THE LIABILITY OF COMPANY MANAGERS FROM THE IMPOSITION OF ENVIRONMENTAL TAXES AND ENVIRONMENTAL TAX PENALTIES ON LEGAL ENTITIES:
DOES IT PROMOTE SUSTAINABLE DEVELOPMENT?

Sustainable Development, Environmental Taxation, and the Liability of Corporate Managers in Greek Law.

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Introduction to Sustainable Development and Tax Policy

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The Foundational Concept of Sustainable Development

Definition (Greek Law/Jurisprudence): Development meeting the reasonable needs of the present without compromising future generations' ability to meet their own needs.

Key Principles: Preservation of natural resources *in perpetuity* and linkage to the cultural environment (viability/sustainability).

Sustainable Development Beyond the Environment: The ESG Framework

Scope: Extends to social, economic, and governance issues.

UN 2030 Agenda & 17 SDGs: Coordinated action for people and the planet (eradicating poverty, changing unsustainable consumption, managing resources).

Core Criteria: Environmental Protection, Economic Development, Social Advancement.

The Role of Tax in the ESG Paradigm

ESG Symbolism: Environmental, Social, and Governance.

Tax Relevance (Prof. Kerrie Sadiq): Tax funds 'E' (Environmental) and 'S' (Social); Corporate Tax Governance is crucial for 'G' (Governance).

Tax Transparency: Builds confidence in a firm's contribution to the 'S' component.

Taxation as a Tool for Environmental Protection

Dual Aims of Environmental Taxation:

1. **Financial Support:** Funding environmental policy, providing 'green development' incentives (e.g., renewable energy credits).
2. **Discouragement:** Deterring pollution via environmental taxes/fines (e.g., carbon tax), changing consumer behavior.

The Liability of Company Managers in Greek Tax Law

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Research Focus & Structure

Focus: Sustainable Development and the liability of company managers for environmental taxes/sanctions in Greece.

Study Parts: 1. Manager Liability for Tax Debts. 2. Limitation of Rights and Proportionality. 3. Environmental Tax Law (A New Discipline).

Manager’s Liability: Legislative Framework Evolution

- **Nature of Liability:** Joint and several liability (*ex lege*), exceptional, additional, and guarantee nature.
- **Evolution in Greek Tax Legislation:** From L. 2238/1994 => Art. 50 L. 4174/2013 => Art. 50 L. 4987/2022 => **Current: Art. 49 L. 5104/2024 (New TPC).**

Shift from Objective Liability to Fault-Based Principle

- **Old Regime:** Objective liability based *solely* on position; jointly and severally liable even without involvement/fault in the debt's creation.
- **New Regime (L. 4646/2019 => Art. 49 L. 5104/2024):** Abolition of "10% small shareholder" liability, ***Introduction of the Principle of Fault*** (Presumed liable, unless they prove absence of fault in management).

Rationale for Joint and Several Liability

State Goal: Ensure rapid and effective collection of tax revenues (including environmental taxes/penalties).

Mechanism: Institutionalizing joint and several liability for those exercising administration to prevent neglect of tax obligations.

Judicial Protection for Company Managers

Current Position (Art. 49 par. 4, New TPC): Managers can file an **administrative tax appeal** (to a higher Tax Authority), but were traditionally considered "third parties" without the right to a subsequent **judicial appeal**.

Debate: This limits effective and complete judicial protection, confining challenge options.

New Liability: Failure to Submit Sustainability Reports

- **EU Directive 2022/2464 (L. 5164/2024):** Incorporating corporate sustainability issues (Environmental, Social, Human Rights, Governance).
- **Manager Responsibility:** Members of the Board/administration are *de iure* and *de facto* responsible for submitting ***Sustainability Reports*** (management reports, corporate governance statements) containing necessary information on the business's impact.

Limitations, Proportionality, and the New Discipline

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Limitation of Rights via Joint and Several Liability

Conflict: *Ex lege* joint and several liability limits fundamental rights of managers.

