

The NRA Treasury Single Account Declared Unconstitutional by the Constitutional Court

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The provisions of § 44, subparagraphs 3 and 5 of the Transitional and Final Provisions of the Amending Act to the Value Added Tax Act (promulgated in The Official Gazette, No. 94 of 2012) introduced amendments to Articles 169 and 179 of the Code of Tax and Social Security Procedure (CTSSP), which produced substantial impact on the principles and modus operandi of the pension and health insurance systems in the Republic of Bulgaria. Consequently, pursuant to these amendments which entered into force on 1 January 2013, where the debtor has several public debts that he is unable to repay simultaneously prior to the commencement of recovery procedures, the debt with the earliest maturity is repaid first, unless a law rules otherwise. If the maturity of two or more public debts is on the same date, these debts are repaid on a pro rata basis.

The claim of unconstitutionality of these amendments filed by a group of Members of Parliament on 21 December 2012 reads that these amendments mix up the repayment of debt of different nature, i.e. taxes and social security or health insurance contributions, as a result of which the state may automatically recover old public debts, including taxes, with funds that are intended to make current payments of social security and health insurance contributions.

Having examined the claim and ruled on the admissibility of the proceedings, the Constitutional Court issued its Decision No. 2 of 4 February 2014, declaring the unconstitutionality of the amendments to the provisions existing prior to 1 January 2013, which had introduced the treasury single account.

The reasons put forward by the Constitutional Court note that the introduction of the amendment to Article 169(4) CTSSP deprives the payee of the public debt of the opportunity to specify the debt which is being repaid (tax debt or social security debt recovery). Thus it becomes possible to channel social security and health insurance contributions to repay tax debts. This is particularly visible in the cases, where employers withhold and remit these contributions from the remuneration and at the expense of the insured persons. Then if the employer, i.e. the insurer, has outstanding tax debts, the National Revenue Agency (NRA)

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may earmark the amounts withheld from the wages and salaries of his employees paid to the treasury single account to the recovery of older tax debts of the employer. The opportunity for co-financing in the case of the social security system is irrelevant.

The Decision of the Constitutional Court declares unconstitutional also the repeal of Article 179(1) CTSSP, eliminating the NRA obligation to remit the revenues to the respective accounts of the National Social Security Institute and the National Health Insurance Fund by the end of each working day. The Decision reads that the repeal of the provisions of Article 179(1) CTSSP, in contravention to the principle of the rule of law, leads to lack of clarity as to where the social security and health insurance contributions go and how they are distributed because of the introduction of the treasury single account for both tax payments and social security contributions. This creates obvious disbalance and generates legal uncertainty.

The entry into force of Decision No. 2 of 4 February 2014 reinstates the earlier wording of Article 169(4) CTSSP and the repealed provision of Article 179(1) CTSSP, unless new amendments are adopted. Pursuant to the Constitutional Court Act, the decisions of the Constitutional Court are promulgated in The Official Gazette within 15 days of their adoption and enter into force on the third day of their promulgation.