

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

Value Added Tax (VAT)

Amendments to the VAT Law valid from 1 January 2012

On 20 December 2011 by Law No [XI-1817](#) amendments to the VAT Law which came into force on 1 January 2012 (some of the amendments will come into force on 1 January 2013) were adopted.

The application of reduced VAT rates for heating energy and medicine compensated by the State is prolonged until 31 December 2012. The reduced VAT rate was abolished to hotel accommodation services.

Lithuanian VAT payers will be allowed to adjust output VAT payable to the budget due to bad debts. According to the Lithuanian VAT Law provisions a bad debt is considered to be remuneration which was not received from the purchaser of goods (services) for a period longer than 12 months after the supply of goods (services) provided that output VAT was calculated and reported in the VAT returns. In such a case a VAT payer should hold documents proving the efforts to recover bad debts and issue a free-form document for the purpose of recognizing the debt as a bad debt and assigning the VAT amount to this debt. According to this document, the purchaser of goods (services) should reduce the input VAT deduction. The VAT relief for bad debts is applied to output VAT calculated and

declared starting from 1 January 2012. The VAT relief for bad debts should not be applied to the transactions performed between related parties.

Starting from 1 January 2012 VAT payers will no longer be obliged to keep registers of output VAT on goods and/or services acquired.

The VAT registration threshold was increased to LTL 155,000 (approx. EUR 45,000). Only transactions performed in Lithuania will be taken into account for the calculation of this threshold. According to the amendments, after the above mentioned threshold over the last 12 months is exceeded, VAT payable to the budget should be calculated not on the income exceeding the threshold but on the income of the transaction the value of which exceeded the threshold.

According to the Lithuanian VAT Law provisions, the VAT deduction should not be adjusted when property is destroyed or lost due to the reasons do not depending upon the VAT payer (i.e. the goods were destroyed due to termination of expiry date).

According to the amendments, a taxable person may opt to calculate output VAT on the rent, sale or any other transfer of immovable property to diplomatic missions, consular offices, etc. (pursuant to Article 47 of the Lithuanian VAT Law) which have the right to refund VAT.

The goods acquired are exempt from import VAT or 0% VAT is applied if the goods are used for private consumption and/or settling of the employees (not citizens of Lithuania) of EU institutions established

in Lithuania to which the Protocol on the Privileges and Immunities of the European Union is applicable.

According to the VAT Law provisions 0% VAT should be applied to vessels navigating on the high seas.

Additionally, the amended Law states that a supplier, purchaser or another third party is responsible for the transportation of new means of transport (where the supply is subject to 0% VAT) to another EU member state.

According to the amended provisions, the purchaser of goods subject to excise duties (when 0% VAT is applied to the supply) is a taxable person or legal person, which is not a taxable person, when the acquisitions of goods (other than goods subject to excise duties) by these persons would not be subject to VAT in another EU member state according to the Directive.

Starting from 1 January 2013 revised VAT invoicing provisions will come into force.

According to the amendments taxable persons not registered for VAT purposes should have the right to VAT deduction if they used goods/services acquired (imported) for VAT taxable supplies.

Comment of Aušra Miltenytė, PwC Manager

Starting from 1 January 2012, as in many other EU member states, new VAT Law provisions implementing the bad debt relief for VAT purposes came into force.

Taking into consideration that this VAT relief should be applied to the output VAT amounts calculated and declared starting from 1 January 2012, business will actually benefit from this VAT relief from 1 January 2013.

The implementation of this VAT relief is a very positive action which should contribute to improving business environment in Lithuania. Hopefully, the implementation of this VAT relief will be smooth and no practical difficulties will be faced such as precluding suppliers from applying the relief if the purchaser does not adjust input VAT amounts related to the bad debt as it is required by the amended VAT Law.

