Latvia

TAX LEGAL CONSULTING

Tax and Investment Facts

A Glimpse at Taxation and Investment in Latvia

SORAINEN

Latvia

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1 Ways of Doing Business / Legal Forms of Companies

Foreign companies may conduct business in Latvia through a company or a branch in Latvia or by entering into contractual arrangements with Latvian counterparties (e.g. agency, long-term distribution agreements). Foreign companies may also establish a representative office in Latvia performing such ancillary activities as advertising and preparing market surveys, but these activities shall not amount to carrying out business in Latvia.

The following legal forms of business are available in Latvia:

- limited liability company (sabiedrība ar ierobežotu atbildību, SIA);
- joint stock company (akciju sabiedrība, AS);
- general partnership (personālsabiedrība);
- limited liability partnership (komandītsabiedrība, KS);
- European economic interest grouping (Eiropas ekonomisko interešu grupējums);
- European public limited liability company (Societas Europaea, SE); and
- individual merchant (individuālais komersants, IK).

The following resident entities are subject to corporate income tax (CIT):

- companies (joint stock companies and limited liability companies) and other entities carrying out business; and
- institutions funded by the state or local authorities generating income from an economic activity if that income is not payable into the national or local budget.

Partnerships are transparent for CIT. The income attributable to partners is calculated at the level of the partnership, but the tax is levied at the partner level.

Exempt entities include:

- private pension funds;
- micro-enterprises that have opted for the micro-enterprise tax regime; and
- foundations and associations, provided they do not generate profits or capital for their members.

2.1 Applicable Taxes / Tax Rates

Companies are taxed at 15%. Payments to resident companies are generally not subject to withholding tax.

2.2 Resident Companies

A company is a tax resident of Latvia if it is established and registered, or is required to be established and registered, in accordance with Latvian law. The location of its management and control is irrelevant under domestic tax law.

2.2.1 Computation of Taxable Income

Resident companies are taxed on their worldwide income. The taxable income is calculated based on the accounting profits as reported in the financial statements prepared in accordance with relevant accounting standards, by adjusting them for, inter alia, exempt income, non-deductible expenses and depreciation allowances.

A company may deduct substantiated expenses directly related to its business activity. However, the following expenses are non-deductible:

- expenses not directly connected with the business activity of the company;
- expenses incurred to establish the company's social infrastructure, i.e. housing, educational, sports, catering and health care establishments if
  (a) they are not directly linked to the business of the company,
  (b) the services they provide are free or subsidised and
  (c) their rental charges are not arm's length;
- penalties and fines;
- amounts paid to non-residents if the company has failed to comply with the duty to withhold tax;
- expenses for leasing, use and maintenance of a luxury car and interest payable on a loan to acquire or lease such a car (except for taxpayers where 90% or more of their business consists of leasing or hiring-out luxury cars); and
- 60% of entertainment expenses.

Expenses not directly connected with the company's business activity or connected to the maintenance of social infrastructure are added to the taxable income by multiplying with a coefficient of 1.5.

2.2.2 Taxation of Dividends

Dividends are exempt from taxable income, except inbound dividends from blacklisted jurisdictions. Outbound dividend payments to blacklisted jurisdictions are subject to 15% WHT and interim dividend payments to such jurisdictions are subject to 30% WHT.

2.2.3 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

Capital gains are taxed as ordinary income. Income from the alienation of shares in a company is exempt from tax, unless that company is a resident of a blacklisted jurisdiction.

2.2.4 Depreciation / Capital Allowances

Fixed assets that are used for business purposes are subject to depreciation, save for assets that are not subject to physical or moral degradation (e.g. land, works of art, organic assets). Tangible assets are depreciated according to the declining-balance method at rates prescribed by law. Intangible assets are depreciated under the straight-line method over a 10-year period for concessions and 5-year period for patents, licenses and trademarks. Other intangibles, such as goodwill and copyrights are non-depreciable.

2.2.5 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

Losses incurred in taxable periods beginning in 2008 and thereafter may be carried forward indefinitely. Losses incurred in taxable periods up to and including 2007 may be carried forward for 8 years. Losses carried forward are set off in the order in which they were incurred. Loss carry-backs are not permitted.

If there is a change of control at a company taking over losses, those losses are no longer available. An exception applies where there is no change in the nature of the principal business activity (as carried out by the company for 2 tax years immediately prior to the change of control) for at least 5 tax years after the change of control.

