

# Tax & Legal Alert

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## Tax & Legal Alert

The publication of tax and legislative updates by the Tax department at PricewaterhouseCoopers.

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## Tax news

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### Amendments to the Law on Sickness and Maternity Social Insurance

On 28 April 2009 amendments No.XI-237 to the Law on Sickness and Maternity Social Insurance were passed. According to the amendments, after the termination of an employment contract the sickness allowance may be paid not longer than for five calendar days of sickness.

As previously, the sickness allowance for the first two days should be paid at the employer's expense. However, the sickness allowance payable from the State Social Insurance Fund (SSIF) payable from the 3<sup>rd</sup> to the 7<sup>th</sup> day of sickness is 40% and as from the 8<sup>th</sup> day it amounts to 80% of the compensated income.

The sickness allowance payable in case of a family member or child nursing is 85% of the compensated income.

The aforementioned amendments should be applicable from 1 May 2009 to 31 December 2010.

The Lithuanian version of the amendments may be accessed [here](#).

### Supplements to the Official Commentary of the Law on VAT

On 28 and 29 April 2009 the Official Commentary on Art. 17 and Art. 19 of the Law on VAT were supplemented by letters of the Tax Authorities No. (18.2-

31-2)-R-4184 and No. (18.2-31-2)-R-4114.

The Commentary on Art. 17 is supplemented with an explanation of cases when the Tax Authorities may adjust the prices between related parties for VAT purposes and apply the rules provided by Order No. 871 of the Lithuanian Government dated 12 June 2002.

The new edition of the Commentary on Art. 19 specifies types of periodicals subject to the reduced VAT rate of 9% until 30 June 2009. The Commentary also clarifies the definition of non-periodicals and explains when companies may apply the old reduced VAT rate of 5% to medicals, subscriptions of periodicals, hotel and similar accommodation services, tickets to cultural and sports events.

It should be noted that these Rules are not compliant with the transfer pricing rules applicable for CIT purposes.

The Lithuanian version of the Commentary on Art. 17 may be accessed [here](#).

The Lithuanian version of the Commentary on Art. 19 may be accessed [here](#).

### Supplements to the Official Commentary of the Law on CIT

On 28 April 2009, based on letters of the Tax Authorities No. (18.10-31-1)-R-4085 and No. (18.10-31-1)-R-4091 the Official Commentary on Art. 5, Art. 38(2), Art. 26

and Art. 43 of the Law on CIT were supplemented.

The new Art. 38(2) explains the application of fixed CIT in more detail and provides more examples.

Art. 26 supplements provide that as from 2009 contributions to pension funds, live and health insurance contributions paid for the benefit of employees may be treated as allowable deductions not only for Lithuanian companies but also for permanent establishments of foreign companies.

The Commentary on Art. 43 was supplemented in accordance to the amendments to the Law on CIT which came into force as from 1 January 2009 and were related to the loss carry forward after a restructuring. According to the new edition of the Commentary, if a company does not continue the activities which were carried on by the company before restructuring, it is obliged to recalculate the CIT and adjust the CIT return of the respective tax period.

It is also explained that tax losses may reduce the taxable income of a company after restructuring starting from the period when the restructuring was performed.

The Lithuanian version of the Commentary on Art. 5 and 38(2) may be accessed [here](#).

The Lithuanian version of the Commentary on Art. 26 and 43 may be accessed [here](#).

### **Amendments to the rules on postponement of overdue tax payments and amendments to the rules on takeover of overdue tax payments**

On 28 April 2009, based on Order No 1K-136 of the Minister of Finance, the Rules on postponement of overdue tax payments were amended. Moreover, based on Order No. 1K-135, the Rules on takeover of overdue tax payments were amended.

The amendments provide that a request to postpone overdue tax payments should be submitted to the Tax Authorities not earlier than 20 days before an overdue tax payment occurs. According to the new rules, a tax payer should also provide supporting documentation proving the possibility of the tax payer to pay the tax overdue in the future.