Supplements to the official Commentary of the VAT Law

- **On credit and debit notes issued**

On 13 December 2011 by letter No [\(18.2-31-2\)-R-11713](#) the Tax Authorities supplemented the Commentary on Article 83 of the VAT Law.

The official Commentary was supplemented with additional cases on issuing credit notes in case the leasing contract is terminated and further examples.

- **On compensation of expenses incurred on behalf of the clients**

On 13 December 2011 by letter No [\(18.2-31-2\)-R-11663](#) the Tax Authorities supplemented Article 15, Part 2 of the VAT Law with the example where a leasing company pays insurance premiums to an insurance company (related party) on behalf of a finance lease client and the latter compensates insurance premiums paid to the leasing company.

The Tax Authorities indicated in the example that insurance premiums repaid to the leasing company by the client should be treated as compensation for VAT purposes to the leasing company (out of scope of VAT).

However, if an operating lease transaction was artificially divided by separating insurance services from the lease services, in such a case expenses for the insurance incurred by the third party should be included into the taxable amount of services provided by the leasing company (and taxed with VAT).

- **On importation of medicines and medical aid equipment from the third countries**

On 29 December 2011 by letter No [\(18.2-31-2\)-R-12227](#) the Tax Authorities supplemented the official Commentary of the VAT Law on Art. 19, Part 4 with additional Part 4.

The Commentary indicates that the reduced VAT rate of 5% can be applied to medicine and medical aid equipment imported from the third parties only when the importer is the National Health Insurance Fund or a hospital, if acquisition expenses of the goods are fully or partially financed according to the Health Insurance Law provisions.

Publication “VAT deduction” updated

On 13 December 2011 by letter No [\(18.2-31-2\)-R-11714](#) the Tax Authorities amended publication “VAT deduction”.

The publication was supplemented with the explanations on VAT deduction on goods (services) related to the ending of activity of the VAT payer, the right to the VAT deduction to the person not registered for VAT purposes, VAT deduction on goods (services) financed by the structural funds of the European Union, inclusion (exclusion) of income received from random activities, which is not subject to VAT, for the calculation of pro-rata, possibility to include to VAT deduction VAT amounts according to the invoices issued by not registered VAT persons.

Moreover, provisions regarding rounding pro-rata used for VAT deduction, attribution for VAT purposes to the economic activity of fixed assets acquired by an individual were amended. In

addition, there were other amendments related to the changes of the VAT Law and other legislation.

New publication “Issuing of credit notes (including debit notes)” prepared

On 13 December 2011 by letter No [\(18.2-31-2\)-R-11712](#) the Tax Authorities published new publication “Issuing of credit notes (including debit notes”.

The publication provides information regarding issuing credit (debit) notes and the requirements for such documents.

Information notes

- **Regarding cases when the purchaser should calculate and pay output VAT on the goods (services) acquired**

On 23 December 2011 by letter No [\(18.2-31-2\)-R-12164](#) the Tax Authorities informed that in 2012 (as in 2011) an obligation to calculate and pay output VAT on the supplies of goods (services) by insolvent companies, on the supply of scrap metal and timber remains with the purchaser which is registered for VAT purposes in Lithuania.

- **Regarding VAT treatment of hotel and special accommodation services**

On 29 December 2011 by letter No [\(18.2-31-2\)-R-12234](#) the Tax Authorities published information regarding VAT treatment of hotel and special accommodation services during transitional period due to the changes of VAT rates.

The Tax Authorities informed that the VAT Law does not indicate any transitional period. Therefore, accommodation services rendered in 2012 are to be taxed with the standard 21% VAT rate in Lithuania, i.e. the VAT rate which was valid when the obligation to calculate VAT occurred should be applied.

Explanatory notes to VAT invoicing Directive (2010/45/EU)

The European Commission released explanatory [notes](#) to VAT invoicing Directive 2010/45/EU, taking effect from 1 January 2013. These notes are not legally binding and highlight the practical, informal guidelines how the EU law is to be applied according to the views of the Directorate General of Taxation and Customs Union and do not represent the views of the Commission.

