

Tax & Legal Alert

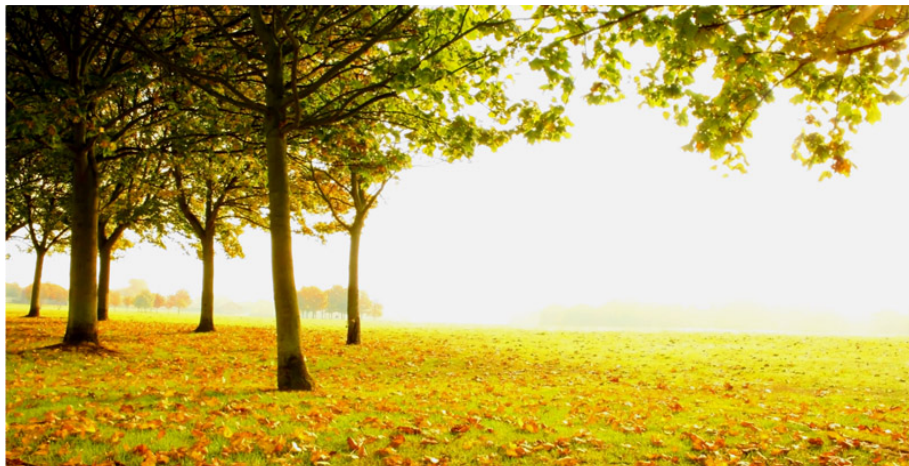
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Tax & Legal Alert

provides the latest information on changes in Lithuanian legislation most urgent to our clients.

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Tax news

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Import VAT payment relief from March 2013

On 19 October 2011 by Order No. [1205](#) the Government of the Republic of Lithuania approved amendments to Order No. 861 dated 12 June 2002 on Implementation of the VAT Law of the Republic of Lithuania. Amendments state that it will be allowed to offset import VAT calculated on goods released to free circulation, i.e. only to report import VAT in the VAT return without making any actual payment to the State budget if a VAT payer is entitled to deduct such import VAT.

Please note that currently it is allowed to offset import VAT calculated only on goods imported as long term assets by VAT payer to be used for his activities and on oil, nuclear fuel, thin or natural gas.

Moreover, neither deposit nor warranty will be required for offsetting such import VAT.

Amendments will come into force from 1 March 2013.

Transfer of tax loss for remuneration is not subject to VAT

On 27 October 2011 by Letter No. [\(18.2-31-2\)-R-10078](#) the Tax Authorities explained that transfer of tax loss for or without remuneration between group companies are not subject to VAT as it is performed for CIT purposes according to the order outlined in the CIT Law and no services are rendered in this case.

Amendment to the official Commentary on the VAT Law concerning reduced VAT rate for accommodation services

On 21 October 2011 by Letter No. [\(18.2-31-2\)-R-9918](#) the Tax Authorities informed about amendments to the official Commentary on Art. 19 Part 3 Point 3 of the VAT Law that was prepared according to amendments to the Tourism Law of the Republic of Lithuania adopted on 1 September 2011. The Commentary is supplemented with terms that determine provision of accommodation services and practical examples.

Amendments to the regulation on transportation of excise goods

On 12 October 2011 by Letter No. [\(18.2-31-2\)-R-9576](#) the Tax Authorities informed about amendments to the regulation on transportation of excise goods for which duty suspension regime is applied. Amendments contain editorial corrections and corrections that are related to structural changes of the Tax Authorities. Moreover, some of formalisation procedures of transportation of excise goods are clarified.

Faster registration for VAT purposes

On 30 September 2011 by Order No [VA-101](#) of the Head of the Tax Authorities amendments to the Regulation on registration/de-registration for VAT purposes were published. They state that starting from 1 January 2012, VAT registration application form (both for Lithuanian and foreign entities) should be submitted 3 business days before the desired date to be registered or the date when the obligation to register for VAT purposes occurs. According to the Regulation currently in force, the period of 7 business days (5 business days in case of reorganisation of an entity) is applied.

Moreover, the time limits of the procedures related to VAT registration were shortened. Decision on registration of a taxable person for VAT purposes should be made by the Tax Authorities within 3 business days after the application form is submitted and a request for additional information should be issued within 2 business days after the date the examination was started.

The requirement to submit application form to be registered with the Tax Payers' Register when registering for VAT purpose is abolished. Moreover, it is no longer required to inform the Tax Authorities about the reorganisation 10 business days before submitting VAT registration application form.

Thresholds for Intrastat declarations for 2012 were published

On 28 October 2011 by Order No. [DI-209](#) of the Head of the Department of Statistics the amendments to thresholds of the value of intra-Community acquisitions/supplies of goods starting from which Intrastat declarations must be filed and statistical values must be reported were published.

