

# Tax receivable disallowed pending administrative litigation between SRS and debtor (2/51/18)

After a person's insolvency proceedings have been announced, a receivable over which the creditor has a dispute with the debtor may be partly or wholly disallowed by the administrator. Yet only civil disputes have been taken into account for a long time. Also, if the debtor appeals a tax assessment decision made by the State Revenue Service (SRS), the receivable will not be allowed by the administrator until after the dispute has been settled in administrative proceedings.

## General jurisdiction court practice

The practice of courts of general jurisdiction supporting the SRS's position that the term "dispute" does not extend to public law was based on three key arguments.

Firstly, the taxpayer is required to calculate and pay taxes, while the SRS monitors compliance with this requirement and imposes a different tax burden only where tax legislation has been breached. So a dispute between a taxpayer and the SRS over payment of taxes cannot exist.

Secondly, suing the SRS over an administrative instrument that imposes an obligation to pay a tax, duty or any other charge to central or local government does not suspend that instrument, and it must be carried out immediately. So any claim that is filed with and heard by an administrative court does not affect the obligation to pay taxes.

Thirdly, the SRS as a subject of public law is unable to defend its interests and enforce receivables in a court of general jurisdiction.

## Counterarguments

The arguments set out above are easily refuted.

Firstly, the SRS is not infallible in its work and might misinterpret some provisions of law or incorrectly assess the legal situation or evidence, so disputes over the legitimacy and validity of tax decisions arise in public law as well. To settle any disagreement with the SRS, a taxpayer has the option of challenging the tax decision in administrative proceedings. The non-existence of a dispute can be established only if the taxpayer agrees with the tax decision and does not appeal it.

Secondly, any provisions of the Administrative Procedure Act, including those governing the suspension of an administrative instrument by filing a lawsuit, are not applicable where the legal situation is encumbered by the taxpayer going insolvent.

Thirdly, it is true that the law does not provide for the SRS going to a court of general jurisdiction over a tax assessment decision, but then again, this is not necessary. Appealing an administrative instrument is subject to a different procedure under which administrative courts are responsible for dispute resolution. So the finding of courts of general jurisdiction has been made by completely ignoring the fact that the receivable is based on an administrative instrument.

## The Supreme Court's interpretation

The court practice described above has been developed by lower courts in hearing SRS appeals against administrators' decisions that disallowed SRS receivables. The fact that there was no appeal against those court rulings to a superior court resulted in the long existence and stagnation of this practice.

The Supreme Court was able to express its opinion on this problem quite by chance when hearing a protest from the Prosecutor General's Office over a court ruling in which findings deviated from the established practice. The Supreme Court also recognises a dispute between the creditor and the debtor where a receivable arises from an SRS decision that is appealed in administrative proceedings.

Once the debtor's insolvency proceedings have been announced, another legal arrangement kicks in, where special provisions of law governing insolvency proceedings are primarily applicable. And provisions of the Administrative Procedure Act should be applied reasonably.