In the case of a merger, losses incurred by the merged company before the merger may be taken over by the surviving company and carried forward, provided that after the merger the surviving company is controlled by the same person or persons that controlled both the merged company and the surviving company before the merger. In the case of a division or split-off, losses incurred by the divided company before the division may be carried forward to the companies established after the division or split-off. The losses are allocated between the companies pro rata to asset value before and after the division or split-off.

2.2.6 Group Taxation

A group consists of a principal company and its subsidiaries in which an interest of at least 90% belongs to
(a) the principal company,
(b) one or more of its subsidiaries or
(c) a combination of the principal company and its subsidiaries.

Tax consolidation and intra-group tax loss transfer are not allowed. Transactions between associated companies that form a group should be adjusted if the transactions are not at arm's length.

2.2.7 Relief from Double Taxation (Tax Credit / Tax Exemption)

Double taxation is normally eliminated according to the ordinary credit method. In certain cases, however, the exemption method applies (e.g. participation exemption). Tax treaty provisions on elimination of double taxation prevail over unilateral relief under domestic tax law, unless unilateral relief is more beneficial to the taxpayer.

2.2.8 Incentives

Economic Zones and Free Ports

There are two special economic zones (SEZs) and free ports (FP) in Latvia: SEZ of Liepāja, SEZ of Rēzekne, FP of Riga and FP of Ventspils. SEZ and FP companies are entitled to 80% CIT credit and immovable property tax credit. The tax credit is applicable in a tax year only insofar as the tax credit together with associated reliefs in respect of immovable property tax and the accumulated direct tax relief do not exceed:

- 55% of the value of accumulated investments for small enterprises;
- 45% of the value of accumulated investments for medium-sized enterprises;
- 35% of the value of accumulated investments in other cases.

Different percentages apply to large investments of over EUR 50 million. Companies engaged in certain types of activity (e.g. transport and steel-making) are excluded from the relief. This means that up to the investment cap, eligible companies pay CIT at a 3% rate and immovable property tax at a 0.3% rate. In addition, SEZ and FP companies are VAT-exempt on most goods and services sold in the zone or port or exported out of them.

The exemptions and reliefs will cease to apply to investments made after 31 December 2035 and are subject to the limits on state aid provided in European law.

Tonnage Tax

Resident shipping companies may opt to apply tonnage tax to income from the operation of ships in international traffic instead of the general CIT regime. Resident companies operating ships on behalf of third parties are also eligible for the tonnage tax regime, but such tonnage may not exceed more than 10 times the tonnage of the ships the company (i) owns, (ii) has an ownership interest in of at least 5%, or (iii) operates on a bareboat charter basis.

Tonnage tax is calculated as the product of:
Net tonnage x exploitation days x 0.15 x tonnage coefficient

The applicable tonnage coefficients are:

- 100 to 1000 tonnage units (tu) - 0.0022
- 1001 to 10,000 tu - 0.0019
- 10,001 to 25,000 tu - 0.0016
- >25,000 tu - 0.0007

Substantial Long-term Investments

As of 1 January 2011, a company making a substantial long-term investment in an approved investment project (including software development, transportation support activities, telecommunications and manufacturing) is entitled to a tax credit if the:

- invested amount exceeds EUR 10 million;
- investment is made within 5 years of the date on which the project is approved (within 3 years if approved before 1 January 2012).
- investment project is completed before 31 December 2025; and
- investment project has to begin a new business operation, or modernise or extend existing operations so as to enable the manufacturing of a new product or provision of a new type of service, or significantly change the existing operative process.

A project may be approved if it falls within certain categories of economic activity (NACE categories) listed in EU Regulation 1893/2006 and qualifies under state aid rules (EU Regulation (800/2008)).

The tax credit is granted in the tax period when the investment project is completed, in the following amounts:

- 25% of the investment amount up to EUR 50 million;
- 15% of the investment amount exceeding EUR 50 million but not exceeding EUR 100 million. However, companies may claim a 15% tax credit on no more than 11.9% of the excess amount over EUR 100 million, subject to the express approval of the government and the European Commission's confirmation that it is compatible with the EU internal market.

Excess tax credits may be carried forward for 16 tax years.

Research and Development Deduction

Subject to certain conditions, a company may claim a treble deduction of the following R&D expenses:

- payroll expenses for scientific and technical personnel directly attributable to R&D activities;
- expenses for research services provided by an approved scientific institution; and

- expenses for testing, certification and calibration services provided by a relevant institution which are necessary for the development of a new product or technology.

