictated, e.g., in Art. 51 § 4 of Law 3691/2008.

- *Permanent or temporary revocation or suspension of license or disqualification from the practice of business*: reserved for serious cases, especially when involving a large number of corporate executives.

- *Prohibition of practicing certain business activities or establishing branches or increasing share capital*: less drastic than the previous, as it specifies areas of corporate activity whose exercise is prohibited. This category could include *temporary suspension or cessation of activity for branches* where illegal acts were committed to the benefit of the company.

- *Permanent or temporary exclusion from public benefits, aids, subsidies, awards of works and services, procurement, advertising and all public tenders*: a particularly effective sanction envisaged in almost all relevant international legal documents. However, the issue of awarding public procurement to subsidiaries of sanctioned legal persons should be regulated. Furthermore, the "integrity clause" (recently introduced by Law 4281/2014) concerning contracts already concluded should be taken into consideration.

These sanctions could be supplemented by the following measures, which are envisaged in other legal orders:

- Compulsory dissolution and liquidation ("corporate death"): an extreme measure that could harm the employees of a particular corporation who were not involved in illegal activities more than the real culprits, who often continue their activity through other partnerships. It should thus only apply to exceptional cases and be enforced sparingly.

- "Placement under supervision" is an appealing sanctioning option for legal persons whose function contributes to financial criminality and corruption. It could be

imposed without acknowledging corporate criminal liability (thus empowering the existing arsenal of administrative sanctions in Greece) and applied against tax offenses to control and prevent relevant recurrent violations of corporations.

- An important part of measures aimed at tackling financial crime and corruption is associated *rules of corporate self-compliance*, the adoption of which is required by competent authorities in several legal orders. Therefore, it would be appropriate to envisage an obligation for legal persons-businesses who violate their duties under administrative law to establish internal codes of corporate governance and corporate responsibility.

These sanctions should be applicable not only to "ordinary" tax violations, but to all crimes against public property (e.g. fraud) and corruption in the public sector, given the conditions above apply.

The debate on sanctions against legal persons cannot ignore the capability to *seize and confiscate assets*. It is required to discriminate between restorative and punitive measures, thus designating the nature of the respective requirements for seizure and/or confiscation. Similarly to what applies to natural persons, such forms of recovering criminal proceeds should retain their principal character; (administrative) punitive sanctions will act as supplementary penalties aiming to further impair the corporate assets. Moreover, it would be appropriate to preserve the distinct roles of the administrative procedure (as to corporate liability) and criminal proceedings against natural persons. Thus, obligations imposed under each process must be resolved according to the individual rules, since corporate property can not be added up to natural persons' assets. Therefore, as regards the provisions on money laundering, the legal entity to which assets are transferred should be considered a "third party", thus triggering the application of relevant provisions.

Finally, a system of purely administrative penalties against legal persons should include certain safeguards for the effectiveness of international cooperation. For example, an explicit provision should make envisaged (administrative) sanctions in Greek law equivalent to criminal sanctions for the purposes of international judicial (and administrative) cooperation, after the German model.

**VI. The imposition of administrative sanctions on legal persons by the respective authorities – The need to "rationalize" the relevant material competence**

The fragmentation of the institutions competent for imposing administrative sanctions is a setback of the current legislative framework.

Since corporate criminal liability is not acknowledged in Greece, and given the previous deliberation on the (constitutionally and expediently doubtful) imposition of administrative sanctions by criminal courts, it could be appropriate to grant (at least the majority of) powers of imposing administrative sanctions on legal persons to a single, non-partisan competent agency whose decisions should be subject to judicial review.

Thus, it is proposed to remove the relevant powers from the competent Minister(s) and grant them to an independent administrative agency (Authority for the

imposition of Administrative Sanctions to Legal Entities and Enterprises), comprised (indicatively) by an ex-administrative judge, the (local) Head of the Financial Crime Unit, and a member of the State Legal Council. Its resolution could be contested before the Administrative Courts, which may review both substantive and legal issues, including the reasoning of the contested decision. Thus, the imposition of administrative sanctions can be detached from political weightings and the judicial review ensured.

