

Tax information request outside control measure (1/18/19)

A company receives an information request from the State Revenue Service (SRS), although no tax audit or other control measure has been started against the company. Taxpayers are often unsure what that means and how to respond correctly. This article explores the reason for such an information request and the taxpayer's options.

The reason and substance of an information request

According to case law, collecting taxes is a function of public power that arises from the principle of a socially responsible country. To fulfil this function, the government needs information, but it would be an exaggeration to always start a tax audit in order to establish some fact. So before starting a tax audit, the SRS may ask the taxpayer to provide more details or an explanation of some details (tax returns or statements) already provided, for example, to help the SRS decide whether there is a valid reason for starting a tax audit.

A need for information means the SRS has identified a discrepancy between their own information and the details supplied by the taxpayer, or the SRS has found an error or an outstanding obligation or received a piece of information that put up a red flag.

To respond or to ignore?

An information request outside a control measure does not bind the taxpayer and has no legal consequences, so it's okay to ignore it. Some taxpayers take the SRS to an administrative court in order to verify the legitimacy of their action. However, the court will reject such a claim because no obligation has been imposed on the taxpayer, and the SRS information request is not, therefore, considered an administrative instrument and is not subject to a separate review in administrative proceedings.

The situation is legally different where an information request affects the company's business partner, not the company itself. In particular, this applies credit institutions when the SRS requests information about a bank's customers facing administrative proceedings. A request addressed to the company is then considered an administrative instrument, and if the private person fails to comply with it voluntarily, it will be enforced.

Possible consequences

If the addressee of an information request ignores it, the SRS will rely on their own information in assessing a potential tax risk or liability and deciding to start a tax audit or another review measure. So refusing to cooperate is a step that deserves some serious consideration.

If an outstanding tax obligation is discovered too late, and a statute of limitation already prevents the SRS from determining a liability within a review measure, then their letter about providing information (an explanation) in fact means an invitation to settle the liability voluntarily. Although the SRS no longer has an effective tool for enforcing tax laws under the statute of limitation, the taxpayer should examine the

possibility that details of an outstanding tax liability or an infringement will be handed over for starting criminal proceedings because criminal liability has different limitation periods.

Recommendations

If a taxpayer receives an information request from the SRS outside a control measure, then taking appropriate action will help avoid trouble in the future. In one case, it makes sense to wait and see how things develop, but another case might require the taxpayer to do everything they can to dispel any SRS suspicion of an infringement and to prevent legal action. Making the right choice depends on assessing each situation on its merits, so the taxpayer is advised at this stage to consider seeking legal assistance.