

The consequences of non-filing of the annual accounts

Every company meeting certain criteria should file its annual accounts. Existing companies not filing their annual accounts are in a state of anonymity and there is room for all sorts of questionable practices. Late or non-filing is therefore subject to criminal, tax or judicial sanctions. These sanctions have important consequences for the company in question.

Value of the annual accounts: analysis of the financial sanity

The annual accounts are the financial report of the company at the end of the financial year. The annual accounts contain four sections: the balance sheet (with assets/possessions and liabilities/debts); the profit & loss accounts (overview of all income and expenditure during the financial year); the explanation and the social report (with information of the number of employees and the trainings).

You should file the annual accounts within seven months after closing the financial year, and within 30 days after approval by the general shareholders meeting. Also, when your company is inactive or in liquidation, you are obliged to file the annual accounts. As long as the liquidation is not finished and published in the Belgian Official Gazette, your company is deemed to exist legally.

Civil/criminal sanctions

Company directors are in principle not liable toward third parties for their normal director faults. But they are jointly and severally held for all damages coming from not complying with the Belgian Companies Code or the articles of association and especially when not drafting and filing the annual accounts. Their penalisation lies in a fine and/or jail. Additionally the burden of proof is reversed. The directors should prove that the damages are not the consequence of the non-filing of the annual accounts in due time.

Surtax or increased filing fees

If you file your annual accounts too late, surtaxes are charged (being extra costs on top of the filing fees):

- 400 €, when the (consolidated) annual accounts are filed in the ninth month after closing of the financial year;
- 600 €, when the (consolidated) annual accounts are filed as from the tenth month until the twelfth month after closing of the financial year;
- 1.200 €, when these documents are filed as from the thirteenth month after closing of the financial year.

Small companies making their annual accounts following the abbreviated scheme, will pay respectively 120, 180 and 360 €.

The National Bank of Belgium collects these amounts together with the publication fees for the (consolidated) annual accounts and transfer these to the Federal Public Service Finance.

If your financial year closes on 31 December, you should file the annual accounts before 31 July. As from 1 September a surtax is charged, which will be increased on 1 October and again on 1 January.

A company which has not filed its annual accounts in due time because of an Act of God, can ask for repayment of the surtax. An Act of God is an unforeseen event (a sudden, rare or abnormal event) from which you cannot escape and takes place outside your will. The application for repayment should be made within a period of 18 months after closing of the annual accounts. To prove the Act of God, all remedies can be used.

Tax fines

Per month of delay in case of non-filing of the annual accounts, an administrative fine of 25 up to 250 € can be imposed. Only the registration and domains section of the Federal Public Service Finance can apply this fiscal sanction.

Judicial liquidation

At the request of every stakeholder or the prosecution the court can decide to liquidate a company which has during three subsequent years not filed any annual accounts, unless regularisation is possible and takes place before the case is decided. The Belgian Companies Code does not give any description of the concept 'stakeholder'. If the authorities want to file an action, they will also have to prove its direct interest such as a material or moral advantages.

The claim to liquidate can be made at the earliest seven months after closing the third financial year.

These companies still have the possibility to regularize their situation by paying the filing fees and filing the missing annual accounts.

Deletion from the 'KBO'

Since 1 July 2013 the 'KBO' (the business database) deletes dormant companies, without charging any fees, if they have not filed their annual accounts with the Balance sheet services of the NBB during three financial year. As soon as the non-filed annual accounts are filed, the administration service of the 'KBO' will withdraw the deletion. On the initiative of the administration service of the 'KBO' both the deletion and the withdrawal of the deletion will be published for free in the annexes of the Belgian Official Gazette.

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