

**The general partner of the limited partnership is still held liable for bad tax debts?**

**The Constitutional Court of Hungary has recently published its decision in which it declared that it is a constitutional requirement that the participation in main proceedings and the right to appeal against decisions must be provided to the former general partner of the limited partnership as the secondary obligor as well; if the underlying responsibility of the general partner may arise.**

In the case, the tax authority imposed a tax differential and a tax penalty on the limited partnership. However, the tax authority was unable to collect the tax debt from the company, therefore the former general partner was required to pay it under the principle of underlying responsibility (i.e. on the basis of the rule that the general partner of the limited partnership must be held liable with his total assets for all debts that the company is unable to pay). The former general partner has filed a lawsuit for revising the administrative decision passed by the tax authority. The lawsuit was based on the fact that he became aware of the tax liability only during the enforcement procedure against the company, thus during the proceeding he could not exercise his right to defence and to appeal and he did not have the opportunity to comment or make a declaration. The court at first instance upheld the lawsuit of the petitioner. However, the Curia repealed the judgment of the court of first instance because it was unfounded.

The petitioner has filed a constitutional complaint against the decision of the Curia. In his motion, he referred to the violation of his right to make a declaration, to appeal and to the principle of fairness in tax proceedings.

The Constitutional Court has repealed the decision of the Curia due to the violation of the right to appeal as a fundamental right of the petitioner. It pointed out in its decision that it is a constitutional requirement that an opportunity must be provided to the secondary obligor, thus to the general partner of the limited partnership, the partner of the unlimited partnership to dispute the legal basis and the amount of the tax debt in the main proceedings and during the judicial review procedures. Whereas, the petitioner had no opportunity to exercise these rights, the Curia has repealed its decision.

It is apparent from the decision of the Constitutional Court of Hungary, that in subject matters similar to the underlying responsibility of the general partners an efficient defence can be built inter alia on constitutional rights.