The obligation to submit Intrastat declarations depends on the value of intra-Community acquisitions/supplies during the previous calendar year. The thresholds for Intrastat declarations for 2012 are as follows:

- on arrivals – LTL 650 thousand;
- on despatches – LTL 700 thousand;
- statistical value (arrivals) – LTL 10 millions;
- statistical value (despatches) – LTL 34 millions.

The Tax Authorities reminded about the payment order of health insurance contributions (HIC)

On 7 October 2011 by letter No. [\(18.26-31-1\)-R-9388](#) the Tax Authorities reminded about the payment order of HIC in 2011 and later years. The letter provides the summary of the main duties applied to individuals working under business certificates, performing agricultural activities, paying contributions as self-insured and individuals departing from Lithuania.

The announcement emphasizes that insured individuals working under business certificates should pay HIC for the days they actually had the business certificates. By 2011 these contributions were not divided proportionally and attributed to days.

It was also reminded that not insured individuals working under copyright agreements and receiving income irregularly, i.e. not every month, should pay HIC for the months in which income was not received. The contributions should be paid to the account of the Tax Authorities. Moreover, it was additionally explained in what cases the overpayment of HIC should be refunded when submitting the annual tax return.

The Tax Authorities remind that individuals departing from Lithuania for a period longer than 6 months should de-register their place of residence at the local municipal office. In such a case they will not be obliged to pay HIC in Lithuania.

The 2012 version of the Combined Nomenclature

On 28 October 2011 the Customs Authorities published Council Regulation No. [1006/2011](#) which provides the latest version of the Combined Nomenclature applicable from 1 January 2012. Amendments were made according to changes of requirements related to statistics and trade policy, technological and trading developments.

The Combined Nomenclature which is updated every year, is used for calculation of import (export) duties and taxes and for data accumulation for trading statistics of goods within the European Community.

Accounting news

Amendment of requirements for submission of the auditor's report and audit summary report to the Register of Legal Entities

On 28 September 2011 by Order No [1117](#) the Lithuanian Government amended requirements for submission of the auditor's report and audit summary report to the Register of Legal Entities. Auditor's report and audit summary reports together with the annual financial statements and consolidated financial statements provided to the Register of Legal Entities should be signed by the certified electronic signature.

The amendment will take effect from 1 January 2012.

The supplement to the 39th BAS "Undertakings of collective investment and pension funds, accounting, financial reporting"

On 17 October 2011 by Order No [VAS-10](#) of the Director of the Audit and Accounting Office the 39th BAS "Undertakings of collective investment and pension funds, accounting, financial reporting" was supplemented by additional line No 12 "Net profit (losses)" in Annex 4 of the reference variable capital investment company or a closed-ended investment company's profit (loss) report.

The 39th BAS will apply to reporting periods starting from the 1 January 2011.

Legal news

Envisaged amendments with regard to allocation and payment of dividends

On 14 October 2011 draft No [11-3616-01](#) was submitted to the Lithuanian Parliament. It aims to amend the Law on Companies by introducing a novelty with regard to allocation and payment of dividends.

The draft proposes to envisage a possibility for companies to allocate and pay dividends to shareholders for a period shorter than one financial year. The right to initiate this procedure would belong to shareholders possessing 1/3 or more of the voting rights. The manager of the company would be obliged to prepare intermediate financial statements and intermediate notice. However, the adoption of the decision to allocate and pay dividends for a shorter period would be the exclusive competence of the general meeting of shareholders.

The Law on Companies now reads that dividends are allocated and paid to shareholders for one financial year.

Envisaged amendments with regard to simplified liquidation of shelf companies

On 24 October 2011 draft No [11-2690-03](#) was submitted to the Lithuanian Parliament. The draft aims to amend the rules of the Civil Code with regard to liquidation of shelf companies at the discretion of the manager of the Lithuanian Register of Legal Entities.

Currently the Register of Legal Entities would contact shelf companies in order to inform them about envisaged liquidation. However, the draft now obliges shelf companies to provide the Register of Legal Entities with *inter alia* annual financial statements and other documents evidencing that the companies are performing their activities. If the documents are not submitted to the Register of Legal Entities, the manager would be competent to start liquidation and appoint a liquidator.

Consequently, the draft intends to amend the rules under which a formal objection submitted by a shelf undertaking is sufficient for precluding envisaged liquidation. In addition, shelf companies would no longer be liquidated by the court but by the manager of the Register of Legal Entities which is not a judicial authority.

Envisaged amendments with regard to collective investment undertakings

On 10 October 2011 draft No [11-1478-02](#) was submitted to the Parliament with regard to envisaged amendments of the Law on Collective Investment Undertakings.

The draft proposes to implement Directive 2009/65/EB on undertakings for collective investment in transferable securities (UCITS IV Directive) in national legislation.

