

TAX LIABILITIES OF THE BOARD MEMBER IN LATVIA: LEGAL-ECONOMIC ASPECTS

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Abstract

Research purpose. To analyse the content of legal acts regulating the personal responsibility of the Member of the Board for overdue tax payments by a legal person, to carry out an analysis of the legal and economic conditions of business development.

Design/ Methodology/ Approach. The study is based on the economic and legal analysis of legal acts using descriptive, analytical, deductive and inductive methods, on the basis of which the authors draw conclusions about the responsibility of the Members of the Board, their rights and obligations towards the state and society, deliberately avoiding compulsory taxes. The research has been created as a systematic review, including searching in databases The Legal acts of the Republic of Latvia and The Commercial Register of the Republic of Latvia, specific literature, publications of expert, methodically analysing, compiling and including and excluding information.

Findings. The responsibility of the Member of the Board for losses incurred by a legal person in Latvia has so far been an insufficiently researched topic and there is a lack of publications and case summaries. This creates problems for the uniform application of the law in practice. This study will analyse current issues – the conditions for the responsibility of a Member of the Board as a natural person for the tax liabilities of a legal person, analysis of statistical data. Changes in statistical data and legislation in the study cover the period from the entry into force of changes in legislation that provide for the personal financial responsibility of the Member of the Board for a legal person's tax debts.

Originality/Value/Practical implications. The study contributes to the analysis of the business environment in two aspects: 1) economic aspects related to changes in the legislation on the personal responsibility of the Member of the Board for corporate tax debts; 2) the legal conditions that affect the role and responsibility of the Member of the Board in a commercial company in case of damages.

Keywords: Tax liabilities; entrepreneurship; responsibility of the member of the board; law; Latvia

JEL codes: K20

Introduction

National tax policy is linked to all major processes in the country – competitiveness, purchasing power, exportability, as well as the promotion of demography and innovation. According to the Ministry of Finance, state tax policy also has a significant impact on employment, business environment and structure, as well as it determines the volume and quality of public services (Ministry of Finance of Republic of Latvia, 2019).

The system of taxes and duties of the Republic of Latvia consists of: state taxes, state duties and municipal duties. State taxes are mandatory payments specified by law in the state budget or local government budgets. State duties are a mandatory payment to the state budget or, in the cases specified by law, to the local government budget as compensation for security provided by public authorities for

business or services rendered, as well as for specific purposes prescribed by law - maintenance and development of roads, ports and communication systems, ecological protection of the population and nature, the improvement of the territory and other purposes (Ministry of Finance of Republic of Latvia, 2019).

Latvia together with Estonia and New Zealand ranked in the top three in the International Tax Competitiveness Index Survey among all OECD countries in 2016. More than 40 different indicators, measuring not only the tax burden, but also the tax structure, including state corporate taxes, personal income taxes, property taxes, consumption taxes, and the taxation of profits earned abroad have been taken into account in the assessment. The purpose of the index assessment is to assess the extent to which a national tax system is based on competitiveness and neutrality. If these two conditions are met, it contributes to sustainable economic growth and investment, as well as provides sufficient income for national priorities (Tax Foundation, 2016).

In order to increase the efficiency of tax collection and administration, as well as to increase the level of responsibility of the current or former Members of the Board of a legal person with regard to the payment of taxes to the state or local government budget, changes in the Law 'On Taxes and Duties' entered into force on 1 January 2015, which provide the personal financial responsibility of a Member of the Board for the tax debts of a legal person. In accordance with Paragraph 170 of the transitional provisions of the Law, the responsibility shall apply to the late payment of the tax due by the legal person, which have been incurred after 1 January 2015. The changes in the Law are due to the fact that the State Revenue Service (SRS) often has to recognize, when collecting tax debts, that the company has neither financial resources nor assets to cover its debt. In accordance with Section 221, Paragraph one and Section 301, Paragraph one of the Commercial Law, the Board is the executive body of a capital company, which manages and represents the company. According to Paragraph 170 of the Transitional Provisions of the Act, the liability shall apply to the late tax payments of the legal person established after 1 January 2015. The responsibility of the Members of the Board of a corporation is laid down in the first paragraph of Section 169 of the Commercial Law, according to which a Board Member must perform his duties as a diligent and careful owner. In addition, the second paragraph of Section 301 of the Commercial Law emphasizes the responsibility of the Board of the Joint Stock Company for the commercial activities of the Joint Stock Company, as well as for the accounting in accordance with the law (Legal acts of the Republic of Latvia, 2015; Saeima of the Republic of Latvia, 2015; Public administration official publisher 'Latvijas Vēstnesis' information platform, 2015).

