

## Nonresident's Subsidiary Does Not Qualify as PE, Supreme Court Holds

by Valters Gencs

Reprinted from *Tax Notes Int'l*, October 14, 2013, p. 120

# COUNTRY DIGEST

## Nonresident's Subsidiary Does Not Qualify as PE, Supreme Court Holds

The Senate of Latvia's Supreme Court on September 30 clarified (in case SKA-358/2013) the criteria for classification as a permanent establishment, holding in favor of the taxpayer, Snickers Workwear AB (SW-AB), a Swedish clothing manufacturer with a branch in Latvia.

Articles 7 and 8 of Latvia's Law on Taxes and Fees state that a nonresident has a PE in Latvia if it permanently uses an immovable property in Latvia for commercial activities or establishes an immovable property in Latvia to be permanently used for commercial activities.

After a tax audit of the Latvian branch company, Latvia's State Revenue Service (SRS) found that the board member of the company was a dependent agent of SW-AB and that the Latvian company was thus an unregistered PE of the Swedish company. The SRS therefore concluded that SW-AB was subject to Latvian enterprise income tax on profits attributable to the PE. SW-AB appealed, arguing that the branch did not qualify as a PE because it operated independently.

In its decision, the Court said that to determine whether an entity constitutes a PE, the following questions must also be taken into account:

- What commercial activities can be performed by the nonresident through the PE?
- Does the nonresident oversee the activities of the PE?
- Does the nonresident give any instructions to the PE?
- Does the nonresident receive goods or services from the PE?
- If the PE receives an administration fee from the nonresident, to what services does the fee apply?

If the PE receives an administration fee from the nonresident, it must also be determined for what services the fee is paid in order to characterize the fee as income of the PE within the meaning of commercial law.

On that basis, the Court determined that the board member of the Latvian branch was not a dependent agent of SW-AB. Therefore, the Latvian company did not constitute a PE of SW-AB, the Court held, and the appellant was not subject to EIT on the profits of the Latvian branch. ◆

♦ *Valters Gencs, tax attorney and founding partner,  
Gencs Valters Law Firm, Riga*