Excise Duties

Amendments to the Law on Excise Duties valid from 1 January 2012

On 15 December 2011 by Law No [XI-1801](#) Article 34 of the Law on Excise Duties was amended. According to the amendment, cigarettes cannot be sold at the price higher than the maximum retail price indicated on the package. The amendment will come into force starting from 1 March 2012.

Amendment to the official Commentary on the Law on Excise Duties regarding taxation of coal, coke and lignite

On 12 December 2011 by letter No [\(18.2-31-2\)-R-11662](#) the Tax Authorities published amendments to the official Commentary of the Fifth paragraph of the Law on Excise Duties (taxation of coal, coke and lignite).

The amendments are editorial and related to the amendments made to the Law on Excise Duties.

New version of rules on registration of excise warehouses

On 7 December 2011 by regulation No [VA-130](#) the Tax Authorities issued the new version of the rules on registration of excise warehouses.

New publication “Excise duty taxation of natural gas”

On 12 December 2011 by letter No [\(18.2-31-2\)-R-11614](#) the Tax Authorities published a new publication “Excise duty taxation of natural gas”.

The publication provides with the cases of taxation of natural gas with excise duty when the natural gas is used as motor fuel.

Corporate Income Tax (CIT)

Changes and amendments on the Commentary of the Law on CIT

- **Regarding tax implications on share capital reduction**

On 5 December 2011 by Letter No [\(18.10-31-1\)-R-11393](#) the Tax Authorities informed that the Commentary on Art. 30 Part 2 Section 4 and Art. 32 Part 5 of the Law on CIT has been amended and supplemented.

The main changes of the Commentary are related to amendment to Art. 32 Part 5 of the Law on CIT, according to which loss from reduction of share capital which has not been formed from shareholders contributions can be recognised for tax purposes as a loss from transfer of securities. Such a loss arises when there is a positive difference between the acquisition price of shares and the funds received by the shareholder after the share capital reduction. If such a difference is negative,

i.e. the share capital reduction results in profit, such profit should be recognised and taxed as profit from transfer of securities.

The basic amendments to the Commentary are as follows:

- loss of profit from transfer of securities can be recognised only when the share capital is reduced with the purpose to distribute funds to shareholders;
- the acquisition price of shares will be identified according to FIFO or weighted average method;
- loss for tax purposes can be carried forward to future periods in the same order as other loss from transfer of securities.
- **Regarding the attribution of costs unrelated to the usual activities of the entity to non-deductible expenses**

On 6 December 2011 by Letter No [\(18.18-31-1\)-R-11429](#) the Tax Authorities informed that the Commentary on Art. 31 Part 1 Section 13 of the Law on CIT was changed. The Commentary was supplemented with a provision stating that expenses on entertainment, recreation, trips and other expenses not related to business activities of the company are not linked to earning income or receiving economic benefit and should be attributed to non-deductible expenses.

- **Regarding the attribution of insurance contributions to allowable deductions**

On 29 December 2011 by Letter No [\(18.18-31-1\)-R-12226](#) the Tax Authorities informed that the Commentary on Art. 17 Part 1 of the Law on CIT was changed by expanding the list of allowable deductions with accident insurance contributions if at least one of the following requirements is met:

- insurance contributions are recognized as expenses incurred for the benefit of employees and are subject to PIT, or
- insurance contributions are the usual costs that an entity actually incurs for the purpose of earning income or receiving economic benefit.

Real Estate Tax (RET)

Amendments to the Law on Real Estate Tax regarding the taxation of immovable property owned by individuals

On 21 December 2011 amendments No [XI-1828](#) on the Law on RET were adopted. These amendments came into force on 1 December 2012. The main provisions regarding the taxation of immovable property owned by individuals are as follows:

- the value of immovable property owned or acquired by individuals exceeding LTL 1 million is subject to RET.