The shadow economy in Latvia is still larger than in the two Baltic neighbours Lithuania and Estonia. The largest part of the shadow economy in Latvia consists of underreporting of business income or tax evasion, which accounts for almost 45% of the total shadow economy in Latvia; its tax evasion discipline is assessed in the annual Baltic State Shadow Economy Survey of Stockholm School of Economics in Riga (Sauka, Putnins, 2018). The study concludes that the Members of the Board of a legal person often do not behave as diligent and careful owners in carrying out their duties. However, under the Commercial Law, the responsibility of a Member of the Board of a legal person for the breach of duty may only be claimed by the creditor of the legal person in the event of failure to obtain satisfaction from the legal person itself and it is possible to prove, that a Member of the Board has caused damage to a legal person through his actions. Although the SRS becomes a creditor of a legal person in the event of failure to pay overdue tax payments within the term prescribed by regulatory enactments, the SRS does not conduct a personal assessment of the activities of the guilty employees or Board Members and it is not the SRS's task. Moreover, damage recovery cases are relatively rare in practice.

Based on the above, the authors of the study set out the objective of this study: to analyse the content of legal acts regulating the personal responsibility of the Board Members for late payment of a legal person, to analyse the legal and economic conditions of business development. To facilitate the

achievement of the research objective, the authors will describe and analyse the system of taxes and duties in Latvia.

Literature Review

Tax and duties system in the Republic of Latvia

The Law 'On Taxes and Duties' in the Republic of Latvia regulates the types of taxes and duties and regulates the procedure for their determination, collection and recovery, the rights, duties and responsibilities of taxpayers and tax administration, registration of taxpayers, the procedures for challenging and appealing decisions taken in tax and tax matters as additional tax administration and credit information office, responsibilities for the processing of personal data in the case of information relating to the income of a natural person. According to the Law 'On Taxes and Duties', the system of taxes and duties in Latvia: state taxes on which objects are to be taxed and the rate of which is determined by the Saeima; state duties, which are imposed in accordance with this Law, other Laws and Cabinet regulations; municipal duties levied in accordance with this Law and binding local government regulations; taxes directly applicable in the European Union. There are 14 taxes in Latvia, which are imposed according to the tax law (State Revenue Service of the Republic of Latvia, 2019).

The State Revenue Service is obliged by law to publish annually the information about the total amount of taxes paid by merchants and the average number of persons employed in the previous year. The provision on the public register in the tax 'umbrella' law has been introduced to encourage voluntary payment of taxes. At the same time, it is the information that can be used to judge what funds enter the state budget and which provide revenue. Latvia is not the only country that publishes the amount of taxes paid. Such a list is also in Estonia.

Every year, the SRS prepares special thank-you letters to taxpayers for their good faith obligations and significant contributions to the state budget. Around 2,500 taxpayers receive them each year. Such recognition also implies that the SRS does not burden the taxpayer with controls. Those selected for recognition are chosen according to certain criteria (tax revenues in the state budget exceed €100,000 per year, the average wage for workers is not less than 70% of the national average, etc.) (State Revenue Service of the Republic of Latvia, 2019).

In 2018, the total budget revenue administered by the State Revenue Service amounted to 9.41 billion euros, which is an implementation of the revenue plan by 101.3%. Compared to 2017, tax revenue has increased by 788.42 million euros, or 9.1%, driven by economic growth and SRS performance. The tax revenue for 2018 was also affected by significant changes in tax laws and regulations as well as the preventive measures taken by the tax administration to discipline taxpayers (State Revenue Service of the Republic of Latvia, 2019).

The Responsibility of the Member of the Board for Tax Liabilities of a Legal person

To comply with the rights to property guaranteed by Section 105 of the Constitution, to increase the efficiency of tax collection and administration, as well as to increase the level of the responsibility of existing or former Members of the Board of a legal person with regard to the payment of taxes and other mandatory payments of a legal person in the State or local government budget and the fulfilment of other duties specified in the regulatory enactments, the amendments to the Law came into force for the Members of the Board in determining personal responsibility with regard to the payment of taxes and other mandatory payments of a legal person in the State or local government budget and the fulfilment of other duties specified in the regulatory enactments. On 1 January 2015, the amendments to the Law came into force for a Board Member in determining personal responsibility for a legal person's overdue tax payments in certain cases. The legal provisions were drafted in such a way that the responsibility of a Member of the Board (individual) for the commitment of a legal person would

only arise in exceptional cases where irresponsible behaviour regarding statutory obligations is established (Legal acts of the Republic of Latvia, 1993).

In addition, by 2015, 5724 legal entities with a tax debt of more than 18,000 euros had a total public debt of 574 million euros. In view of the above, there are no less restrictive means to protect the rights established in Section 105 of the Constitution. Consequently, the restriction on the rights of the individual in the bill is proportionate to the aim pursued by the bill: promoting voluntary tax payment and improving tax administration, thereby generating the revenue necessary to meet the needs of the society, and promoting fair competition by improving the business environment. With the introduction of the new norms, a mechanism was created whereby the State Revenue Service is entitled to request a Member of the Board to cover the tax liability of a legal person (Saeima of the Republic of Latvia, 2015).

On the other hand, Section 26 of the Law ‘On Taxes and Duties’ provides for the action of the State Revenue Service in the case of late tax payments for the tax payer.