Key Rights Affected: 1. The Right to Property. **2.** The Right to Effective Judicial Protection.

Right to Property and the Principle of Proportionality

Limitation Principle: Property rights can be limited for "social solidarity," but the tax burden must not exceed the "reasonable tolerance limit."

Core of the Right: Limitations must not "inactivate" the property or "affect the core of the right."

Conclusion: <u>Manager liability for another legal person's debts must be limited by the **Principle of Proportionality**</u> (e.g., by examining culpability).

Right to Effective Judicial Protection

Core Question: ***Is limiting legal remedies for managers of the legal entity's debts necessary and appropriate?***

Old Regime Deficit: Only an administrative appeal/objection was allowed, leading to "incomplete" protection and affecting the "core" of the right.

Judicial Recourse and the Council of State

Landmark Decision (CoS 498/2020): Managers, as jointly and severally liable persons, have the **right to exercise both an administrative tax appeal and a judicial appeal** (under the Code of Administrative Procedure).

Impact: Overturned previous case law to ensure **full and substantial judicial protection** and restore the "fair balance" with public (fiscal) interest.

Environmental Tax Law: A Dedicated Discipline

Definition of Environmental Taxes: Imposed on physical objects/uses with a negative impact on the environment.

Purpose of Sanctions: Achieve compliance and use tax policy as a "vehicle" for environmental protection.

Goal: Protecting the environment for future generations.

The Dividend of Environmental Taxes

1. **Behavior Modification:** Reducing pollution and resource consumption, enhancing environmental awareness.
2. **Economic Boost:** Promoting "ecological innovation," strengthening the "green" economy through investments (e.g., renewable energy) and job creation.
3. **Incentives:** Tax breaks, reduced taxation for "ecological" investments.

Superiority of Environmental Taxes

Advantages (EEA/OECD):

Less distortive (compared to income tax).

Limited Tax Avoidance: Environmental cost is incorporated into the price of the product/service at purchase/use (tax revenues are better protected).

Fairness: Burden falls only on those engaging in environmentally harmful behavior, not on all of society.

Sustainable Development as a Form of Proportionality

- **Constitutional Harmony:** The principle of sustainable development balances the "economic" Constitution (economic development, property rights) with the "environmental" Constitution (environmental protection).
- **Core Argument:** Sustainable development **contains the element of proportionality**, weighing and harmonizing legitimate, often conflicting, constitutional interests.

Conclusions and Proposals (I)

Fair Taxation: Taxpayer engaging in harmful behavior is taxed proportionally to their polluting activity (***Sustainable Development => Proportional Tax Equality***).

Constraint: Rights (economic freedom, property) are exercised *while* ***respecting the "environmental reserve"*** for future generations.

Proposal: Recognition of **"*Environmental Tax Law*"** as a separate scientific discipline.

Conclusions and Proposals (II): *Environmental Taxation & Manager Liability*

Imposition of environmental taxes & administrative sanctions on managers of legal entities due to their joint liability.

Taxation is used for environmental protection ("green" policy), collecting revenue but also providing relief.

Challenge: **Transferring liability from the legal entity to managers raises questions of effectiveness**.

Need: **Application of the principle of proportionality to maintain a "*fair balance*" between environmental protection and taxpayer rights**.

Conclusions and Proposals (III):*CJEU Decision (C 1/21): Conditions for Liability*

Manager Status: Proof of the person's participation in decision-making within the legal entity.

Bad Faith Acts (*Mala Fides*): The manager acted in "bad faith" through acts like hidden profit distribution or transferring assets below market value.

Causal Link: A direct link must exist between the bad faith acts and the legal entity's inability to pay the tax.

Liability Limit: The manager's liability is strictly limited to the amount by which the legal entity's assets were depleted.

Auxiliary Nature: Liability is established only "in the alternative," meaning only if it is impossible to recover the debts from the legal entity itself.