

# Intragroup loan: tax authority's ruling confirms cases where retained earnings do not need reducing (2/40/19)

After the corporate income tax (CIT) reform, loans to related parties may be taxable, raising the question of whether a loan can be made with no CIT implications. This article looks at a new ruling published by the State Revenue Service (SRS) explaining how to apply statutory exclusions.

## Background

A company made a loan to its subsidiary in 2018. This transaction qualifies for an exclusion and is exempt under section 11(3)(1) of the CIT Act. The company sought a ruling from the SRS to confirm that retained earnings recorded at 31 December 2017 do not need reducing by a loan not charged to CIT and are available for tax-free distribution in subsequent periods (the loan does not need reporting in column 7 of table 1.1 of the CIT return).

## The ruling

In Ruling No. 30.1-8.7/304749 the SRS confirms that a company's loans to its subsidiary are exempt from CIT.

The SRS also explains that paragraph 10 of the Transition Rules of the CIT Act lists the following elements to be deducted from retained earnings:



Loans to related parties will reduce retained earnings only if the company relies on the criterion that exempts loans equal to retained earnings at 31 December 2017 (i.e. if paragraph 34 of the Transition Rules of the CIT Act is applied).

If the company takes an exemption available under section 11(3)(1) of the CIT Act, the law makes no provision for reducing retained earnings on the balance sheet at 31 December 2017.

## Our conclusion

The ruling implies that where a company is free to apply any of the criteria laid down by section 11(3-4) of the CIT Act, this can be done without affecting the amount of retained earnings available for tax-free distribution in dividends. Retained earnings should be reduced by loans to related parties only if an exemption is taken under paragraph 34 of the Transition Rules of the CIT Act, i.e. if none of the other exclusions may be applied in this situation.