

Abstract

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## The debiting of receivables against tax liabilities

If a debtor is owed money by the same creditor, receivables can generally be debited against liabilities on certain conditions. This can be agreed mutually, but in specific conditions receivables can be debited against liabilities with the approval of a single party.

State officials can also debit receivables against liabilities. They are regarded as a legal entity in this respect. Consequently the tax administration is entitled to debit receivables owed by any state authority under private or public law against a person's tax liabilities.

The objective of this audit was to evaluate the debiting of receivables against tax liabilities in state administration, particularly with regard to key authorities. A further goal was to determine whether reforms are needed to improve the effectiveness of the present system.

Receivables can be debited against tax liabilities under the Tax Collection Act or on the basis of civil law. The debiting of receivables under the Tax Collection Act is only used by the tax administration internally. A total of FIM 509 million in receivables was debited in this way in 2000. Problems in this area have been quite limited. The debiting of receivables under civil law takes place between state agencies. Here effectiveness is reduced by serious problems which result in the loss of million marks in state revenues annually.

Debiting receivables against tax liabilities is a fast, simple and inexpensive way to settle taxes compared with enforced collection, in which case other creditors' receivables must also be taken into account and the end result for the state is uncertain. In the opinion of the State Audit Office, state agencies should favour the debiting of receivables against tax liabilities.

At present it is unclear and unregulated to what extent and on what basis different authorities can refuse to allow the debiting of receivables against tax liabilities. As a result money owed to the state is often lost either completely or at least partly. In the opinion of the State Audit Office, legislation in this area should be developed to ensure the state's overall interests.

The debiting of receivables against tax liabilities under civil law is somewhat haphazard at present. If state aid is paid out under a specific item in the state budget, this is possible in principle. If state aid is granted in the form of a tax allowance, such as the energy tax allowance, it cannot be used for this purpose. Some authorities refuse to allow debiting at all.

The Ministry of Justice has plans which call for the preparation of general regulations concerning the collection of liabilities under public law. In the opinion of the State Audit Office, these regulations should also cover procedures for the debiting of receivables against liabilities under civil law. Regulations should also cover the obligation to allow debiting and who in the state administration is responsible for decisions in this area. In addition regulations should lay down the grounds on which the obligation to allow debiting can be waived entirely or in part.

In some situations, for example if a firm has neglected to pay employer's contributions or VAT to the tax office, the firm may receive a tax refund even though it has unreported or unpaid taxes. This is true if the due date for back taxes comes after the date of a tax refund, since receivables can be debited against tax liabilities only after back taxes have fallen due. The State Audit Office notes that the collection of taxes should be developed so that tax refunds are not paid to firms with unpaid taxes at the same time. This could take place by developing the debiting system or by moving up debiting decisions.

Business aid is sometimes paid to bankrupt estates even though these practically always owe taxes. Paying aid to bankrupt estates is hard to justify since they are unable to carry on profitable operations. In the opinion of the State Audit Office, the conditions and procedures for granting business aid should be developed so that if business aid is paid to a bankrupt estate, the tax office should always be able to debit this against back taxes. Authorities granting aid should do a better job monitoring firms' back taxes in general.

If a firm has applied for restructuring, the position of the tax office weakens if the handling of the application is drawn out, since back taxes often continue to grow until the court has issued its decision. On average restructuring takes less than a year, but in individual cases the process can last much longer. The State Audit Office notes that it would be in the state's interests to approve restructuring programmes at a brisker pace.