- The aggregate value of structures (premises) owned and acquired by individuals and their family members intended for dwelling purposes, gardens, garages, homesteads, greenhouses, farms, subsidiary farms, science, religion and recreation, fish-farming structures as well as engineering structures will be calculated for RET purposes.
- The family members for RET purposes shall include wife or husband, single parents and their biological and/or adopted children under 18.
- 1% RET rate is applied on the part of the value of immovable property exceeding LTL 1 million.
- RET return should be submitted to the Tax Authorities and the tax due should be paid until 15 December of the current tax period.

Additionally, the main rule on the beginning and the end of calculation of the tax due is amended, i.e. the tax due shall be calculated as from the month following the month in which the real estate was acquired/retained/overtaken and the calculation of the tax due will be finished as from the month following the month in which the real estate was transferred/returned/lost in any other way or not used due to construction works. Previously, the tax liability occurred/ended from the same month in which the transfer of immovable property was performed.

The amendments came into force on 1 January 2012.

Taxable values of immovable property are published by the Lithuanian State Company “Centre of Registers”. The values can be found by using the following two options:

1. by entering the unique number of real estate in the website of Lithuanian State Company “Centre of Registers” http://www.registrucentras.lt/masvert/paieska_un.jsp (it works only with the real estate valued by mass valuation); or
2. by applying directly to Lithuanian State Company “Centre of Registers” with a request for a confirmation of the taxable value.

Taxable values of immovable property can be negotiated by the tax payer based on the order established in Art 10 of the Law on RET.

Changes and amendments to the Commentary of the Law on RET

The Tax Authorities informed that the Commentary on Art. 4 and Art. 8 Part 2 of the Law on RET was changed and supplemented in accordance with the [amendments](#) to the Law on RET which came into force on 1 January 2011.

On 9 December 2011 by Letter No [\(18.40-31-1\)-R-11582](#) the Tax Authorities informed that the Commentary on Art. 8 Part 2 was updated by elaborating the order to apply RET on the value of immovable property determined by individual valuation.

On 15 December 2011 by Letter No [\(18.40-31-1\)-R-11781](#) the Tax Authorities informed that the Commentary on Art. 4 was changed and supplemented with the provisions specifying what objects are subject to RET.

- Immovable property is not subject to RET if immovable property is not in use and the construction of immovable property has not been completed in accordance with the procedure laid down by the Law on Construction.
- The Commentary also adjusted the rules regarding the taxation of uncompleted but used immovable property.
- The list of objects not subject to RET was expanded with immovable property created or acquired on the basis of the general public-private partnership as defined by the Law on Investments.
- The Commentary also specified cases when RET is not imposed on immovable property owned by individuals, however, it should be noted that as of 1 January 2012 the Law on RET was significantly amended with regard to taxation of immovable property owned by

individuals and these changes were not included in this Commentary.

Personal Income Tax and Social Insurance Tax

The Laws on Sickness and Maternity and on Occupational Accidents and Occupational Diseases were amended

On 15 December 2011 amendment No [XI-1803](#) to the Law on Sickness and Maternity was adopted by which the maximum compensated salary amount which is used when calculating maternity benefits was reduced. Starting from 1 January 2012 such an amount should not exceed the sum of 3.2 insured income amounts of the current year (i.e. LTL 3,744). Compensated salary amount used for calculation of sickness benefits according to the amendment to the Law on Occupational Accidents and Occupational Diseases No [XI-1804](#) should not exceed the sum of 3.2 insured income amounts of the current year as well (the previous maximum compensated salary amount was equal to the sum of 5 insured income amounts).

