

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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Amendments to the Law on Pollution Tax

On 12 May 2009 amendments to the Law on Pollution Tax No. XI-254 were passed. Besides the amendments of editorial nature, the new edition of the Law provides for a more detail definition of the mobile sources of pollution. It is also specified that the tax period for the pollution tax is a calendar year irrespective of the pollution source and the amount of tax calculated. Compliance requirements remained the same. The 5th Annex of the amended Law provides for increased rates of the pollution tax on pollution from mobile sources.

For the purpose of implementation of the amendments the Lithuanian Government is obliged to prepare legislation establishing rules for accounting taxable goods and taxable packaging that includes the goods. The legislation will be applicable to individuals and legal entities liable to pay pollution tax.

The aforementioned amendments come into force on 1 January 2010.

The amendments in Lithuanian may be accessed [here](#).

New rules on recognition of benefits in kind

On 19 May 2009 by Order No. 1K-162 of the Minister of Finance new rules on recognition of benefits in kind were

approved. The Tax Authorities also published the related explanations. The new rules come into force on 1 July 2009.

The most important amendments are related to the taxation of the following benefits in kind:

- when an individual uses long-term assets of a company for private needs (e.g. private use of a company car);
- when an individual receives an interest-free loan from a company or pays reduced interest on such a loan;
- when an individual receives long-term assets or services from a company free of charge or at a reduced price;
- when buildings or premises are repaired/ reconstructed for the benefit of an individual at expense of the company.

New rules provide for two options for recognition of benefits in kind on private use of a company car.

Under the first option monthly benefit in kind will be equal to monthly rent payment (established at arms' length) for the period when the car is used for private needs. Such a benefit should be assessed on the last day of month concerned.

Under the second option monthly benefit in kind is fixed and equal to 0.75% of the car's market value irrespective of the actual time the car is used for private needs.

The Tax Authorities emphasized that in both options the amount of benefit in kind recognized includes expenses of car maintenance, wash, repair, insurance, etc.

Every company should consider each option and apply the most favourable one.

The rules also provide that when an individual receives an interest-free loan from a company or pays reduced interest on such a loan, an individual's benefit in kind should be assessed as the difference between the interest amount to be paid on such a loan at a fair market price and the interest amount actually paid. Benefit in kind should be assessed at the moment of payment of the reduced interest. In case of interest-free loan, benefit in kind should be assessed at the moment of repayment of the loan or its part. However, if the loan or its part is not repaid during the tax period, benefit in kind should be assessed on the last day of the tax period.

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

The related explanations with the relevant examples are published on the official site of the Lithuanian Tax Authorities:

- Explanation regarding taxation of benefits in kind when an individual receives an interest-free loan or pays reduced interest on such a loan may be accessed [here](#).
- Explanation regarding taxation of benefits in kind when an individual uses a company car for private needs may be accessed [here](#).

Supplement to the Official Commentary of the Law on CIT

On 18 May 2009 the Tax Authorities issued notifications No. (18.10-31-1)-R-4739 and No. (18.10-31-1)-R-4738 informing that the commentaries of Art. 4, Part 4, Par. 7, and Part 3, Par. 1 of the Law on CIT were supplemented.

The commentary of Art. 4, Part 4, Par. 7 provides for the definition of annual payments to the Board members (bonuses). The Commentary stipulates that such payments should be subject to withholding tax at the rate of 20% from 2009.

The commentary of Art. 4, Part 3, Par. 1 was updated with regard to expansion of foreign entities' tax base by the income from international telecommunications derived by the foreign companies through a permanent establishment in Lithuania.

The Lithuanian version of the commentary of Art. 4, Part 3, Par. 1 may be accessed [here](#).

The Lithuanian version of the commentary of Art. 4, Part 4, Par. 7 may be accessed [here](#).

