

Are money transfers from partners living together subject to personal income tax? 1/7/25



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According to the law, married persons assume legal obligations and exercise their rights. For example, in the case of personal income tax (PIT), the money received from the spouse is not taxed. At present, people tend not to marry but to live in a joint household, even with children. Since such a relationship is by nature a marriage-like cohabitation, the question arises as to whether this PIT exemption could be extended to people living together unmarried. The Senate of the Republic of Latvia (Senate) has answered this question in one of the latest judgements (No. A420156821) discussed in this article.

Nature of the case

On 12 November 2020, the State Revenue Service (SRS) decided, as part of the compliance audit, to calculate the PIT and the additional payment for person A (Applicant) for the income received in 2018. The income received consisted of money transfers from person B (Partner) that exceeded the threshold for non-taxable income from an unrelated person (EUR 1,425 p.a.), as defined in the Personal Income Tax Law (PIT Law).

The Applicant was not married to her Partner, but they had a child together. According to the information provided by the couple, they had lived together in a flat that they had not declared as their place of residence. According to their statements, the Partner transferred money to support the Applicant and her child.

In assessing the situation, the SRS recognised that the money received by the Applicant was subject to PIT, except for the above-mentioned non-taxable income and the amount intended to cover the daily expenses of the Applicant and their child. Since the Applicant was unable to prove the amount of money invested for the child's maintenance, the SRS calculated the maintenance expenses based on the monthly minimum wage at that time.

The Applicant filed a suit to overturn the calculated tax, and the case eventually ended up before the Senate, which upheld the SRS's appeal.

Ruling by the Senate

Considering the circumstances of the case, the Senate concluded that:

1. The exemption provided in Section 9, Paragraph one, Clause 35“a” of the PIT Law for gifts by natural persons when the recipient and the donor are related up to the third degree of kinship or affinity within the meaning of the Civil Law applies only to spouses and relatives. There is no basis for granting opposite-sex partners living in an unregistered partnership the same

- right to exemption from PIT as spouses.
2. According to the provisions of the Civil Law, marriage is a contract of cohabitation between two persons of the different sex that has legal effect. In contrast, unregistered cohabitation, unlike marriage, is not based on a legal contract of cohabitation and therefore has no legal basis.
 3. Equalising unregistered cohabitation with marriage would lead to an unfair situation in which, on the one hand, unregistered partners could enjoy the benefits that spouses enjoy but would not assume the duties and responsibilities arising from the marriage contract. Therefore, there are no regulations for non-registered cohabiting couples, neither in the area of personal rights nor in the area of matrimonial property regimes. In the opinion of the Senate, people who opt for an unregistered partnership should expect that they will not enjoy the tax advantages that spouses enjoy.

At the same time, the Senate objected to the court's argument that the entire amount of money could be subject to the exemption of Section 9, Paragraph one, Clause 11 of the PIT Law, which relates to maintenance.

The fact that the Applicant and the child lived together cannot justify the application of the PIT exemption, even if the money received was used for the maintenance of the child's home. In this situation, the Applicant should demonstrate the extent to which the money was used to cover the child's expenses by providing supporting documentation relevant to the SRS.

In view of the circumstances established, the Senate decided to set aside the court's judgement and refer it back for reconsideration.

Commentary

In this judgement, the Senate once again confirmed that the PIT exemption for gifts from natural persons only applies to spouses and relatives up to the third degree within the meaning of the Civil Law. The fact that people live in the same household and have children together is not decisive for the application of the PIT exemption, as it presupposes the existence of a legal relationship.

At the same time, the Senate says that the person receiving maintenance payments for a child must prove that these funds are used to cover the child's daily expenses, i.e., the person is obliged to provide the SRS with the necessary evidence to justify the application of the PIT exemption to maintenance payments.

Marriage, however, is not the only way to establish a legal relationship for the application of the PIT exemption. From 1 July 2024, two adults will have the right to register a partnership with a notary if they can prove that they have a close personal relationship and a joint business. Even if the partnership is not equated with a marriage through the conclusion of a notarised partnership deed, the individuals will be entitled to the same tax benefits as spouses, including the PIT exemption.