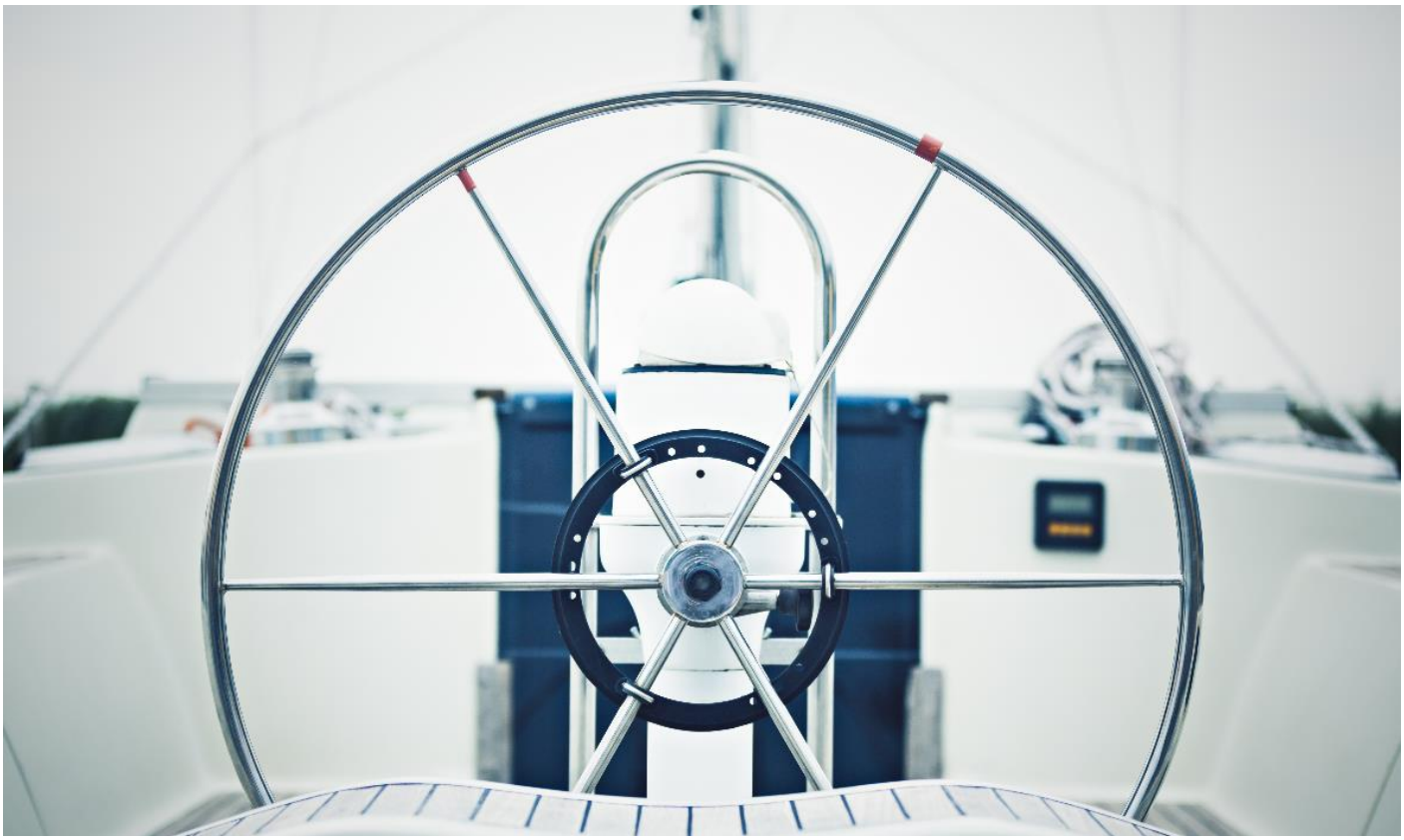

Tax and Legal Newsletter

June 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

Amendments to order "Regarding the rules on electronic reporting of trade with European Union Member States performed by VAT payer of the Republic of Lithuania"

On 7 June 2017 Customs Department under the Ministry of Finance of the Republic of Lithuania issued Order No 1B-432 „ Regarding the rules on electronic reporting of trade with European Union Member States performed by VAT payer of the Republic of Lithuania". The order lays down the grounds for an updated Intrastat system as well as terminates the previous agreements on online Intrastat data submission.

Accordingly, VAT payers which have an obligation to report Intrastat data must be registered within the "Electronic services" portal as the service recipient.

The order can be found here.

New service of e-invoicing subsystem presentation

As of 8 June 2017 users of e-invoicing services subsystem (i.SAF) of smart tax administration system (i.MAS) enjoy a possibility not only to submit VAT invoice registers, issue and receive electronic VAT invoices (service provided to small business only), but also to order preliminary VAT return service.

