

Tax & Legal Alert

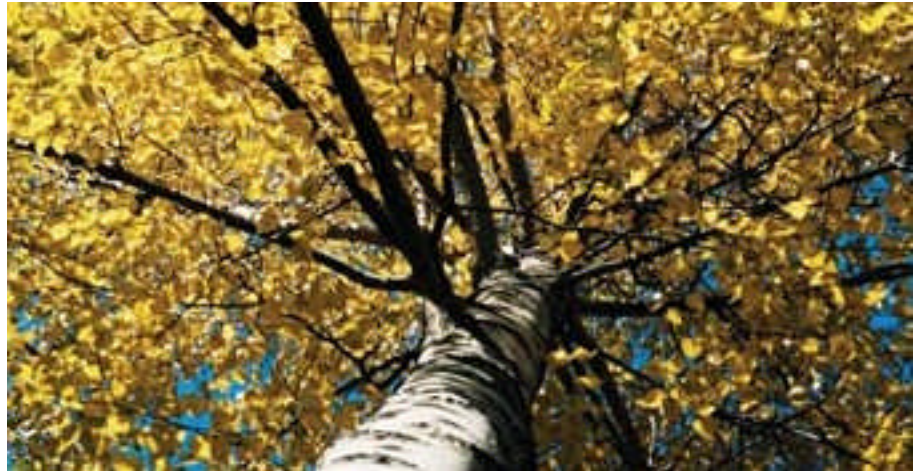
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Tax & Legal Alert

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

In this issue:

- comments of our VAT specialists on prospective changes to the VAT Law from 1 January 2010



VAT news

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Draft VAT Law

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.

We would like to provide our comments on some of the essential amendments envisaged in the draft VAT Law.

The place of supply of services

Where the purchaser is a foreign taxable person

According to the currently valid general rule, services are considered to be supplied where the supplier is established. The VAT Law specifically provides for rules on services the place

of supply whereof is determined on the basis of other criteria: the place where the customer is established, where services are actually performed, etc.

From 1 January 2009 the general rule changes: services will be treated to be supplied in the country where the customer (taxable person) is established.

This change will have an impact on services which are taxable according to article 13, part 1 of the VAT Law. For instance, long-term car lease, printing services, marketing services which do not fall within the scope of advertising, and alike. Local VAT on such services will no longer be calculated in invoices issued to foreign taxable persons.

The new general rule should also be applicable to agent services, transport of goods, work on movable goods, etc., when these services are rendered to foreign taxable persons.

Output VAT on such services should be calculated in the country of the customer.

Notwithstanding the treatment of the majority of services as being out of scope of Lithuanian VAT, the suppliers will not be precluded from the right to input VAT deduction.

Besides the place of taxation, changes will be implemented to reporting of services in VAT returns. According to the tax authorities' information, the VAT return form will be amended as well.

Where the purchaser is a Lithuanian fixed establishment of a foreign person

The new general rule should not apply when the services are supplied to a Lithuanian fixed establishment of a foreign taxable person.

The draft Law provides for an amended definition of a fixed establishment. Due to this amendment a foreign taxable person will be considered as having a fixed establishment for VAT purposes in Lithuania, if:

- economic activities are performed via this establishment, or
- if goods/services are purchased via this establishment within the country.

Thus, before the general rule is applied, Lithuanian VAT payers will have to check whether the purchaser being a foreign taxable person is not considered as having a fixed establishment for VAT purposes in Lithuania. Should this be the case, invoices for services will have to be issued with local VAT, notwithstanding the fact that this foreign taxable person has no registered office within the country. The key criteria for determining whether or not the services will be treated as being out of scope of Lithuanian VAT will be the beneficiary of services purchased. This requirement should raise many issues for Lithuanian service providers because in some cases it is not easy to determine whether a foreign customer has a fixed establishment for VAT purposes in Lithuania, or not.

We would like to note that a fixed establishment for VAT purposes is not in all cases equal to a branch or a representative office of a foreign person in Lithuania. This could be a non-registered fixed place of business in Lithuania which meets the requirements laid down in the commentary of currently valid article 2 of the VAT Law.

Where the purchaser is a foreign non-taxable person

If a foreign customer is not a taxable person, invoices for services should be issued in many cases in the same manner as before 1 January 2010 – by applying local VAT, with the exception of special cases when services are rendered to non-EU residents (consulting, advertising and other services currently included in article 13, part 6 of the VAT Law).

We would like to note that according to the draft VAT Law, for the purpose of services rendered to customers established outside Lithuania, persons that are not engaged in any economic activities but are registered for VAT purposes will be also regarded as taxable persons (for instance, public authorities registered for VAT purposes in the country of their establishment due to intra-Community acquisitions of goods).

