

THE DOCTRINE OF PIERCING OF CORPORATE VEIL

Abstract

Piercing the corporate veil (PCV) is a fundamental exception to limited liability in corporate law, ensuring that companies and associations remain separate legal entities—thereby protecting shareholders from personal liability—unless the corporate form is abused for illegal purposes such as fraud, tax evasion, or other misconduct that harms creditors or the state. This paper critically examines the legal framework for PCV in Croatia, focusing on its dual regulation in both general company law (via the Companies Act) and specialized tax law (through the General Tax Act). It explores how abuse of limited liability triggers personal liability for controlling individuals and the conditions under which the veil may be pierced, as evidenced by Croatian case law, which requires concrete proof of misconduct rather than mere non-performance. A comparative analysis reveals significant differences among jurisdictions. For instance, while the German system employs “Durchgriffshaftung” to impose direct personal liability in cases of asset commingling or undercapitalization, Croatian law maintains a stricter separation between corporate and personal assets. Similarly, in the tax context, the Croatian General Tax Act introduces a mechanism for tax guarantees that holds certain company insiders liable for tax debts when abuse is evident, thereby facilitating faster tax collection. However, this approach risks overextending liability to passive members and generating legal uncertainty. The paper employs a multifaceted methodological framework—including legal doctrinal analysis, comparative and case law analysis, empirical research, sociological inquiry, and normative critique—to identify key deficiencies in the current system. Findings indicate that the normative vagueness in the Companies Act and inconsistent judicial interpretations hinder effective creditor protection, while recent amendments to the General Tax Act may have broadened liability in a manner that conflicts with principles of legal certainty and proportionality. Based on these insights, the paper proposes targeted legal reforms. First, the Companies Act should be amended to incorporate explicit, objective criteria for piercing the corporate veil, such as clear definitions of intentional fraud, gross negligence, and asset stripping. Second, the General Tax Act should be revised to ensure that tax guarantor liability is imposed solely on those actively involved in tax evasion—preferably focusing on company managers—thus better balancing efficient tax collection with the protection of innocent investors. Finally, enhanced institutional coordination and procedural safeguards, including specialized judicial panels and mandatory judicial review of tax-guarantor decisions, are recommended to ensure a consistent and fair application of the doctrine. Ultimately, this research underscores the need for a balanced approach that preserves the economic benefits of limited liability while preventing its abuse. Reforms that clarify statutory language and strengthen enforcement mechanisms will not only improve creditor protection and tax discipline in Croatia but also align domestic practice with international standards and fundamental rights principles.

Keywords: piercing the corporate veil, tax guarantees, third party liability.

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1. INTRODUCTION

Piercing the corporate veil is a core principle of modern corporate law, establishing that companies and associations are legally separate from their members and liable only for their own obligations. This separation underpins limited liability, promoting entrepreneurship and protecting creditors. However, when the corporate form is abused for fraud or evasion of obligations, courts may disregard this separation and impose personal liability on controlling individuals. This paper examines the doctrine from several angles. It analyzes the liability of legal entities under Croatian law—drawing on the Obligations Act, the principles of care and good faith, and the Companies Act (CA)—and considers the conditions under which abuse of limited liability triggers the application of the veil-piercing doctrine. Notably, Croatian case law demands concrete proof of abuse rather than mere non-performance. A comparative analysis reveals significant differences among European jurisdictions, for example, Germany’s direct imposition of personal liability versus Croatia’s strict division between company and personal assets. The study also explores the doctrine’s role in tax law under the General Tax Act and its criminal law implications. Based on an analysis of current shortcomings, the research sets out the following: Hypotheses: The existing legislative framework in Croatia inadequately protects creditors, allowing irresponsible members to exploit the corporate structure without real personal liability. This paper investigates whether the normative vagueness of the Companies Act and passive judicial practice contribute to this issue. Although the current system strengthens tax collection, recent amendments (GTA 2024) may have overly broadened liability, risking legal certainty and taxpayer rights. The study examines if focusing liability on company management rather than all members could better balance tax collection with investment climate and proportionality. Institutional weaknesses—such as limited court specialization and poor coordination among bankruptcy, criminal, and tax mechanisms—undermine the effectiveness of veil piercing. The research explores whether enhanced institutional support and systematic tracking of abuses could reduce recidivism. Theses: Clearer normative regulation in the Companies Act is essential for effective creditor protection; explicitly defined criteria and procedures would enhance legal certainty and consistent application of the doctrine.