An exception could apply as to tax penalties, which should still be imposed by the locally competent tax office. A possible intervention here could involve the creation of a special sanctioning unit (statutorily detached from the auditing unit) operating independently from the Tax Authority director, and the persistence in envisaging specific fines (based on objective criteria) to ensure uniformity and, consequently, legal certainty. Combined with the proposed introduction of *placement under surveillance*, one could speak of a "tax profile" for each legal entity-enterprise, accessible to various authorities but also permitting the imposition of scalable sanctions when a legal entity perpetrates multiple tax violations.

Finally, the usefulness of the administrative complaint system before the Dispute Resolution Directorate could be evaluated to determine whether it works in practice, by "filtering" the number of cases brought before the administrative courts. If the system is found (through empirical data analysis) to fall behind the desired goals, improving interventions or the restoration of a temporary judicial protection system could be discussed.

**VII. Accountability of representatives**

Excluding corporate criminal liability has an offshoot related to the possibility of attributing (criminal) liability for *omissions*, especially in cases of "delegation of duties" (e.g. for supervising the activities of subordinates). The conditions for imposing criminal sanctions in such cases should allow neither for the concealment of detrimental conduct, nor for the diffusion of criminal liability to "bystanders".

Initially, one observes a "regulatory confusion" in legislative documents aiming at the criminalization of liability for executives' omissions, which is technically typified using three approaches: a) by establishing genuine omission offenses, either by emphasizing on the absence of supervision measures or by incorporating (inter alia) a specific detrimental effect on the actus reus, b) by establishing provisions explicitly stating that certain representatives of legal entities are considered principals (or, where applicable, accomplices) of the envisaged offense, and c) through provisions directly or indirectly establishing a special legal obligation for specific representatives, so that they may be held criminally responsible (also according to Art. 15 GPC) for acts of corporate bodies they failed to prevent. In analyzing these stipulations, a lack of consistency in regulating similar issues is apparent, while some of the provisions in question come dangerously close to recognizing criminal liability without describing a specific behavior linked to the illegal outcome and without presenting a comprehensible subjective connection between the person and the attributed act. In other words, criminal offenses are constructed around the objective status of the natural person as its "core" element.

Apart from the fact that strict liability is not constitutionally acceptable in Greece, introducing "ex officio responsibility" could not be based on general conceptions such as the theory of guarantor status: a) because they are also constitutionally challenging, mainly due to the inherent ambiguity as to the terms for affirming criminal liability, b) because they cannot effectively capture the complexity of control and decision-making mechanisms that govern the function of modern corporations, and c) because (even under the very theory of guarantor status) it is difficult to conceive of a director's "guarantor status" over all subordinates' acts, which should thus be treated as "permanent sources of risk"

In mere "lack of supervision" by a director, the requirement of a special legal obligation is typically absent, while no such requirement can be inferred by citing "non-regulated" cases. Therefore, it is imperative to select those cases of failed supervision that are in fact crime-related, and typify them as crimes of *genuine* omission, with a description of the objective and subjective conditions for the affirmation of criminal behavior. Such a case is the herein suggested provision on failure to preventing passive or active bribery by a subordinate. Although the concurrent application of the provisions on participation found in the general part of the GPC (together with Art. 15 GPC) cannot be a priori excluded for such cases, a crime of genuine omission in the sense of this paper could require the affirmation of amplified mens rea (e.g. direct instead of indirect intent), thus leaving a certain range of application (threatening a more lenient penalty) for the general provisions.

On the contrary, attributing criminal liability to natural persons (whenever they do not fulfill the requirements of the offense's special constituent elements) requires a particular legal obligation to protect the legal interest from (internal or external) infringements. This option is consistent with the nature of the criminal behaviors analyzed herein, which (corruption offenses excluded) are essentially violations against ownership/property.