The State Revenue Service shall have the right to require a Member of the Board to pay personally the debts incurred during his time if the following five conditions are met, which must be fulfilled simultaneously under Section 60 of the Law ‘On Taxes and Duties’: the minimum monthly wage bill (see Table 1); the decision on the recovery of tax arrears is notified to the legal person; it is established that, after the arrears of tax payments, the legal person has disposed of assets to a person who, in relation to a Member of the Board, meets the concept of a stakeholder within the meaning of the Insolvency Law; an act of impossibility of recovery has been drawn up; the legal person has not complied with the obligation under the Insolvency Law to submit an application for the insolvency proceedings of a legal person (Saeima of the Republic of Latvia, 2015).

Interested persons in relation to the debtor – a legal person – are listed in Section 72 of the Insolvency Law: members (shareholders) or members of the partnership of the debtor, members of administrative bodies; procurator and trustee; a person consisting of the debtor’s founder, member (shareholder) or member of a partnership, members of the administrative bodies in marriage, affinity or affinity to the second degree; creditor in the same group as the debtor (Legal acts of the Republic of Latvia, 2015).

In 1993, the Republic of Latvia ratified ‘Minimum Wage Fixing Convention’ No 131 of 22 June 1970, which means that the financial threshold for a Board Member’s liability depends on the national minimum monthly wage.

Although, above all, the increase in the minimum monthly wage is a struggle against poverty – raising the standard of living for the poorest and most vulnerable groups and raising the average living standard, but as shown in the table, the increase in the minimum monthly wage specified in the Republic of Latvia serves as an instrument for raising the financial threshold for the Member of the Board. With the increase in state welfare from 2015, the financial threshold for Board Member responsibility has also increased by 19% in 2018 (See Table 1).

Table 1. Financial threshold for Board Member responsibility per year, 2015–2018 (Source: author’s calculations based on regulations Cabinet of Ministers of the Republic of Latvia, 2015–2018)

	2015	2016	2017	2018
National minimum monthly wage (<i>euro</i>)	360	370	380	430
Financial threshold for Board Member responsibility (<i>euro</i>)	18,000	18,500	19,000	21,500

The second paragraph of Section 60 of the Law 'On Taxes and Duties' provides that, where a legal person has several Members of the Board, they shall be jointly liable for late payment by the legal person (Legal acts of the Republic of Latvia, 2015).

In its turn, Section 60 paragraph 3 of the Law 'On Taxes and Duties' provides that, if there are objective reasons for not filing an insolvency proceeding with the court, as well as evidence that, after the arrears of tax payments, be considered as an interested party within the meaning of the Insolvency Law, be of an economic nature, or have evidence, which certifies that the Board Member is not responsible for the taxpayer's late payment of taxes and the disposal of the legal person's assets (division of Board Members' duties, justifying reasons, etc.), the Board Member shall inform the State Revenue Service supporting documents for the period within one month, where the list of supporting documents is specified in Section 60, sub-paragraphs 1, 2, 3, 4 and 5 of this Law (Legal acts of the Republic of Latvia, 2015).

The Law does not directly provide the possibility, for example, for a Board Member in marketing or production matters to avoid liability for those obligations committed, knowingly or unknowingly, by a Board Member in financial matters. The law also states that the Members of the Board are jointly liable for non-payment of taxes to the state (Legal acts of the Republic of Latvia, 2015).

Comparison between legislation of Latvia and several European countries

When studying foreign experience, it can be concluded that in cases where a company has incurred late payments to the tax administration, a broader legal framework has been established regarding the rights and duties of the tax administration to recover these late payments. Namely, in certain cases, the tax debt of a company is 'transferred' to the responsible officials of these legal persons. In the UK – until 2009 – the responsibility of the Members of the Board was applied only in relation to the Value Added Tax, whereas from the audit surcharges of 2009, the personal responsibility of the Members of the Board may be applied not only to the Value Added Tax but also to other taxes. In Estonia, in relation to the audit surcharge, Board Members are jointly liable in cases of fraud or gross negligence, where it is not possible to recover the debt from the tax debtor. In the Netherlands, there is a 'subsidiary liability for Board Members' in relation to the audit surcharge. In Denmark, the debts of legal persons are transferred to the responsible natural persons in case of malicious insolvency. The Swedish Tax Code contains rules on the responsibility of former company officials for late payment of taxes in cases where the tax administration proves that the official acted intentionally or with gross negligence as a typical example of such failure to file an insolvency petition.

However, it should be noted that there are also sharply divergent views on the amendments to the Law 'On Taxes and Duties'. Criticism of amendments to the Law 'On Taxes and Duties' was expressed by the Council of Foreign Investors (FICIL Foreign Investors Council in Latvia, 2015).

Karin Madisson in her research 'German and Estonian laws' compares legislation between both countries in terms of liabilities of the Members of the Board and points out that legislation is relatively similar regarding these issues. German and Estonian commercial law determines the Member of the Board obligation to act bona fide and compensate losses (Madisson, 2012).