Harmonizing tax and corporate law is crucial to avoid conflicts and ensure equal treatment. Directing tax-related liabilities primarily at actual company managers would protect innocent shareholders. A dual approach combining precise legal measures with improved institutional capacities—such as specialized judges, better-trained tax inspectors, and enhanced cooperation between bankruptcy trustees and tax authorities—yields the best results, as confirmed by comparative experiences. Ultimately, this paper aims to identify key deficiencies in the current system and propose concrete reforms to improve creditor protection, promote tax discipline, and strengthen legal certainty in the area of piercing the corporate veil.

2. LIABILITY OF LEGAL ENTITIES IN CIVIL LAW RELATIONS

The liability of legal entities is fundamental in civil law, requiring legal persons—such as companies and associations—to bear the consequences of their actions. Anchored in the Croatian Obligations Act (OA, Official Gazette No. 35/2005, as amended), this institution ensures legal certainty, protects creditors, and prevents abuse of rights through the mandatory principles of diligence and honesty (Slakoper 2003, 511–548). In cases of abuse—recognized as a breach of legal personality—liability may extend to those controlling or managing the entity (Slakoper 2013). Radolović (2012) explains that liability arises from both the formal independence of legal persons and the need to safeguard third-party rights, noting that Croatian

case law, though traditionally conservative, is gradually broadening its approach in structural abuse cases. Comparative analysis shows that while the German system employs “Durchgriffshaftung” to impose direct personal liability, the Croatian system maintains a stricter separation between the assets of the entity and those of its members (Slakoper 2014). Empirical evidence suggests that, although decisions to breach legal personality in Croatia are rare, they are crucial for protecting creditor rights and curbing contractual abuse (Slakoper 2017, 2018). Normative discussions recommend clearer definitions of breach conditions and enhanced creditor protection mechanisms to adapt the legal framework to modern economic realities (Radolović 2012; Slakoper 2013). Overall, the liability of legal entities represents a balance between contractual autonomy and public interest protection.

3. RESPONSIBILITY AND PIERCING OF CORPORATIVE VEIL IN RELATION TO THE BASIC PRINCIPLES OF CIVIL LAW

The institution of “piercing the legal veil” represents an exception to the fundamental principle of separation between the legal personality of a company and the limited liability of its members. It is common for a company to be an independent legal entity that is liable for its obligations solely with its assets, while the members (shareholders or partners) are not personally liable for the company’s debts (Marković, 2021). This departure from the principle of separation and limited liability has been established in English law since the classic case of *Salomon v. Salomon* (1897), which affirmed the separate legal personality of a company and the limited liability of its members. However, jurisdictions recognise that this separation is not absolute – the ‘corporate veil’ can be pierced in exceptional circumstances where strict adherence to separation would lead to injustice or abuse (Krupa-Lipiński & Slup, 2018). Therefore, in certain situations, the courts “lift” or “pierce” the corporate veil and make the members of the company personally liable for the company’s obligations in order to prevent the legal personality from being used as a cover for illegal purposes, fraud or harming creditors (Krupa-Lipiński & Slup, 2018) (Marković, 2021). In the following, this institute is analysed in the Croatian legal framework (according to the Companies Act), with a review of case law and a comparison with European and international standards. Particular attention will be paid to circumstances such as tax liability, criminal liability and creditor protection where the corporate veil is pierced.

