



# Tax liabilities of Legal Representatives and Liquidators

In the regular course of business and on account of multiple factors it is common for shareholders of a business company to opt for dissolving and liquidating the business concern. Under this scenario, it is relevant to consider liability regulations applicable not only to the members of the same depending on the company type but also to the legal representatives and liquidators.

Taking the above into account, in this bulletin the Tax Area would like to remind our clients the main aspects to be considered by the legal representatives and liquidators of a company in the liquidation process and upon liquidation of the same before Tax Authorities.

## I. In the liquidation process:

First of all it is necessary to underscore that according to the provisions under Article 847 of the Tax Code, upon occurrence of the cause for dissolution of the business concern, two obligations arise:

- i) Give **notice to the collection office** of the corresponding Tax Authorities within 10 days from the date on which the event producing the cause for dissolution occurred. The legal representative is liable for this obligation and has been established so that such Authorities may inform any overdue tax obligations in charge of such company<sup>1</sup>; and
- ii) Endeavor payment of company debts while respecting the **order of precedence of tax credits**. The liquidator is liable for fulfilling this obligation.

In the event of failing to comply with the above obligations, the legal representative that failed to give notice and/or the liquidator that disregards the precedence of tax credits will be jointly and severally liable for unpaid debts of the Company<sup>2</sup>.

## II. Upon conclusion of the liquidation process and once the company is liquidated:

Once the company has been liquidated, the legal entity disappears and consequently it may not be subject to rights and obligations. Likewise, as stated by the Council of State<sup>3</sup>, the

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<sup>1</sup> Once notice is given, the tax authority is required to provide within 20 days information in connection with outstanding tax debts and obligations in charge of the company. If no pronouncement is made within such 20 day time period, the liquidating proceeding may be move forward.

<sup>2</sup> The liquidator shall be and jointly and severally liable for the tax debts of the company undergoing liquidation, if the same omits to include in the precedence of the credits the tax obligations such liquidator may have learned of in the response from the tax authority to the request from information in connection with outstanding debts or by any other means.



liquidator loses the legal representation of the company and may not be required to comply with tax obligations in charge of the liquidated company.

Notwithstanding the above, it is necessary to observe the provisions under Article 255 of the Commercial Code which states that the liquidator is liable before members and third parties (including DIAN) for any damages caused by negligence or default of the duties and obligations of the same.

Likewise, it is important to take into account that it does not suffice for tax purposes to cancel the trade registration since it is necessary also to carry out cancellation of the RUT of the liquidated company before DIAN.

We hope the above information will prove to be useful and relevant.

We remain at your disposal to provide any additional information you may require on this matter.

Sincerely yours,

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<sup>3</sup> Sentence of 23 April 2015 from the Fourth Section of the Council of State, Reporting Justice Martha Teresa Briceño de Valencia.