

Directors' liability towards the company when they are also the sole shareholders

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The Spanish Supreme Court (SC) has ruled that directors are personally liable to the company for tax penalties arising from negligent management even when they own all of the company's share capital¹.

The case concerns a company incorporated in 2001 by two shareholders who also served as joint and several directors until 2010, when one of them sold his stake to the other shareholder's wife, who then became the sole director. The Spanish Tax Agency (STA) later initiated a tax audit and concluded that the company had evaded approximately EUR 185,000 in taxes for the fiscal years 2007 and 2008 by means of "fraudulent and wilful actions" and "accounting irregularities" relating to certain contracts, for which it imposed a penalty of nearly EUR 100,000.

The company brought a liability action against the former directors, seeking to recover from them the tax debt for 2007 and 2008 and the tax penalty imposed by the STA².

A commercial court found that they had breached their duty of diligence and caused damage to the company and, therefore, upheld the claim. However, the Málaga Court of Appeal (MCA) overturned this first instance judgment, holding that, as the directors were "the only shareholders when the fraud against the Public Treasury occurred", the unlawful acts were not "attributable to the directors, but rather to the company".

The MCA relied on a precedent concerning the distribution of a company's profits "in an atypical manner, in order to benefit from a favourable tax regime", in which the SC dismissed the liability action filed by the company against its former directors on the grounds, *inter alia*, that they were also the sole shareholders³.

The company appealed the MCA's decision to the SC, arguing that improper accounts keeping and other actions sanctioned by the STA related to managerial directors' functions and so it was clear that the defendants had acted in their capacity as directors.

The SC noted that the conclusion it had reached in the precedent relied on by the MCA was not applicable, since it concerned the distribution among shareholders of profits arising from a "complex transaction" and there was therefore "no breach attributable to the directors, but rather a decision taken by the shareholders".

The SC concluded that the rationale in that earlier case could not be transposed to the one at hand, where the negligent conduct that led to the imposition of a tax penalty constituted an act of "ordinary management of the company, extending to the proper keeping of the accounts and compliance with the company's tax obligations".

The SC, however, limited the amount of the directors' liability to the value of the tax penalty, reasoning that the tax debt evaded in 2007 and 2008 was in any event payable and did not result from the directors' misconduct.

¹ Judgment 1090/2025 of 9 July.

² Only the director who was no longer a shareholder contested the claim.

³ Judgment 14/2018 of 12 January.