In the article 'Liabilities of the Members of the Board of Directors of Capital Companies Under Turkish and Belgian Laws', the Turkish ADMD Law Office compares the legislation between Turkey and Belgium in terms of liabilities of Members of the Board. The author of the article points out that in case the founders, board members, managers and liquidation officers breach their liabilities defined by the law and articles of association due to their fault, they shall be deemed responsible for the loss they cause against the company, shareholders and company creditors.

Similar legislation exists in Latvia. However, Belgian legislation regulation concerning the liabilities of the Members of the Board differ completely from Latvia, Germany and Turkey. In comparison, the

Belgian system does not possess the same clarity. Indeed, different pieces of legislation provide for the liability of directors. The grounds on which board members may encounter civil liability are spread in the Belgian Company Code and Civil Code. Much precision regarding the scope of each type of responsibility is to be found in the case of law and the research of scholars and practitioners. A particularity of the Belgian regime is to recognize the criminal liability of companies (Balfroid, 2012).

Lastly, it is important to note that under the Turkish and Belgian laws, board members may encounter specific liabilities for the non-payment of taxes and other public receivables such as social security contributions. Liabilities of Members of the Board in terms of non-payment of taxes are regulated in the same manner in the Latvian regulatory enactment.

Austrian legal regulation is similar to German rights. For example, in the Austrian Limited Liability Companies Act (GmbHG), Paragraph 25 determines that Members of the Board are responsible about the losses they have caused to the company, failing to fulfil their obligations. Board members in Austria must take the responsibility of losses caused to creditors, if the Member of the Board fails to submit insolvency process application (Novicāne, 2013).

In a letter to the Saeima, the Employers' Confederation of Latvia has pointed out that Board Members who do not participate in 'risky' decisions or who do not have sufficient financial competence, but who, according to the proposed changes to the law, will be jointly liable for the decisions of other Board Members. Also, in the Saeima on December 17, the new norms triggered a widespread debate. Deputy Gunārs Kūtris, former Chairman of the Constitutional Court, holds that the newly introduced Section 11 is in conflict with the Convention for the Protection of Human Rights and Fundamental Freedoms and also with the Constitution – Sections 91, 92 and 105 (Zanfelde, 2015).

It is considered that there is a loophole in the change of law, since the changes do not apply to the partnership carriers and to represent the eligible members, as well as to the decision-making bodies of a legal person, who may also have the right to accept such issues as the Board, the owner of the shares of Ltd, who may dispose of the specified assets and the company's proxies (Zanfelde, 2015).

The European Court of Human Rights, on the other hand, has said that the criminal procedure and the fine or amount of the fine are of the Criminal Law nature, and thus, the principle of the presumption of innocence applies here, but the bill requires the person to prove his innocence. The Saeima Legal Bureau has also expressed the opinion that the above mentioned regulation in the wording proposed in the draft law may contradict Sections 91 and 105 of the Constitution and possibly also Section 92 and other Sections of the Constitution (Saeima of the Republic of Latvia, 2014).

According to the above, on December 29, 2015, the 2nd Chamber of the Constitutional Court initiated the case 'On the Compatibility of Sections 60, 61 and 62 of the Law "On Taxes and Duties" with Section 91, the first sentence, Section 92 and Section 105 of the Constitution of the Republic of Latvia.' Twenty members of the Saeima submitted their application to the Constitutional Court. The Saeima deputies consider that the contested norms disproportionately restrict the right to property established in Section 105 of the Constitution, indicating that the separation of property liability shall be regarded as mandatory for a legal person. On the other hand, under the contested provisions, the liability of a legal person for late payment is, in certain cases, not borne by the legal person itself but by its Members of the Board (Constitutional Court of the Republic of Latvia, 2015).

On November 15, 2016, the Constitutional Court declared the contested norms to be in compliance with the principle of equality included in the first sentence of Section 91 of the Constitution. The Court stated, *inter alia*, that in conducting a commercial activity in any of the forms of commercial activity provided for in the Commercial Law, the individual must act in a manner consistent with the obligation to pay taxes in the public interest. Thus, the Constitutional Court declared the contested norms to be in compliance with the first sentence of the Constitution and Section 91, Section 92 and Section 105 of

the Constitution. The judgment of the Constitutional Court is final and not subject to appeal, it came into force on the day of its official publication (Constitutional Court of the Republic of Latvia, 2016).

It should also be taken into account that according to Section 25 of the Law 'On Taxes and Duties', the SRS extinguishes tax debts to the taxpayer, in the case provided for in Section 26, Paragraph 61 of this Law, if no decision on overdue tax is taken within three years of the due date. recovery of payments, as well as if the taxpayer is excluded from the Registers of Companies in the cases provided for by regulatory enactments and, if provided for by the Commercial Law, the creditor's rights of claim expire (SRS, 2019).

