

The administration and management of a business have many liabilities. Among them, we mention tax liability.

In this regard, it is necessary to understand how the **tax liabilities** of managers and partners of the company work and the precautions that need to be taken.

Concept



The tax liability of administrators is the personal accountability of partners and/or managers for the tax credit constituted by an act practiced through violation of the law.

Thus, the tax credit will result from an excess of powers of your representatives and generally committing infractions of the company's articles of association or the law in question in order to have liability.

How does it work?

According to the current legislation on the matter, we can say that there are two possibilities of liability, they are:

- Joint Liability

In this case, it will be applied only when the taxpayer can't demand the credit, that is, by the company.

Thus, according to article 134 of the National Tax Code (CTN), its managers will appear as subsidiaries as subjects of tax enforcement.

In this way, they will be included in this passive pole, both the taxpayer as jointly liable.

It should be noted that for the administrator to be inserted as a solidary debtor, it is necessary to detect the infringement of the duties of supervision, good administration and representation, whether by actions or omissions.

- Personal liability of Employees

Unlike the previous case, in article 135 of the (CTN), the tax debt will appear in the name of the legal entity; however, due to **excessive practices** that violate the law, the articles of association, or the statute, procedural substitution will be carried out.

In this substitution, the obligatory relationship will fall exclusively on the person responsible for the act performed, replacing the company in the passive pole of the enforcement action.

Once established that the act of origin to the tax debt came from an action that does not comply with the law and other duties of the administrator, nothing is fairer than holding them exclusively liable.

Thus, there is no question of liability of the legal entity for the debt created.

Even so, it is necessary to emphasize that the attribution of responsibility for tax debts to managers will only occur if the irregularity of the act, such as a violation of the law, is proven.

However, it is possible to notice that the Applications of the Courts are not always following these determinations, so let's see their understanding below.

Application of the Courts

Although the law provides for the need for proof for the administrator to be included as responsible for the tax credit, it is possible to note that many courts do not necessarily follow this determination.

Most of the time, there is a requirement for the inclusion of partners and administrators in the passive pole of the tax execution, although the mere request is not enough, as they have been met.

In this regard, the administrators and partners are more frequently involved in tax enforcement actions with legal entities.

Due to this practice, the Superior Court of Justice decided that there is an expressed need to indicate the reasons for which they would be supporting the request for the personal tax liability of the managers or partners of the company.

If not done this way, the request will be rejected, and the partners cannot be held **personally responsible** for the tax amount due.

In this regard, it is clear that the mere default of the tax obligation will not be enough for the administrator to be held responsible, as provided for in Docket 430 of the STJ.

Thus, these are the main issues involving the **tax liability** of a company's administration. Did you like the content and want to learn more about the Law universe? Keep following our blog and follow our Instagram.