# SRS interprets PIT treatment of non-resident's disposal of RE company (1/19/19)

In response to an advance tax ruling (ATR) request from a non-Latvian tax resident individual, the State Revenue Service (SRS) has explained the personal income tax (PIT) treatment of a non-resident's disposal of shares in a Latvian company with real estate in Latvia representing more than 50% of its assets (the "Latvian RE Company"). The ATR has been issued to a particular taxpayer and is not public, so it cannot be applied directly. This article explores the SRS conclusions about the PIT treatment in similar situations.

Questions put to the SRS

In analysing the taxpayer's situation, the SRS answered the following important questions:

1. What is the PIT treatment of a disposal of shares in foreign company B if it owns shares in Latvian RE Company C?
2. Does a disposal of shares in B, by contributing them to the share capital of newly formed foreign company A, put the non-resident under an immediate PIT payment obligation, or is this obligation deferred until shares in A are sold?
3. Will a future donation of shares in A make the donor (a non-Latvian resident individual) or the donee (a non-Latvian resident individual) liable to PIT?

See the picture for a better understanding of the questions:

SRS comments

1. The SRS says the non-resident's income arising on the disposal of shares in Latvian RE Company C is considered income from RE under the PIT Act. So the disposal of shares in foreign company B or A will make the non-resident liable to PIT if the percentage of Latvian RE in the foreign companies' assets as per balance sheet exceeds 50%.
   The non-resident's income is revenue less expenditure and attracts a 20% PIT. In this case, revenue is the value of shares in B for contributing to A, and expenditure is the non-resident's investment in B's share capital, i.e. the amount of share capital. Since B owns not only Latvian companies but also a foreign company, Latvian-source income is measured in proportion to the amounts invested in B's Latvian companies and other companies.
2. If shares in B are contributed to A's share capital, the taxation of income is deferred until the non-resident disposes of shares in A acquired by exchange. So the amount of PIT due is measured when the shares are contributed, but the payment obligation is deferred until shares in A are sold. However, the non-resident is required to report this transaction by filing with the SRS the *Details of transactions started but not completed within one tax year* annex to the capital gains tax return.
3. The SRS finds that a donation of shares does not result in a Latvian tax liability because the donor does not receive any consideration in return. There is no Latvian tax liability on the donee, either.

But the shares in A are considered to change hands on the date of donation, so the non-resident will be required to calculate and pay PIT on contributing the shares in B.