Risks Related to the Payment of Compensation for Wages not Received by Employees Due to the Employer's Bankruptcy

Summary

The State Audit Office assessed whether the money allocated from the government guarantee fund for the payment of wage compensation to the employees for wages not received due to the employers' bankruptcy have been utilized with expedience and legitimately.

The audit was performed for the reason that the amount of money paid from the guarantee fund has been relatively large every year and the State Audit Office had been informed that some of the trustees in bankruptcy have not utilized the money allocated from the guarantee fund with proper expedience.

The period under audit was the previous year and the first quarter of this year. In 2001, the total amount of 21.4 million kroons was paid to the employees of companies in bankruptcy; compensations were paid to employees of 112 companies. Within the first three months of 2002, 3.8 million kroons were paid from the guarantee fund.

The payments from the Government's guarantee fund is made pursuant to the Employment Contracts Act and Bankruptcy Act, enacting that in case of the employer's bankruptcy the state is committed to pay the employees of such a company the un-received wages, holiday pay, compulsory health insurance and compensation for the termination of employment contract.

The allocation of the necessary funds is organized by the Ministry of Finance. The trustee in bankruptcy shall file a petition to the Minister of Finance and the money shall be transferred whether to the bank account specified by the trustee in bankruptcy of the bank accounts of the employees.

The Ministry of Finance shall continue to pay the compensation until the end of this year, starting from 01.01.2003 a new public legal entity – Estonian Unemployment Fund – is going to pay the employees compensation in case of the employer's bankruptcy, as established with the Unemployment Insurance Act.

Main Conclusions and Recommendations

The State Audit Office has formed an opinion that the organization of payments made from the guarantee fund is not managed sufficiently to avoid the risk of abuse and breach of legislation. The part of the Unemployment Insurance Act which deals with the payments made to the employees of companies in bankruptcy by the Unemployment Fund is not explicit enough and should be changed.

- Many problems arise of the documents submitted to the Ministry of Finance by the trustees in bankruptcy and the checking of the said documents. The trustees in bankruptcy do not submit any documents which give evidence concerning the existence and size of the individual's claim to the Ministry.

  The State Audit Office recommended the Minister of Finance to make amendments to the regulations in such a way that the list of documents to be submitted by the trustees in bankruptcy would include also the claims of the employees.
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- As the trustees in bankruptcy have not calculated the amount of compensation correctly, there are several cases where the employees have been paid more or less compensation than justified.

  Therefore, the State Audit Office considers it necessary to ask the trustees in bankruptcy to submit accounting documents used to calculate the compensations as the evidence of correct calculations.
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- According to the regulation which entered into force in April, this year, the trustees in bankruptcy are committed to make the employees payments within ten days; such a requirement was not implemented before. In course of audit it became evident that in some

cases the trustees in bankruptcy made the payments over an extended period. In some cases no money was paid as the trustees were not able to find the respective employee. As the audit was performed, the Ministry of Finance had no idea how much money to be refunded to the state budget is available on the bank accounts of the trustees in bankruptcy.

The State Audit Office has formed an opinion that the money should be transferred directly to the bank accounts of the employees. In case it is still decided to make the payments to the accounts of the entrepreneur in bankruptcy, the person making the payments should supervise the utilization of the money, asking the trustees in bankruptcy to submit reports on the utilization of the funds.

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- The trustees in bankruptcy had adopted different approach towards the calculation of social insurance tax to be paid on the payments made from the guarantee fund. In some cases the payments were made to the employees but the social insurance taxes were still outstanding; in some case no payment was made at all as there was no money for the payment of social insurance tax. There was one case where the social taxes were paid from the money of the guarantee fund (this should be paid by the employer but in the given case it was a sole proprietor).

  The State Audit Office suggested the Minister of Finance to start paying compensations to the justified individuals only.

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- The State Audit Office is of opinion that the situation where no accurate account is kept of the money of the guarantee fund is unacceptable. In course of the audit it became evident that the accounting of the money allocated from the guarantee fund met with the requirements, but the book-keeping systems applied were doubtful. The money allocated from the guarantee fund had not been recorded as a claim; there is also no idea what should be the amount of the said claim.

  The State Audit Office recommended the Minister of Finance to adopt measures for recording the money allocated from the guarantee fund as a claim in accounting systems and reports.

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- During the period audited, the Minister of Finance had not submitted any reviews on the utilization of the money allocated from the guarantee fund to the Government. The report was only submitted during the audit process. Nevertheless, it did not include any reference to the money refunded by the entrepreneurs in bankruptcy and the claims of the state.

  The State Audit Office suggested the Minister of Finance to supplement the reports submitted with the two said indicators.

Besides the Minister of Finance, the State Audit Office also made similar recommendations to the Minister of Social Affairs, as the area is going to within the competence of the respective Minister from the beginning of the next year.

The Minister of Finance agreed with most of the recommendations; the Minister of Social Affairs agreed with all the recommendations.

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