

LIABILITY OF CIVIL SOCIETY PARTNERS FOR TAX LIABILITIES AND MANDATORY INSURANCE CONTRIBUTIONS

The civil corporation contract is legally settled in art. 357 of the Obligations and Contracts Act (OCA) of the Republic of Bulgaria. An unincorporated entity may be established by a contract between two or more persons who intend to unite their activities to achieve a common economic goal. According to the civil law of the Republic of Bulgaria the unincorporated entity does not have a separate legal personality, i.e. the participants in it are holders of the rights and obligations according to their participation. The unincorporated entity does not have either substantive or procedural legal capacity.

In the administrative and civil proceedings the unincorporated entity is not a party. According to Article 15, paragraph 1 of the Administrative Procedure Code of the Republic of Bulgaria (APC) parties to the administrative proceedings are the "administrative body, the prosecutor and any citizen or organization whose rights, freedoms or legitimate interests are or could be affected by the administrative act." **§1, item 2 of the APC** provides a legal definition of "organization": "any legal person or an association of legal or natural persons, which is organizationally distinct in pursuance of a law". In order to participate in the administrative proceedings the association shall have rights and obligations, which provide it with legal capacity and it shall be legal capacity under the public law. Therefore, the organizations referred to as parties in the APC, are those associations which by law can be subjects to public rights and liabilities and this is the criterion to differentiate them¹. **Therefore, the civil**

¹ Court decision No. 7703 from 25.06.2008 on administrative case 5874/2008 of the SAC and decision No. 231 of 07.01.2011 on administrative case 14624/2010 of the SAC".

corporation cannot be a party in the administrative process. The same applies to civil proceedings. Only the persons who have legal capacity under the substantive law may become parties. The court monitors the legal capacity *ex officio*.

A proper party both in the administrative and the civil proceedings may be the partners or partner involved in compliance with the civil corporation contract.

Unlike the administrative and civil procedures, in tax procedures civil corporations are considered separate legal entities. The Tax-Insurance Procedure Code of the Republic of Bulgaria (TIPC) assumes that the civil corporation has its own legal capacity.

According to Art. 9, para. 2 of the TIPC unincorporated entities and insurance funds in proceedings under the Code shall be treated as legal persons. Within the meaning of Art. 1, para. 2 of the Accounting Act of the Republic of Bulgaria (AA) unincorporated entities are enterprises. Therefore, civil corporations established under the OCA, including those under Art. 276 of the Commercial Act of the Republic of Bulgaria (CA) should keep separate accounting under the general rules of the accounting laws and standards. With regards to the procedures for establishing liabilities for taxes and mandatory social security contributions, **including in proceedings for imposition of interim measures and on appeals of tax assessments the unincorporated entities are treated as legal entities. Ie. for tax purposes unincorporated entities /civil corporations, incl. the consortium under Art. 276 of the CA/ should be considered as separate legal entities**, which are subjects of tax rights and liabilities.

As evidenced by art. 9, para. 1, sentence. 1 of the TIPC in proceedings under the Code unincorporated entities have their own legal capacity and the imposition of

preliminary injunctions under art. 121 of the TIPC cannot be carried out against the individuals involved. The latter **is supported by the second sentence of Art. 9, para. 1 of the TIPC which provides for a subsidiary responsibility of the individuals participating in the unincorporated entity and only in case of commencement of enforcement of established public debts.** Prior to the issuance of the tax assessment bill, its delivery to the civil corporation and the expiration of the 14-day period for voluntary compliance, enforcement against the individuals involved cannot be commenced. Therefore interim security measures under Art. 121 of the TIPC may not be imposed against individuals involved in a civil corporation.

According to Art. 127 in conjunction with Art. 9, para. 1 of the TIPC enforcement is directed only against the persons participating in the civil corporation upon the occurrence of the condition for enforcement. Only upon the issuance of the tax assessment bill and the expiration of the 14-day term for voluntary compliance, there will be grounds for commencement of enforcement. The latter may be directed only subject to subsidiarity and only against persons who are participants in the civil corporation, **to the amount of their participation at the time of occurrence of the grounds for enforcement.** Where no tax assessment bill is issued for tax liabilities and mandatory social security contributions, there is no ground for imposing interim security measures under Art. 121 of the TIPC against the persons involved. The participants in the civil corporation are responsible for the tax liabilities and mandatory social security contributions established by the tax assessment bill up to the amount of their participation. This means that the persons involved in a civil corporation are not responsible for the whole obligation established by a tax assessment bill for taxes and social security contributions.

It should be noted that the liability of the participants in a civil corporation is established if there is tax assessment bill subject to enforcement. Only the persons involved in the civil corporation at the time of enforcement may be held responsible, according to their participation in its liabilities. Enforcement and imposition of interim measures are admissible against the persons involved in the civil corporation only after fulfillment of the conditions under Art. 127 of the TIPC. In the event that any of the persons participating in the civil corporation is replaced by another person, the latter is responsible according to their participation for taxes liabilities and mandatory social security contributions at the time of enforcement. Where the share of a person is changed prior to the occurrence of the enforcement of the tax assessment bill, the relevant person will be responsible for the tax liability of the civil corporation within his changed share.

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