

Supreme Court's ruling on non-resident's income from selling property to resident individual 2/34/22



Senior Consultant, Tax, PwC Latvia
Madara Hmelevska



Director, Tax, and Head of Pan-Baltic
People and Organisation Practice, PwC
Latvia

Irena Arbidane

On 22 December 2021 the Supreme Court's Administrative Division ruled on case A420209519, SKA-744/2021 dealing with the personal income tax (PIT) treatment of a non-resident individual's sale of real estate (RE) in Latvia. The ruling reinforces the understanding of the PIT treatment for a non-resident selling RE to Latvian tax-resident individuals who are not traders.

The essence of the court case

The dispute between the State Revenue Service (SRS) and a non-resident individual is not over their obligation to pay tax on the sale of Latvian RE. During a data compliance review of the non-resident's sale of RE in 2018, the SRS found that the non-resident's income arising on the sale should be charged to a 20% PIT, not 3%, and the non-resident is responsible for paying tax because the buyers were non-trading individuals.

So the dispute is over applying the correct rate and which of the parties is liable to pay tax considering the actual circumstances. The taxpayer tried to benefit from a more generous rule by applying a 3% PIT on their income where the law doesn't provide for this.

The finding

The Supreme Court stated that residents' and non-residents' income from capital gains generally attracts a 20% PIT. However, if the income arising on a property sale is paid out by a trading Latvian-resident individual and the amounts paid are taken into account for that trader's tax purposes under section 17(12.2) of the PIT Act, then a 3% PIT applies on the proceeds.

Since the income arising on the sale was received by the non-resident from non-trading individuals, the court had correctly stated that the non-resident's income attracts a 20% PIT, not 3%. Accordingly, the onus of paying tax is on the recipient of income, not the person who pays it out.

The Supreme Court also states that the Regional Administrative Court has invoked a finding the Supreme Court made in a similar case (SKA-208/2019): a 3% PIT applies only on the non-resident's income from a trading resident individual who bought RE in the normal course of business.

Accordingly, the Supreme Court upheld the Regional Administrative Court's ruling and dismissed an appeal.

It's important to note that unlike the Corporate Income Tax Act, the PIT Act doesn't give EU/EEA residents a choice in paying tax on the sale of Latvian RE. The PIT Act distinguishes between paying tax in two situations:

- A non-resident sells RE to a trading individual, and that trader is liable to withhold a 3% PIT.
- A non-resident sells RE to another person (including a resident individual) and PIT is payable by the non-resident at 20% of the profit.