Can someone who spends more than 183 days in Latvia over 12 months avoid becoming tax resident? 2/28/21

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To deal with the Covid-19 crisis in 2020 and 2021, the governments have imposed tight restrictions, including travel restrictions, to contain the pandemic. Various exit and entry restrictions forced many people to stay in Latvia or another country. If you are performing your job duties in Latvia then you may need to consider tax treatment aspects. This article explores how Covid-19 affects the way tax residence is determined under Latvian law.

The issue

Given the prolonged pandemic and the travel restrictions imposed to mitigate its consequences, there are situations where individuals who under normal conditions stay in another country are currently staying in Latvia, including performing their job duties for a foreign employer remotely. Such circumstances pose the risk of foreign companies having a permanent establishment in Latvia and being liable to register for Latvian payroll taxes. This can happen even if the employees would not be staying in Latvia under normal conditions and the employer has not posted them to perform their job duties in Latvia. It is also possible that the emergency situation will change a person’s tax residence country because they spend more than 183 days in Latvia over any 12-month period.

National law analysis

Under the Taxes and Duties Act a person meeting one of these conditions is considered a tax resident in Latvia:

1. The person has a registered (declared) place of living in Latvia;
2. The person spends 183 days or more in Latvia over any 12-month period;
3. The person is a Latvian citizen whom the government of the Republic of Latvia employs abroad.

This means that a person who is unable to leave Latvia because of Covid-19 restrictions becomes a Latvian tax resident if their stay in Latvia reaches or exceeds 183 days in any 12-month period (e.g. from March to March).

The tax authorities’ view

While neither the State Revenue Service nor the Ministry of Finance has published their stance on applying exclusions from the residence rules because of the Covid-19 crisis, PwC has received a letter in which the tax authorities seem prepared to make some special exceptions.

In their reply to PwC the tax authorities state that *"as for days that should or should not be included in the 183-day period when determining the period an individual has spent in Latvia,* each case should be assessed on its own merits.

Where an individual can demonstrate a reasonable original intention to carry out their activities in a manner which ensures that the duration of their presence does not exceed the stated time frame but some external circumstances (in the form of travel and other restrictions imposed to contain the pandemic) have forced an extension, then any periods that have had to be added to the person's periods of stay or activity in Latvia should not count in determining their presence under the general statutory provisions."

So the period or periods necessitated by the Covid-19 travel restrictions should be ignored in determining a person's residence, and someone spending more than 183 days in Latvia over a 12-month period can avoid becoming a Latvian tax resident under Latvian law.

Accordingly, when it comes to assessing an individual's residence under Latvian law, if we are to prevent Latvia from being named as the country of tax residence, we must show that the person has failed to leave for their habitual abode (residence country) because of objective circumstances.

We recommend seeking the tax authorities' approval for each of these cases.