

Liability of Directors of Private Companies under Section 179 of the Income Tax Act, 1961*

Background

A private limited company is a separate legal entity and separate from its members. The liabilities of its members are limited to the extent of subscribed share capital. But the operations of a company are managed by natural persons, called directors. Therefore, the directors are responsible for management of affairs of the company as they are the true mind behind all decisions taken by the company.

Section 179 of the Income Tax Act, 1961: Liability of directors of private company in liquidation

The provisions of Section 179 of the Income Tax Act, 1961 provides that any tax due from a private company, in respect of any income of any previous year or from any other company in respect of any income of any previous year during which such other company was a private company cannot be recovered then , every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Where a private company is converted into a public company and the tax assessed in respect of any income of any previous year during which such company was a private company cannot be recovered, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax due in respect of any income of such private company assessable for any assessment year commencing before the 1st day of April, 1962.

For the purpose this section, the expression “Tax Due”, includes penalty, interest or any other sum payable under the Act, 1961.

Proposed Amendment in Finance Bill, 2022

The Finance Bill, 2022 has proposed to amend the provisions of section 179 of the Income Tax Act, 1961 relating to tax liability of directors of the private limited companies applicable from 1st April 2022. Section 179 of the Act contains provisions which enable Income tax authorities to recover tax due from a private company from its directors, under certain circumstances where such tax cannot be recovered from the company itself. The section makes each director of the private company jointly and severally liable for the payment of such tax with certain conditions. ***However, the title of the section inadvertently refers to the liability of directors of private company in liquidation.***

* CA Govind Agarwal, Assistant Director, The ICSI

Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.

*The liability of directors of a private company under this section is not conditional upon the company being in liquidation and the section makes no reference to liquidation. Therefore, to make the title of the section uniform with its provisions, it is proposed to amend the title of the section to “**Liability of directors of private company**”.*

Further, Explanation to the section clarifies that the expression “tax due” in the section includes penalty, interest of any other sum payable under the Act. In order to avoid unnecessary litigation and to provide further clarity, the proposed amendment would include the word “fees” in the scope of the expression “tax due” under Explanation to the section.

<https://www.indiabudget.gov.in/doc/memo.pdf>