The rates of social insurance contributions were changed

On 20 December 2011 the Law on Approving the Indices of the State Social Insurance Fund Budget for 2012 No [XI-1826](#) was adopted, according to which the following four (instead of three) rate categories of social insurance contributions for

occupational accidents and occupational diseases are ratified for 2012: category I – 0.18% (former 0.9%), category II – 0.42% (former 0.38%), category III – 0.9% (former 0.18%) and category IV – 1.8%. The order of attribution of insurers to these categories was changed, however, the general rate for insurers remained the same, i.e. 30.98%. The Law confirmed the amount of state pension social insurance contribution transferred to private pension funds by individuals participating in the pension accumulation scheme. The rate of such contribution was reduced from 2% to 1.5% in 2012.

The rules on completing Form FRO471 updated

On 13 December 2011 by Letter No [\(18.16-31-1\)-R-11715](#) the Tax Authorities informed that the rules on completing form FRO471 were updated. The main update is related to the permission to declare payments made to individuals performing individual activities under business certificates (“individualios veiklos vykdymo pažyma”) by indicating the number of business certificates instead of personal codes. This provision will be applied when declaring payments made in 2011 and onwards. When declaring payments made to individuals having business certificates (“verslo liudijimas”) in 2012 and onwards, the number of a business certificate will have to be indicated instead of the personal code.

We would like to remind that all the payments made in 2011 to individuals performing individual activities will have to be declared in form FRO471 until 1 February 2012 (in 2010 only payments exceeding LTL 320 had to be declared).

The Tax Authorities explain news related to business certificates

On 15 December 2011 by Letter No [\(18.23-31-1\)-R-11817](#) the Tax Authorities informed that publications for individuals who will perform their activities under business certificates acquired for trade, rent of premises and manufacturing or provision of services for 2012 were prepared. The publications provide the main changes related to certain limitations for activities, newly granted rights, requirements for accounting and taxation of income. The above mentioned documents can be found on the [website](#) of the Tax Authorities.

Other taxes

Amendments to the Law on Tax on State Natural Resources

On 20 December 2011 amendment No [XI-1818](#) to the Law on Tax on State Natural Resources was adopted.

According to the amendments, the tax period for the Tax on State Natural Resources (except for tax on resources of animals for hunting) was shortened to

a quarter of a calendar year. Accordingly, terms for declaring and payment of tax due were adjusted: form KIT708 for tax on minerals, water and constructional soil has to be submitted and the tax due has to be paid during a month after the end of the tax period (each quarter), i.e. until 30th of April, 31st of July, 31st of October, and 31st of January.

Additional amendments established new tax rates applicable to minerals, water and constructional soil and adjusted the order of their indexation and effect.

The amendments came into force on 1 January 2012.

Changes to the Law on Land Tax

On 21 December 2011 amendment No [XI-1829](#) to the Law on Land Tax was adopted. This amendment

will come into force on 1 January 2013 (except for Art. 3 Part 2 which came into force on 31 December 2011). The main changes to the Law on Land Tax are introduced in the table below.

Changes to the Law on Tax on the Use of State-owned Assets under Trust

On 1 December 2011 amendment No [XI-1753](#) to the Law on Tax on the Use of State-owned Assets under Trust was adopted. This amendment annulled the provision that the tax payable (2%) on the use of state-owned assets under trust by public undertakings may not be lower than 10% of the taxable profit amount for the previous reporting period.

The amendment came into force on 1 January 2012.

The main amendments	Currently in force	In force from 1 January 2013
Tax rate	1,5%	0,01% - 4%, defined by municipality
Taxable value	Value identified by the Centre of Registers multiplied by quotients	<ul style="list-style-type: none"> •The average market value determined in the map of values established according to the mass valuation •The mass valuation is performed not rarer than every 5 years •A possibility to apply the property value determined during the individual valuation if it differs from the market value by more than 20% (principles are similar to real estate tax)
Declaration	Template of a tax return is completed and sent by the Tax Authorities until 1 October	Template of a tax return is completed and sent by the Tax Authorities until 1 November
Payments	One annual payment until 1 November	One annual payment until 15 November
Additional comments		Gradual increase of the tax from 2013 to 2016; from 2017 full payment

Accounting News

Amendment of the 13th BAS "Intangible assets" and the supplement of the 21st BAS "Grants and subsidies"

On 7th December 2011 by Order No BAS-14 of the Director of the Audit and Accounting Office the 13th BAS "Intangible Assets" was amended and the 21st BAS "Grants and subsidies" was supplemented.

