

Association's right to carry on business 1/48/23

The administrative courts occasionally hear disputes between the State Revenue Service (SRS) and associations either over their obligation to pay tax because it turns out that the overt or covert purpose of forming an association was to make profits or capital gains for its members, or over breaches allowing the SRS to delist the association as a public-benefit organisation. In either case the bone of contention is a business the association conducts in addition to its core activity, which the SRS assesses differently and perceives as an irregularity.

Associations

An association is a voluntary union of persons formed to achieve the non-profit goal set by its articles. This means an association is essentially a non-profit organisation. However, an association has the right to carry on a business as an ancillary activity that involves maintaining or using its own property, and to carry on any other business to achieve its stated aims. The law lays down the following general conditions for a business conducted by an association:

1. Making profits or capital gains must not be the association's primary goal, and the business may only be carried on as an ancillary activity.

No business may become the association's core activity. This is a basis for finding that the sole and actual purpose of the association's existence is to make a profit from its income, rather than achieving the goals set by its articles. For example, in one lawsuit the court agreed that lending was in fact the only activity the association had carried out.

1. Any income the association receives should only be used for achieving the goal set by its articles.

How profits are used is also an important consideration. If the association has used its profits in an unlawful way, i.e. they have not been applied to achieve its stated aim, then a tax exemption is not available.

1. Profits must not be distributed between the members of the association.

In the latest case law, a court decided the question of whether the provision of services for a fee (the organisation of training courses in this case) should be recognised as the association's core activity for profit. Having examined the association's accounting documents, the SRS found its revenues came from fees charged for an educational programme and for taking exams repeatedly, with salaries, salary taxes and health insurance representing the bulk of its expenses. This led the SRS to find a breach of sections 2 and 7 of the Associations and Foundations Act. The SRS did not, however, question the fact that in organising training courses and seminars for subject-matter experts, the association operated for the common public benefit and in line with the goal set by its articles.

The court saw no breach in the association's activities and overturned the SRS's decision. Firstly, the court questioned the SRS's view that finance for the core activity of any association should mainly come from donations, subsidies and dues. In the court's eyes, the fact that the association's income mostly comes from fees it charges for training courses is not contrary to section 7 of the Associations and Foundations Act. Secondly, the law does not make it illegal for a public-benefit organisation to pay salaries to its employees, and payment of salaries does not necessarily mean its activities are no longer geared towards

public-benefit goals, because it may be the case that those activities can be carried out only through employees. Also, since the income from the organisation of training courses is reinvested in the organisation of training courses, there are no grounds for claiming that the association's core activity is not geared towards achieving the non-profit goal set by its articles. Thirdly, the association has carried out a number of other activities. For example, it has approved programmes for training courses organised by other persons; it has published various manuals and also issued them free of charge; it has provided a free download for one book; and it is working on a new book and preparing it for publication, as well as collaborating with other organisations in the industry. The proportion of these activities has not been greater than the organisation of training courses, but if we properly evaluate the way and purpose of organising the training courses in conjunction with the goals set by the articles, there are no grounds for finding that the core activity has the intention of making a profit.