In the report of the Saeima Public Expenditure and Audit Commission, it was stated that within two years of the law requiring personal responsibility of Board Members for delayed tax payments, the State Revenue Service has not claimed responsibility from any Board Member and has not collected a cent based on this provision of the Law, there has been no recovery process against a natural person, a Board Member, and no cent has been recovered (Saeima of the Republic of Latvia, 2017).

In other words, it can be said that, at the moment, a provision has failed to provide for the personal responsibility of the Members of the Board of companies for their corporate tax debts. In order to eliminate the loopholes of the law, the State Revenue Service addressed the Ministry of Finance, which intends to improve this provision by 2019 as a part of the tax reform. Meanwhile, the companies, that had challenged the Board Member's liability law in the Constitutional Court, consider that this form of punishment should be abolished at all because of the decrease in the desire to start business (Čīka, 2017).

Methodology

The study is based on the economic and legal analysis of the legislation, revealing loopholes in the law, using descriptive, analytical, deductive and inductive methods to draw conclusions about Board Members' responsibility, their rights and obligations towards the state and society deliberately avoiding the payment of mandatory taxes for the company. The study is designed as a systematic review, including searching databases The Legal acts of the Republic of Latvia and The Commercial Register of the Republic of Latvia, specialist literature, the publications of expert, methodological analysis, compilation, inclusion and exclusion of information.

Research limitations. The research is based on a scientific research analysis method analysing economical and legal conditions of liabilities of Member of the Board towards legal person tax liabilities, including:

- 1) analysis about tax and duties system in the Republic of Latvia and changes of legal norms to enhance voluntary payment of taxes and improve tax administration, using databases of The Legal acts of the Republic of Latvia;
- 2) analysis about available data in the research about registered enterprises in The Commercial Register of enterprises in Latvia by types (2015–2018), using database of The Commercial Register of enterprises and liability of financial threshold of Member of the Board depending on minimum monthly wage (2015–2018) during a year in absolute numbers, when Latvia has changed a normative regulation that foresees personal financial liability of the Member of the Board for legal person tax liabilities;
- 3) comparison of legal regulation between Latvia and several European countries that foresee liability of the Member of the Board for losses caused to a legal person;
- 4) analysis about discipline of publications and researches of expert who is internationally recognized in the field of shadow economy and competitiveness of entrepreneurs.

Using monographic or descriptive scientific research method, the authors investigate the liability of a Board Member towards commitments of legal person based on the analysis of legislative changes in Latvia, describing not only the liabilities of Board Member losses towards legal persons but also the liabilities of the Member of the Board on tax liabilities.

Authors used document analysis scientific research method to obtain information and evaluate processes that concern the liabilities of the Members of the Board regarding tax liabilities of legal persons. Any written and digital materials that include information about phenomenon researched are considered documents.

Based on scientific induction and scientific deduction methods, authors of the research conclude that legal loopholes may contribute to the risk of reducing the responsibility of the Member of the Board, which may have an impact on the economic situation in the country.

Changes in statistical data and legislation in the study cover the period from the entry into force of changes in legislation that provide for the personal financial responsibility of the Member of the Board for a legal person's tax debts. Research time period 2015–2018, because in order to increase the efficiency of tax collection and administration, as well as to increase the level of responsibility of the current or former Members of the Board of a legal person with regard to the payment of taxes to the state or local government budget, changes in the Law 'On Taxes and Duties' entered into force on 1 January 2015, which provide the personal financial responsibility of a Member of the Board for the tax debts of a legal person.

The following criteria were used choosing expert publications and opinions: well recognized expert in Latvia or abroad in the following fields – shadow economy, competitiveness of enterprises and business expansion in international markets, cooperation with OECD and different industry associations, unions and non-government organizations in Latvia that are social partners of the government.

Results

Analysing the factors that determine the personal responsibility of the Board Members in practice for the company's tax debts, the paper investigates those legal and economic factors that significantly influence the implementation and realization into practice the amendments to the Law 'On Taxes and Duties'.

In other words, in order to carry out tax control measures for taxpayers with the highest risk of tax evasion and budget payment and to use the resources at the disposal of the SRS, SRS pays great attention to planning tax control measures and selecting the objects to be inspected. For SRS tax control measures, taxpayers are selected on the basis of a Risk Analysis (See Fig. 1).