2.3 Non Resident Companies

A company is a tax resident of Latvia if it is established and registered, or is required to be established and registered, in accordance with Latvian law. The location of its management and control is not relevant for tax residence under domestic tax law. Non-resident companies are taxed on income that is attributable to a permanent establishment (PE) in Latvia or derived from a property located in Latvia. In the absence of a PE in Latvia, in certain cases non-residents may be subject to withholding tax on Latvian income (see 2.3.2 below).

2.3.1 Concept of Permanent Establishment / Doing Business

Under Latvian tax law, a non-resident has a "fixed place PE" if it has a fixed place of activity in Latvia that is used permanently or has been created with the intention of using it permanently and that is used for carrying out business. In addition, a non-resident has a PE in Latvia where the non-resident:

- uses a building site, construction, installation or assembly project located in Latvia, or carries out supervisory or consultancy activities connected therewith (construction PE);
- uses equipment or structures located in Latvia or used for the exploration or extraction of natural resources, including drilling rigs or ships used for the exploration or exploitation of natural resources, or carries out supervisory or consultancy activities connected therewith;

- provides services, including consultancy, management or technical services, by means of employees or other personnel based in Latvia and engaged for this purpose for a period or periods extending for more than 30 days in any 6-month period (services PE); or
- uses the services of an agent, whether a natural or legal person, who has and habitually exercises (more than once in the taxable period concerned) authority in Latvia to conclude contracts in the name of the non-resident (agency PE).

Latvian tax treaties may limit the ambit of the PE definition provided in national law.

A non-resident company is subject to CIT on income that is attributable to a PE in Latvia. A PE is deemed to be a separate taxpayer for the purposes of tax law.

2.3.2 Withholding Taxes

Latvia imposes the following withholding taxes on payments made by a Latvian tax resident or a PE in Latvia to a non-resident:

- 10% on management and consultancy fees (tax exemption applies under most tax treaties);
- 5% on rental payments of moveable property, except rental of aircraft usable in international traffic and industrial, commercial and scientific equipment;
- 2% on proceeds from the sale of immovable property in Latvia, including proceeds from the sale of participations in an entity where more than 50% of its assets in the tax year or in the immediately preceding tax year consists directly or indirectly of Latvian immovable property, except where those participations are securities publicly traded in an EU/EEA country;

- 5% on interest paid by credit institutions established in Latvia to blacklisted offshore jurisdictions (except where the taxpayer has obtained a tax administration permit not to withhold tax);
- 30% on interim dividend payments to blacklisted offshore jurisdictions (except where the taxpayer has obtained a tax administration permit not to withhold tax);
- 15% on any other payment to blacklisted offshore jurisdictions (except where the taxpayer has obtained a tax administration permit not to withhold tax).

2.3.3 Capital Gains

Capital gains are taxed as ordinary income.

2.4 Tax Compliance

A company's taxable period is normally 12 months. In the year of a company's incorporation or where a company changes its financial year, the taxable period may be shorter or longer, but it cannot exceed 18 months. The taxable period normally corresponds to the calendar year, but a company may elect to have a taxable period different from the calendar year.

A company must file an annual CIT return which is due by the date on which the annual financial statements of the company are due (normally by 30 April of the following year).

A company has to make advance tax payments by the 15th of each month. Until and including the month in which the annual financial statements are filed (but no later than the month in which they are due), the instalments are equal to 1/12 of the tax paid for the tax year 2 years prior to the current tax year, adjusted for the change in the consumer price index for the preceding tax year. For the remaining months (usually May to December) the instalments are equal to the tax paid for the preceding tax year, adjusted for the change in the consumer price index for the preceding tax year, less the tax paid for the initial months, divided by the number of months remaining in the year. Advance tax payments are credited against the final tax liability. Any outstanding tax must be paid within 15 days of the day on which the annual financial statements and the annual tax return are filed, i.e. the outstanding tax is normally payable no later than 15 May.

3 Double Taxation Agreements

Latvia has effective tax treaties with 58 countries which include all the EU Member States apart from Cyprus, and other major trading partner countries. The majority of treaties follow the OECD Model Tax Convention.

