

Securing orders in theory and practice of the financial government and administrative courts

Abstract

This work explains the institute of securing order, as defined in Act n. 280/2009, Coll., tax code. The aim of this thesis is to analyze how the securing orders were used by the Financial government and consequently judged by the Supreme Administrative Court of the Czech Republic. The first part of the work is concerned with the theory of securing orders, meaning their function, the way they are used and conditions for use as well as their termination. In this part, there are also the statistics of their use issued by the Financial government. This part of the work is based on commentaries of the Tax Code by Baxa and Kaniová, and Lichnovský, also a new publication by Vladimír Balcar and articles by experts on this topic from the ranks of tax advisors, Tomáš Hajdušek and Jan Rambousek. The second part of the work contains a description of five court decisions that prove that the institute is neither negative nor positive by itself, but it depends on its use by the Financial government. As an illustration, I chose cases that either confirm or reverse the securing orders. Specifically, in the second part I describe the following cases: the case of Českomoravská olejářská komanditní společnost (4 Afs 22/2015-104) which defined the need to balance the conditions for issuing the securing order. Then the case of KM PLUS spol. s r.o. (52 Af 67/2016-264) is described which shows a justified use of securing orders according to law, to prevent the loss of property from the company and to ensure the future collection of the tax. Third described case is another important ruling about Petr Š. (2 Afs 239/2015-66), where the Supreme Administrative Court defined the so called subsidiarity of the securing orders, which orders the tax administrator to first use other ways of payment of the tax, if there is a possibility that the tax subject will pay the tax, even if over a longer period of time. Then there is a description of the case of LEDOPA GROUP s.r.o. (2 Afs 250/2015-53), where the Supreme Administrative Court confirmed the securing orders as correct and correctly justified. The last case are two rulings concerning securing orders for two taxes against one tax subject, HERO Computers s.r.o. (5 Afs 254/2108-49 a 4 Afs 250/2015-65) which were chosen because the cases were decided only in 2019, which the securing orders were issued in 2017, meaning after the previously mentioned rulings which helped define the use of securing orders.

Key words: Securing order, tax government, tax procedure code