

# Case law on tax dispute during insolvency proceedings 3/31/22



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The Supreme Court's Administrative Division has reversed the Regional Administrative Court's ruling, which had overturned a decision from the State Revenue Service (SRS) on an additional personal income tax (PIT) liability.<sup>1</sup> This article explores the case in detail.

## Background

The Supreme Court heard a dispute over whether a PIT liability for a period preceding the announcement of a private individual's insolvency proceedings, which the debtor became liable to assess and pay during his insolvency proceedings after the deadline for filing creditor claims expired, should be counted as costs of those proceedings and treated as a current tax charge, or whether a creditor claim should have been filed for it. The Supreme Court was to determine how statutory rules should be applied to a tax liability that does not fall due before the creditor claims deadline expires and what would the tax payment procedure be, considering that a creditor claim is not filed.

Interestingly, when hearing the case before, the Regional Administrative Court had stated that in determining whether the debt arose before or after the announcement of insolvency proceedings, the deciding factor is when the taxable transactions were made, rather than when the tax falls due. The SRS was not entitled to the debt because of failure to duly submit a creditor claim.

The SRS appealed against the Regional Administrative Court's ruling, stating it was physically impossible to file a creditor claim because the relevant tax period had not ended and the person had not filed a tax return, so there was no way to identify a tax debt.

## The Supreme Court's findings

The Supreme Court finds a hidden loophole in the law because the fact that the SRS is unable to recover taxes under the procedure and in the amount prescribed by the Insolvency Act because it was unable to file a creditor claim regardless of its actions and is also unable to collect those as current taxes, is contrary to the lawmaker's intention and the legal framework.

The Supreme Court states that in order to close that loophole, the legal framework should be applied in such a way that the SRS's duty to file a creditor claim exists for any claims arising after the announcement of insolvency proceedings and before expiry of the creditor deadline that are directly linked to transactions the debtor made before the announcement of proceedings. Accordingly, in those situations, any taxes to be assessed and paid after the creditor deadline expired must be treated as current taxes payable as costs of insolvency proceedings.

In view of these considerations, the Supreme Court found the Regional Administrative Court had misapplied the relevant provisions of law, which serves as a basis for overturning its ruling and requiring it to rehear the case.

We will be monitoring the Regional Administrative Court for a new ruling to keep our MindLink subscribers informed.

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<sup>1</sup>The Supreme Court's Administrative Division ruling No. SKA-197/2022 of 26 May 2022, A420282418