The Tax Service of Ukraine clarifies: should a resident legal entity withhold income tax at payment of Ukrainian-sourced income to a non-resident individual?

In May 2023 the State Tax Service of Ukraine published answer to the following question at the Public Information Resource portal (hereinafter - “ZIR”): “Should a resident legal entity withhold income tax at payment of Ukrainian-sourced income to a non-resident individual?”. The State Tax Service of Ukraine (hereinafter - “STSU”) clarifies that a resident legal entity should not withhold income tax set forth in subpara. 141.4.2 of para. 141.4 of Section III of the Tax Code of Ukraine (hereinafter - “TCU”), however Ukrainian-sourced income of a non-resident individual should be taxable [by the personal income tax] pursuant to para. 170.10 of Art. 170 of Section IV of the TCU. Particularly, according to subpara. 170.10.3 of para. 170.10 of Art. 170 of the TCU, in case a resident legal entity pays Ukrainian-sourced income to a non-resident, the resident should be a tax agent of the non-resident for such an income. In addition, the STSU refers to subpara. 168.1.1. of para. 168.1 of Art. 168 of the TCU, whereas a tax agent that accrues (pays, provides) taxable income to a taxpayer should withhold tax out of the amount of such income at the taxpayer's expense under the tax rate set forth in Article 167 of the TCU. Please note according to para. 3.2. of Art. 3 of the TCU, should an international treaty ratified by the Verkhovna Rada of Ukraine establish rules other than that set forth in this Code, the rules of the international treaty apply. In addition, we draw attention to Article 103 of the TCU. It provides for the procedure of application of a double tax treaty for the purposes of complete or partial exemption from taxation of Ukrainian-sourced income of non-resident. Though the STSU does not refer to Art. 3 and Art. 103 of the TCU in the above-mentioned answer, please note the provisions are valid and should be taken into account by taxpayers when analyzing taxation treatment. We recommend monitoring clarifications of the STSU on taxation of income of non-resident individuals in Ukraine and raising additional questions.

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