These amendments provide that integrated pollution prevention and control licenses obtained free of charge can be accounted for at cost and are not covered by the 21st BAS "Grants and subsidies".

These provisions took effect from 1 January 2012.

Approval of the 7th BAS "Accounting policies, changing accounting estimates and correcting errors"

On 23 December 2011 by Order No BAS-21 of the Director of the Audit and Accounting Office the 7th BAS "Accounting policies, changing accounting estimates and correcting errors" was approved. The purpose of this standard is to determine how to account for and disclose in financial statements the changes in company's accounting policy, accounting estimates and error correction results. This standard applies to financial statements prepared from 1 January 2012 and onwards. It may be applied

to correcting errors made in previous reporting periods.

Amendment of the 1st BAS "Financial reporting"

On 29 December 2011 by Order No BAS-19 of the Director of the Audit and Accounting Office the 1st BAS "Financial Reporting" was amended. Part 10 "Significance of information" item 42 to material information was included in the definition of the wrong approach.

The changes took effect from 1 January 2012.

Amendment of the 3rd BAS "Income (loss) statement"

On 29 December 2011 by Order No BAS-17 of the Director of the Audit and Accounting Office the 3rd BAS "Income (loss) statement", items 12 and 30 were amended and item 3 was abolished.

Items 12 and 30 clarified that in order to provide detailed information on the performance, the company may split the totals in articles of the profit (loss) statements to more detailed amounts indicating them in separate lines.

This amendment took effect from 1 January 2012.

Amendment of the 16th BAS "Consolidated financial statements and investments in subsidiaries"

On 29 December 2011 by Order No BAS-16 of the Director of the Audit and Accounting Office item 49 of the 16th BAS "Consolidated financial statements and investments in subsidiaries" was amended.

According to this amendment in order to provide detailed information on the performance, the company may split the totals in articles of the profit (loss) statements to more detailed amounts indicating them in separate lines.

This amendment took effect from 1 January 2012.

Approval of the 37th BAS "Joint venture"

On 23 December 2011 by Order No BAS-20 of the Director of the Audit and Accounting Office the 37th BAS "Joint venture" was approved in a new version. It has replaced the former 37th BAS "Investment in joint venture (partnership) contract".

The new version of the standard instead of three joint venture contract objects were distinguished two: general economic activity and the joint

venture. The standard sets out financial reporting principles for joint venture partners.

This amendment shall take effect from 1 January 2013.

Approval of the 43rd BAS “Accounting for credit unions and their financial statements”

On 23 December 2011 by Order No BAS-15 of the Director of the Audit and Accounting Office the 43rd BAS “Accounting for credit unions and their financial statements” was approved.

The purpose of the standard is to set requirements by credit unions’ accounting, financial statements’ composition and their contents.

This standard took effect from 1 January 2012.

Legal News

Opportunities to appoint a foreign insolvency administrator

On 1 December 2011 the Minister of Economy adopted Order No [4-876](#) with regard to the provision of insolvency administration services. The order has harmonized legal rules regulating the provision of insolvency administration services pursuant to the EU Services directive. The amended rules now read that insolvency administration services may be provided in Lithuania by EU

citizens, EEA citizens as well as other natural persons entitled to the right to move freely in the EU Member States under EU law. Insolvency administration services may also be provided by legal entities established in the EU or EEA and entitled to the provision of insolvency administration services in their home Member State.