Transfer pricing requirements apply to transactions between associated enterprises if:

- they are a parent company and a subsidiary;
- one company has a participation of between 20% and 50% in the other company; or
- de facto control exists, most importantly when such control arises from common ownership by an individual and his or her close relatives (kinship or marriage) or from contractual relationships between companies.

A transaction is deemed to be made between associated enterprises or persons if it was made between a Latvian resident company or PE in Latvia, on the one hand, and a company or other person located in a blacklisted jurisdiction on the other.

The transfer pricing methods used are the:

- comparable uncontrolled price method,
- resale price method; and
- cost-plus method.

There is no order of priority between these three methods. If none of the above methods is sufficient to determine the market price or the market value of the transaction, the transactional net profit method or the profit split method may be used.

Transfer pricing documentation applies to companies or PEs if

(a) net annual turnover of the taxpayer in the respective tax year exceeds EUR 1.43 million and

(b) the value of the respective type of transaction exceeds EUR 14,300.

Transfer pricing documentation must be kept for 5 years and submitted to the tax administration within 1 month of the date of request. If the taxpayer fails to submit the documentation within the prescribed time, the tax administration will determine the transfer price or value on the basis of information at its disposal.

5 Anti-avoidance Measures

The principal anti-avoidance measures are as follows: substance over form principle, withholding tax on payments to blacklisted offshore jurisdictions, interest deduction limitation and transfer pricing provisions. Some Latvian tax treaties provide for specific anti-abuse measures, such as the principal purpose test, limitations of benefits clause and the mutual agreement procedure for granting relief under the treaty.

5.1 General Anti-avoidance Rule

Under the substance over form principle the tax administration is required to take into account the economic substance of a transaction or series of transactions, not only its or their legal form.

5.2 Thin Capitalisation Rules

A company may not deduct excess interest amounts calculated according to one of the following methods, whichever is the largest:

- debt to equity ratio of 4:1;
- the amount of the relevant loan multiplied by 1.57 times the average short-term interest rate for the last month of the taxable period, as determined by the Bank of Latvia.

The above interest deduction limitations do not apply to interest paid:

- on loans or borrowings from credit institutions resident in Latvia or in another EU/EEA country or in a country with which Latvia has an effective tax treaty, from the World Bank Group, the State Treasury, the Development Finance Institution, the

Nordic Investment Bank, the European Bank for Reconstruction and Development, the European Investment Bank or the Council of Europe Development Bank; and
- by credit institutions or insurance companies.

The second method for calculating the interest deduction limitation does not apply to loans extended by financial institutions, which are tax resident in Latvia or another EU/EEA Member State or a tax treaty partner country, which provide crediting and financial leasing services and are subject to supervision by the financial supervisory authority of the respective country.

5.3 Controlled Foreign Company Provisions

Latvian corporate tax law does not provide for CFC rules.

5.4 Others (e.g. subject-to-tax clauses)

Latvia imposes 15% WHT on any payment to an entity established in a blacklisted offshore jurisdiction. Latvian companies that receive inbound dividends from such entities or earn capital gains from the sale of shares in such entities are not entitled to CIT exemption that would otherwise apply.

6 Taxation of Individuals / Social Security Contributions

Individuals are subject to personal income tax (PIT), solidarity tax on employment income exceeding EUR 48,600 p.a. and mandatory state social security contributions (SC). Taxable income includes all income earned by the individual except specific items of income exempt from PIT.

Individuals carrying out business activity may also register for payroll tax purposes as:

- self-employed individuals and sole proprietors (e.g. architects, attorneys-at-law) who are taxed on net income from business activity or profession;
- licence fee payers if they are engaged in certain occupations (e.g. beauty care, clothing and footwear manufacture), their annual turnover is below EUR 50,000, they have no employees and do not have to register for VAT purposes. The amount of the monthly fee is determined by regulation and varies based on the location and nature of the business. Licence fee payers are exempt from PIT and SCs in respect of their business income;
- micro-enterprise taxpayers if they are self-employed, or sole proprietors and their annual turnover does not exceed EUR 100,000 and the number of employees is no greater than five at any time. Micro-enterprise tax is a "catch-all" tax that is payable instead of CIT, PIT, SC and the entrepreneurship risk contribution fee. However, from 2017, payment of the micro-enterprise tax will no longer mean exemption from SCs, and certain activities will no longer qualify for the micro-enterprise tax regime.