4. PRINCIPLES AND CONDITIONS FOR THE ESTABLISHMENT OF LEGAL PERSONALITY IN CROATIA

In Croatian law, the Companies Act (hereinafter: CA)(1993) expressly provides for the institute of infringement of legal personality. The basis is laid down in Article 10 of the CA: “Anyone who abuses the fact that he is not liable for the obligations of the company as a shareholder of a capital company cannot claim that he is not liable for these obligations by law.” (Marković,2021). Thus, if a member of a company abuses the rule of limited liability, he cannot enjoy the protection of this rule, but is personally liable for the obligations of the company. This provision has been implemented since the entry into force of the CA in 1995 and applies to members of corporations (joint-stock companies - d.d., limited liability companies - d.o.o., including simple d.o.o.). It is a non-contractual liability of one member for the debts of another - a creditor can demand the fulfilment of an obligation directly from a member of the company due to his unlawful conduct, but only after the obligation of the company has become due and remained unfulfilled (Barbić, 2001). Therefore, this liability is conceptually understood as a

joint and several guarantee of a member for the debts of the company - a member is not the original debtor of the obligation, but becomes a co-debtor through his conduct, jointly and severally liable with the company to the creditor (Slakoper, 2014).

1. Abuse of rights as a basis for liability

The most important prerequisite for the violation of legal personality is the existence of an abuse of rights by a member of the company. The member uses the institution of the spin-off of the company in a way that is contrary to the purpose for which the spin-off was created – as an incentive for legitimate entrepreneurship and not as a means of circumventing the law or harming creditors (Marečić 2019). Case law emphasizes that the mere fact of non-payment of debts by the company is not sufficient to establish the liability of the shareholder; the creditor must specifically demonstrate and prove what constitutes an abuse of this rule (Marković 2021; Rožac 2021; Slakoper 2014; Barbić 2001). Abuse of rights can manifest itself in various ways: Use of the company for an improper purpose: A shareholder establishes or uses the company to achieve a legally prohibited objective and thus abuses limited liability. Damaging creditors: Deliberately acting through the company with the intention of leaving creditors unpaid. This is usually done through fraudulent actions such as favoring certain creditors, paying out assets to related parties or entering into harmful transactions. Unlawful asset management: Procedures that blur the distinction between the company's assets and the personal assets of a member, such as commingling company assets with private assets (Brnabić & Ivkošić 2018; Rožac 2021). Deprivation of assets: Intentional reduction of the company's assets for one's own or another's benefit in a situation in which the company is insolvent or over-indebted, including the payment of unjustified loans to oneself or the transfer of valuable assets to related parties (Barbić 2001; Slakoper 2013). Case law confirms that the conditions for the liability of a shareholder may be met even if only one of the above-mentioned circumstances exists. The CA expressly states by means of an exhaustive list in Article 10 that in such cases the conditions for abuse of rights are deemed to be met. However, the list is not exhaustive – it is left to the courts to assess other forms of abuse (Krupa-Lipiński & Slup 2018; Rožac 2021). Finally, it is always examined whether the member has acted contrary to the purpose of limited liability by using the company as a front to the detriment of creditors or for an unlawful purpose.

2. Case law in Croatia and the European Union

Croatian courts have consistently clarified that a creditor invoking Art. 10 of the Croatian Act must pinpoint the specific acts of abuse by a company member; an outstanding debt or business cessation alone does not trigger personal liability. The Supreme Court has held that liability arises only when it is proven that the defendant acted contrary to the purpose for which limited liability was granted, while the High Commercial Court has stressed that mere non-performance is insufficient to establish abuse. These rulings ensure that piercing the corporate veil remains an exceptional remedy, reserved for clear cases of abuse—such as when a shareholder/director, exercising full control, depletes company assets for personal gain, leaving creditors unpaid (see HCC judgments Pž-1008/1998, Pž-3587/2009, Pž-1096/2013, Pž-3595/2018; SC judgments Rev-x 144/09 and Revt 428/05). At the European Union level, case law on breach of legal personality is limited since the issue is primarily governed by national law. However, in Case C-81/09 Idrima Tipou (2010), the Court of Justice of the European Union ruled that a Greek law imposing automatic joint and several liability on shareholders holding more than 2.5% of a television company's shares—a form of *ex lege* veil piercing—is

acceptable only if it does not unduly restrict fundamental freedoms, such as the freedom of establishment and free movement of capital. Although EU law permits exceptions to limited liability, any national measure must be compatible with these core freedoms. Efforts to harmonize legal personality regulation at the EU level, such as proposals in the 9th Company Law Directive (1984) and early drafts regarding single-member companies, have not culminated in binding rules, resulting in diverse national approaches that still must conform to EU framework requirements (Max Planck Encyclopedia of EPL 2025).