Preliminary declaration is formed by using the VAT information exchange among Member States system (ITIS_EU) and then is uploaded to e-declaration system (EDS) for review/amendment/approval by i.SAF user.

More information available here.

New service of e-invoicing subsystem presentation

As of 15 June 2017 users of e-invoicing services subsystem (i.SAF) of smart tax administration system (i.MAS) enjoy a possibility not only to submit VAT invoice registers, issue and receive electronic VAT invoices (service provided to small business only), order preliminary VAT return service (service was made available from 8 June 2017) but also use VAT invoices cross-checking service.

The i.SAF will notify VAT invoices cross-checking data and lack of conformity related to VAT invoices after submitting VAT invoices up until the deadline provided for data submission. It will allow to compare VAT invoices data submitted to i.SAF between taxpayers.

More information available here.

The Article 61 of the Lithuanian Law on Tax Administration was amended

On 23 May 2017, the amendment of the Article 61 of the Lithuanian Law on Tax Administration setting an obligation for taxpayers that meet certain requirements to provide information concerning the

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participants of multinational enterprise groups to the STI was adopted. We have written about this amendment here.

The amendment came into force as of 5 June 2017.

More information is available here.

Legal News

Amendments to the Law on Legal Status of Foreigner adopted

On 25 May 2017 the Lithuanian Parliament adopted amendments to the Law on Legal Status of Foreigners and thus replaced former regulation on temporary residence permit issue for intra-group secondment cases. Main novelties include the following:

- Possibility for the host company in Lithuania to submit documents on behalf of seconded employee;
- Shorter examination period: application for temporary residence permit shall be examined and decision adopted within 2 months (ordinary procedure) or within 1 month (urgent procedure);
- Short term intra-group mobility option (possibility to transfer seconded employee within the group of companies in EU for up to 90 days period), etc.

Amendments will come into effect on 1 September 2017.

More information can be found here.

Average gross salary in Lithuania has decreased

At the end of May, Lithuanian Department of Statistics announced that, according to the data of the first quarter of the year 2017, the average gross monthly salary in Lithuania is EUR 817.6.

More information can be found here.

New Labour Code adopted

On 6 June 2017 the Parliament adopted new wording of the Labour Code. The main novelties are introduced in the following areas:

- Employment termination: amendments include new grounds for employment termination, shortened notice periods, lower amount of severance pay;
- New rules for calculation of working time, overtime and annual leave;
- New types of employment contracts: the law establishes apprenticeships contracts, project-based employment contracts, employment contract for several employers, etc.

The adopted Labour Code will come into effect on 1 July 2017.

More information about amendments can be found in a special **Deloitte overview**.

General Data Protection Regulation enters into force in less than a year

As of 25 May 2018, the ageing Data Protection Directive 95/46/EC (Directive) will be replaced by the General Data Protection Regulation (GDPR). Since GDPR will be directly applicable in each Member State of the EU, it is expected to create a single set of data protection rules uniformly applicable across the whole Union.

According to the State Data Protection Authority, it would be appropriate to perform these following steps in advance:

- Designate a person or a department who would be responsible for data protection and who would help the authority to comply with the GDPR;
- Evaluate their data processing activities, e.g. review what kind of personal data and on what purposes they are being processed, identify the ground(s) based on which the data are being processed;
- Identify priority actions to ensure that the processing of personal data is in compliance with the GDPR by assessing the highest risk to rights and freedoms of natural persons;
- Assess whether under the GDPR the authority has an obligation to carry out a data protection impact assessment.

The regulation set in the GDPR is based on transparency and accountability of data controllers and data processors, e.g. organisation's using personal data in its activities. GDPR waived the obligation to notify SDPI about the processing of personal data and also establishes accountability. This means that, data controllers will have to take measures to comply with the requirements of GDPR and be able to demonstrate it. Thus, the data controllers will have more freedom to act without the prior supervisory authorities' control, it also implies a greater responsibility and more homework for the private and public sector: policies, orders, review of current practice, other preventative measures.

More information can be found here and here.

European Central Bank published Practical Fit and Proper Assessments Guide for Board members of credit institutions

European Central Bank (ECB) published a guide to fit and proper assessments, which should be applied by significant credit institutions who manage the financial sector of the euro area before appointing persons to managerial positions.

Less significant banks, that are under surveillance of national supervision institutions, while in close communication with ECB, should take into account these guides at licencing and acquisition of qualifying holders processes.

The policies, practices and processes described in this Guide may have to be adapted over time. It is meant to be a practical tool that

will be updated regularly to reflect new developments and experience that is gained in practice.

