

# 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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### Explanation on VAT payable on margin

On 6 August 2009 according to Decision No. [\(18.2-31-1\)-R- 7537](#) of the Head of the Tax Authorities the Commentary on Art. 92 part 6 of the Law on VAT was supplemented.

The supplements are related to calculation of VAT by taxable persons who engage in supplies of goods which are subject to margin scheme according to the provisions of Art.106 of the Law on VAT and who have not submitted any application to register for VAT purposes.

The Commentary is supplemented with an example which indicates the method for calculation of output VAT payable on the margin, which is applied on income exceeding LTL 100,000 during the last 12 months. Moreover, the example gives an explanation when an obligation to register for VAT purposes arises in these cases.

### Simplified documentation of representation expenses

On 10 August 2009 the Tax Authorities published notification No. [\(18.26-31-1\)-R-7671](#) by which the Commentary of Art. 22 part 3 point 2.3 of the Law on CIT was amended.

The amendments provide for simplified rules on the documentation of the representation expenses to be recognised as allowable deductions.

According to the supplements of the Commentary, representation expenses may be treated as limited deductions without preparing reports on representation expenses, but only in cases when the invoices received sufficiently prove that services or goods were acquired for representation.

Such invoices or other acquisition documents should be approved by the director of the company indicating that these expenses should be treated as representation expenses.

### Practical guidance on implementation of investment project relief

On 31 August 2009 according to the letter of the Tax Authorities No. [\(18.10-31-1\)-R-8277](#), the supplements of the Commentaries on Art. 2 part 12-1 and Art. 46-1 of the Law on CIT were adopted. The supplements are related to the practical implementation of the investment project relief.

The Tax Authorities explained that expenses on an investment project should be treated as actually incurred on the date when a document supporting the purchase of assets is issued.

An amended Commentary also explains application of the relief in cases when a new company is established or reorganisation of several companies is performed.

Besides other important explanations, the Commentary provides examples on how the expenses which are not used for the relief should be carried forward to subsequent periods, how the periods of limitations should be calculated. Moreover, it provides for the particular requirements for the notification for the Tax Authorities.

### **Tax Authorities' explanations regarding compulsory HIC**

On 14 August 2009 the Tax Authorities issued explanation No. [\(18.26-31-1\)-R-7837](#) regarding the compulsory Health Insurance Contributions (HIC) where they state their position that compulsory HIC should be withheld and paid from the additional (voluntary) HIC when an employer pays it on behalf of the employee. If companies did not withhold compulsory HIC, no fines or late payment interest should be applied.

Moreover, it is provided that starting from 1 January 2010, additional HIC will not be subject to compulsory HIC.

The Tax Authorities also reminded that life insurance contributions and contributions to pension funds should not be subject to compulsory HIC.

On 31 August 2009 the Tax Authorities prepared explanation No. [\(18.18-31-1\)-R-8279](#) where provide for the rules on declaration of compulsory HIC on voluntary HIC paid for the benefit of employees. Compulsory HIC should be reported in the return form FR0572 and its appendix FR0572A.

On 20 August 2009 the Tax Authorities prepared explanation No. [\(18.26-31-1\)-R-7985](#) regarding compulsory HIC which have to be paid by foreigners.

According to the explanation, individuals who have an approval that they are insured by social (and health) insurance in another Member State will be exempted from compulsory HIC in Lithuania.

In a similar way as for social insurance, individuals should receive a standard document (forms E101, E102 or E103) or a written free-form approval from the competent authority of this Member State that during the respective period he/she was covered by social (health) insurance in another EU or EEE country.

Moreover, it is stipulated that compulsory HIC on accidental income should be mandatory only for residents of Lithuania.

### **Amendments to the rules on issuing forms E101, E102, E103 for persons insured with State Social Insurance in Lithuania**

On 28 August 2009 according to Order No. [V-498](#) of the Head of the Managing Board of the State Social Insurance Fund the rules on issuing forms E101, E102, E103 for persons insured with State Social Insurance in Lithuania were amended. The new edition of the rules should be applicable from 1 September 2009.

Based on the new edition of the rules, for the purpose of receiving of the aforementioned forms, it is not required to provide documents of outbound family members or copies of balance sheet, profit (loss) statement of the company assigning the employee together with an application for these forms. In cases when person is self-employed it is not required to provide individual entity's registration certificate or individual activity's certificate. Other amendments were also enacted.

### **Basic monthly salary and basic hourly wage reduced**

On 19 August 2009 following Decision No. [844](#) of the Lithuanian Government basic monthly salary was reduced from LTL 128 to LTL 122 and basic hourly wage was reduced from LTL 0.76 to LTL 0.73. The Decision came into force on 23 August 2009.

### **Amendments to the Rules on Land Tax Administration**

On 3 August 2009 by Order No. [VA-55](#) of the Head of the Ministry of Finance Rules on Land Tax Administration were amended.