Liquidation of the Securities Commission and the Insurance Supervisory Commission

Pursuant to the Law on Reform of the Financial Market Supervision System the Securities Commission and the Insurance Supervisory Commission were liquidated with effect from 1 January 2012. Their functions were transferred to the Bank of Lithuania.

Companies shall be allowed to pay dividends for a period shorter than one financial year

On 15 December 2011 the Parliament adopted amendment to the Law on Companies No [XI-1798](#) empowering legal entities to pay dividends for a period shorter than one financial year. The right of initiation shall belong to shareholders having not less than 1/3 votes, provided that the articles of association of the company do not provide otherwise. The right to decide whether to pay dividends for a period shorter than one financial year shall fall within the exclusive competence of

the meeting of shareholders. The Law on Financial Statements of Entities was amended accordingly. If the President signs the amendment, it shall come into force on 1 March 2012.

Restricted rules applicable to annual bonuses to members of the board and the supervisory board

On 22 December 2011 the Parliament adopted amendment to the Law on Companies No [XI-1890](#) with regard to payment of annual bonuses to members of the board and the supervisory board, incentives to employees and other allocations. The previous version of the law read that companies were allowed to allocate not more than 1/5 of the net profit of the reporting financial year to bonus payments. The amendment introduced one additional quantitative requirement, i.e. the share of the profit for the payment of annual bonuses to members of the board and the supervisory board may not exceed 1/3 of the share of profit for the payment of dividends. The President has already signed the amendment in question.

Criminal sanctions against employers of illegally staying third-country nationals

On 23 December 2011 the Parliament adopted amendment to the Criminal Code No [XI-1917](#). The amendment envisages criminal liability applicable to natural and legal persons for employing third-country nationals illegally staying in the Republic of

Lithuania, including minors, and for making illegally staying third-country nationals

subject to particularly exploitative working conditions. The amendment implemented Directive 2009/52/EC of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The amendment needs to be signed by the President in order to come into force.

Free economic zones have been established

On 22 December 2011 the Parliament adopted Law No [XI-1896](#) with regard to establishment of a free economic zone in Kėdainiai. On 23 December 2011 the Parliament adopted Laws No [XI-1909](#), No [XI-1908](#), No [XI-1907](#), No [XI-1906](#) under which free economic zones in Šiauliai, Panevėžys, Marijampolė and Akmenė were established. Five free economic zones shall exist for 49 years. The laws establishing free economic zones in Kėdainiai and Panevėžys have been vetoed by the President while other laws have been signed.

Enhanced competition on the market of electronic money

On 22 December 2011 the Parliament adopted Law No [XI-1868](#) on Electronic money and electronic money institutions. Electronic money could be issued only by credit institutions possessing a

special licence before the adoption of the law. The law broadened the list of market players allowed to issue electronic money and created legal conditions for a new market, i.e. issuance of electronic money. According to the law, the right to issue electronic money shall be granted to credit institutions, electronic money institutions, post office giro institutions, the European Central Bank and national central banks, Member States or their regional or local authorities when acting in their capacity as public authorities. The law implemented Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC. The law needs to be signed by the President in order to come into force.

Mortgage of the company

On 22 December 2011 the Parliament adopted amendment to the Civil Code No [XI-1842](#) implementing a new concept of the mortgage. The amendment *inter alia* has created a possibility to mortgage a company like immovable property. According to the amendment, it shall be possible to mortgage the whole company or only its part, for example, assets of a branch. In addition, the mortgaged company shall remain entitled to perform business activities and dispose of its assets. It is supposed that the amendment shall have a

positive impact on business and the mortgage of the company shall be applied instead of suretyship when securing the performance of obligations of the company. If the President signs the amendment, it shall come into force on 1 July 2012.

The right of the tax authorities to establish a legal mortgage

On 20 December 2011 the Parliament adopted amendment to the Law on Tax Administration No [XI-1849](#) with regard to the right of the tax authorities to secure state claims arising from tax liabilities. Pursuant to the amendment the tax authorities shall have the right to adopt a decision establishing a legal mortgage (pledge) of the assets of a tax payer. If the President signs the amendment, it shall come into force on 1 July 2012.