3. Comparative review of European and international standards

Despite the differences in the regulation of the piercing of the corporate veil between jurisdictions, common legal standards can be identified. Almost all legal systems accept that a corporation is an independent entity with limited liability, but recognize that this limitation is not absolute. In Anglo-American law, the doctrine of "piercing the corporate veil" was established by case law as early as the beginning of the 20th century. For example, in *United States v. Milwaukee Refrigerator Transit Co.* (84 U.S. 1905), the U.S. Court emphasized that the fiction of separate personality may not be used for fraud or injustice. Thompson (1990) points out that this doctrine, applied using tests such as proof of an "alter ego" relationship, willful undercapitalization, and violation of corporate formalities, is now used as a central tool in malpractice cases. Similarly, English law, based on the principle of *Salomon v. Salomon & Co. Ltd.* principle – examples such as *Gilford Motor v. Horne* (1933) and *Jones v. Lipman* (1962) illustrate situations where a company is formed as a front to avoid legal obligations. Modern UK practice, for example in *Prest v. Petrodel Resources Ltd* (2013), has limited the piercing of the veil to cases where the company is a 'simulation' or 'facade' and there is no other remedy to bring the responsible person to court. In the continental European systems, the principle of the prohibition of abuse of rights dominates the rule of piercing the veil. German law uses the term "Durchgriffshaftung" for cases in which there is a commingling of the assets of the company and the shareholder or in which insufficient capitalization indicates creditor fraud. German stock corporation law, with its special rules for group relationships (group law), also allows for pass-through liability when a parent company integrates a subsidiary into a single company, thereby providing additional protection for creditors. French law uses the concept of abuse of rights (*abus de droit*) and the Italian system uses the doctrine of *finalità fraudolenta*, which sanctions companies that serve as instruments for circumventing the law.

In Central and Eastern European countries such as Poland, Hungary and Slovenia, the influence of German and Anglo-American law has led to the emergence of similar doctrines. Comparative studies (e.g. Vandekerckhove 2007; Steffek 2009; Krupa-Lipiński 2018) show that the patterns of abuse – mostly closely held companies used for fraud or asset skimming – are very similar regardless of the legal system. The international framework also recognizes the need for balance. While there is no uniform international rule for piercing the veil, a 1995 resolution of the Institute of International Law suggests that in corporate groups, the controlling members (parent companies) are liable for the debts of subsidiaries in certain circumstances. In investment disputes, the term "alter ego" analysis is often used, illustrating how formal separation is ignored in cross-border structures to protect creditors or ensure the application of sanctions. In general, international business practice accepts the institute of piercing the veil as a necessary corrective – standards of good corporate governance and various soft law documents (such as the OECD Guidelines) implicitly emphasize that the legal personality of a company must not be abused. Despite regional differences, the basic principle remains the same: Owners who use the company as an extension of themselves and thereby cause harm to creditors can be held personally liable. The German system uses "Durchgriffshaftung" for direct

personal liability in cases of asset mingling and thin capitalization. The UK courts are restrictive on pass-through liability and only authorise it when the company serves as a front to avoid obligations. USA courts more frequently apply the "alter ego" test and the concept of fraud, but this remains an exceptional remedy. The French legal system uses the concept of "abus de droit" to sanction the abuse of legal personality. The Italian system applies the doctrine of "finalità fraudolenta" to prevent the exploitation of a company for illegal purposes. Poland, Hungary, Slovenia: These countries, under the influence of German and Anglo-American law, have adopted similar doctrines with certain variations in application.