Amendments to the procedure of takeover of overdue tax payments

On 7 May 2009 Order No. VA-35 of the Tax Authorities amended an Order of the Head of Tax Authorities regarding the procedure of takeover of overdue tax payments. These amendments are related to the respective amendments to other orders (see Tax & Legal Alert, No. 109).

The new edition of the procedure includes the new requirements regarding the conclusion of the agreement not earlier than 20 days before an overdue tax payments occur as well as restrictions to commence or end the recovery actions during the period when the request is analysed. The procedure specifies that tax overpayment may be treated as the circumstance to justify an ability of a taxpayer to fulfil its obligations to the budget.

The procedure cancelled the one-year limitation to file a new request asking that the same entity takes over the same overdue tax payment. As from now on after a negative decision of the Tax Authorities the tax payer may file a new request asking for a permission for the same entity to take over the same overdue tax payment after the circumstances causing the negative decision disappear.

The new edition of the Procedures may be accessed [here](#).

Explanation of the Tax Authorities regarding adjustment of VAT deduction when goods are written-off or destroyed

On 7 May 2009 by letter No. (18.2-31-2)-R-4434 the Tax Authorities explained that based on the case-law of the European Court of Justice (in cases C-110/94, C-400/98, C-98/98 and other) a tax payer is not obliged to adjust input VAT deduction if the goods were acquired for the purpose of VAT taxable activities and due to objective reasons such activities were not commenced. In such cases a tax payer should have an objective evidence to support these reasons.

Objective reasons may include the expiration date of goods acquired, no longer suitable spare parts due to acquisition of new equipment, etc.

Companies which adjusted input VAT deduction on goods written off or destroyed should consider a possibility to adjust VAT returns for previous periods.

Explanation may be accessed [here](#).

Explanation of the Tax Authorities regarding taxation of dividends payable

On 22 May 2009 by letter No. (18.2-31-1)-R-5007 the Tax Authorities explained how the dividends should be taxed based on provisions of the Law on CIT applicable from 1 January 2009.

The Tax Authorities explained that for the purpose of determination of the proportion of dividends payable from non-taxable profits, the amount of non-taxable profits, which were subject to reliefs applicable during the tax period when the profit was earned for the dividends to be distributed, should be considered.

The Tax Authorities explained that for the purpose of calculation of part of dividends payable from non-taxable profits, amount of non-taxable profits included in the proportion may be reduced by the amount of dividends paid before 31 December 2008 from profits earned during 2002-2007, which was paid from non-taxable profits. However, dividends paid from retained earnings accrued before 2002 should be treated as paid from taxed profits.

Tax payers are in a position to choose from the profits of which year the dividends are distributed.

The restriction to the “participation exemption” should also be applicable in cases when the share capital of a company was increased from retained earnings and afterwards reduced and the funds of the company were paid to the shareholders.

Explanation may be accessed [here](#).

Updates and supplements to publications issued by the Tax Authorities

On 6 May 2009 the Tax Authorities informed that the publication “Customers’ obligation to calculate output VAT on goods and services acquired” was updated.

The main amendments are related to introduction of the increased 19% VAT rate. The publication was also supplemented by the provisions regarding the “reserve rule” for calculation of output VAT on goods acquired from another Member State.

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

On 18 May 2009 the Tax Authorities informed that the publication “VAT taxation of land and other real estate” was updated.

The amendments are related to introduction of the new VAT rate (19%) and abolition of reduced VAT rates. The publication is also supplemented with provisions regarding VAT taxation of old buildings or buildings under reconstruction that are sold together with the land plots.

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

On 21 May 2009 the Tax Authorities informed that the publication “Registration of foreign legal entities with the Lithuanian Tax Payers’ Register” was updated.

The main updates are related to the amended rules on foreign tax payer’s registration/deregistration with/from the Lithuanian tax payer’s register as well as new requirements on the registration of foreign tax payers and their data adjustments on the Tax Authorities’ initiative in accordance to the Law on Tax Administration.

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

On 26 May 2009 the Tax Authorities informed that the publication “Information for foreigners about VAT in Lithuania” was updated.