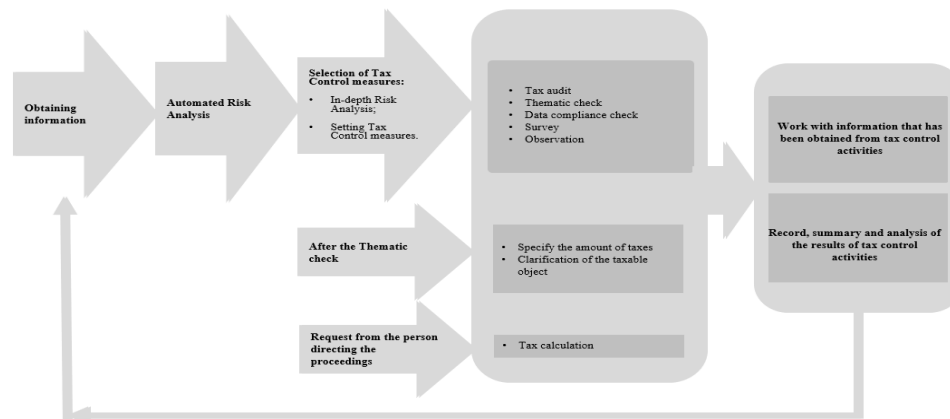


Fig. 1. Tax control process diagram (Source: State Revenue Service of the Republic of Latvia, 2019)

The purpose of tax control is to ensure the full, timely and fair assessment and collection of taxes and duties. If the taxpayer does not eliminate the errors or inconsistencies found in the tax returns, as a result of which the cooperation between the SRS and the taxpayer has not achieved the desired result, the SRS, taking into account the available information and the results of risk analysis, assessing the information at hand and the results of the risk analysis, shall take appropriate tax control measures for the taxpayer.

Although the total number of taxpayers – legal persons from 2015 – has decreased by 8% in 2018, but as shown in the table, from 2015 to 2018 the average number of legal persons as taxpayers in the Republic of Latvia is over 200 thousand (See Table 2).

Table 2. Registered enterprises by type (legal persons - taxpayer), 2015–2018 (Source: The Commercial Register of the Republic of Latvia data, 2015–2018)

	2015	2016	2017	2018
Cooperatives	1894	1871	1859	1854
Partnership	698	719	744	761
Stock company	1032	1038	1025	1055
Limited liability company with no minimum capital requirement	36,297	39,589	42,152	44 630
Limited liability company	126,467	124,468	117,116	105,565
Individual merchant	12,525	11,891	11,645	11,371
Farm	28,027	26,949	26,202	25,725
Individual enterprises	13,111	12,540	12,061	11,771
Other	1183	1146	1137	1124
TOTAL:	221,234	220,211	213,941	203,856

The most popular type of company is a limited liability company and a limited liability company with no minimum capital requirement, which together account for an average of 73%. However, almost 40% of the Ltd. included in the statistics do not have any employees. This was one of the risk indicators for the introduction of a legal framework for the person at risk.

Section 1 (31) of the Law ‘On Taxes and Duties’ sets out the criteria for persons at risk, and at least one of these criteria must be met in order for a natural person to be considered a person at risk. The

broader objective of the legal status of a person at risk is to limit the activities of merchants whose real purpose is to act as intermediaries in money laundering and tax fraud schemes and whose organizers and beneficial owners are not identifiable in the administrative process. There are criteria for identifying persons who need to be effectively deterred from further involvement in the commercial environment by temporarily limiting their right to represent businesses. The Senate has previously acknowledged that the purpose of listing a person at risk is to target unscrupulous merchants whose exclusion from the business environment will promote fair competition and business development in general, in the public interest. The inclusion of a person on the list of persons at risk also serves the broader purpose of protecting the interests of creditors and other merchants, promote the safety of the business environment and voluntarily discharging tax obligations, and includes the ability to return to the business environment the reason to consider it a risky person (Legal acts of the Republic of Latvia, 2019).

Section 222 Paragraph 3 of the Law ‘On Taxes and Duties’ defines the characteristics of a transaction as suspicious in the field of taxation: income, earnings, savings, property or changes in their value; an unusually large transaction volume; incoming transactions make many small amounts, but outgoing transactions are large amounts. The purchase of real estate for a manifestly inappropriate price; cash transactions over 60,000 euros; striking changes to the account balance; carries out complex or unusual transactions for which the terms used for the transaction, or the amount of the tax, are not clearly understood for their economic or legal purpose by themselves or by separate provisions (Legal acts of the Republic of Latvia, 2019).

The availability of such information makes it possible to identify, in a more timely manner, persons or businesses at high risk of tax evasion, as well as those who conceal the real incomes that are often used, for example, to pay ‘envelope salaries’. This information also enables timely prevention of Value Added Tax fraud and the fraudulent creation of illicit cross-transaction schemes.

In 2016, before extending the scope of the Anti-Money Laundering and Terrorist Financing Prevention (AMLF) Law, the SRS received 262 reports of suspicious tax transactions from credit institutions and payment service providers, containing information on 4,473 transactions (SRS, 2016).

This information is used by the SRS to take targeted preventive measures and to plan more effective tax control measures. As a result, the SRS has so far taken decisions on suspension and termination of business activities, exclusion from the SRS Value Added Tax Register, commencement of thematic inspections, commencement of tax audits, as well as informing the Enterprise Register of the Republic of Latvia regarding the rights of taxpayer representation.