Special rules should apply to services of agents, transport of goods, work on movable property etc.

Agent services rendered to non-taxable persons should be treated as supplied and taxable in Lithuania, if the main transaction in which the agent represents the client in his/her name and on his/her account takes place within the country.

Intra-Community transport of goods should be taxable with local VAT, if the point of departure is in Lithuania.

Non-intra-Community transport of goods rendered to a non-taxable person should be treated as supplied in Lithuania, if the service will be actually carried out within the country. The same applies to **services ancillary to transport of goods** (both when the transport takes place between Member States, and in other countries).

Work on movable goods, such as their valuation, repair, processing should be considered as rendered within the country, if these services are actually carried out in Lithuania.

Hiring of means of transport

After the amendments come into force, **long-term hiring of means of transport** will be treated as supplied in the country where the customer (taxable person) is established. Thus, invoices to foreign customers will be issued without Lithuanian VAT.

The place of supply of such services rendered to non-taxable persons will be in the country where the supplier is established (this rule applies by 31 December 2012).

From 1 January 2013 long-term hiring of means of transport to a non-taxable person should be treated as supplied in Lithuania only in case the purchaser is established or has his permanent place of residence in Lithuania.

From 1 January 2010 **short-term hiring of means of transport** (up to 30 days for vehicles and up to 90 days for vessels) should be treated as rendered and taxable with VAT within the country where the means of transport is actually put at the disposal of the customer.

Valuation, work on and processing of movable tangible property

From 1 January 2010 such services rendered to taxable persons should be treated as supplied within the country where the customer is established. Thus, notwithstanding the actual performance of such services, Lithuanian VAT should no longer apply to services, if the customer is, e.g. a VAT payer of another country (EU or non-EU). However, local VAT should be applicable, if the services are provided to a fixed establishment of a foreign taxable person in Lithuania.

According to the currently valid VAT Law, when the movable property is transported to Lithuania for the purpose of rendering such services thereon, and after the services are supplied, the property is dispatched from the country, and the purchaser of the services is a VAT payer of another Member State, the service is treated as being out of scope of Lithuanian VAT. After the amendments come into force, this rule becomes redundant since the place of supply of such services will be determined according to the general rule. Due to this reason article 78, part 4 will be abolished which includes the requirement for a separate accounting of such property transported to and dispatched out of Lithuania.

Lithuanian VAT will apply to such services if they are provided to non-taxable persons and if the services are actually carried out within the country. However, if the movable property is transported to the territory of the European Community and is dispatched outside the EU after the services are rendered, the services should be taxable with zero-rated VAT where the purchaser is a non-taxable person according to article 51 of the VAT Law which is not amended by the draft Law.

Place of supply of restaurant and catering services

The draft VAT Law includes rules on place of supply of restaurant and catering services. The currently valid VAT Law does not provide any specific regulations in this respect, therefore, these services are taxable according to the current general rule – in the country where the supplier is established.

From 1 January 2010 restaurant and catering services (with the exception of those actually provided on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community) should be treated as performed and taxable with VAT in the country where these services are actually supplied.

Restaurant and catering services provided on board ships, aircraft or trains during the section of a passenger transport operation effected within the Community will be considered as performed within the country of departing point of the passenger transport operation.

Services related to immovable property

The draft Law does not include any essential changes to the place of supply of services related to immovable property. Thus, such services should be taxable according to the currently applicable rule within the country where the immovable property is located.

Scientific, training, conference, entertainment services

The draft VAT Law does not include any amendments valid from 2010 and applicable to scientific, educational, training, conference, entertainment and other similar services.

However, amendments should come into force from 1 January 2011. The prospective changes have already been included in the draft Law. They provide that cultural, artistic, sporting, scientific, educational, entertainment and similar services, including the supply of services of organisers of such activities, as well as ancillary services will be considered as rendered in Lithuania, if the services are actually performed within the country and the purchaser is a non-taxable person.

Whereas admission (and services ancillary to admission) to cultural, artistic, sporting, educational, scientific, training and entertainment activities provided to taxable persons will be considered as supplied in Lithuania, if the activities are actually performed within the country.

It can be concluded from the amendments in the draft Law that the place of supply of other cultural, artistic, sporting, educational, scientific, training and entertainment services (other than admission) could be determined according to the general rule – within the country where the purchaser is established. This could impact such services as scientific research (including clinical trials), and alike.