Tax Case-Law

Entitlement to VAT deduction

On 1 December 2011 the Supreme Administrative Court of Lithuania (hereinafter – SACL) adopted a decision in administrative case No [A-442-3146/2011](#) with regard to entitlement to VAT deduction.

The case concerned a situation where company B transferred material assets and equipment to company A under several VAT invoices but company B did not pay VAT. The tax authorities claimed that company A was aware of the fact that company B was in a difficult financial situation, would bankrupt and would not be able to pay VAT. Due to the fact that company A was unfair, the tax authorities concluded that company A was not entitled to VAT deduction and ordered it to adjust its input VAT deduction and pay late payment interest and a penalty.

Company A applied to the Commission on Tax Disputes (hereafter - the Commission). The Commission explained that company A could not have been denied the right to VAT deduction only because it was aware of the fact that company B would not be capable of paying VAT. According to the Commission, the tax authorities had to prove not only that company A abused its rights but also that it contributed to non-payment of VAT.

The tax authorities did not agree with the Commission and applied to the court of first

instance. However, the court upheld the decision of the Commission, according to which entitlement to VAT deduction is inherent in the principle of abuse of rights.

The tax authorities submitted an appeal against the decisions adopted by the Commission and the lower court to the SACL. The SACL explained that the Commission and the court of first instance were incorrect to rule that unfairness was not a sufficient legal basis for denying the right to VAT deduction. According to the SACL, the principle of unfairness but not the principle of abuse of rights has to be proven when denying the right to VAT deduction. Pursuant to the case-law of the SACL, the notion of unfairness refers to a situation when an undertaking deducting input VAT knew or should have known that its contractor was in a difficult financial situation, would bankrupt and would not be able to pay VAT to the State budget.

The SACL set aside the decisions and ordered the Commission to settle the dispute anew.

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

Taxpayers must have a right to recover VAT charged in error from the State budget

On 10 November 2011 the European Union Court of Justice (further – EUCJ) ruled in case [C-427/10](#) (*Banca Antoniana Popolare SpA*,) where it analyzed the following situation. A seller referring

to the tax authorities' explanations invoiced fees for its services by calculating output VAT. Later the tax authorities changed their opinion by issuing an explanation that such services are exempt from VAT. The customers referring to the Civil Code claimed against the supplier to return the VAT paid in error, whereas the supplier consequently submitted an application to the tax authorities to refund the overpaid VAT. However, the tax authorities refused to grant the refund since the time limitations laid down by tax legislation were already passed.

The EUCJ explained that where a customer has a claim against his supplier to return the VAT charged in error, the principle of effectiveness requires that the supplier has to have the ability to recover that VAT from the tax authority. In case of the differences in specific time-limits laid down in civil law and tax law, the tax authorities should take into account the particular situations of the economic operators and where appropriate, provide for adjustments to the way in which its new legal assessments of those transactions are applied.

Publications

Publication on key tax issues for Real Estate Investors 2011/2012

PwC Lithuania together with PwC firms in other 34 countries prepared a publication on key tax issues for Real Estate Investors in 35 different tax jurisdictions worldwide. The publication gives an overview of year-end to-dos and highlights what needs to be considered in international tax planning and structuring of real estate investments.

You can find the publication in English [here](#).

New amendments to the Tax Code of the Republic of Belarus

As from 1 January 2012 a number of amendments to the Tax Code of the Republic of Belarus entered into force. These amendments are aimed at further simplification of Belarusian tax system as well as at easing of tax burden for taxpayers. PwC Belarus together with PwC Lithuania prepared a publication which summarizes the principal changes which may be relevant to our clients investing in Belarus.

You can find the publication in English [here](#).



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