

Relief from Latvian Withholding Taxes

(Procedures for the Application of Tax Relief under the International Agreements for the Prevention of Double Taxation and Fiscal Evasion, Cabinet Regulations of 30 April 2001, No.178, amended by Regulations of 6 March 2007, No.161)

The Cabinet Regulations "Procedures for the Application of Tax Relief under the International Agreements for the Prevention of Double Taxation and Fiscal Evasion" (hereinafter – regulations) prescribe the procedures for application of tax relief under international tax treaties with respect to payments made to a resident of the other contracting state by a resident of Latvia or a permanent establishment, as well as in the situation when the activity or presence of a non resident in Latvia is not constituting a permanent establishment under a tax treaty. In order to apply tax relief two basic types of residence certificates are used: the residence certificate-application for reduction of or exemption from Latvian anticipatory taxes (the relief certificate - Annex 1) and the residence certificate-application for refund of Latvian taxes (the refund certificate - Annex 2). Further, regulations provide for additional certificate for non-registration of permanent establishment (Annex 3). The certificates are available at <http://www.vid.gov.lv/default.aspx?tabid=10&id=554&hl=1&oid=14424&otype=14>

The regulations also provide for application of tax treaty reliefs in respect to pensions paid by the State Social Insurance Agency to individuals residents of other European Union member states.

Tax Treaty Relief at Source

Tax Relief Certificate

The relief certificate (Annex 1) is used to apply tax treaty reliefs directly to payments to non residents when the payment is made. Briefly, the procedure to obtain tax relief using the relief certificate will be as follows:

The certificate shall be filled in four copies (approved by tax administration of the state of residence of the recipient of income). Then three copies shall be submitted to payer (resident of Latvia), the fourth shall be left at the payee. The payer shall submit copies of the received relief certificate to territorial office of the State Revenue Service at his (its) place of registration (residence). The territorial office of the State Revenue Service shall review the received certificate and within 30 days from the receipt shall approve it by filling part VI "Statement of the Republic of Latvia State Revenue Service" of all three copies of the certificate and by sending two filled copies to the payer. After the receipt of the approved relief certificate the payer is entitled to withhold taxes according to the tax treaty (to apply reduced tax rate or exempt from tax). The certificate is valid for five years from the date of its approval.

Use of certificates of residence of the other contracting state

In order to provide more flexibility in application of tax treaty reliefs the State Revenue Service is entitled to agree with the competent authority of the other contracting state to apply tax treaty reliefs directly (at the moment of payment) on the basis of certificates of residence of the other contracting state. However, the certificate of residence of the other contracting state is acceptable only if the competent authority of the other contracting state confirms that Latvian relief certificate and the refund certificate cannot be certified due to well-founded grounds. Moreover, the following information shall be included in the certificate of the other state:

- name and surname (or title, if company) of the payee, passport (identification document) or certificate of incorporation No, date of issue;
- statement of the competent authority of the state of residence of payee that payee is a resident of the respective state according the tax treaty and is entitled to make use of requested tax reliefs;
- year of taxation to which the statement of the competent authority of the state of residence of the payee applies to.

In case of agreement on the use of the other state's residence certificate the tax treaty reliefs can be applied on the basis of the certificate during the period of one year from the date on which the certificate has been issued. The one of the languages in which the other state's residence certificate has been issued must be English, or certified translation of the certificate into Latvian must be attached to the certificate.

Refund of Latvian Tax

Refund Certificate

The refund certificate (Annex 2) is used to recover the overpaid tax amount. If the tax has been withheld in accordance with Latvian laws but the recipient is entitled to tax relief under a tax treaty, in order to recover the overpaid tax amount the recipient of payments, within three years from the date of making the payments, shall submit the refund certificate to the territorial office of the State Revenue Service at the payer's place of registration (residence). The refund certificate is valid only for the refund of the overpaid tax specified therein.

Use of certificates of the other contracting state

In order to provide more flexibility in application of tax treaties the regulations enable the State Revenue Service to agree with the competent authority of the other contracting state to apply the treaty reliefs (refund of overpaid tax amount) on the basis of certificates of residence of certain form of the other contracting state (instead of the Latvian refund certificate), provided the following information is included in such certificates:

- name and surname (or title, if company) of the payee, passport (identification document) or certificate of incorporation No, date of issue;
- statement of the competent authority of the state of residence of payee that payee is a resident of the respective state according the tax treaty and is entitled to make use of requested tax reliefs;
- year of taxation to which the statement of the competent authority of the state of residence of the payee applies to.

It should be noted that residence certificates of the other contracting state may be used only for refund of overpaid tax amount and may not be used instead of the relief certificate.

Non registration of permanent establishment

In certain situations application of tax treaty reliefs is based on the non existence of a permanent establishment under a tax treaty while in the same situation a permanent establishment may exist under the domestic law of a contracting state. In other words, in certain situations tax treaties are narrowing the definition of a permanent establishment, if compared with that in the domestic law of a contracting state and as a consequence income derived by a resident of the other contracting state is not taxable in the state of source. When the presence or activities of a non resident in Latvia satisfies the criteria of a permanent establishment under the law On Taxes and Fees, it is necessary to register a permanent establishment even if the non resident's presence or activities in Latvia was not constituting a permanent establishment under a tax treaty. In order to simplify application of tax treaty reliefs in the described situation the regulations provide for application for non registration of a permanent establishment (Annex 3).

The application must be filled in three copies (approved by competent authority of the state of residence of the non resident applicant). The filled copies must be submitted to the territorial office of the State Revenue Service according the place of non resident's activity in Latvia within 10 days from the commencement of activity. The office shall review the received application and within 30 days from the receipt shall approve it by filling part V of all three copies of the application and by sending two copies to the applicant. After the

receipt of the approved applications the non resident is entitled to carry out his activities in Latvia without registration of a permanent establishment.

It should also be mentioned that the application (Annex 3) will be used only if a non resident has in Latvia any presence or activities constituting a permanent establishment under the law of Latvia. If the activities are carried on outside Latvia, the tax reliefs are applicable using the two basic types of residence certificates: the relief certificate (Annex 1) and the refund certificate (Annex 2). However, in certain situations, the relief certificate (Annex 1) may be used together with the application for non registration of a permanent establishment (Annex 3), for example: in case if services are rendered by a non resident, and the non resident's activities are partially carried on outside Latvia, and partially – in Latvia.

Tax Treaty Relief on Pensions

It should be mentioned that as an exception none of the forms must be used in order to apply tax treaty reliefs in respect of pensions paid by the State Social Insurance Agency (SSIA) to individuals residents of other European Union member states. Under the regulations SSIA is entitled to apply tax treaty reliefs to the pensions paid to individuals residents of other European Union member states on the basis of the residence as determined under the Council Regulations (EEC) No 1408/71 and (EEC) No 574/72. Thus, for the above mentioned recipients tax treaty reliefs on pensions paid by SSIA will be granted on the basis of residence determined for the purposes of pensions, and no certificates must be submitted to SSIA.