

Amendments to Solidarity Tax Act (2/3/19)

The Solidarity Tax (ST) Act has been amended with effect from 3 January 2019. This article offers a summary of the amendments.

Reasons

The amendments were drafted to comply with the ruling of 19 October 2017 on case No. 2016-14-01 and with the ruling of 16 November 2017 on case No. 2016-16-01, in which the Constitutional Court (CC) recognised section 6 of the ST Act as inconsistent with the first sentence of section 91 of the Constitution and therefore void from 2019.

The voided section said the rate of ST should match the rate of national social insurance (NSI) prescribed by section 18 of the NSI Act, i.e. income subject to ST attracted the same rate of NSI that was charged on income subject to NSI for the tax period. The rate of NSI varied according to types of NSI an employee was insured for, meaning a variable rate of ST. Setting different ST rates allowed easy collection of ST without placing any extra administrative burden on ST payers.

The CC stated, however, that easy administration of ST cannot be the sole objective reason for a differential treatment of mutually comparable groups of ST payers. The CC ruled that all ST payers find themselves in comparable circumstances and the differential treatment prescribed by the lawmaker has no legitimate purpose, and so the lawmaker was required to reassess the rates set for ST payers and consider ways of satisfying the principle of equality.

Proposals

To enforce the CC rulings, three options for setting the rate of ST were evaluated:

1. a rate of ST equal to the lowest rate of NSI (25.5%);
2. a fixed ST rate of 30.87%; or
3. an ST rate equal to the highest rate of NSI (35.09%).

To achieve the purpose of the ST Act without placing any extra administrative burden on ST payers, it was decided that the new rate of ST should equal the lowest rate of NSI (25.5%).

Amendments

According to the amendments –

- the rate of ST equals the lowest rate of NSI;
- income subject to ST attracts the same rate of NSI that is charged on income subject to NSI for the tax period;
- with respect to any income subject to ST that attracted a higher NSI rate than the ST rate for the tax period, the State Revenue Service (SRS) will, by 1 September in the following tax year, retrospectively refund the overpaid ST (the amount of ST paid at a higher NSI rate less the amount of ST retrospectively charged at a rate of 25.5% for the tax period);
- the overpaid ST is refundable only to the employer;
- a new sequence for allocating ST is prescribed by giving priority to solidarity-related baskets:

- 1% for funding health care services;
- 14% towards the special budget of national pensions; and
- 10.5% into the PIT account held by the National Treasury.

From 2019, ST is payable by individuals whose annual income exceeds €62,800 (*the cap of €55,000 on income subject to NSI has been raised to €62,800 from 2019*).

The amendments will affect close to 4,000 people, according to the Ministry of Finance.

Example

In 2019, person A receives employment income of €80,000. ST applies to any excess over the NSI income cap, i.e. to €17,200 (80,000 – 62,800):

2019		Applicable in 2019	By 1 September 2019
Employer's NSI (24.09%)	€4,143.48		
Employee's NSI (11%)	€1,892.00	25.5% ST (€4,386)	The SRS refunds the overpaid ST of €1,649.48 (6,035.48 – 4,386) to the <u>employer</u> .
Total NSI	€6,035.48		