

Is income from live streaming of video games subject to personal income tax? 2/34/24



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The live streaming of video games has become a popular form of entertainment attracting millions of global viewers on streaming platforms. The creators of video game livestreaming often encourage viewers to make voluntary payments supporting the gamer, which in certain cases may be his only source of income. This income has attracted the attention of the State Revenue Service (SRS). Having examined a person's activities of creating video game streams and receiving money from viewers, the SRS found an unregistered economic activity and charged personal income tax (PIT). The person challenged this decision, and the case ended up in the Latvian Supreme Court. This article explores the background to the case and the Supreme Court's opinion on the PIT treatment of income received from viewers during the live streaming of video games.

Background

On 26 July 2024, the Supreme Court ruled on administrative case No. A420196620 hearing an individual's petition to reverse the SRS Director General's decision of 5 May 2020. This decision finds that in regularly livestreaming video games and systematically receiving payments from viewers through a special program, the petitioner has carried on an economic activity and earned taxable income. The petitioner was required to pay PIT, interest on arrears and a penalty, totalling over EUR 13,000.

The petitioner challenged the decision and said his income from creating and livestreaming video games on YouTube and Twitch is not business income because any payment received from viewers is voluntary, i.e. they are not obliged to pay the gamer for the opportunity to view his live stream. Based on these circumstances, the petitioner claimed the payments were not service fees but rather gifts under the Civil Code releasing him from tax liabilities because none of the gifts exceeded EUR 1,425 in the tax year.

The Regional Administrative Court dismissed the petitioner's claim on the grounds that the payments he had received represent business income. Dissatisfied with this ruling, he appealed to the Supreme Court.

The Supreme Court's opinion

The Supreme Court said the petitioner's activities, including the creation and livestreaming of video games on platforms, have the hallmarks of an economic activity under section 11 of the PIT Act:

1. The transactions are regular and systematic (three or more transactions in a tax period or five or more transactions over three tax periods).
2. Revenue from the transactions exceeds EUR 14,229 in the tax year.
3. The economic substance of the transactions indicates a systematic activity aimed at receiving a consideration.

Having evaluated the petition and the arguments from the SRS, from the regional court and from the petitioner in the light of the PIT Act, the Supreme Court established several circumstances that confirm the

conduct of business.

Systematic nature and economic substance

The Supreme Court stated that as regards the viewers' payments, what matters is the economic substance, regularity and amount of transactions and the consideration, rather than the form or description of payments. The court found the petitioner's activities had been regular and systematic, as evidenced by a large number of live streams, for instance, 200 live streams on YouTube in 2017. The Supreme Court said the regular streaming schedule and the substantial volume of streams clearly demonstrate the petitioner's professional approach, rather than simply entertainment in his spare time.

The purpose of payments and making a profit

The Supreme Court recognised that the petitioner deliberately builds his content to attract viewers' interest and drive payments because the goal is to appreciate his entertainment service and make sure it continues in the future. This means the viewers' payments are intended as a fee for the petitioner's services, not gifts under the Civil Code, as the petitioner believed. The fact that the payments are voluntary is not relevant.

The Supreme Court also finds that the scheme developed by the petitioner for receiving payments from viewers is purposefully geared towards making a profit. This is confirmed by the fact that since April 2018 the viewers' payments are the petitioner's only source of income, which points to a deliberate activity aimed at securing income from the viewers' payments.

Royalties

The Supreme Court dismissed the regional court's finding that the streaming of video game content is not governed by copyright law because livestreamed video gaming can include several complementary visuals that can represent an audiovisual work under the Copyright Act, giving its author the right to receive royalties and apply taxes under the PIT Act. In this case, besides the video game content, there are also the gamer's visuals and audio commentary, as well as other elements (graphical effects, inscriptions, etc.) which give grounds for treating such livestreamed video games as a derivative audiovisual work governed by copyright law.

The Supreme Court emphasised that it is important to assess each case on its merits in order to determine whether those elements and their combination meet the criteria for a work creator and a new creation under the Copyright Act. Accordingly, the Supreme Court ruled that the regional court should reassess whether the petitioner has created any work protected by copyright law and received royalties, because that would affect his right to apply PIT and deduct expenses incurred in creating author's works under the PIT Act. Accordingly, the Supreme Court decided to reverse the Regional Administrative Court's ruling and send the case back for a rehearing.

Takeaways

The Supreme Court's ruling is an important step in building the case law on income received during video game livestreaming with appropriate taxation, which is crucial for live streamers and tax authorities alike. The systematic creation of video game livestreams, as well as the amount and regularity of payments received, are the hallmarks of an economic activity. Even if the payments are referred to as gifts or donations, they qualify as service fees and attract PIT under the general taxation scheme (PIT and national social insurance contributions) or the microbusiness tax scheme.

It follows from the Supreme Court's ruling that video game livestreaming can be governed by copyright law if it includes several elements representing an audiovisual work. If a derivative audiovisual work is created during a livestreamed game, the recipient of royalties with a registered business can claim deemed expenses at 25% or 50% of the royalties under the general taxation scheme.