Passenger transport services

The draft Law includes separate rules for passenger transport services. It provides that passenger transport should be taxable in Lithuania, if the service is actually carried out within the country. If the service is performed partly within and partly outside the country, only a part of the service which is proportional to the section of operation executed within the country should be treated as rendered within Lithuania.

Attention should be drawn to the fact that the place of supply is determined not taking account of whether purchaser of the service is a taxable or non-taxable person.

Additional reporting obligations

From 1 January 2010 additional reporting obligations for VAT payers which render services to taxable persons established in other Member States should come into force.

The EC Sales List for goods should be changed to the EC Sales List for goods and/or services.

The new EC Sales Lists should be filed not on the quarterly but on the monthly basis by the 25th day of the next month (as well as VAT returns).

Services rendered to taxable persons established with the Community the place of supply whereof is outside Lithuania (services being out of scope of Lithuanian VAT) should be reported in these Lists with the exception of those taxable with zero-rated VAT or being VAT-exempt.

Due to the latter requirement, suppliers of VAT-exempt services (for instance, financial services) will be obliged to check whether the services are treated as VAT-exempt in the country of the purchaser as well, since only in this case there will be no obligation to report the services in the EC Sales Lists.

VAT refund within the Community

From 1 January 2010 rules on VAT refund for VAT payers of Member States will be changed. All Member States should introduce electronic systems for VAT refund claims using which VAT payers of all Member States should be enabled to apply to the tax authorities of their country with a claim for refund of VAT from another Member State.

Claims will be filed electronically. The electronic systems should enable the applicant to trace the process and the deadlines.

Moreover, every Member State should introduce late payment interest payable by the State in cases where the tax authorities delay VAT refund. It is anticipated that this should enhance the processes and make VAT refunds more efficient.

Chargeable event for services purchased from foreign taxable persons

When there is no obligation to register for VAT in Lithuania

The currently valid VAT Law, by article 14, part 3, establishes the chargeable event in cases when the purchaser should calculate for output VAT on services acquired. The general chargeable event is the date when the invoice is received.

The draft Law no longer includes this regulation, and the chargeable event for services acquired by taxable persons who are liable to calculate output VAT thereon according to article 95 of the VAT Law is no longer specifically regulated.

When the supplier fails to register for VAT in Lithuania

When services are acquired from foreign taxable persons and they are liable to charge Lithuanian output VAT (for instance, services related to immovable property located in Lithuania), but the suppliers fail to register for VAT purposes in Lithuania, output VAT should be calculated by local purchasers according to the currently valid article 95, part 5 of the VAT Law.

The draft Law establishes that in such cases the chargeable event is determined according to the date when the invoice is received. If no invoice is issued and no payment is made, the chargeable event occurs by the last day of the taxable period when the services are supplied.

According to the currently valid rules, output VAT may be calculated on such services by the end of the month following the month when the services were supplied.

Continuous services

According to the draft Law, if the supplier of continuous services (telecommunication, lease etc.) and of electricity, gas, heating is a foreign taxable person and the purchaser has an obligation to calculate for output VAT, the chargeable event occurs when an invoice is issued. Where an invoice is not issued, the event occurs when the payment is made.

However, if the services are rendered for a period longer than 12 months and no invoice is issued as well as no payment is made, the chargeable event occurs on the last day of each year until the services are completed.

Attention should be drawn to the fact that the draft Law provides for particular requirements applicable to issuing invoices when continuous services are supplied by foreign taxable persons. When the obligation to calculate for output VAT is shifted to the Lithuanian customer and the services are rendered for a period longer than 12 months and no invoice is issued as well as no payment is made during this period, the invoice must be issued not later than on the last day of each year as well as without delay when the supply of service is completed.

Local changes

Apart from changes determined by amendments to Directive 2006/112/EC, the draft Law includes new regulations amending local VAT treatment rules.

Taxation of postal services

The currently valid article 25 of the VAT Law provides that VAT exemption applies to postal services and directly linked goods supplied by universal postal service providers. This does not apply to shipments of packages.

According to the draft Law, the scope of VAT-exempt postal services would be narrowed. It includes the rule that VAT exemption does not apply in cases where the terms for supply of postal services and directly linked goods are individually negotiated.

The amendment to the VAT Law related to postal services was initiated due to Case C-357/07 of the European Court of Justice in which the Court decided that in general VAT exemption provided for in Directive 2006/112/EC applies only to services of universal postal service providers which are rendered in order to satisfy the public interest in accordance to Directive 97/67/EC which is implemented in the Lithuanian Post Law.

If the services are supplied for the purpose of meeting specific needs of an economic operator, when terms are negotiated individually, such supplies are not treated as supplied in the public interest. Thus, the VAT exemption does not apply.

