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Taking counsel

Janis Taukacs, partner at Sorainen Law Offices in Riga

Tax disputes with state authorities in Latvia - the new era

In a world of tight legal and economic networks, the number of tax disputes is on the rise. As of Feb. 1, 2004, tax disputes in Latvia are governed by a new law - the Administrative Procedure Act - that protects taxpayers to a greater extent than the previous one. Moreover, pursuant to the APA, special administrative courts have been introduced in order to resolve any disputes between a person (an individual or a company) and state or municipal institutions. In addition, the APA provides a more detailed legal framework - e.g., how administrative acts are issued and appealed (including a challenge of actual actions) or how to require indemnification and an advance ruling.

Progress of the new regulatory framework was already apparent in the first half of the year 2004. According to the statistics of cases heard at the lower administrative court, out of 85 cases against the State Revenue Service 60 have been decided in favor of a taxpayer.

As to the major changes introduced by the APA, I would like to stress the following:

1. The role of the court has been changed from a competition of parties to an objective investigation. The court actively participates in the proceedings and may act on its own motion;
2. The burden of proof has been switched from the taxpayer to the institution. The institution must prove that its objections are substantiated, but the applicant participates according to his abilities;
3. The legitimate expectations principle will be more consistently applied. The actions of an institution must be legal and consistent, and a mistake may not adversely affect anyone;
4. The advance ruling principle has been introduced. If a person acts in accordance with the received advance ruling, the consequences may not be more adverse than in the ruling. Previously written opinions of state authorities on specific issues were not binding for the authorities whereas now under the APA they are. Moreover, the ruling may be challenged in a higher institution.

In order to introduce a more even balance between a person and the state, there is a new draft law on indemnities in Parliament that states the right to claim compensation of losses on damages caused by a state institution (like unrealized profit, cost of legal assistance, etc.), personal harm (reputation, trade secret) and moral harm. Currently it is disputed whether the state can limit its liability by a certain amount as stated in the present draft.

Businesses and individuals can now rely on case law of the European Court of Justice, which can be used in the Baltic states in the same way as in other EU member states. Thus the taxpayer may do both - to refer to previous judgements and, during the case hearing, the Latvian court may apply for an ECJ preliminary ruling.

Finally, I would like to stress that there is a better quality case law available as a result of the new APA, which provides clarity on uncertain issues in disputes with a state or municipal institution. For instance, in a pretrial procedure, both tax payable as a result of tax assessment by the authorities and penalties are suspended, whereas in the court stage only penalties remain suspended upon a request, based on interpretation of public interests.

We hope the next step in improving the legal environment in disputes with the state, particularly in the field of tax disputes, will include an introduction of new,

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flexible penalties in place of the old system, where most penalties, notwithstanding circumstances in each particular case, amounted to 100 percent of the tax assessed.

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