

# 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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### Supplements to the Commentary on the Law on PIT

On 30 September 2009 by letter No. [\(18.18-31-1\)-R-9313](#) the Tax Authorities informed that the Commentary on art. 22 part 2 and 3 of the Law on PIT was supplemented.

Apart from editorial amendments, the Commentary is supplemented by explanations and additional examples related to income classification between schedule A and schedule B applicable from 2009.

According to the new classification, income from individual activities performed under a business certificate should be treated as income of schedule B, provided that such income is received from a person related to this individual by employment relations.

Based on the above, entities paying income to such individuals are not liable to withhold and pay PIT on income paid.

### Specification of the provisions of the Rules on recognition of benefits in kind

On 14 September 2009 following the amendments to the Law on PIT (see Tax & Legal Alert, Issue 112), by Order of Minister of Finance No. [1K-301](#) the provisions of the Rules on recognition of benefits in kind were specified.

The specifications are related to the postponement of the application of the Rules. They provide that clauses on recognition of income received in kind when a company's car is used for personal needs or interest-free loan is granted by the company should be applicable from 1 January 2010.

Other clauses should be applicable from 1 July 2009.

The valuation of income received in kind remains the same.

### Compliance requirements related to schedule B income paid to individuals

On 16 September 2009 by Order No. [VA-59](#) of the Head of the Tax Authorities the Rules on filing of form FR0471 were supplemented.

Supplements are related to introduction of the compulsory Health Insurance Contributions.

### New publication of the Tax Authorities

On 30 September 2009 the Tax Authorities informed that a new [publication](#) "VAT treatment of deemed intra-Community supplies" was issued and now available on their official website.

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## Draft amendments to tax legislation

### PIT

On 25 September 2009 draft amendments to the Law on PIT No. [XIP-992](#) were registered with the secretariat of the Lithuanian Parliament.

According to the draft amendments it is proposed to abolish taxation of profits received by an individual from transfer of assets acquired when the individual owned these assets for a period shorter than three years.

### VAT

On 11 September 2009 draft amendments to the Law on VAT No. [XIP-1066](#) were registered.

The draft amendments to the Law on VAT include changes related to important amendments to the Council Directive 2006/112/EC which will come into force on 1 January 2010, 1 January 2011, and 1 January 2013:

- rules on determination of the place of supply of services are amended;
- the system of VAT refund from other Member States is reformed;
- additional reporting requirements are introduced.

Moreover, the draft amendments include important local changes to the Lithuanian VAT legislation.

More detailed information on future changes will soon be available in our special news edition.

## News from the EU

On 18 August 2009 in the framework of its strategy to combat tax evasion and fraud European Commission adopted a proposal for recast of the Council Regulation No. 798/2003 on administrative cooperation in the field of Value Added Tax, extending and reinforcing the legal framework for the exchange of information and cooperation between Tax Authorities.

One of the key elements of the proposal is the creation of a legal base to set up Eurofisc. Eurofisc should be defined as a common operational structure allowing Member States to take rapid action in the fight against cross border VAT fraud.

Such structure would also allow a rapid direct access to national taxpayers' databases for other Member States. The proposal also contains a framework to ensure the quality, comparability and usability of information contained in national databases.

Such structure would be beneficial not only for Tax Authorities but also for tax payers in order to prevent them from being involved against their will in fraud schemes due to an enhanced and secure system of validation of their counterparts' VAT number and identity.

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## Legal news

### Decrease of maternity (paternity) allowances

On 22 September 2009 amendments No. [XI-420](#) to the Law on Illness and Maternity Social Insurance were enacted which provide for a decrease of maternity (paternity) allowances.

From 1 July 2010 the new allowances paid from the end of pregnancy and childbirth holiday until the child is one year old should amount to 90% of the compensated amount and until the child is two years old – 75%. Previously, these amounts were respectively 100% and 85%.

### Rules regarding the organization of lotteries changed

On 2 September 2009 amendment [No.975](#) of the rules on organization of national and local lotteries were adopted. The mentioned amendment foresees that from now on legal entities that would like to organize lotteries will not be obliged to provide a duly notarized copy of the registration certificate as well as duly notarized incorporation documents to the institution responsible for issuing the relevant licenses.

