

# Failure to comply with the disclosure obligation

## No plaything



# Consequences of failing to meet the disclosure obligation

Pursuant to the provisions of the Accounting Act and the Act on Public Company Information, Company Registration and Dissolution Proceedings, all companies applying double-entry bookkeeping are required to file and disclose their financial statements prepared in accordance with the Accounting Act (including the auditor's clause issued after a mandatory audit and the resolution concerning the use of the after-tax profit which is passed simultaneously with the approval of the financial statements) within (i) 150 days from the balance sheet date of the fiscal year concerned for simplified annual financial statements or (ii) 180 days from the balance sheet date of the fiscal year for consolidated annual financial statements.

**As already noted in one of our previous newsletters, since 1 May 2009 companies have only been able to file their financial statements prepared in accordance with the Accounting Act to the Company Information Service through the government portal (Ügyfélkapu). The purpose of this newsletter is to remind you of the sanctions which are now applied by the Tax Authority automatically and without further deliberation against companies failing to meet their disclosure obligation.**

## Verification of the disclosure obligation

After receiving the financial statements, the Company Information Service immediately notifies two entities about the receipt of the financial statements: it sends a confirmation to the company and forwards the related form to the Tax and Financial Control Administration (APEH). Thus APEH is immediately notified if a company fails to meet its filing and disclosure obligation.

## Requests

If a company fails to file its financial statements, APEH requests the company within 30 days from the specified deadline to comply with the regulations at 15 days' notice. In 2009, only those companies with a fiscal year different from the calendar year were requested by APEH to comply with their obligation whose reporting date was after 30 April 2009. Since the reporting date of companies whose fiscal year corresponds to the calendar year (i.e. the majority of companies) is 31 December, the first time that such

companies could receive such a warning and be confronted with the rather strict sanctions described above is in 2010.

### Suspension of tax numbers

If the company in default fails to comply with its disclosure obligation within the deadline specified in the request, APEH will irrevocably and without deliberation suspend the company's tax number (Community tax number) for a definite term of 60 days and publish its resolution on its website. Furthermore, for business entities, APEH will also immediately notify the competent registry court about its decision; such registry court will record the fact that the tax number has been suspended and the date that the relevant resolution entered into force. During the period of suspension the company loses a number of tax benefits (e.g. tax reclaim rights, tax refund rights and the right to claim subsidies from the central budget), whereas it is still required to fulfil its tax liabilities during this period. APEH will cancel the procedure as soon as the company remedies its default.

### Dissolution of the company and its removal from the company register

If the company fails to remedy its default before the 60-day deadline is up, APEH will automatically take the necessary steps for the company to be declared dissolved and request the registry court to remove the company from the company register. The registry court will take the necessary steps towards the company's removal. If the company does comply with its disclosure obligation during this time and if APEH notifies the registry court in time, the company may escape from being removed from the company register and being dissolved. Otherwise, however, failure to file the financial statements could lead to the company's removal from the register at the end of the above procedure, i.e. within 4 to 6 months from the date of default.

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### Additional liability of senior executives

In addition, the Bankruptcy Act also provides for sanctions for senior executives of companies in liquidation for failing to meet their disclosure obligation. In particular, under the Bankruptcy Act, the interests of creditors shall be deemed harmed in the case of companies where senior executives fail to comply with their obligation to file and disclose their financial statements before the date that liquidation commences. Consequently, the senior executive failing to comply with the disclosure obligation must prove that he/she acted in his/her executive capacity in accordance with the interests of the creditors after the liquidation became impending. If the executive is unable to do so, eventually he/she may even be required to pay up any unsettled claims by the creditors. Furthermore, senior executives failing to settle their full liability will be debarred from acting as senior executives of other companies for 5 years from the conclusion of the execution proceedings brought against them. Therefore, failure to comply with the obligation to file and disclose a company's financial statements can not only impede the company's business activities, but could also require the senior executive to assume personal liability and fiduciary duty or, in the long run, could lead to debarment from similar functions.

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