

Fines attracting corporate tax (2/47/18)

Not all fines should be added to the corporate income tax (CIT) base under the new CIT Act effective from 1 January 2018, a welcome change that still raises many questions about what kinds of fines are exempt. This article explores a ruling issued by the State Revenue Service (SRS) on motoring fines.

Fines treated as non-business expenses

Under the new CIT Act, non-business expenses include amounts spent on fines that are disproportionate to the value of the transaction or have been paid to a related party or to an entity set up or operating in a tax haven. The Cabinet of Ministers' Regulation No. 677 explains that fines levied by government agencies are considered reasonable expenses.

This rule does not, however, apply where the company does not reclaim damages from its employee who is liable for the offence. For example, the CIT base should include a fine paid for a motoring offence committed by an employee if the employer has not filed a claim against the individual.

The SRS ruling

On 1 November 2018, the SRS issued the company with Ruling No. 30.1-8.7/274225, explaining the tax treatment of motoring fines. The company had received a number of invoices with different details and asked the following main questions about each of them:

1. Does an administrative fine paid by the company form part of its business expenses?
2. Should the fine be traced to the individual and charged to personal income tax (PIT) and national social insurance (NSI) contributions? Should the company include the fine in its business expenses?

Background

The company provides international road haulage services in the Baltic, Scandinavian, European, Russian and other markets. The company receives more than ten fines a week from various member states for speeding, ignoring road signs and other motoring offences, as well as for ignoring statutory limits on working time, overweight goods, tyres worn below the legal limit of tread etc. The fines are addressed to the company or to the driver in person at the company's registered office or at his declared place of residence:

1. A speeding fine for company truck KO, addressed to company driver M at the company's registered office;
2. A speeding fine for company truck KE, addressed to the company but showing a snapshot of the employee at the time of committing the offence;
3. A speeding fine for company truck LG, addressed to the company;
4. A speeding fine for trailer U held by the company under a finance lease. The fine is addressed to another entity as owner, but the company appears as holder on the vehicle's certificate of registration;
5. A speeding fine for company truck KG, addressed to the company and giving the name of the driver (employed by the company);
6. A fine for tyres worn below the legal limit of tread in Norway for company truck KN. The fine is addressed to company driver K at his place of residence. In economic substance, the driver cannot

be held liable if the employer has failed to provide a compliant tool (a truck in this case), and the company is therefore responsible for paying the fine;

7. A bill for an overdue motorway toll for company truck KT, addressed to the company. The company finds that this is an overdue bill for using a toll road, rather than a fine;
8. A parking fine in Latvia in May 2018 for company truck KZ, addressed to the company.

The SRS opinion

In the ruling, the SRS states that the CIT base should include any fines the company has paid but does not reclaim from the individual, regardless of who was issued with a motoring fine. The speeding fines and the bill for an overdue motorway toll mentioned in the background are therefore considered non-business expenses unless the company reclaims them from the individual who committed the offence by ignoring the national highway code.

The SRS explains that in this case the fines paid by the company should be neither personalised nor charged to PIT/NSI.

As to the fine for tyres worn below the legal limit of tread in Norway (question 6), the SRS finds that the driver cannot be held liable for this offence. In this case, the company has no grounds for reclaiming the fine from the individual, and it should not be included in the CIT base. The fine should be neither personalised nor charged to PIT/NSI.

Our conclusion

Since motoring fines are imposed for offences mostly committed by the driver, based on the SRS ruling, such fines will have to be included in the CIT base unless the driver has compensated the company for them.