On 6 June 2017, Latvia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. The Convention was drafted by the OECD with the aim of ensuring, as soon as possible, and as uniformly as possible, the implementation and application of minimum standards and recommendations in the activities of the OECD BEPS Preventive Action Plan with respect to tax treaties. Latvia has chosen to apply only those provisions of the Convention that ensure the introduction of a minimum standards for BEPS in the tax plan. This means that Latvia fully supports the fight against tax evasion and aggressive tax planning, both at global and European Union level (Legal acts of the Republic of Latvia, 2017).

Conclusions

The authors of the study conclude that the following legal loopholes may contribute to the risk of reducing the responsibility of the Member of the Board, which may have an impact on the economic situation in the country.

Until January 2015, when the amendments were adopted to the Law 'On Taxes and Duties', which provided for the personal financial responsibility of a Member of the Board for the tax debts of a legal person, following the adoption of a decision on the recovery of late tax payments, the bringing of a person to administrative responsibility for failing to submit an application for insolvency proceedings, when the SRS has a legally approved act on recovery impossibility, there was no state-regulated mechanism to further facilitate the fulfilment of the duties of a Member of the Board, related to the termination of the activities of a legal person in accordance with the procedures specified in regulatory enactments and the payment of taxes.

Until January 2015, there was no complete legal framework for the fulfilment of the duties of the taxpayer specified in regulatory enactments, including the payment of taxes and fees within the prescribed time limits and in full, which did not motivate the Members of the Board of a legal person to fulfil their duties as a good and careful master.

The regulatory enactments governing the personal responsibility of a member of the board are incomplete and require additional changes, since the legal provisions providing for personal responsibility of a member of the board of the company's tax debts do not work in practice, as well as the case law in matters of responsibility of the Member of the Board is currently underdeveloped in Latvia, since the Law provides for requesting personal responsibility from 2017. For the Member of the Board of companies, the State Revenue Service (SRS) has not claimed responsibility from any Member of the Board;

According to the Section 61 of the Law 'On Taxes and Duties', the SRS has the right to recover unpaid taxes from a Member of the Board as natural persons only in court, because both the legal person and the individual are entitled to appeal the decision taken by the Authority to the Administrative Court. An application in which a decision regarding the reimbursement of overdue tax payments is contested shall suspend the operation of this decision from the day on which the submission was received in the institution until the day when the decision taken by an official of the State Revenue Service has become undisputed or unappealable.

Section 60 of the Law 'On Taxes and Duties' stipulates the joint liability of the Members of the Board for delayed taxes of the legal person, but the Law does not directly provide for the Members of the Board to carry liability only for the economic sphere, which was under their direct supervision.

The Commercial law shall allow a Member of the Board not to answer for the actions of other Members of the Board, if he can prove it, because Section 169, Paragraph 3 of the Commercial Law determines that a Member of the Board and the Council shall not be liable if he or she proves that he or she has acted as a good and careful master.

References

Balfroid C. 2012. Liabilities of the Members of the Board of Directors of Capital Companies Under Turkish and Belgian Laws. ADMD Law Office. Available from Internet: <http://www.admdlaw.com/liabilities-of-the-members-of-the-board-of-directors-of-capital-companies/#.XdWqE-gzY2w>. Access: 10.10.2019.

Broka B., Johansen S. (2017). Juridiskā analīze un tekstu rakstīšana. Tiesu namu aģentūra.

Čīka I., 2017. Public-LETA. Neviena uzņēmuma valdes loceklis nav saukts pie atbildības par nodokļu parādiem. Available from Internet: <https://skaties.lv/zinas/latvija/sabiedriba/neviena-uznemuma-valdes-loceklis-nav-saukts-pie-atbildibas-par-nodoklu-paradiem/>. Access: 07.08.2019.

Commercial law issues at stake Latvian and Europe: Commercial transactions, Responsibility, Commercial disputes. 2013. Tiesu namu aģentūra.

Constitutional Court of the Republic of Latvia, 2015. Applicant: 12. Saeimas deputāti: Gunārs Kūtris, Jānis Urbanovičs, Dainis Liepiņš, Inguna Sudraba, Silvija Šimfa. Case No 2015-25-01. Available from Internet:

<http://www.satv.tiesa.gov.lv/en/cases/?case-filter-years=%5B2015%5D&case-filter-status=&case-filter-types=&case-filter-result=&searchtext=>. Access: 10.08.2019.

Constitutional Court of the Republic of Latvia, 2016. Judgement For the Republic of Latvia Riga, November 15, 2016 in case no. 2015-25-01. Available from Internet: <https://likumi.lv/ta/id/286612-par-likuma-par-nodokliem-un-nodevam-60-61-un-62-panta-atbilstibu-latvijas-republikas-satversmes-91-panta-pirmajam-teikumam>. Access: 10.08.2019.

Legal acts of the Republic of Latvia, 1993 (adoption 1922). Law 'The Constitution of the Republic of Latvia'. Available from Internet: <https://likumi.lv/ta/en/en/id/57980>. Access: 09.08.2019.

Legal acts of the Republic of Latvia, 1993. Decision of the Supreme Council of the Republic of Latvia "Ratification of the International Labour Organization Conventions". Available from Internet: <https://likumi.lv/doc.php?id=63029>. Access: 09.08.2019.

