

# Regional Administrative Court on compensation for loss and non-pecuniary damages resulting from incorrect tax assessment 2/32/22



Manager, Tax, PwC Latvia  
Matiss Auzins

On 19 July 2022 the Regional Administrative Court ruled on a case in which a taxpayer sought compensation for a loss and non-pecuniary damages resulting from an unlawful audit decision issued by the State Revenue Service (SRS) and overturned by the court. This article explores what losses (expenses) the court considers reimbursable and what the court evaluates in determining whether particular expense items can be reimbursed.

In 2016 a Latvian taxpayer's VAT audit resulted in the SRS assessing additional VAT and a penalty, as well as refusing a refund of overpaid VAT. The taxpayer appealed against the audit decision, and the court reversed it.

Once the SRS had refunded the VAT overpayment and the additional assessment, the taxpayer asked the SRS to reimburse a loss and non-pecuniary damages caused by the unlawful decision:

- Legal assistance received during the audit and litigation
- The interest rate on a bank loan
- Non-pecuniary damages due to a bad reputation, e.g. a supplier now demands prepayment, parties to the case have read some commercial information, and this has become known to market players

The taxpayer's compensation request was appealed in several instances and granted partially.

## Legal assistance received during the audit and litigation

The Cabinet of Ministers' Rule No. 859, *Maximum legal costs reimbursable to a private person*, prescribes upper limits and reasons for legal assistance. The taxpayer sought a reimbursement of legal costs, which was granted or refused on grounds stated in the table below:

Subject matter of legal assistance	Request granted or not	Grounds for refusing the request
Legal assistance during the audit, when challenging the decision, and related to tax support measures	Request partially granted under Rule No. 859	The request was not granted for legal assistance during the audit because audits are not unlawful and the taxpayer has discretion to acquire external services. Also, the request was not granted for legal assistance related to tax support measures because the invoice fails to state the date and fees.

Preparing a complaint to the SRS Director General, an application to the court, an ancillary complaint, an appeal, and additional explanations, and representation at court hearings

Request granted under Rule No. 859

Reading materials of the caseRequest rejected

An unproven claim: the statement of delivery and acceptance fails to mention that the legal service provider read materials of the case, and neither the statement nor an invoice for legal services has been filed.

A note in the statement about the claimant's representative having read materials of the case prevents any conclusion as to which materials he read.

Overall, we conclude that legal services at rates set by Cabinet Rule No. 859 are reimbursed, yet it's crucial that those expenses should be accurately detailed in the supporting documents.

## The interest rate on a bank loan

The court examined when interest was paid to the bank and found, firstly, it was paid for the period prior to completion of the audit and, secondly, the taxpayer had already had tax audits before with an additional tax assessment that would also require funds. So the court found no causal link between the interest paid and the expenses claimed in the application. The court also found the loan was made for the purpose of buying goods specified in the loan agreement.

## Non-pecuniary damages

The court stated that in order to receive a compensation for non-pecuniary damages, the person must describe an infringement of non-pecuniary rights and legally protected interests and name grounds for the amount of compensation being sought. The court agrees in principle that an honest taxpayer's reputation is infringed by the SRS wrongly deciding he has failed to honour his tax liabilities. However, the court stated the company had already had earlier tax audits resulting in unfavourable decisions, so it cannot claim an infringement of its reputation as an honest taxpayer. The company's claim that its rights to a trade secret are infringed because parties to the case read some commercial information and this became known to market players is invalid, as the company fails to indicate any circumstances evidencing potential disclosure of a trade secret.

It's our conclusion that where a tax audit results in the SRS wrongly assessing extra taxes and the taxpayer incurring expenses because of that assessment and on legal assistance in appealing against the audit decision, there is an opportunity to recover those expenses. Yet it's important to prepare supporting documents with sufficient detail. The court also found that an incorrect, unfavourable audit decision causes an infringement of the taxpayer's reputation. Here we should consider ways to compute and prove the loss resulting from that infringement.