

Is tax authority permitted to approve foreign residency certificate for tax relief for only three months? 3/50/24



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Claiming tax relief under a double tax treaty between two countries is an integral part of day-to-day practice for many Latvian taxpayers. A key condition for taking relief is a foreign residency certificate approved by the State Revenue Service (SRS). While in general cases a residency certificate is approved for five years, there are situations where the SRS challenges another country's residency certificate for compliance with national criteria. For example, the Latvian Supreme Court has recently ruled on an SRS decision to approve a US residency certificate for only three months because the SRS believed the conditions for a five-year period had not been met. In this article we explore the Supreme Court's findings and answer the main question of whether the SRS decision was justified.

Background

It follows from the description of the case (No. A420186121) that a Latvian entity (the 'claimant') filed a US residency certificate and attached Appendix 1 (Residency Certificate – Application for Tax Relief) to the Cabinet of Ministers' Rule No. 178 for a five-year period. According to this rule, the claimant completed only Parts I, II, III and IV of the appendix because a foreign certificate had been issued that replaces Part V.

The SRS approved the set of documents but for only three months – from 8 October 2020 to 31 December 2020. The claimant disagreed with this period and asked the SRS to approve relief for five years. The SRS rejected the request, and the claimant challenged the SRS decision in court. The court satisfied the claimant's appeal, yet the SRS appealed to the Supreme Court.

The Supreme Court ruling

Having assessed all the circumstances of the case, as well as the arguments put forward by the claimant and the SRS, the Supreme Court ruled as follows:

- The SRS was wrong to approve a relief period shorter than five years because no obstacles had been identified to prevent approval for a five-year period.
- By issuing a statement of the taxpayer's residence, the other country's competent authority only confirms the status on the relevant date. However, the Latvian legal framework does not require the competent authority to indicate a future period that would cover the entire five-year period, especially because the authority might be unaware of such future information or unable to predict it with certainty.
- Indicating only one tax year on a foreign residency certificate does not rule out the possibility of approving a five-year period for tax relief. If the competent authority confirms the person is a resident of the other country on that date, it's presumed the person will continue to be a resident of that country for the next five years. However, there will be no basis for claiming tax relief if the payee loses resident status in the future. So taxpayers are expected to

promptly notify the SRS once the legal basis for claiming relief disappears.

The Supreme Court confirmed the court had correctly established that indicating only one tax year (2020) on the residency certificate filed by the claimant does not preclude a five-year period for claiming relief. Accordingly, the court ruling was upheld and the SRS appeal dismissed.

Key takeaways

This ruling reconfirmed the established practice: in general cases the SRS is to approve tax relief for five years if the taxpayer has filed Appendix 1 or 2 (with approved Part V) and the other country's residency certificate or a similar document, attaching Appendix 1 or 2 with completed Parts I, II, III and IV.

It's important to note, however, that a foreign residency certificate should give all the details required by the Cabinet Rule:

- The payee's first name, last name and personal ID number (the business name and registration number of an entity)
- A statement issued by the competent authority of the payee's residence country (in one or more foreign languages, one of which is English, or the payee should file a Latvian translation along with the document) confirming that the payee is resident in the relevant country under Latvia's double tax treaty with that country and is entitled to the tax relief being claimed
- The tax year (period) covered by the confirmation. As stated above, the period does not have to be five years.

The taxpayer should observe the period set by the SRS and the requirement that the payee should retain resident status during that period. If the payee has lost tax resident status when payment is made, there is no basis for claiming relief.

When the period expires, the taxpayer should file these documents with the SRS again to continue taking relief.