Legal acts of the Republic of Latvia, 2000. Law 'The Commercial Law'. Available from Internet: <https://likumi.lv/ta/en/en/id/5490>. Access: 09.08.2019.

Legal acts of the Republic of Latvia, 2013. Law 'On Taxes and Duties'. Available from Internet: <https://likumi.lv/doc.php?id=33946>. Access: 09.08.2019.

Legal acts of the Republic of Latvia, 2015. Law 'Insolvency Law'. Available from Internet: <https://likumi.lv/ta/en/en/id/214590>. Access: 09.08.2019.

Legal acts of the Republic of Latvia, 2015. Law 'On Taxes and Duties'. Available from Internet: <https://likumi.lv/ta/en/en/id/33946>. Access: 09.08.2019.

Legal acts of the Republic of Latvia, 2017. Law 'Law on the Prevention of Money Laundering and Terrorism Financing'. Available from Internet: <https://likumi.lv/ta/en/en/id/178987>. Access: 13.08.2019.

Madisson K. 2012. RGSL RESEARCH PAPERS NO. 7, Duties and liabilities of company directors under German and Estonian law: a comparative analysis. Available from Internet: <https://www.rgsl.edu.lv/uploads/research-papers-list/16/7-karin-madisson-final.pdf>. Access: 10.10.2019.

Ministry of Finance Republic of Latvia, 2019. Tax system of Latvia. Available from Internet: <https://fm.gov.lv/en/s/taxes/>. Access: 12.08.2019.

Novicāne E. 2013. Commercial law issues at stake Latvian and Europe: Commercial transactions, Responsibility, Commercial disputes. 2013. Latvian: Tiesu namu aģentūra, 234-278pp.

Public administration official publisher 'Latvijas Vēstnesis' information platforms, 2019. Skaidrojums: Likums daudzpusējās konvencijas nodokļu līgumu piemērošanai. Available from Internet: <https://lvportals.lv/skaidrojumi/306721-likums-daudzpusejas-konvencijas-nodoklu-ligumu-piemerosanai-2019>. Access: 12.08.2019.

Republic of Latvia Supreme Court Senate Department of Civil Cases February 8, 2012 judgement. Available from Internet: <http://www.at.gov.lv/downloadlawfile/164>. Access: 05.08.2019.

Republic of Latvia Supreme Court Senate, 2019. Judicature archive data. Available from Internet: <http://www.at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/civillietu-departaments/klasifikators-pec-lietu-kategorijam/komerctiesibas/valdes-locekla-atbildiba?lawfilter=1>. Access: 10.08.2019.

Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. 2015. Latvian: Daigas Rezevskas izdevums. 176pp.

Saeima of the Republic of Latvia, 2013. Available from Internet: <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/0EFEF951A488C4DAC2257BF700498EF2?OpenDocument>. Access: 09.08.2019.

Saeima of the Republic of Latvia, 2015. Available from Internet: <http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/EB75F1CD6B5CDDFF5C2257DA900470C22?OpenDocument>. Access: 05.08.2019.

Sauka A., Putniņš T., 2018. Shadow economy in the Baltic states 2009-2017. SSE Riga Sustainable Business Center. Available from Internet: https://www.sseriga.edu/sites/default/files/2018-07/sseriga_enu_ekonomikas_indekss_2009-2017.pdf. Access: 05.08.2019.

State Revenue Service of the Republic of Latvia, 2019. Available from Internet: <https://www.vid.gov.lv/lv/nodoklu-administresana>. Access: 05.08.2019.

Tālis J. Putniņš, Arnis Sauka, 2015. Measuring the shadow economy using company managers. Journal of Comparative Economics: Volume 43, Issue 2, May 2015, Pages 471–490. Access: 05.08.2019.

Tax Foundation, 2016. 2016 International Tax Competitiveness Index. Available from Internet: <https://files.taxfoundation.org/20170630141955/TF-ITCI-2016.pdf>. Access: 09.08.2019.

The Commercial Register of the Republic of Latvia, 2019. Available from Internet: <https://www.ur.gov.lv/en/register/>. Access: 06.08.2019.

Zanfelde D. 2015. Public administration official publisher 'Latvijas Vēstnesis' information platforms, 2015. Skaidrojums: Valdes locekļu atbildība par nodokļu parādiem (I). Available from Internet: <https://lvportals.lv/skaidrojumi/268040-valdes-loceklu-atbildiba-par-nodoklu-paradiem-i-2015>. Access: 05.08.2019.

Zanfelde D. 2015. Public administration official publisher 'Latvijas Vēstnesis' information platforms, Skaidrojums: Valdes locekļu atbildība par nodokļu parādiem (II). Available from Internet: <https://lvportals.lv/skaidrojumi/268040-valdes-loceklu-atbildiba-par-nodoklu-paradiem-i-2015>. Access: 05.08.2019.