Rules for obtaining residency certificates to be amended (3/25/17)

Proposals have been drafted for amending Cabinet Regulation No. 178 of 30 April 2001, which lays down procedures for claiming relief available under double tax treaties. The proposals set out arrangements for approving a residency certificate issued by a foreign tax authority, which will be valid for five years, as well as prescribing easy terms for transactions below €5,000. This article explores the proposed changes.

The current rules

Under the cabinet regulation, certain taxable payments (listed below) to residents of countries that have an effective double tax treaty with Latvia may be exempted from withholding tax (WHT) where the treaty applies as confirmed by a residency certificate.

There are two ways a residency certificate can be taken out:

1. Filing with the State Revenue Service (SRS) a completed Appendix 1 to the cabinet regulation (titled “Residency Certificate – Tax Relief Request) signed also by the competent institution of the payee’s country of residence;
2. Filing with the SRS completed parts I–IV of Appendix 1 to the cabinet regulation and a tax residency certificate issued by the competent institution of the payee’s country of residence (this option isn't part of the rulebook as yet, but in practice the SRS has been using it as a procedure for approving residency certificates.

Under the current rules, in the former case an exemption is available for five years after the application is filed with and approved by the SRS; in the latter case an exemption is available only for the year that is covered by a letter of confirmation from the competent institution of the payee’s country of residence.

The proposed amendments

The proposals bring the following innovations:

1. The procedure for approving residency certificates issued by foreign tax authorities, which the SRS has so far applied only in practice, will be included in the cabinet regulation;
2. Treaty relief will be available for five years after the date from which the SRS seeks to tax the payment also where completed parts I–IV of the appendix and a tax residency certificate issued by the competent institution of the payee’s country of residence have been filed with the SRS;
3. If the amount of a single payment or the total of multiple payments made to the payee in the tax year doesn’t exceed €5,000, the payer should apply treaty relief on the basis of a residency certificate issued by the other country. In this case, treaty relief will be available for a period of up to one year after the residency certificate was issued, but the parties will not be required to go through the approval procedure with the SRS.

Payments to non-residents attracting tax

Tax is charged on revenues that non-residents gain in Latvia from business or related activities. Tax should be withheld on amounts that residents and permanent establishments pay to non-residents unless personal income tax has been withheld on those payments. Corporate income tax should be withheld on –

1. income gained from shares in a partnership (15% of taxable income);
2. profits distributed to members of a cooperative society for agricultural services and of a cooperative society for forestry services meeting compliance criteria, of the remainder of a qualifying distributed cooperative society, of an apartment owners' cooperative society, of a car garage owners' cooperative society, of a boat garage owners' cooperative society, and of a gardening cooperative society (15% of these payments);
3. management and consulting fees (10% of fees);
4. rental charges for the use of property in Latvia (5% of charges);
5. proceeds from the sale of real estate in Latvia (2% of proceeds);
6. payments to persons in tax havens (15% of payments and 5% or 30% in certain cases).

It's important to remember that the double tax treaties offer WHT relief for management and consulting services only.