

Ways of identifying and addressing financial issues early (2) 1/36/21



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This article completes what we [wrote last week](#).

Insolvency proceedings

A third legal solution is insolvency proceedings, which should be applied when the company's basic financial indicators are not stable enough to restructure the debt using an out-of-court settlement, legal protection proceedings, or out-of-court legal protection proceedings, and when the demand for the company's products or services is not sufficient to obtain the extra funds it needs to stay in business. In certain cases there is a statutory obligation to file an insolvency petition (e.g. if the debtor's payables are more than two months overdue). It is important to note that up to 31 December 2021 the Covid-19 Act has cancelled the debtor's obligation (while keeping this as a right) to file a corporate insolvency petition unless the debtor has failed to pay the full amount of wages or compensation for an accident at work or for an occupational disease, or has failed to pay mandatory national social insurance contributions within two months after the due date for paying wages. Also, the creditors' right to file a corporate insolvency petition against their debtor is restored from 1 September 2021.

Quite a few Latvian companies owe taxes to the government, and the State Revenue Service (SRS) is often the creditor seeking a delinquent taxpayer's corporate insolvency proceedings. Sometimes tax debts could be avoided if taxpayers were aware of the statutory opportunities to postpone the deadline or divide the tax into instalments. Reaching an agreement with the SRS might also help the company improve its cash flows.

Consequences of default and agreement to postpone tax payments

It is important to both negotiate ways of paying debts with the creditors (suppliers) and to be aware of the legal consequences that may arise if the company fails to pay taxes as they fall due. The implications include the SRS charging a late fee of 0.05% of the tax debt for each day overdue, collecting the overdue taxes, putting the company on the public list of tax debtors, and taking restrictive measures (such as suspension of permits or suspension of business). In statutory cases the company's board member will be held solely liable for its tax debts incurred after 1 January 2015 (this liability being joint and several in the case of multiple board members). If certain criteria are met, the SRS can recover the tax debt from the board members' assets.

If it is known before a tax falls due that for objective reasons the company will be unable to pay the full tax by the due date, then depending on the cause of the tax debt there are ways to reach a voluntary agreement with the SRS on easy terms for paying it. A solution can be found even if the SRS has already started collecting the debt. In any event the first thing the company should do is file an application on the Electronic Declaration System.

Common situations in which companies can approach the SRS

If a debt arises because the company lacks funds to pay the tax, it is possible to extend the deadline for up to one year and pay the debt in instalments. Once 80% of the debt has been paid, it is possible to postpone the balance for another six months and divide the debt into instalments. In such cases the late fee is reduced to 0.0125% for each day overdue.

During the pandemic up to 30 June 2021 the [Covid-19 Act](#) permitted companies affected by the Covid-19 crisis to extend their tax payment deadlines for up to three years (instead of one year) but this rule has now ceased to apply. It is advisable to follow the latest developments and see if any new rules are adopted to offer easy terms for paying tax debts.

If a tax debt results from a control measure conducted by the SRS, the possibility of extending the deadline depends on whether the company accepts the SRS decision on the results of the control measure. In the case of acceptance, the additional tax assessment can be divided into instalments over a period of up to five years with a reduced late fee of 0.0125% for each day overdue. If the company initially disputes the SRS decision on the results of the control measure and later, with the dispute still unsettled, enters into a settlement and pays the tax assessment within 12 months then no extra late fee will be charged.

It is also important to note that whenever the taxpayer addresses the problem of extending the deadline and pays the debt according to the extension schedule, the SRS will keep the company off the public list of debtors.

If the SRS has already started collecting the debt from the company, it is still possible to agree to divide the debt into instalments over a period of up to three years if no more than six months have elapsed from the start of collection. In this situation the reduced late fee will be 0.025% for each day overdue but the company will appear on the SRS debtors list.

Available resources for a corporate self-assessment

A team representing the Ministry of Justice, the European Bank for Reconstruction and Development and the financial sector has created several tools for companies to self-assess their financial position and has put together guidance on how to use the restructuring methods in addressing problems brought on by debt. The tools are available to all Latvian companies free of charge.

The format of an early warning self-assessment tool is simple and easy to understand. This interactive instrument allows the company to conduct a fast and comprehensive analysis and assess whether insolvency risk is likely in the near future and when the company should take steps to mitigate the risk.

Another available tool for monitoring financial indicators allows the company to measure its key financial indicators by simply entering key figures of its financial statements. This provides a fast assessment and recommendations on what action is required.

The Ministry of Justice has published recommendations for preparing cash flow forecasts, with a sample forecast for corporate restructuring as it substantially differs from forecasts used in standard everyday situations.

Taxpayers are also encouraged to use the available resources and databases of other government agencies that will help assess their financial position (e.g. the [Enterprise Registry](#), the [Bank of Latvia Credit](#)

Register, the [Single National Computerised Land Register](#), and the [SRS Taxpayer Rating System](#)).

* The guidance for identifying and acting on financial distress as well as the corporate self-assessment tools (part of the guidance documents) are available on the [Justice Ministry's website](#).