

# Recovering income tax paid twice on work done for Latvian company abroad 1/20/22



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On 20 April 2022 the Regional Administrative Court again ruled on a dispute between a Latvian company and the State Revenue Service (SRS) about refunding overpaid personal income tax in a situation of double taxation. This court ruling follows the Supreme Court Administrative Division's ruling No. A420282416 of 9 July 2020 (SKA-150/2020). The Regional Administrative Court's anonymised ruling is available under case No. A420282416 (archive No. AA43-0096-22/15).

## Background

In 2013 and 2014 the claimant (a Latvian company) sent its workers on business trips to Norway. Personal income tax (PIT) and mandatory national social insurance contributions were paid in Latvia.

In March 2015 the Norwegian tax authority notified the company of how much PIT was due on its workers' income for 2014. In May 2015 the Norwegian tax authority notified the company of late fees. The company did not withhold the PIT or late fees on the workers' income but paid those out of its own pocket. By the time the company was to recover Latvian PIT on the income taxed twice, it had already terminated employment with some of the workers and was therefore unable to withhold the Norwegian PIT on their income.

To recover the PIT paid twice, the Latvian company adjusted its employer reports and statements of amounts paid to individuals for the period and sought a refund of the overpaid PIT. Yet the SRS disagreed with the adjustments the company had made.

## The outcome

The company's claim was satisfied and the SRS was required to refund the Latvian PIT paid, on the basis of the Supreme Court's ruling and the following findings:

- If provisions relating to the taxpayer's rights are applied by analogy, the employer in fact suffers a loss due to payment of PIT on his workers' income solely because he had paid the tax to the Norwegian government out of his own pocket. It is the loss, therefore, that forms the basis for claiming a refund of the overpaid tax.
- The refund must not exceed the amount of PIT paid on the part of income taxed in Latvia.
- This solution ensures fair protection of the right to property guaranteed by section 105 of the Constitution.

## The relevance of this case

Our experience suggests that the SRS has no common practice for recovering tax paid twice on income from gainful work under Latvian legislation (the PIT Act) and double tax treaties.

Section 24(7) of the PIT Act specifies an exemption method for recovering PIT paid twice if gainful work has

been carried out abroad. So, if PIT has been paid abroad, the Latvian PIT paid is refunded in full. There is no dispute over the requirement that PIT on income taxed twice should be refunded in Latvia. In the context of these two cases, the court has considered which party is entitled to a refund of the tax paid twice, i.e. the company or the individual, and what exemption method is applicable.

Under section 24(7.1) of the PIT Act, the employer too is permitted to recover the tax paid twice. The SRS has repeatedly stated in its communications with PwC that subsection 7.1 may be used only if the Latvian company has submitted a statement to the SRS with code 71 on the start of work abroad and with code 72 on the return from work abroad, and has adjusted its monthly and annual SRS filings to exclude the PIT paid. At the same time, the SRS states that the individual cannot recover the tax paid twice through the annual income tax return.

In this court case, the SRS carried on the dispute with the taxpayer, noting that in the PIT Act the lawmaker has clearly designated the individual as the subject of law entitled to a refund of the PIT paid twice.

That raises the question of whether this court case will create a new precedent in the SRS practice to allow the employer to fully recover the PIT paid twice and adjust the employer's filings, rather than through the annual income tax return, and whether this will accordingly create a practice under which the individual cannot recover the overpaid PIT at all. To find out the latest developments around the procedures for recovering a double payment of tax, we will be monitoring the news and SRS communications about the possibility of new guidance being prepared on how companies should act in these and similar situations.