This Guide covers fit and proper assessments of members of the management body, both in their management function (executives) and supervisory function (nonexecutives) of all institutions under the direct supervision of the ECB (significant institutions), whether credit institutions or (mixed) financial holding companies.

More information can be found here.

Decision of the members of the credit unions loans committee regarding the annual payments (bonuses) assignation

On 18 May 2017 Lithuanian Supreme Court took a judgment in a civil case no. e3K-3-234-469/2017 as relates to the credit unions members right to vote at the general meeting subject to the assignation of the annual payments (bonuses).

According to the Supreme Court, interpretation of article 14, paragraph 3 of the Law of Credit Unions prohibiting the member of the credit union to vote not only on the issues related to membership in the union or in the specific cases that are established in the articles of association, but also when a union member has a direct interest, is not justified. As a consequence, it disproportionately restricts members' of a credit union right to vote, because it covers all the cases where the certain member exercises his right to vote in the credit union meeting.

However, the panel of judges emphasizes that the chairman status of the loans committee diverges from the status of the member of the loans committee, since he/she is a union leader. Chairman is regarded as the management body with the maintenance functions, therefore, chairman of the committee should be a subject not only to the prohibition to vote according to the Law of Credit Unions Article 9, paragraph 3.3, but also to the fiduciary obligations set out in Civil Code Article 2.87 - an obligation to avoid a situation where his/her personal interests are in conflict or may be in conflict with the interests of the legal person.

Law of Credit Unions does not regulate size of annual payments (bonuses), basis for the imposition, it does not establish the criteria following which the credit union's general meeting decides if there is a basis for the payment of annual installments. However, the panel of judges emphasized that in all cases, the decision must comply with the general principles of reasonableness and fairness, be inconsistent with the credit union's and its members' interests and meet the aims of the credit union. The fact that the Law of Credit Unions does not establish criteria under which the payment of the bonuses is recognized as valid, it does not mean that the decision to pay the bonuses cannot be declared contrary to the principles of fairness and reasonableness.

According to the panel of the judges, payment of the bonuses for the members of loans committee must be related to the results

achieved by the loan committee performing its functions, and not only based on the formal status of the member.

Overview of case law regarding civil liability of management bodies of companies

On 4 April 2017, considering the current situation, the Supreme Court of the Republic of Lithuania (the Supreme Court) published the comprehensive overview of case law in relation to the application of the norms of civil law regulating the civil liability of management bodies of companiest. The overview mostly analyses the matters of obligations and civil liability of sole management body of the company, the managing director (CEO) of a company.

The Supreme Court has noted that *civil liability of different management bodies in case of damages caused to the company must be separated and distributed separately since the obligations of each management body are independent. Where a claim is submitted for compensation of damages resulting from transactions concluded by a company's CEO andapproved by the Board of the company, liability for such transaction shall apply on the Board of the company, if the absence of fault of the CEO appears. If the CEO is also recognised as actet in fault or negligence, the CEO and the Board shall be liable in accordance with the rules of partial liability considering the level of fault.*

In practice, there might be situations whereas *de jure* CEO of a company is not formally appointed or, where the latter is actually appointed, his functions are performed by another person. Therefore, it is recognised that in such cases the actual CEO of the company may also be held liable in the civil procedure for non-performance or inadequate performance of obligations set forth in the law. Having recognised that a person not appointed as CEO of the company in the procedure set forth in the legal acts systematically performed functions usually performed by the CEO, such person shall be held liable for the damages incurred by the company as a result of his actions and being a *de jure* CEO. In the case where the company has an actual CEO in addition to a *de jure* CEO, both CEOs must comply with the obligations set forth in the laws.

Generally, civil liability of management bodies to a solvent company is direct; liability of management bodies of a company to the creditors of the company when undergoing bankruptcy appears is subsidiary. The CEO is liable to the creditors as an additional debtor within the scope of obligations not implemented by the direct debtor – a company.

The Supreme Court recognised in its case law that a creditor may submit a direct claim against a company's CEO. However, this is feasible only if the latter had caused direct damages to the specific creditor rather than indirect damages to creditors as a group of interests du to inadequate management or failure to initiate bankruptcy case in due time. Thus, the right of the creditors to submit a direct claim is limited by the chosen grounds of the claim rather than the stage of bankruptcy procedure.

The Supreme Court has indicated that CEO a is subject to the liability of twofold nature: *material liability under the labour law; meanwhile, civil liability is based on the principle of full compensation for damages.* If the company incur damages since of violation of the obligations established for an employee of the company such employee shall be held materially liable. The employee shall compensate for all the damages caused, however, such compensation shall not exceed an amount of his three average wages save for the cases where the employee must compensate for the full amount of damages. In those situations where a CEO violated his fiduciary obligations or obligations set forth in relation to him as a CEO in special laws, civil liability shall apply.

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