6.1 Residency rules

An individual is considered to be a tax resident of Latvia if:

- the individual's declared address is in Latvia;
- the individual is physically present in Latvia for at least 183 days in any 12-month period beginning or ending in the tax year; or
- the individual is a citizen of Latvia employed abroad by the government of Latvia.

6.2 Income Liable for Tax

Latvian tax residents are generally liable for tax on their world-wide income. Non-residents are liable for tax on their income earned from sources in Latvia.

6.3 Allowable Deductions

Taxpayers may deduct minimum non-taxable allowances of:

- EUR 1,200 p.a. for taxpayers whose annual gross taxable income does not exceed EUR 4,560; and-
- EUR 900 p.a. for taxpayers whose annual gross taxable income exceeds EUR 12,000; and
- a formula-based allowance for taxpayers whose annual gross income is in the range of EUR 4,500 to EUR 12,000.

The amount of the minimum non-taxable allowance will be progressively reduced over the next 4 years and will reach zero in 2020. The amount of the maximum personal allowance will be progressively increased and will reach EUR 1,920 in 2020.

Other deductions are available, such as medical expenses, health insurance premiums and contributions to private pension schemes and allowances for dependents in the amounts and rates set by the law.

6.4 Tax Rates

Income is subject to PIT at a general rate of 23%. Dividends, interest, capital income other than capital gains and income from leasing immovable property are taxed at 10%. Capital gains from the disposal of capital assets, such as immovable property, securities, intellectual property, are taxed at 15%.

6.5 Tax Compliance

PIT in most cases is withheld by a paying agent, an employer or other legal entity or an individual entrepreneur. In other cases, taxpayers are required to pay tax by self-assessment and file an annual tax return between 1 March and 1 June of the year following the tax year. Returns for capital gains must be made separately on a monthly, quarterly or annual basis depending on the amount of capital gains.

6.6 Social Security Contributions

SCs are payable on employment income at a general rate of 34.09%. In 2016, 10.50% of the gross salary is paid by the employees, and 23.59% on top of the gross salary is paid by the employer. Employee contributions are withheld by the employer. The amount of SCs is capped at EUR 48,600. However, the excess amount over the cap is subject to solidarity tax which is levied at the SC rate that is applicable to the respective individual.

Latvia levies the following indirect taxes: VAT, excise duty, electricity tax, customs duty, natural resources tax, tax on lotteries and gambling, enterprise light vehicle tax, vehicle exploitation tax, state duties for the registration of title over immovable property with the Land Book and certain stamp duties.

7.1 Value Added Tax / Goods and Services Tax

The standard VAT rate in Latvia is 21%. The supply of public transport, approved medical equipment and medicines, certain baby food, home heating and firewood, newspapers and magazines, books and other educational materials are taxed at a reduced rate of 12%.

A number of transactions are rated at zero percent such as the export of goods and services, supplies of goods and services to diplomatic missions, supplies of goods and maintenance services in respect of vessels operated by international shipping lines or used for emergency and rescue missions. Education, financial, medical and insurance services, nursery fees and the sale of used immovable property (except building land) are exempt from VAT.

Registration for VAT purposes is required if during the previous 12-month period, the taxpayer's transactions exceeded EUR 50,000. This amount does not include the value of any supply of fixed assets or intangible contributions. Taxable persons must register with the VAT register submitting an application form to the State Revenue Service or electronically. Non-residents need not register for VAT if their transactions only take place within a customs warehouse or free zone and they supply only non-Community goods or goods already undergoing export procedures.

7.2 Transfer Tax

The registration of the transfer of title to immovable property is subject to a state duty levied at the following rates:

- 2% for undeveloped land, land with residential buildings or only residential buildings;
- 2% for land with non-residential buildings or only non-residential buildings capped at EUR 42,686.15;
- 3% for land and/or buildings transferred as a gift;
- 6% for transfer of an apartment to a legal entity carrying out business;
- 1% for contribution of immovable property to a company's share capital.

State duty is calculated on the sales price or cadastral value of the immovable property, whichever is higher.

7.3 Others

Excise duties are payable by local producers and importers of alcoholic drinks, tobacco products, hydrocarbon oils, coffee and soft drinks. Legal persons who have acquired goods subject to excise duty from another legal person that has no licence to trade in such goods, are also subject to excise duty.

8 Inheritance and Gift Tax

Latvia does not levy inheritance and gift tax. The transfer of title upon inheritance and donation, however, is subject to state duty and notary fees.

9 Wealth Tax

There is no wealth tax in Latvia.

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