In any case, the application of the relevant provisions (i.e. those proscribing the specific offenses in conjunction with the general rule of Art. 15 GPC) should be strictly linked to omissions associated with the activities of the legal person and grounded on the following conditions: a) ability to be aware of the situation that calls the legal representative or any competent executive into action, b) proof of actual capacity to exercise authority via decision-making and/or supervision in the specific field of corporate activity where the criminal result materialized, which allowed the director (or anyone replacing him/her under delegation or transference of authority) to prevent the relevant behavior or supervise others, c) omission resulting to breach of managerial or supervision duties, and d) fulfillment of the crime's mens real, through both the cognitive and volitional elements (given that the relevant detrimental behaviors require ascertained intent).

Introducing such a special legal obligation does not necessarily intend to establish a principal perpetrator's liability for the "superior" in all cases. That would require the capability to autonomously prevent the detrimental conduct of third parties, and the adoption of a theoretical viewpoint on the possibility to accept double simultaneous accountability for act and omission, which should be left open for interpretation.

In this context, the (administrative) corporate accountability will be independent of the affirmation of criminal liability of a specific representative, and will only depend upon its own elements, even on the basis of a combined action of its various bodies. Thus, the focus will shift to the legal entity itself, thus indirectly effecting the assertion (or not) of representatives' criminal liability, a field where less abuse is expected in practice under the proposed model.

The model's approach to the responsibility of representatives for tax offenses is noteworthy. Currently, Article 20 of Law 2523/1997 and Article 25 §§ 2 & 3 of Law 1882/1990 establish principal liability for tax offenses against the tax liability of legal persons (or other collective entities) according to a checklist of standardized attributes ascribed to certain individuals. Thus, criminal responsibility is envisaged even for persons are (de jure or de facto) unrelated to the entity, and therefore have no actual ability to enforce compliance with the financial obligations of the entity at the tempus delicti. It is obvious that such provisions serve "tax collection" by promoting an "automation" of criminal indictment that essentially approaches towards recognizing strict liability with the affirmation of certain attributes being the basic criterion. It is therefore proposed to abolish the checklist and approach criminal liability on the basis of the specific legal elements of each (tax) offense. However, the legal representatives bear principal liability when they fail to prevent acts of third parties in the above sense, provided that they have real deterrence ability through decision-making or supervision or control over them. Furthermore, even if legal representatives delegate their authorities on fulfilling the tax obligations of the legal person or collective entity to third parties, they are still mandatorily responsible for their supervision and, by extension, could still be liable as principals by omission under the abovementioned conditions if the third parties commit tax offenses as described in Articles 1-4. Finally, given that the delegation of responsibilities and the perpetration of tax offenses by third parties may occur within private enterprises, especially when they have a complex internal structure and hierarchy, it is expressly provided for the identity of legal grounds that the previously mentioned conditions will apply mutatis mutandis in these cases.

Moreover, joint liability for certain individuals as to legal entity tax debts raises significant issues. Generally, tax authorities allocate all corporate taxes due to their managers, conveying all relevant legal issues to administrative courts. The risk entailed in this approach is a serious disincentive for capable employees to occupy positions of responsibility. It is imperative to remove this deterrent through express provisions which will not leave room for misinterpretation.

For cases where personal responsibility of representatives for tax debts of legal persons will endure, it seems appropriate to legislatively determine a point in time for triggering such accountability (e.g. debit note) other than the "dissolution, merger, conversion or division" of the legal person, as evidenced by the diachronically applicable provisions, including Art. 50 of the Code of Tax Procedure. Setting the time of "dissolution or merger" as crucial for establishing joint liability of representatives has led to the irrational outcome of leaving the implementation of the relevant provisions to the discretion of managing executives to dissolve (or not) the legal person, as its continuation practically acts in favor of the latter. Similar

problems are linked to the current relevant provisions, particularly in Art. 25 of Law 1882/1990. The liability of the “last manager” must give way to an accountability system that focuses on those who exercised active management at the time when the debt incurred, and are criminally accountable for their respective acts (omissions). Finally, the principle of subsidiarity requires a rationalization of the relationship between provisions establishing civil-administrative and criminal liability respectively. It is inconceivable for the legislator to acknowledge criminal liability for natural persons who do not bear civil accountability for debts of the legal person to third parties.