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

Accounting news

Methodical recommendations on 30th Business Accounting Standard (BAS) “Related persons” prepared

On 14 May 2009 by Order No. VAS-3 of the Head of the Authority of Audit and Accounting methodical recommendations on 30th BAS “Related persons” were approved.

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

Tax case-law

The Tax Authorities’ decision acknowledging advertising and marketing of pharmaceuticals as the sale of pharmaceuticals was repealed and the Tax Authorities were assigned to perform a repeated tax audit

On 4 May 2009 the Supreme Administrative Court of Lithuania (SACL) decided in administrative case No. A-438-563/2009. The case was related to CIT which was additionally calculated for one of the Lithuanian companies. The main activities of the company were advertising and marketing of pharmaceuticals. Such services were provided to its parent foreign pharmaceutical company.

During the tax audit the Tax Authorities stated that though the Lithuanian pharmaceutical company formally does not issue any invoices for pharmaceuticals produced by its parent company the company’s activities qualify as wholesale of pharmaceuticals. Therefore, the Lithuanian company is obliged to pay CIT on wholesale. The conclusion of the Tax Authorities was based on their assumption that the model of business activities, organizational structure and functions performed were analogical to the ones performed by other Lithuanian pharmaceutical wholesalers.

SACL stated that the Tax Authorities:

- did not investigate the fact which of the companies received income from sale of pharmaceuticals (the evidence collected by the Tax Authorities are not sufficient);
- did not investigate the fact whether income received from sale of pharmaceuticals was taxed in another country by the parent company;
- did not assess transfer pricing documentation provided by the Lithuanian company.

In view of the fact that the Tax Authorities did not assess additional circumstances, SACL assigned the Tax Authorities to perform a repeated tax audit and to adopt a new decision.

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

Application of zero-rated VAT on intra-Community supplies to a VAT payer of another Member State

On 14 May 2009 SACL decided in administrative case No. A-442-648/2009. The case examined the legitimacy of zero-rated VAT application on intra-Community supplies to a VAT payer of another Member State. During a tax audit the Tax Authorities stated that there was no sufficient evidence proving the transfer of goods from Lithuania to another country because the invoices do not contain information about the representative of the foreign company who received the goods, there are no signatures of authorized representatives, also stamps of the company that received the goods, signatures and stamps of persons who received the goods are missing in transportation documents, there is no information about the exact location, date and time of loading and unloading of the goods, and there is no information about drivers of vehicles which transported those goods.

Moreover, the Tax Authorities stated that they received information from foreign Tax Authorities stating that it was impossible to assess the foreign company which purchased the goods because that company did not respond to the Tax Authorities' request and was not present at its registered address.

In its appeal the company stated that the foreign Tax Authorities confirmed that the foreign company declared a part of its acquisitions from the Lithuanian company. It also stated that the foreign company's extracts from the accounting documents were received.

SACL stated that if all the evidence enable to state that supply of goods to another country was performed, just the mere fact that the company's documents do not contain formal details or contain invalid ones does not deny the right to apply zero-rated VAT.

Taking into consideration such circumstances SACL decided that the case must be examined anew.

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

PIT taxable base in case of an unaccounted salary

On 25 May 2009 SACL decided in administrative case No. A-438-393/2009. The case examined PIT taxable base in case of unaccounted salary. During a tax audit the Tax Authorities identified cases when employees received unaccounted salaries. The Tax Authorities calculated PIT payable not on the salaries that the employees received in fact (net), but on the calculated salaries before taxes (gross).

SACL ruled that such Tax Authorities' position does not refer to any gross factual or legal circumstances. SACL stated that the Tax Authorities did not prove that there is an agreement between the employer and the employee on payment of a higher salary than the net one. Taking into consideration the above, SACL stated that in such cases PIT taxable base should be considered to be the net salary. SACL also indicated that State social insurance and Guarantee fund payments should be calculated in the same manner.

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

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