Greek tax law pierces the corporate veil of companies for tax debts.

In July 2013, the Greek Parliament voted a new Tax Procedure Code (Law 4174/2013- Government Gazette ……/2013). The new Tax Procedure Code was implemented in order to facilitate the taxpayers in the fulfillment of their tax obligations, to enhance the use of e-communication between the tax payers and the tax authorities and to modernize the legal framework for the resolution of tax disputes in an administrative level. The new framework was welcomed by the tax professionals as entailing positive provisions which will increase the efficiency of the tax collection.

However, art. 50 of the said law is a surprise for shareholders, taxpayers and legal scholars. In accordance with par. 3 or the said article : "*If at the time of dissolution of a legal entity, there exist pending tax obligations of the legal entity, including withheld taxes, the shareholders or partners with a participation of at least 5% in the legal entity, are liable along with the legal entity for the said taxes up to the amounts that they have taken out of the legal entity as profits or other payments in cash or in kind from the legal entity due to their capacity as shareholder or partner of the legal entity during the last three years prior to its dissolution.*" Furthermore, par. 4 provides that any partner or shareholder with a participation of over 5% during the last 3 years before the legal entity is dissolved is also liable for any tax accrued during the period it held such participation, up to the amounts that they have taken out of the legal entity as profits or other payments in cash or in kind from the legal entity due to their capacity as shareholder or partner of the legal entity, provided that these taxes were still due when the entity was dissolved. The above provisions do not apply for listed companies.

The above mentioned provision is another example of tax provisions which do not take into consideration the core principles of corporate law and specifically company law.

It is the cornerstone of company law that the liability of the shareholders of a Société Anonyme or a limited liability company is limited to the amount of capital that they contribute in the company. This is essential since this limitation of its liability is the reason for which an investor is willing to participate in the company and risk the related capital. If the liability is extended to cover any obligations of the company including tax obligations the investor would be reluctant to participate in a new venture which might fail. Greek legal theory and case law accept the piercing of the corporate veil only when it is abusively invoked by the single shareholder who has acted in its transactions in such a way as to create the impression that he is one and the same with the company of which he is a shareholder, that the company's property is in fact its own and that the actual counterparty in a transaction is himself.

One can easily detect that such a rationale does not exist behind the newly introduced provision. It is important to note that the percentage which gives rise to such an obligation is rather low (only 5%). Therefore, it is highly likely that minority shareholders will be obliged to contribute to the tax liabilities of the company although they have no participation in the decision making process. On the other hand, one could argue that the liability of the shareholders is limited to amounts that they have actually received from the company during the last 3 years before its dissolution and thus justified. If the amounts were not paid to shareholders then the

company would have the necessary cash to do away with its tax obligations. In essence, this provision implies that these amounts should have never been actually paid to the shareholders since the company had other pending obligations. Regardless of the fact that there are specific provisions of company law which are supposed to block the distribution of profits to shareholders when the financial situation of the company does not justify it (*see* art. 44a of law 2190/1920 implementing art. 14 of the Second Company Directive), one cannot avoid noticing that the said liability extends to a 3 year period, i.e. may cover a time when the company was in a position to cover its tax obligations and therefore the distributions were justified. In other words, one can argue that the shareholders are punished for future failures of the management of the company.

Concluding, it must be stated once again that the need for the Greek tax authorities to collect additional taxes does not justify such a breach in the dogma of corporate law and surely does not help the efforts of Greece to attract investors. It is a characteristic example of the lack of capacity of the legislator to understand the needs of businesses and deal with them in an efficient and friendly manner. Shareholders must now make sure they do not spend any money they collect from their investment for a period of 3 years as the tax authorities might ask them to return it!