

Tax authority refuses to cancel misfiled capital gains tax returns and charges tax and late fees 2/26/21

The power of the State Revenue Service ("SRS") to adjust the amount of tax due is primarily laid down by section 23(1) of the Taxes and Duties Act. The period open to review is limited to three years, and it is generally accepted that a person's tax burden cannot be revised outside this period. Yet the SRS takes the view that a person's obligation to pay taxes is not limited in time and is not really covered by the statute of limitations. We have encountered a practice in which, on finding an incorrect tax payment for a period outside the three years, the person was given the option of voluntarily filing the relevant tax returns and paying additional taxes. To stimulate this voluntary action, the person was warned that the SRS might pass their information to the Finance Police in order to decide on starting a criminal prosecution. This practice is now developing in such a way that a taxpayer's mistake in filing tax returns for earlier periods is interpreted as voluntary performance of their obligation and an action that cannot be rectified.

Background

The tax inspector examining the person's capital gains tax returns for 2018–2020 asked for additional information about earlier periods. As a result, the person prepared and filed capital gains tax returns for 2012–2017 on the SRS Electronic Declaration System. The tax returns were accepted and the person was liable to pay additional tax and late fees for the period.

A legal assessment of the situation

There is no doubt that administering taxes is mainly based on information the taxpayer provides. Yet the tax legislation gives the taxpayer and the SRS a right to make appropriate adjustments to tax returns if necessary.

For example, under section 16(1)(6) of the Taxes and Duties Act, the taxpayer has, among other things, the right to file corrections or adjustments to a tax return within three years after the time limit for payment prescribed by particular laws if a tax audit has not been started or conducted during this time for particular taxes and relevant tax periods, or if the time limit for filing adjustments to tax returns prescribed by section 23(5.1) has not expired, or if there is no decision to adjust a tax liability in the case prescribed by section 23(5.2) of the Taxes and Duties Act. When it comes to tax charges payable to the government, the SRS Director General can reset the time limit prescribed by section 23(5.2) if the taxpayer files an application for paying overdue taxes.

Thus, indeed the taxpayer can repeatedly correct or adjust the tax returns within the time limit specified by this section if any errors or inaccuracies are found.

In specified instances the SRS has the power to monitor and adjust tax returns (*see sections 22 and 23 of the Personal Income Tax Act*), to adjust the amount of tax due in the event of a breach by taking appropriate control measures, and to impose statutory penalties (*see section 23 of the Taxes and Duties Act*).

These rules have a common element, though: the taxpayer's rights and those of the SRS are limited in

time. The taxpayer cannot improve his situation and the SRS has no power to conduct review measures in order to determine a different tax burden outside the statutory time limit. This is based on the legal certainty requirement. Accordingly, no changes can be made to the legal position once the statutory time limit has expired.

If tax returns for earlier periods have been filed erroneously so that the taxpayer is automatically required to make additional payments with no further evaluation, and there is no way he can rectify the situation, then it would be reasonable to expect that either the technical possibility of filing such tax returns is excluded altogether or such tax returns should be subject to cancellation/revocation at the taxpayer's request. Otherwise there is no clear time frame during which the SRS will deem it possible to accept late filings. Is it currently possible to file a tax return for 2000? But maybe then for 1995, too? That would not be a reasonable and legally sound outcome.

The SRS position

Despite this, the SRS position at the level of the Personal Tax Filings Unit of the Tax Board was not very accommodating in this particular case. In fact, all the SRS did was pointed out that the legislation makes no provision for cancelling any misfiled tax returns and refused to deal with this matter in a different way. This means that in 2021 the person has tax arrears for 2012-2017 and late fees keep accruing each day.

The principle of lawfulness

It is important to note that section 7 of the Administrative Procedure Act upholds the principle of lawfulness, under which a government agency's behaviour must be consistent with provisions of law. A government agency operates within its statutory powers and can exercise those powers only according to the meaning and purpose of this authorisation. The case law states that there are written provisions of law and then there are unwritten ones – principles of law. The fact that the written provisions of law fail to expressly state the basis for a government agency's behaviour does not mean the agency can refrain from any action that is necessary and adequate in a particular situation. The requirement for behaviour in accordance with provisions of law, which arises from the principle of lawfulness and from the principle of statutory mandate does not mean that the government agency is only permitted to take any action that is expressly mandated by a particular written provision of law. This is why a solution to the situation can often be found by looking at the particular legal remedy according to its substance and considering the provisions of law governing the matter under review in correlation. When it comes to establishing the content of the lawfulness principle we should also follow the principle that prohibits legal obstruction, under which a government agency, among other things, must not refuse to decide a matter on the grounds that it is not settled by law or any other external enactment. Likewise the government agency must not refuse to apply a provision of law on the grounds that it fails to provide for a mechanism for enforcing it, that the existing mechanism is not complete, or that no other enactments have been issued to regulate how this provision of law should be applied.

We will keep our MindLink.lv readers informed of whether the taxpayer obtains a favourable solution from the SRS Director General in this case.