The amendments to the Rules on takeover of overdue tax payments provide that an agreement on a takeover of overdue tax payments between a tax payer and a third party should be concluded not earlier than 20 days before an overdue tax payment occurs.

The new edition of the Rules abolishes restrictions which established that an overdue tax payment may be taken over only by one third party and that the overdue tax payment taken over may not be transmitted to another party or back to the tax payer. Moreover, the Rules are supplemented with the provision stating that the overdue tax payment recovery procedure applicable to the tax payer should not be started or should be suspended during the request processing period.

The Lithuanian version of Order No. 1K-135 may be accessed [here](#).

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### **Order on pollution tax checks was approved**

On 23 April 2009 based on Order No. D1-213 of the Minister of Environment, the Order on pollution tax checks was approved.

The Order determines how the legitimacy of calculation of pollution tax and issuance of certificates related thereto should be checked.

The Lithuanian version of the Order may be accessed [here](#).

### **Explanation regarding payment codes for Personal Income Tax and compulsory Health Insurance Contributions (HIC) on Schedule A income**

On 2 April 2009, explanatory note No. (18.18-31-1)-R-3132 was issued by the Tax Authorities. The document provides for payment codes that should be used by persons withholding PIT and HIC on Schedule A income.

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If the abovementioned taxes were paid using different codes, than indicated in this note, a request to credit or refund a tax overpayment should be submitted to the Tax Authorities.

The Lithuanian version of the explanatory note may be accessed [here](#).

### Publication "VAT treatment of advance payments" was updated

On 8 April 2009 the Tax Authorities informed that the publication "VAT treatment of advance payments" was updated based on the latest amendments of the Law on VAT.

The publication may be accessed [here](#).

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## Tax case-law

### Tax obligations occurred due to illegal activities of individuals should be fulfilled by the company

On 16 April 2009 the Supreme Administrative Court of Lithuania (SACL) decided in the administrative case No. A-556-521/2009. The case examined whether a company is liable for CIT and VAT calculated on income received by illegal activities of individuals (a liquidator and a third party) on behalf of the company.

In its complaint, the company stated that it was not in a position to recognize such income for accounting and tax purposes, as there was no will of the company to receive such income and the management of the company was not aware of earning such income and its further movement.

The SACL's decision was based on the similar decision of 19 February 2008 in administrative case No. A-438-59/2008. SACL stated that activities of individuals, even if they are illegal, are not relevant for tax purposes, as such individuals did not cause any damage to the State budget but to the company. The damage was made to the company. Therefore, the company should be obliged to fulfil the tax obligation which occurred due to such illegal activities. SACL also stated that the company may claim the damage from the individuals in accordance to the procedure, established in the Civil Code.

The complete Lithuanian version of the case may be accessed [here](#).

### Duration of tax inspection

On 27 April 2009 the SACL decided in administrative case No. A-438-547/2009. The case examined the legitimacy of an extension of a tax inspection performed by the Tax Authorities at their office.

A company claimed that the tax inspection was suspended and renewed for several times and the inspection continued for 1.5 years. Therefore, the company faced an indefinite situation as it was not clear when the documents of the company would be at the disposal of the company, when the results of the inspection would be provided and how this would impact the activities of the company. The Tax Authorities based their decision to extend the duration of the inspection on the requirement to gather additional information.

SACL stated that no limitation on duration of a tax inspection performed at the Tax Authorities office is defined in the legislation. Therefore, the Tax Authorities are authorised to establish the duration of an inspection taking into account one condition – an obligation to finish the review as quickly as possible. SACL also stated that this condition does not mean that the right of the Tax Authorities to extend the duration of the review is unconditional. However, this right should be implemented based on the objective circumstances, i.e. objective reasons to perform certain actions (e.g. request for additional documents, information).

SACL concluded that in the case at hand the Tax Authorities did not violate provisions of the legislation as collection of additional information may be treated as an objective circumstance for an extension of the duration of the review.

The complete Lithuanian version of the case may be accessed [here](#).