Due to the fact that the UCITS IV Directive presupposes a significant number of amendments, the draft law intends to propose an entirely new version of the Law on Collective Investment Undertakings. In addition, the new version aims to tackle practical issues identified during the application of the old version of the Law.

The Bank of Lithuania initiates changes in the field of payment services

On 14 October 2011 the Bank of Lithuania commenced a campaign designed to enhance transparency and competition among payment service providers.

The Bank of Lithuania signed an agreement with banks and their branches established in Lithuania, the Lithuanian Central Credit Union and payment institutions. Under the agreement, banks, credit unions as well as payment institutions will provide information to the Bank of Lithuania with regard to their prices for the provision of payment services to consumers. The initiative is supposed to help consumers compare prices for the provision of payment services and opt for the most competitive service provider.

Accordingly, the prices for payment services (transfer of national or foreign currency, cash operations, currency exchange, etc.) are now available at www.lb.lt/ikainiai.

Tax Case-Law

Regarding the principle of the precedence of content over form

On 3 October 2011 the Supreme Administrative Court of Lithuania (hereinafter – SACL) adopted a decision in administrative case No [A-438-2350-11](#), wherein it resolved a tax dispute with regard to the application of the principle of precedence of content over form.

The Tax Authorities found out that two family members (mother and daughter) concluded a transaction under which a daughter transferred real estate as a gift to her mother. In addition, the value of the real estate indicated in the transaction was higher than the price for which it had been purchased by the daughter herself. Next day after the receipt of the gift it was sold to a third party by the mother.

The Tax Authorities claimed that the sole purpose of the first transaction was to gain tax benefits. According to them, the daughter transferred the real estate to her mother as a gift in order not to pay PIT. In addition, the value of the gift had been increased with the intention to eliminate the difference between the purchase and sale prices of the real estate and avoid paying PIT. As a result, the Tax Authorities decided to look at the content rather than the form of the transaction and obliged the daughter to pay PIT for the sale of the real estate to a third party.

The daughter applied to the Commission on Tax Disputes (hereafter - the Commission) which upheld the complaint. According to the Commission, there was no evidence in this case that the daughter intended to benefit for the purposes of PIT by transferring the real estate to her mother as a gift.

Due to the fact that the court of first instance reversed the decision of the Commission, the daughter submitted an appeal to the SACL.

The SACL (i.e. the last instance hearing tax disputes) supported the position of the daughter. According to the SACL, a person is gaining tax benefits for the purposes of PIT only if after the first transfer of real estate (in this case – transfer as a gift) that person is still (i) governing, (ii) using, (iii) disposing and (iv) exercising other rights before the conclusion of the final transaction (in this case – a purchase-sale agreement). The SACL explained that the mother herself was looking for potential purchasers, negotiated with them, sold the real estate and used remuneration for her personal purposes. The SACL concluded that the circumstances of the case did not evidence that the daughter actually governed, used, disposed and exercised other rights towards the real estate after its transfer to her mother but before the conclusion of the purchase-sale agreement.

Consequently, the SACL ruled that the daughter did not gain any tax benefits for the purposes of PIT and there was no basis for the application of the principle of the precedence of content over form. The decision of the Tax Authorities was reversed.

A decision of the SACL is final and cannot be appealed.

Regarding the taxation of the sale of defaulted debts

On 27 October 2011 the European Union Court of Justice (EUCJ) ruled in case [C-93/10](#) (*GFKL Financial Services AG*) where the question of whether an entity, at his own risk purchasing defaulted debts for a price lower than the face value affects a supply of services and carries out an economic activity.

The EUCJ argued that the assignee of the debts receives no consideration from the assignor and such a transaction is different from the supply of factoring services for commission fees. The difference between the face value of the assigned debts and the purchase price constitutes not the consideration for such a service, but rather reflects of the actual economic value of the debts at the time of their assignment depending on the fact that they are doubtful and on the increase of the risk of default. Therefore, the entity purchasing defaulted debts at a price below their face value does not affect a supply for consideration and does not carry out an economic activity and such transactions should not be considered as subject to VAT.

Publications of PwC

Article on the problem that auditors may not always identify cases of fraud

On 5 October 2011 PwC audit specialists published an article on the problem that audit carried out may not always identify fraud. Objective of the audit is to identify material deviations, therefore, fraud related to small amounts may be identified only within a few years when material discrepancies arise. The article points out that companies themselves should ensure prevention and identification of fraud.

Please find the article in Lithuanian [here](#).

VAT treatment of financial services

On 27 October 2011 PwC published the press release under the title “ Does VAT exemption give EU banks a tax advantage” that presents the report of the research “How the VAT exemptions impact the banking sector” conducted by PwC together with Professor Ben Lockwood of the University of Warwick (UK). The report provides findings how VAT income of EU member states might be affected if financial services would be taxed with VAT and examines VAT burden experienced by EU established banks.

Please find the press release in English [here](#).

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