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ECJ: Joint and several liability of a third party following insolvency and deletion from the commercial register

The request for a preliminary ruling from Bulgaria concerns the joint and several liability of a third party for the VAT debts of a person liable for payment of that VAT (a company) where that person no longer exists, and where the liability of that third party was not prescribed until after that company's liquidation. The Advocate General has submitted her Opinion.

The link between the person liable for payment of VAT and the third party is a contract for the supply of goods or services which was duly performed in the past.

According to the referring court, the Bulgarian provision in question appears to treat as sufficient the fact that the liable party (third party) knew or should have known that its trading partner would not discharge its tax debt. The referring court asks whether such a far-reaching provision governing liability for tax debts of a trading partner that has already been deleted is compatible with the provisions of the VAT Directive.

In summary, this is what Advocate General Juliane Kokott had to say in her **Opinion delivered on 4 September 2025**:

Article 205 of the VAT Directive must be interpreted as permitting no transfer of the tax debt to a third party but only ancillary liability for the tax debts of a person liable for payment of VAT where that tax debt has not been extinguished yet and that person still exists. The imposition of secondary liability following the conclusion of insolvency proceedings and the deletion of the taxable person from the commercial register is thus not covered by this Article.

Article 205 of the VAT Directive, read in conjunction with Article 273 thereof, permits also the imposition of liability on the recipient of a supply where that recipient knew or should have known that the transaction would lead to that recipient being involved in the commission of fraud on the part of his or her or its contractual partner, or where the recipient's conduct itself amounts to abuse. **However**, mere failure to pay the declared tax does not constitute VAT fraud. Provided that the recipient of the supply cannot be accused of abusive conduct, the mere fact that that recipient knew or should have known that his or her or its contractual party would not pay the declared tax **is not sufficient** to warrant that recipient **being held liable**.

Furthermore, the AG points out that the ECJ has previously made it clear that the 'regular' risk of insolvency (or risk of loss of tax revenue) in the case of a defaulting person liable for payment of tax should be minimized by other means (effective oversight, prompt enforcement) and not by transferring that risk to a third party. Accordingly, for example, a third party could not be denied a reduction in the taxable amount within the meaning of Article 90 of the VAT Directive after insolvency proceedings were opened in respect of its contractual partner's assets. (Judgment of 15 October 2020 C-335/19 E, para. 42) The same must apply to a possible secondary liability imposed retroactively following the conclusion of insolvency proceedings against the person liable for payment of VAT.

ECJ case reference **C-121/24 Vaniz** - Opinion of 4 September 2025.

Keywords

liability for VAT