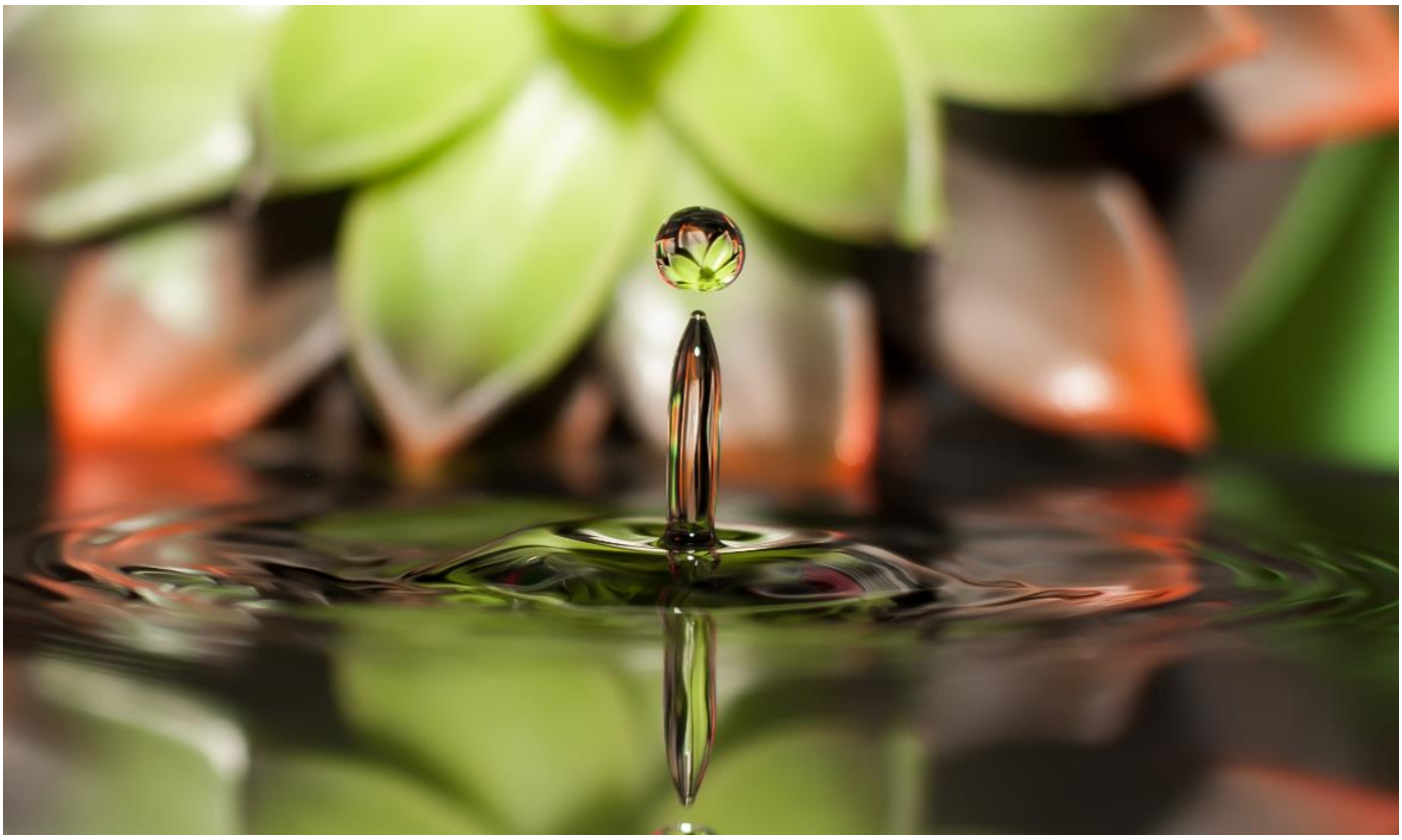

Tax and Legal Newsletter

April 2017

Audit and consulting company, Deloitte Lithuania, is glad to introduce you with Tax and Legal Newsletter. In this edition, you will be presented with the latest tax and legal news prepared by our Managers from Tax and Legal Department.