4. Tax liability and "tax guarantors" as a special form of piercing the legal veil in a financial and legal sense

Tax claims represent a special context in which legal personality is breached to secure tax collection. The Croatian General Tax Act (GTA, 2016) serves as *lex specialis* to the Obligations Act (OA) by stipulating that members of a capital company are not liable for its debts "except as provided by law" and that any abuse of this protection nullifies the limitation of liability (Rožac 2021; Brnabić & Ivkošić 2018). Article 31 of the GTA lists specific situations—such as transfers of assets for tax avoidance, fictitious transactions, and failure to initiate bankruptcy proceedings—that trigger personal liability of members (Rekaš Tucaković 2019; Baker 2023; Rihter 2016; Marečić 2019). If such actions are uncovered, the tax administration may declare the member a tax guarantor for the company's debt pursuant to Art. 32 of the GTA, effectively piercing the corporate veil administratively without resorting to litigation. Similar mechanisms exist in other jurisdictions, such as in German tax law, where directors or shareholders may be held liable for tax debts in cases of intentional evasion. Comparative studies caution that such third-party liability must be applied proportionately, balancing the need to protect tax revenues with the protection of individual rights (Baker 2023).

5. Criminal law aspects

Using a company as a front does not absolve perpetrators from criminal liability for illegal acts. Many abuses that lead to the breach of legal personality are also punishable, as the Croatian Criminal Code (CC) (2011) provides for sanctions for actions directed against the company's creditors. For example, the criminal offense of causing bankruptcy (Art. 249 CC) punishes responsible persons who, through their negligent management or reduction of the company's assets, cause its insolvency to the detriment of creditors. The offense of abuse of trust in business transactions (Art. 246, para. 2 CC) also covers situations in which the responsible person knowingly harms the company for personal gain or for the benefit of another legal entity (Kantolić 2022). Such an act, in which a member of the company siphons off assets and thereby harms creditors, can result in both civil and criminal liability. Criminal law provides an additional deterrent through fines or imprisonment, as the offender is personally liable, regardless of the limited liability of the company. It is important to emphasize that in the criminal law context, piercing the corporate veil is not the exception but the rule: both a legal entity and natural persons acting on its behalf can be held criminally liable, so the real perpetrators cannot hide behind the legal entity. Furthermore, certain abuses – such as breach of duty in the event of capital loss or the unlawful granting of a loan (Articles 251 and 252 of the CC) – are additionally criminalized in order to protect creditors. In short, criminal law and the institution of piercing the corporate veil work in a complementary way – first by sanctioning

and deterring more serious abuses, and then by enabling creditors to obtain civil law protection and recover their claims.

6. Creditor protection and other specific contexts

The interests of creditors are at the heart of the institution of piercing the legal veil. Limited liability exposes creditors to the risk of not being paid in the event of the company's failure – which is why company law prescribes mechanisms to protect creditors, such as mandatory share capital, capital maintenance rules, restrictions on dividend payments and the obligation to file for bankruptcy in a timely manner (Barbić 2025). The piercing of the veil as an ultimate remedy only intervenes if these standard mechanisms have been used in a way that constitutes an abuse of rights. In practice, this institute is most often applied in the case of close companies – for example, small family limited liability companies, where the controlling owner makes no real distinction between himself and the company and creditors have no other way to collect their claims than to pierce the corporate veil and access the owner's personal assets (Marković 2021). Croatian statistics confirm that lawsuits for infringement of legal personality are much more common in limited liability companies than in joint stock companies, which is due to the smaller number of shareholders and the higher concentration of power in such companies. Special groups of creditors and circumstances are also important: when a company goes bankrupt, creditors often try to pierce the company's veil, even if the bankruptcy assets are not sufficient to pay the debts. Croatian practice confirms that the opening of bankruptcy does not prevent a creditor from suing a member of the company on the basis of Article 10 of the Companies Act (Marečić 2019; Brnabić & Ivkošić 2018). The liability of a member for abuse can be determined regardless of the status of the company in insolvency, as it is the liability for its own acts of abuse and not only for the assumption of the company's debts. Corporate groups (groups of companies) present an additional challenge as the parent company can “bleed” the subsidiary through intra-group transactions, putting creditors in a disadvantageous position. In jurisdictions where there are no formal group agreements – as is the case in some European countries – the only way to protect creditors may be to lift the veil on the parent company.

