# Overpaid solidarity tax: refund to employer (3/29/20)

The State Revenue Service ("SRS") is in the process of refunding solidarity tax ("ST") overpaid by companies. This article serves as a reminder that an ST overpay, assessment procedures and refund deadlines raise a number of questions, such as how a refund of ST for 2019 that is received this year should be recognised in the books, and points to consider when it comes to timing a future reorganisation or liquidation.

How does an ST overpay arise?

ST is payable for socially insured persons whose employment income for a calendar year exceeds the upper limit of income that is subject to mandatory national social insurance ("NSI") contributions (EUR 62,800 for 2019–2021). The slice of income that is subject to ST in the tax year (i.e. above EUR 62,800) attracts the same rate of NSI as the person's income up to the upper limit. So ST is charged at a rate of 35.09% during the year even though the ST Act prescribes a rate of 25.5%.

The difference between the 35.09% ST paid during the year and the amount payable at 25.5% is considered an overpay and refunded to the employer (or to the taxpayer if ST is paid on non-employment income). An ST overpay for the previous tax year that is due to the employer will be calculated by the National Social Insurance Agency before 1 June in the following tax year, and the SRS will refund it to the employer before 1 September in the following tax year if the NSI rate is split between employer and employee as prescribed by section 18 of the NSI Act. So most employers have now received an ST refund.

How to record an ST refund for 2019 received this year?

While many employers have already included an ST refund in their financial statements for 2019, there are many companies that did not expect this refund for various reasons.

If an ST refund is omitted from the company's financial statements, the first thing we need to do is assess the materiality of this error against the company's income and expenses. An error is considered material if it is likely to lead the user of the financial statements to the wrong conclusions about the company's performance and financials.

Depending on whether the error is considered material or immaterial, the company has two alternatives. In the case of an immaterial error where the ST overpay is insignificant, the company can adjust its profit or loss for the current year. If the error is material, the company has to adjust its financial statements. It is important to note that in the case of a material error, the figures for 2019 are adjusted in the financials for 2020 instead of adjusting the financials for 2019. This involves the company adjusting its comparative indicators for 2019 to reduce expenses in the financials for 2020 and indicating the ST overpay as a receivable. Once the refund is made, the receivable is treated as cancelled.

Areas to focus on

When it comes to reorganising or liquidating a company, it is important to note that the SRS cannot adjust the ST refund timetable, so it is advisable to plan for completing the reorganisation or liquidation after the ST has been refunded if the amount is significant. In the case of a reorganisation, the acquiring company takes over all of the transforming company's rights and liabilities, including any ST overpay, which causes no loss to the company. However, a company in liquidation can lose the ST refund if it is liquidated too early. So management should take care to time the liquidation properly if the refund is significant.