Tax News

Information concerning the participants of multinational enterprise groups will be provided to STI

On 12 April 2017, the Government of the Republic of Lithuania approved the project of the Law amending the Article 61 of the Lithuanian Law on Tax Administration (further – Law on Tax Administration). The project provides that in order to enhance the efficiency of mandatory automatic information exchange in tax area, the taxpayers that engage in multinational enterprise groups (further – MNE Groups) will be liable to provide the STI with reports consisting of data about the amount of revenue, profit (loss), corporate income tax accrued and paid, share capital, number of employees, tangible assets (apart from cash and cash equivalents) extracting this data according to separate jurisdictions, in which they perform business.

Once the respective amendments of the Article 61 of the Law on Tax Administration come into force, a group of entities will be treated as MNE Group, provided that the following conditions are met:

- total consolidated group revenue referred in its consolidated financial statements was not less than EUR 750 000 000 during the fiscal year immediately preceding the reporting fiscal year, and
- the group of entities includes two or more enterprises, which tax residence place is located in different jurisdictions, or
- the group of entities includes an enterprise, which is a resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

The taxpayers that engage in MNE Groups will be liable to provide STI with country-by-country reports concerning the MNE Group participants and their financial indicators for 2016 and the following years within 12 months as of the last day of the reporting fiscal year of MNE Group. More detailed reporting procedures should be determined by the central tax administrator.

If the Parliament approves this project, the amendments of the Article 61 of the Lithuanian Law on Tax Administration should come into force as of 5 June 2017.

More information is available here.

Court of Justice of the European Union (hereinafter – CJEU) case law

C-564/15 Tibor Farkas

As part of an electronic auction organised by the tax authorities, Mr Farkas purchased a mobile hangar. The seller in question issued the invoice, which included the VAT relating to that transaction, in accordance with the rules applicable to the ordinary tax system. When Mr Farkas paid the auction selling price, he included the VAT indicated by the seller, who paid that tax to the Hungarian tax authority.

Mr Farkas deducted the output VAT recorded in that invoice. The Hungarian tax authorities then carried out checks on the refunds requested by Mr Farkas and found that the rules governing the reverse charge system, according to which it fell to Mr Farkas, as purchaser of the property, to pay the VAT directly to the Treasury, had not been complied with. The application was thus refused and additional amounts due were calculated.

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Mr. Farkas brought an action before a court in order to ask the CJEU whether the refusal of his right to make a deduction is compatible with EU law.

The Court held that, in the absence of EU rules on applications for the repayment of taxes, it is for the domestic legal system of each Member State to lay down the conditions under which such applications may be made and those conditions must observe the principles of equivalence and effectiveness. CJEU has accepted that a system in which, first, the seller of the property who has paid the VAT to the tax authority in error may seek to be reimbursed and, secondly, the purchaser of that property may bring a civil law action against that seller for recovery of the sums paid but not due, observes the principles of neutrality and effectiveness.

However, if reimbursement of the VAT becomes impossible or excessively difficult, in particular in the case of the insolvency of the seller, the principle of effectiveness may require that the purchaser of the property concerned be able to address his application for reimbursement to the tax authority directly. Thus, the Member States must provide for the instruments and the detailed procedural rules necessary to enable the purchaser to recover the unduly invoiced tax in order to respect the principle of effectiveness.

More information is available here.

Legal News

Amendments to the regulation for issuing of visas
On 6 April 2017 an order, which changed the rules of issuing and withdrawing visas, was adopted. The main amendments of the rules:

- Multiply-entry national visa cannot be issued to a person, who periodically arrives to the Republic of Lithuania to work or engage in other types of legal activities and who's main residence is in a foreign country;
- From now on multiply-entry visa is issued for a foreigner, who periodically arrives to work under the list of highly qualified professions that are in demand in Lithuania and for a foreigner, whos is not a citizen of EU or EFTA Member State and is seconded to the Republic of Lithuania under an agreement conducted between companies;
- The list of documents, which, in cases described by the Order, must be submitted to the Visa office, in order to receive a multiply-entry national visa, was extended (employment contract or employer's obligation to employ the foreigner, documents proving a long-term stay in Lithuania, etc.);
- The term for making a decision regarding the withdrawal of the visa has been amended (no later than 14 calendar days).

The amendments entered into force as of 15 April 2017.

More information is available here.

A remarkable decision for debt collection agencies by the Court of Justice of the European Union
Court of Justice of the European Union (CJEU) recently examined a dispute of great importance to debt collection agencies and clarified that debt collection agencies must comply with the Directive on credit agreements for consumers. At the end of April 2017, the Supervision Department of The

Bank of Lithuania published an opinion regarding the issues raised in the case and within the framework of the national law. Overall stricter requirements for the debt collection agencies should be applied. The objective is to ensure consumers' confidence and protect them from unfair and misleading activities of the debt collection companies. The interpretation of the CJEU is relevant for the debt collection companies operating in Lithuania.