Examples from German law, such as the “Autokran” case (BGH 1985), show that the corporate veil can be pierced due to the subsidiary's complete financial interdependence and dependence on the parent company, while similar doctrines have been developed in the US through so-called corporate liability (Krupa-Lipiński & Slup 2018; Vandekerckhove 2007). Regulatory and sanctioning situations: The piercing of the corporate veil can be applied not only to protect private creditors, but also in the interest of public policy. The example of media fines in Greece, where the state attempted to lift the veil to collect fines from the owner of a television station, illustrates how public interests can be superseded by individual interests (Baker 2023; Stavropoulou 2016). Similarly, in the area of environmental protection or market competition, European practice allows for the relativization of the separation of a company when the parent company is used to carry out illegal cartels or other similar acts. In short, the piercing of the legal veil acts as a safety valve of the legal system – an exceptional tool that ensures that the legal personality of a company does not become a haven for unfair or illegal behavior. Croatian law provides additional protection to creditors through the principle of prohibition of abuse of rights and specific indicative cases, while European and international standards ensure that national solutions do not violate fundamental freedoms and legal certainty.

Both institutions aim to protect creditors from the abuse of limited liability, but differ in the way they are applied. The Companies Act (CA) bases the piercing of the veil on a judicial analysis of abuse of rights, which allows the exclusion of limited liability protection only in exceptional cases (Marković 2021; Slakoper 2013). On the other hand, the General Tax Act

(GTA) introduces specific, administratively applicable measures – the so-called tax guarantee – which immediately burden the liable members in the event of abuse and thus ensure faster tax collection (Rožac 2021; Brnabić & Ivkošić 2018). The existing standards in the CA do not contain sufficiently precise criteria for proving abuse, which leads to inconsistencies in case law and leaves many creditors unprotected. On the other hand, the GTA mechanism, although effective for tax collection, may lead to an overly broad application of liability to passive members, creating legal uncertainty.

5. CONCLUSION AND LEGAL REFORM/RECOMMENDATIONS

The doctrine of piercing the corporate veil and the tax guarantor mechanism are essential safeguards for creditor protection and effective tax collection in Croatia. Under the Companies Act, limited liability is maintained unless members abuse this protection by using the corporate form to commit fraud, undercapitalize the company, or mix personal with corporate assets.

However, the statutory language is vague and judicial interpretations vary, leaving creditors at risk. Similarly, the General Tax Act enforces personal liability through tax guarantor provisions when abuse is evident, ensuring prompt tax recovery. Yet, its broad application may unduly affect passive members, compromising legal certainty. A comparative review shows that while German law employs "Durchgriffshaftung" to impose direct personal liability in cases of asset commingling, the UK and US systems apply veil piercing only in clear instances of fraud or abuse. In France and Italy, doctrines such as "abus de droit" and "finalità fraudolenta" serve similar purposes. In Eastern European countries, influenced by these models, similar principles prevail. Internationally, the core principle remains that the corporate form must not shield wrongful conduct. To address these shortcomings, the following reforms are recommended:

Clarify Normative Criteria in the Companies Act: Amend the Act to explicitly define the conditions under which the corporate veil may be pierced. This should include clear, objective criteria—such as intentional fraud, gross negligence, and asset stripping—that would trigger personal liability. Such precise language will reduce judicial discretion and improve creditor protection.

Refine the Tax Guarantor Mechanism in the General Tax Act: Revise the Act to ensure that tax guarantor liability is imposed only on those actively involved in the evasion of tax obligations. Limiting liability to controlling members or managers, rather than all shareholders, will better balance the need for efficient tax collection with the protection of legitimate investors.

Enhance Institutional Coordination and Procedural Safeguards: Establish stronger links between commercial courts, tax authorities, and insolvency practitioners. This may include the creation of specialized judicial panels and standardized guidelines to ensure consistent application of the piercing doctrine. Additionally, introducing mandatory judicial review of tax-guarantor decisions will safeguard individual rights and uphold due process. These reforms aim to strike a necessary balance between preserving the economic benefits of limited liability and preventing its abuse. By clearly delineating the boundaries of acceptable conduct and reinforcing institutional capacity, Croatia can achieve greater legal certainty, protect creditor interests, and promote a fairer, more efficient business environment.

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