

Court overturns tax authority's interpretation of tax evasion (1/24/20)

In our Flash News of 10 September 2019 "[State Revenue Service seeks collection from tax debtor's business partners](#)" we wrote about how the SRS suspended a trader's business after he refused to pay taxes owed by its supplier. The SRS has recently lost more cases in which a trader disputed his business suspension enforced by the SRS after he withheld information about one of his suppliers and in which a trader refused to pay a supplier's tax debt at the SRS's request. This article explores key aspects of those disputes.

How the SRS interprets "tax evasion"

The SRS's recent approach to collecting unpaid taxes is to enforce business suspension, a sanction that inflicts maximum encumbrance, where a trader fails to pay a supplier's tax debt or withholds supplier details requested by the SRS.

A key issue such disputes revolve around is interpreting the term "tax evasion" defined by section 1(14) of the Taxes and Duties Act. The SRS tends to claim tax evasion also where a trader withholds information and documents requested by the SRS relating to another taxpayer, and where a trader fails to pay a tax debt of his past or present supplier at the SRS's request.

The Supreme Court's ruling

The Supreme Court finds that the way the SRS interprets and applies sections 1(14) and 34.1(1)(2) of the Taxes and Duties Act is too wide and defeats their purpose, as these provisions are to be interpreted systemically, i.e. in conjunction with other provisions of the Act, including obligations it imposes on the taxpayer.

A trader doing business aims to make a profit. Suspending his business prevents this aim from being achieved and therefore substantially limits the trader's rights. The lawmaker permits business suspension only where a serious tax breach is detected.

Clearly, a trader being asked to provide information has to cooperate with the SRS, but this does not mean his refusal to cooperate justifies such a substantial limitation of his rights.

Having assessed the applicable rules, the Supreme Court recognises that a taxpayer may be found guilty of tax evasion only if his actions affect his own taxes and their amount.

Accordingly, if a trader refuses to cooperate with the SRS, withholds information on another taxpayer and fails to pay into revenue accounts designated by the SRS any amount owing to another taxpayer whose tax debts the SRS is trying to collect, there are no grounds to claim that the trader is evading taxes under the Taxes and Duties Act.

The ruling implies that a trader's business suspension by the SRS alleging tax evasion is unlawful.

Of course, it is still possible that a third party's actions may help another taxpayer evade taxes by making it difficult or even impossible for the SRS to collect them properly. However, even in such cases, as recognised by the Supreme Court in its ruling of 25 February 2020, the SRS has to show how the taxpayer is putting the tax system at risk. A general statement or assumption that such situations might arise is not sufficient.

It would be premature to talk about any fully fledged case law in this area, yet some key guidelines have been outlined, and the trader will now find it much easier to defend his interests when he finds himself in a situation where the SRS unlawfully threatens to suspend his business only because he withholds information unrelated to himself or fails to pay his supplier's tax debts at the SRS's request.

If your company is struggling with the issue described in this article, our team would be happy to help you (phone Olegs Spundins on 67094400 or email olegs.spundins@pwc.com).