Debt collection agencies placed on the same footing as the consumer credit intermediaries in terms of organizing credit agreements for consumers. One of the main notes has been made - deferment of the debt or payments in instalments (debt restructuring agreements), which not only determines a debt repayment schedule, but also raises additional charges for consumers.

CJEU stated in cases where a debt collection agency acts on behalf of a lender for the conclusion of a rescheduling agreement for an unpaid credit, under which the consumer undertakes to repay the total amount of the credit and to pay interest and costs, must be categorised as a credit intermediary, which means that the debt collection agency must be included in the list of independent consumer credit intermediaries supervised by the Bank of Lithuania. If the debt collection agency interfere a rescheduling agreement not on behalf of the lender, but on its own, it may lead to the status of the lender and an obligation to enter the list of the consumer credit lenders appears.

More information is available here.

The Regulation of the creditworthiness assessment of the consumer credit's recipient and responsible borrowing does not interfere with the Constitutional principle of the rule of law in Lithuania

May 5th 2017, the expanded panel of judges of the Supreme Administrative Court of Lithuania (SACL) made a decision that the Article 4 of the Regulation of the creditworthiness assessment of the consumer credit's recipient and responsible borrowing (hereinafter- Regulation), approved by the Bank of Lithuania, does not interfere with the Constitutional principal of the Law, Article 8 Paragraph 5 of the Republic of Lithuania Law on the Consumer Credit (hereinafter- Law on Consumer Credit).

Article 4 of the Regulations provided that the income, expenses and financial liabilities of the recipient of the credit should be read in a broad sense and treated as the income, expenses and financial liabilities of the borrower and his family, except when the creditor or peer lending platform operator has any evidence and disposed information is sufficient for an appropriate creditworthiness assessment.

The panel of Judges of the SACL stated the provision in Article 4 of the Regulation contains an obligation, obligatory to ensure the implementation of the principle of the responsible borrowing, to assess the income, expenses and the financial liability of the credit recipient's spouse, while doing the creditworthiness assessment. The panel of Judges emphasized that a family is an economic unit, whereas normally spouses are members of a household, therefore is managed on the basis of common property. Hence, the property acquired during the marriage is treated as a common property of the spouses, simultaneously, obligations implemented in the laws should be carried out from the common property of the spouses. The income, expenses and the financial liability of the credit recipient's spouse could affect the creditworthiness of the consumer, therefore, obligation to assess the income, expenses and the financial liability of the credit

recipient's spouse arise from the requirement of the Article 4(2) Paragraph 8 of the Law on Consumer Credit.

More information is available here.

Stricter liability for fraudulent insolvency

On 24th April 2017, the expanded panel of seven Judges of the Supreme Court of Lithuania issued a judgment in a civil case no. e3K-7-115-915/2017, regarding the fraudulent insolvency boundaries and relevant civil liability issues.

The Supreme Court has acknowledged the fraudulent insolvency is assumed if actions that served to recognize the insolvency as fraudulent, violate the rights of all creditors and such actions could prevent a company from pay off with its creditors. Therefore, every creditor, without the obligation to prove unfair actions taken against a specific creditor, has the right to claim for damages that consist of the unpaid part of the claim.

In addition, the Supreme Court stated that in a case of fraudulent insolvency, the outstanding claims of the creditors are considered by default as damages. However, the claims of the creditors may occur on different grounds, which may be unrelated to the actions, which caused the insolvency. In such case, the person or persons, who carried out fraudulent insolvency causing actions, must rebut the presumption.

In addition, the court concretized the concept of the fraudulent insolvency in details. From now on, in cases of this nature, the court must analyze and evaluate the scope and systematic of actions that led to the insolvency. In cases where no causal link between conscious poor management of the company and the insolvency of the company, or a causal link between conscious poor management of the company and the substantial deterioration of the position of the company, were established, separate features of detection (as unprofitable transactions, negligent record keeping etc.) required to be assessed by using other legal measures (as criminal liability, civil liability, invalidity, clearance of transactions), but it cannot by nature assume and determine the finding of the fraudulent insolvency of the company.

More information is available here.

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