

Do persons not subject to corporate tax have to withhold it on payments made to non-residents?

3/49/22



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Section 5(1) of the Corporate Income Tax (CIT) Act lists payments made to non-residents that are taxable at source. Section 2(2) lists persons that are not subject to CIT. In practice this raises the question of whether non-CIT payers are liable to withhold it on payments made to non-residents. This article answers the question.

The CIT Act's provisions

One might think that if a person is not a CIT payer under section 2(2) of the CIT Act, they are not liable to withhold CIT on payments made to non-residents. This is not the case, though, because we need to consider the Cabinet of Ministers' Rule No. 677, *Application of Provisions of the Corporate Income Tax Act*, paragraph 29, which explains the application of the Act's section 5 and describes the taxpayers. Specifically, tax on payments made to non-residents must be withheld and paid to the government by permanent establishments and residents (with the exception of individuals), including taxpayers that are not subject to CIT under the Act's section 2(2):

- Individual (family) undertakings (including farm and fishery operations) that have elected not to prepare annual accounts under the Company and Consolidated Accounts Act
- State-funded institutions whose income from business is earmarked in the national budget
- Municipality-funded institutions whose income from business is earmarked in the municipal budget
- Private pension funds
- Investment funds and alternative investment funds
- Associations and foundations unless they are established with the open or hidden purpose of making profits or capital gains for their members
- Religious organisations, trade unions and political parties
- The Financial and Capital Market Commission

Accordingly, non-CIT payers making payments to non-residents have to apply CIT under the Act's section 5.

As regards the withholding procedure and the obligation to notify the State Revenue Service (SRS), a payment is to be reported¹ by filing the "Corporate Income Tax Report on the Non-resident's Income Gained and Tax Paid in the Republic of Latvia" with the SRS on or before the 20th day of the month following the month of payment; the relevant rate of tax must be charged and the CIT due must be paid into the single tax account on or before the 23rd day.

However, if relief is available under double tax treaties as confirmed by a residency certificate received from the non-resident, no withholding is required. Likewise, if there is no tax to be withheld at source, the

taxpayer need not notify the SRS of the fee paid to the non-resident, unless the non-resident's total income of the relevant type for the financial year exceeds EUR 5,000.

Please note that the CIT Act does not make a separate procedure available to non-CIT payers for adjusting the CIT due if a residency certificate is outstanding. So it's crucial that they get hold of a residency certificate by the time they make a payment. Otherwise, filing the report late will attract a late charge. The SRS may also charge a penalty for late filing.

¹Section 16(2) of the CIT Act and paragraph 108.1 of the Cabinet of Ministers' Rule No. 677