

Suspension of business for failure to provide information requested by tax authorities (1/21/20)

The **Taxes and Duties Act** permits the State Revenue Service ("SRS") under certain conditions to suspend a taxpayer's business, for example, after finding that the taxpayer has evaded taxes or duties. The SRS has so far put an overly wide interpretation on their powers to restrict a trader's business so substantially. The Supreme Court has recently issued an important interpretation.

The issue

Taxpayers are required to cooperate with the SRS in accordance with tax legislation. Among other things, cooperation means providing any information and documents requested by the tax authorities. The SRS may request information or documents in the following cases:

1. Details relating to a taxpayer – outside any ongoing tax check if the SRS is running a risk analysis of that taxpayer and decides to begin a tax audit, a data compliance review, or a thematic review;
2. Details relating to the taxpayer as part of an ongoing tax check on him;
3. Details relating to the taxpayer's supplier if the SRS is running a tax check on that supplier.

The Supreme Court had so far stated that a request for information made outside any ongoing administrative proceedings does not bind the taxpayer and gives him no legal consequences, yet the taxpayer should expect a tax check from the SRS. The taxpayer's obligation to provide information as part of an ongoing review of him has never been doubted. The Supreme Court has now explained that where the SRS is interested in the taxpayer's supplier and not the taxpayer itself, the taxpayer is required to cooperate, but contrary to the SRS's opinion and practice, refusal to cooperate and failure to provide information cannot be automatically interpreted as tax evasion, meaning that the SRS has no power to suspend the taxpayer's business on that basis.

Background

The SRS asked a company to provide information about its supplier and transactions with him because that supplier was being audited. The requested information was not provided by the stated deadline, so the SRS held the company's director administratively liable and decided to suspend its business. The company presented relevant supporting documents to the SRS and also challenged in the administrative court the SRS's power to enforce a trader's business suspension for his refusal to cooperate outside a tax check run on him.

The SRS's arguments

Section 32.2(1) of the Taxes and Duties Act requires the taxpayer to cooperate with the SRS. Failure to provide the requested information under section 1(14) of the Act is one of the cases treated as tax evasion for which the taxpayer's business can be suspended under section 34.1(1)(2) of the Act.

Interpreting these provisions of law in correlation, the SRS stated:

1. The obligation to cooperate exists regardless of whether the taxpayer or its supplier is undergoing a tax audit;

2. Failure to provide information and documents has the same consequences – the SRS is denied the opportunity to examine the legality of the taxpayer's business, including the correctness of tax calculations and completeness of tax payments. Accordingly, failure to provide any information required for tax administration and control per se equals tax evasion, so the SRS has the power to suspend the taxpayer's business;
3. It does not follow from the provisions of law or their amendments that the SRS's power to suspend the taxpayer's business is restricted to cases where a tax check is run on the taxpayer. And this sanction is efficacious and more often produces the required result, compared to other sanctions.

Findings of the Supreme Court

This case is concerned with the fact that the SRS suspended the trader's business because he withheld information as part of a tax check run on his supplier and not one run on himself.

The Supreme Court finds that the SRS has the power to suspend the taxpayer's business only if he has committed a substantial breach that affects the amount of taxes due. However, failure to provide information is not considered a substantial breach. In the case of failure to provide information, the SRS must establish that by this omission the taxpayer has evaded taxes or duties. The Supreme Court finds that a distinction must be made between cases where the taxpayer fails to provide information and evades taxes or duties under section 1(14) of the Taxes and Duties Act and cases where it is made difficult for the SRS to obtain evidence when running any tax checks on another taxpayer that are not tackling the tax liability of the person having received the SRS decision. No doubt, in both cases the person being asked to provide information is required to cooperate with the SRS, but this does not mean that the same sanctions can be imposed on the taxpayer for refusal to cooperate.

The Supreme Court also admits that in general there could be a situation where a third party's actions help another taxpayer evade taxes or duties by making it substantially difficult or impossible for the SRS to collect them correctly. There could also be situations where a third party's actions result in the SRS being denied the opportunity to find out whether that third party is compliant with tax legislation. In such cases, however, the SRS must describe the threat the taxpayer poses to the tax system, and a general reference to or an assumption about such a situation potentially arising is not sufficient. In summary, under the stated conditions and with compelling arguments, the SRS will still have the power to suspend the taxpayer's business also on the basis of the taxpayer's refusal to provide information about its supplier.