It should be noted that the case mentioned above concerns transactions between Royal Mail of the United Kingdom and a private postal service provider TNT Post UK Ltd. Royal Mail was obliged to render to TNT Post UK Ltd. the services of delivery of post collected, sorted and transported by TNT Post UK Ltd. to one of the regional depots of Royal Mail.

VAT treatment of advance payments

The draft Law provides for amendments in respect of the chargeable event for amounts received as payments in advance.

Currently payments received in advance for goods/services the supply whereof will be completed not later than within 12 months (from the contract date) are treated as out of scope of VAT. No VAT is calculated on such advance payments.

When amendments to the VAT Law come into force, taxable persons will be entitled to opt to tax such advance payments. In this way VAT return adjustments as well as payments of additional VAT and late payment interest could be avoided in cases when at the beginning of the contract it is anticipated that goods or services will be completed to be supplied within 12 months, however, the completion of the transaction is delayed, and the advance payment received longer than 12 months ago must be taxed with VAT.

Transfer of going concern to be out of scope of VAT

The draft Law provides for an amendment which would implement the possibility envisaged in Directive 2006/112/EC for the Member States to treat the sale or other transfer of a totality of business assets or a part thereof ('transfer of going concern') as being out of scope of VAT.

According to the currently valid commentary on the VAT Law, the sale of a business as a complex is treated as supply of goods and is taxable with VAT, if the supplier was entitled to VAT deduction.

From 1 January 2010 a transfer of a business (or parts thereof) as a complex would be out of scope of VAT (as treated neither as supply of goods nor supply of services), provided that the acquiring person continues with the same activities.

Longer period for input VAT adjustments

The draft Law provides for an abolishment of article 91⁽¹⁾ of the VAT Law according to which deduction of input VAT not deducted due to a mistake cannot be adjusted, if the input VAT had to be deducted longer than 3 years ago from the moment when the mistake was identified.

When this article of the Law is abolished, VAT return adjustments would be regulated by the Law on Tax Administration which provides that mistakes may be adjusted for the current calendar year and 5 previous calendar years as from the moment when the circumstances concerned were identified.

Taxable persons which currently have limited possibilities to adjust (increase) VAT deduction due to the 3-years rule would be enabled to file adjusted VAT returns for an additional period of 2 years upon enforcement of the new regulation.

Zero-rated VAT on goods under customs warehouse procedure

According to the currently valid VAT Law, zero-rated VAT does not apply to supply of goods kept under customs warehouse procedure in cases when the goods supplied are imported in Lithuania which results in an obligation to pay import VAT thereon. Therefore, such supplies are subject to double taxation since they are taxed with output VAT (calculated by the supplier) and are subject to import VAT (calculated by the importer).

With the intention to avoid this issue, article 53 of the draft Law provides that such supplies are taxable with zero-rated VAT.

However, it should be noted that due to the application of the zero-rated VAT foreign suppliers performing such supplies would not avoid the obligation to register for VAT purposes in Lithuania because article 71, part 3, item 3 is also to be amended by including the new zero-rated VAT rule therein.

VAT exempt negotiation of credit

The draft VAT Law provides for a supplement to article 28, part 1 of the VAT Law and explicitly establishes that negotiation of credit is VAT exempt.

This regulation does not enlarge the scope of VAT exempt financial services since Directive 2006/112/EC which is currently valid already establishes that negotiation of credit is exempt from VAT. The new rule included in the draft Law would more precisely implement the VAT exemption provided for in the Directive.

Limited VAT deduction in case of investment management services

According to the VAT Law, article 58 taxable persons which supply financial services regulated by article 28 to persons established outside the Community are entitled to input VAT deduction. Article 28 includes *inter alia* services of management of assets of variable capital investment companies, closed-end investment companies, investment funds and pension funds.

Since the entitlement to VAT deduction in such a case is contrary to Directive 2006/112/EC, the draft Law envisages the abolishment of the right to deduct input VAT in relation to management of investment companies and investment funds as well as pension funds performed to customers outside the Community.

Possibility not to draw invoices

According to the draft VAT Law, the Lithuanian Government or another institution authorised by it should establish cases in which there would be no requirement to issue invoices for supplies of goods/services which are VAT exempt of taxable with zero-rated VAT.

Currently invoices have to be issued in all cases when goods/services are supplied to taxable persons.

Seminar

Upon approval of the draft VAT Law by the Parliament, our VAT specialist will hold a seminar during which VAT news and issues related thereto as well as possible solutions will be dealt with in more detail.

Moreover, we are ready to individually discuss with you relevant VAT issues related to the pending introduction of amendments to the VAT Law.

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