Non-resident’s income from capital gains in Latvia 2/11/22


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Latvian tax residents are also taking the opportunity to work abroad. A Latvian tax resident meeting certain criteria may become a tax resident in the foreign country where he is employed. Selling real estate (RE) located in Latvia or other assets may raise the question of which country’s personal income tax (PIT) is payable on the profit you make on the transaction.

For the purposes of this article we assume the person is considered a non-resident for Latvian tax purposes, as completion of the necessary formalities allows the State Revenue Service (SRS) to confirm this status.

Statutory requirements

If the person is a non-resident for Latvian tax purposes, this does not fully release him from potential tax charges in Latvia. The types of income on which the person still has to pay Latvian taxes are defined in section 3(3) of the PIT Act, for example:

- Income from the use of RE in Latvia
- Income from the disposal of RE located in Latvia and other capital assets under section 11.9 of the PIT Act, except for income from the disposal of publicly traded financial instruments and from the disposal of debt securities issued by Latvia or another EU/EEA member state or by municipalities

These examples imply that RE sales by a non-resident in Latvia are also subject to PIT. A non-resident’s income from selling other capital assets to a non-resident is also taxable in Latvia unless this is income from the disposal of publicly traded financial instruments or from the disposal of debt securities issued by Latvia or another EU/EEA member state or by municipalities. At the same time, we need to consider any special rules laid down by the relevant double tax treaty (DTT).

PwC’s question

We used the following facts in our example:

1. The person has been a Latvian tax resident and has become a Swedish tax resident.
2. The person has been deregistered and is considered a non-resident for Latvian tax purposes.
3. The person owns RE in Latvia and other capital assets, including shares.
4. The capital assets are sold at a profit.

We asked the SRS to interpret the tax treatment of the non-resident’s income from the disposal of capital assets in the light of Latvia’s DTTs. We used the DTT with Sweden in our example.

Article 13(6) of the DTT provides that if an individual that has been a Latvian resident and has become a Swedish resident receives income from capital gains arising on the sale of any property other than RE, the income may be taxed in Latvia if the sale occurs within ten years after the person ceased to be a Latvian resident. Article 6(1) provides that any income a Swedish resident receives from RE in Latvia (including income from agriculture and forestry) may be taxed in Latvia.

The SRS interpretation

The SRS refers to the PIT Act and articles 13(6) and 6 of the DTT. Latvia has a right and will tax income from all kinds of capital gains (including on RE disposal) accruing to a person that has been a Latvian tax resident and has become a Swedish tax resident. The DTT also provides that Latvia has a right to tax income within ten years after the person became a Swedish tax resident. At the same time, the PIT Act exempts income from the disposal of publicly traded financial instruments and from the disposal of debt securities issued by Latvia or another EU/EEA member state or by municipalities.

PwC comment

This does not mean that Sweden does not have a right to tax this income. The DTT explains that income may be taxed in Latvia if the PIT Act provides for this (in the case of Latvia this is aggregate income from capital gains with certain exceptions). If Swedish law, too, provides for taxing this income, then Sweden may do so, but it is required to prevent taxation in both countries. So, if Swedish tax on the individual's income is higher than what Latvian law prescribes, the person will have to pay the difference to the Swedish tax authority.

We need to read each relevant DTT and check if it prescribes a ten-year period for taxing capital gains in the previous country of residence. This is prescribed by Latvia's DTTs with Sweden, Denmark and Lithuania, for example. Latvia's other DTTs (e.g. with Italy, Spain and the Netherlands) do not contain this rule and provide that this income, except for RE sales, may be subject to PIT in the country of residence only. Almost every DTT provides that income from RE sales is taxable where the RE is located.