### Rules regarding licensing of trade of unpacked oil products changed

On 9 September 2009 amendment [No.1110](#) regarding the licensing of the trade of unpacked oil products was adopted. The amendment states that now licenses for trade of unpacked oil products will be issued by the Lithuanian Ministry of Energy instead of the Ministry of Economics.

### License Forms for licenses for trade of unpacked oil products changed

On 22 September 2009 Order of the Minister of Energy [No.1-161](#) regarding the forms of licenses for trade of unpacked oil products was adopted. The Order established a new form of the request for the license, and a new recommended form for the declaration of the storage and trade places of unpacked oil products. The Order foresees that until 20 October of each year one copy of the form EN-01 „Balance of Oil and Energy“ must be submitted to the Ministry of Energy.

On 22 September 2009 Order of the Minister of Energy [No.1-162](#) was adopted. The new order introduced new forms of licenses for trade of unpacked oil products.

### Rules regarding issuing of passports for foreigners changed

On 14 September 2009 Order of the Minister of the Interior [No.1V-493](#) regarding issuing of passports for foreigners was changed. The Order foresees changes regarding the documents that must be submitted to the Authorities in order to receive a passport as well as changes regarding the administrative process of issuing of the passports.

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## Tax case-law

### VAT deduction and deduction of costs for corporate income tax purposes

On 21 September 2009 the Supreme Administrative Court of Lithuania (SACL) decided in administrative case No. [A-556-963/2009](#). The case examined whether the company which is involved in gross sales of pharmaceuticals (hereinafter – the Company) is allowed to deduct input VAT as well as whether it is allowed to deduct costs related to advertising services acquired.

In the case it was established that the Company acquired advertising material production and distribution services from another entity. The Company treated these expenses as deductible for corporate income tax purposes as well as deducted input VAT. The advertising material concerned was distributed to customers in the pharmacies.

During the tax investigation the Tax Authorities established that the entity which provided advertising material production and distribution services for the Company has not reported and has not paid output VAT calculated on these services. In the criminal case it was established that when the advertising service agreement as well as other related documents were signed, this entity was illegitimately represented by its temporary director.

Due to the above-mentioned transactions the Company was charged with additional VAT and corporate income tax. The Tax Authorities based their decision by the following arguments:

- the transactions were not actually performed according to conditions which were indicated in the accounting documents;

- the Company was negligent and unfair, as it has not taken feasible actions in order to make sure that its counterpart was fair;
- the services acquired are not related to the Company's taxable activities as well as they are not related to income earned or other economic benefit gained.

SACL in its decision stated that:

- the Tax Authorities' argument that the transactions were not actually performed according to the conditions which were indicated in the accounting documents is not reasonable enough. The services provided were described in transfer-acceptance statements. This fact is also supported by samples of the advertising materials. There is no convincing evidence in the case proving that the goods (services) actually did not exist. The fact whether the goods (services) were actually sold by the person who was indicated as the seller in the invoice cannot be decisive in this case for determining whether input VAT deduction is allowed;
- the Tax Authorities' argument regarding the Company's unfairness is also not reasonable enough. The Company's fairness is proved by the necessary documents provided before the transactions as well as the fulfillment of conditions indicated in the agreement. Based on the actual facts established in the case, claiming that the Company is unfair would be less reasonable than claiming otherwise;
- however, the Company has not provided with any particular and obvious evidence allowing to link advertising material production and distribution services with the Company's business activities. The Company is involved in gross sales of pharmaceuticals which include supply, except for the supply to end consumers. However, in the case it was established that advertising material was provided not to the pharmacies but directly to end consumers. Moreover, the above-mentioned advertising material basically included only the name of the Company. As pharmaceuticals supplied by the Company do not include the name of the Company, distribution of its advertising material should not be regarded as promotion of pharmaceuticals.

Based on the last argument, SACL decided that in this case the Company is not allowed to deduct input VAT as well as it is not allowed to deduct costs related to advertising services.

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