Based on the amendments, land tax payers (EDS users, i.e. persons who concluded agreements on filing of documents by electronic means) will be provided with

declarations only by telecommunication means, i.e. no forms will be sent by traditional mail.

The tax payers who do not use EDS and do not require to receive declarations by traditional mail may receive them directly from the local Tax Authorities' department after a written request is submitted.

The rules also provide for a new edition of the return form KIT703.

### **The practice of the Tax Authorities**

On 5 August 2009 the Tax Authorities [informed](#) that as a result of tax inspections violations related to withholding of significant amounts of funds from cash registers for the purposes of under-the-counter transactions or payments are increasingly reported.

In the publication the Tax Authorities described a practical situation when a significant amount of funds was withheld from the company's cash register by the owner of the company under an investigation for the purpose of payments for goods to an US registered company.

With the assistance of the American Internal Revenue Service the Tax Authorities identified that the US registered company does not exist and the owner of the Lithuanian company under investigation could not provide any documentation to support the transaction performed. Therefore, such income of the owner of the Lithuanian company should be subject to PIT.

On 5 August 2009 the Tax Authorities [informed](#) that recently representatives of the Tax Authorities more often identify violations related to trade of illegally acquired goods, an unaccounted income, etc.

In the publication the Tax Authorities described a practical situation when officers of the Tax Authorities performed a controlling purchase of cigarettes and alcohol in a retail store and identified that the cash paid was not entered into the cash register and no receipt was issued. After inventory and review performed in the retail store's premises amounts of unregistered cash, cigarettes and alcohol without purchase documents were found.

The Tax Authorities inform that companies targeted for such inspections are selected based on the reliable information analysed.

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## **Tax case-law**

### **Concept of advertising services for VAT purposes and requalification of advertising and marketing of pharmaceuticals into the sale of pharmaceuticals**

On 29 June 2009 the Supreme Administrative Court of Lithuania (SACL) decided in administrative case No. [A-438-614/2009](#). The case was related to VAT and CIT which was additionally calculated for a foreign pharmaceutical company's branch office in Lithuania which is involved in advertising and marketing of pharmaceuticals.

During the tax investigation the Tax Authorities established that the branch office arranged conferences and other events for Lithuanian doctors and representatives of pharmaceutical companies during which pharmaceuticals of its foreign group companies were introduced. The branch office recharged expenses related to the above mentioned conferences and other events (remuneration paid to event organizers and conference lecturers, meals, accommodation and entertainment costs related to event participants) to its group company established in another Member State. The branch treated these recharged services as advertising services, therefore, no VAT was charged on them as they were deemed to be rendered outside Lithuania. In their decision the Tax Authorities stated that the treatment of the recharged services as advertising services was unfounded, therefore, additional VAT was charged thereon.

The Tax Authorities also stated that although the branch office formally declared only advertising and marketing activities and did not issue any invoices for pharmaceuticals sold, however, the branch office activities qualify as wholesale of pharmaceuticals. Therefore, the branch office is obliged to pay CIT on the wholesale. The Tax Authorities based such conclusion on the assumption that the branch office's business activities, organizational structure and functions were analogical to the ones of other Lithuanian pharmaceutical wholesalers.

With respect to VAT, SACL stated that the conference and event arrangement services purchased and recharged to the other group company by the branch office should be treated as representation or training. SACL emphasised that the nature of the conference and event arrangement services has not changed after they were recharged by the branch office, therefore, these services could not be treated as advertising services. Based thereon, the place of supply of the services should be Lithuania, and local VAT should be charged thereon.

With respect to CIT, SACL stated that the circumstances established by the Tax Authorities during the tax investigation are not sufficient for levying CIT on the branch office's income, as the Tax Authorities have not fully investigated these circumstances as well as have not eliminated all the related contradictions. SACL based such conclusion with the following arguments:

- although in its decision the Tax Authorities have stated that pharmaceutical supply agreements were formally concluded between the above mentioned foreign group companies and their Lithuanian customers, as actually pharmaceuticals were sold by the branch office, however, the Tax Authorities have not performed any analysis or assessment of these agreements, supporting their alleged formality;
- although the Tax Authorities have stated that the branch office performed sales activities in Lithuania, money transfer documents show that customers transferred money to other foreign group company's bank account. There is no additional evidence based on which this fact could be interpreted otherwise;
- as the branch office was established by the foreign company, therefore, it should be taxed according to international legislation, i.e. according to the double tax treaty signed between Lithuania and the respective foreign country, as well as provisions of the Law on CIT stipulating taxation of foreign entities. However, these circumstances were not analyzed by the Tax Authorities.

Based on the above, CIT related issues in the case were relegated to the Tax Authorities for their reinvestigation.

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