



## Tax Alert

March 2025  
English and Romanian

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## Decision No 49/2025 of the Romanian Constitutional Court

The Decision no.49 of the Romanian Constitutional Court regarding the unconstitutionality of article no. 25, para. (3), letters b and c of the Tax Procedure Code was published in the Official Gazette no. 237 on 18 03 2025.

According to the Tax Procedure Code, a legal entity is jointly and severally liable with an insolvent or bankrupt debtor if the legal entity directly or indirectly controls, is controlled or is under common control with the debtor and if certain conditions are met, among which the following:

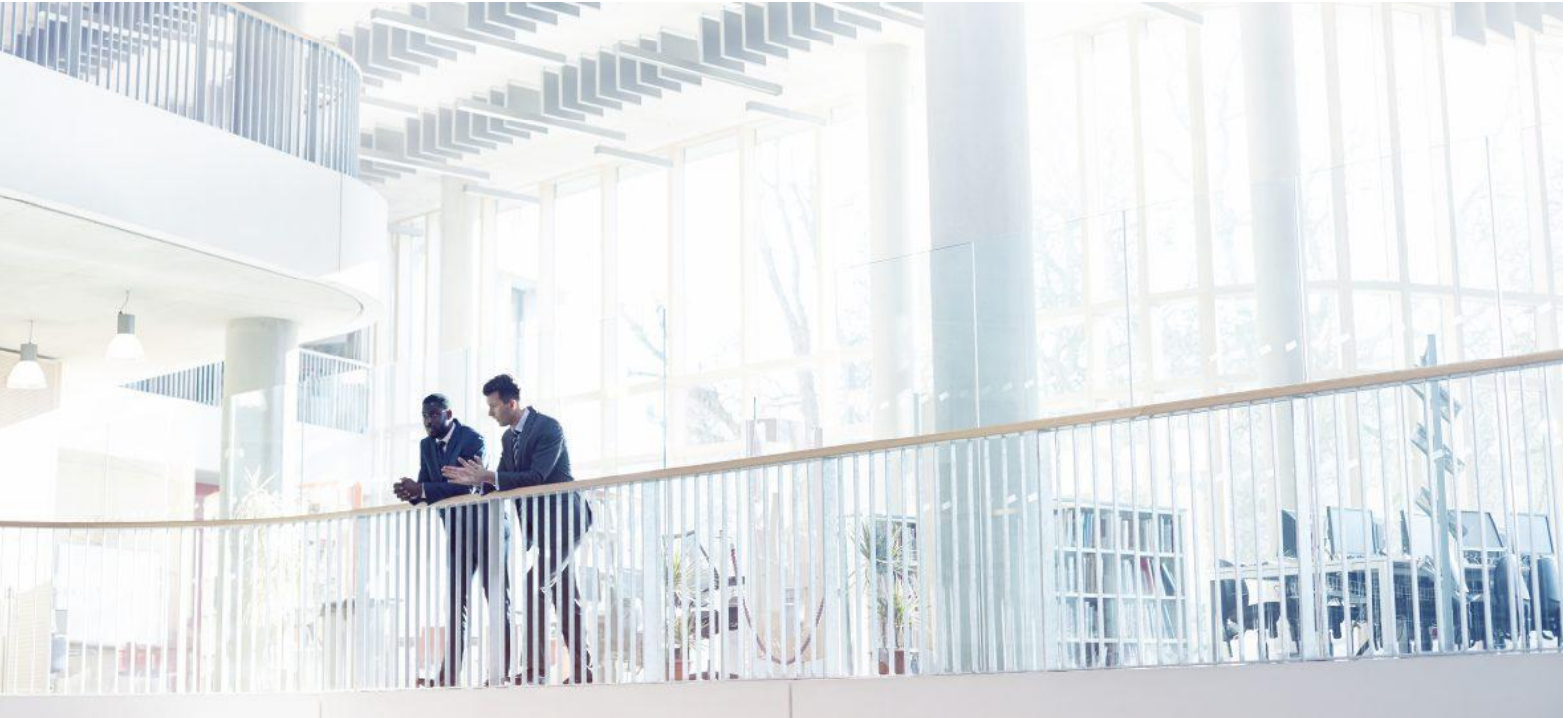
1. The legal entity has or has had significant contractual relations with the clients and/or suppliers that have or have had contractual relations with the debtor, representing at least half of the value of the transactions;
2. The legal entity has or has had employees or collaborators (based on services agreements, as per the civil law), in common with the debtor, representing at least half of their total number.

### Main aspects of the Decision:

The Romanian Constitutional Court declared these two conditions as unconstitutional, considering the following aspects:

- Lack of clarity, precision and predictability: the provisions analyzed do not provide clear criteria to determine under which conditions a legal entity can be held jointly and severally liable with the debtor;
- Failure to establish objective and measurable criteria for assessing the economic or employment relationship between the debtor and the entity to which the liability is attached - this lack of objective and measurable criteria may lead to abusive and inconsistent interpretations by tax authorities;
- Infringement of economic freedom and the right to work - the rules may restrict the right to work of laid off employees and collaborators of a company in insolvency.

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## Decizia Curții Constituționale a României nr. 49/2025

Decizia nr. 49 a Curții Constituționale a României privind neconstituționalitatea art. 25 alin. 3 lit. b și c din Codul de procedură fiscală a fost publicată în Monitorul Oficial nr. 237, în data de 18.03.2025.

Conform Codului de Procedură Fiscală, o persoană juridică răspunde solidar cu un debitor declarat insolubil sau insolvent dacă, direct sau indirect, aceasta controlează, este controlată sau se află sub control comun cu debitorul și dacă sunt îndeplinite o serie de condiții, printre care:

1. Persoana juridică să aibă sau să fi avut relații contractuale semnificative cu clienții și/sau furnizorii care au avut sau au relații contractuale cu debitorul, reprezentând cel puțin jumătate din valoarea tranzacțiilor.
2. Persoana juridică să aibă sau să fi avut angajați ori colaboratori (pe bază de contracte civile de prestări servicii) comuni cu debitorul, în proporție de cel puțin jumătate din totalul acestora.

### Principalele aspecte ale deciziei:

Curtea Constituțională a României a declarat neconstituționalitatea acestor două condiții, având în vedere următoarele aspecte:

- Lipsa clarității, preciziei și previzibilității: dispozițiile analizate nu oferă criterii clare pentru a determina în ce condiții o persoană juridică poate fi considerată răspunzătoare solidar cu debitorul;
- Nestabilirea unor criterii obiective și măsurabile pentru evaluarea raporturilor economice sau de muncă între debitor și persoana careia i se atrage răspunderea – lipsa aceasta poate genera interpretări abuzive și neunitare din partea organelor fiscale;
- Încălcarea libertății economice și a dreptului la muncă, normele putând îngreuna dreptul la muncă al angajaților disponibilizați și colaboratorilor unei firme aflate în insolvență.

**Solicita o ofertă**

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