Tax and Legal Newsletter

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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

Confirmed reporting rules of multinational enterprise groups country by country report

On 31 May 2017 Order No VA–47 issued by the Head of The State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (hereinafter – STI under MF) has confirmed the reporting rules for the multinational enterprise (hereinafter – MNE) groups also known as country by country (hereinafter – CbC) reporting rules. The CbC reporting requirement has been established by Article 61 of the Law on Tax Administration of the Republic of Lithuania (further – LTA, more information about amended Article 61 can be found in our April edition of Tax and Legal Newsletter) and European Council Directive (EU) 2016/881.

Parent company of the MNE group is obliged to submit a CbC report if consolidated revenues of the MNE group exceed 750 million euros per year. In certain cases parent company of the MNE group can pass on an obligation to submit a CbC report to another company of MNE group (surrogate parent company). Under Lithuanian legislation the deadline to submit the first CbC report is 31 March 2018. It should be noted that Lithuanian companies, which are not parent companies or surrogate parent companies of the MNE group are obliged to inform STI under MF about the company, which will provide CbC report for the MNE's group results for financial year 2016 in a free format.

Based on the CbC reporting rules, information related to financial and other operational results of the companies should be divided into two separate tables. The first table should include revenues, paid taxes and overview of other financial indicators of the MNE group segregated by countries. The second table should show the list of all companies of the MNE group additionally indicating the main business activities of different companies of the MNE group in different countries.

It should be noted that CbC reporting rules are obligatory not only for separate MNE group companies, but also to the permanent establishments. Information related to the permanent establishment should be attributed to the country in which permanent establishment is constituted, rather than to the resident country of the business unit constituting permanent establishment.

These rules came into force as of 5 June 2017.

More information is available here and here.

The Government approved suggestions of Seimas to tighten criminal and administrative liability for tax evasion

On 7 June 2017 the Government of Republic of Lithuania (hereinafter – the Government) mainly approved the projects of the Laws amending the Articles 220 and 221 of the Criminal Code of the Republic of Lithuania (hereinafter – CC) and the Article 187 of the

Contacts:

Kristine Jarve
Partner
Tax and Legal Department
Tel: +370 5 255 3000
Email: kjarve@deloittece.com

Lina Krasauskienė
Senior Manager
Tax and Legal Department
Tel: +370 5 255 3000
Email: lkrasauskiene@deloittece.com

Tomas Davidonis
Attorney at Law
Tax and Legal Department
Tel: +370 5 255 3000
Email: tdavidonis@deloittece.com

Code of Administrative Offenses of the Republic of Lithuania (hereinafter – CAO), however, proposed to improve them taking into account the comments and suggestions provided by the Government.

Upon adoption of the proposed CC amendments, criminal liability for the 1) submission of incorrect data concerning the income, profit or property as well as 2) failure to submit a return, report or other document to the state authorized institution would apply, if the amount of seeking to avoid taxes exceeded 50 MLS (currently for 1) 10 MLS is applied, for 2) – 500 MLS is applied, where 1 MLS is equal to 37.66 euros). Persons who committed these criminal offenses could be sentenced to imprisonment up to four years (currently – up to three years). Moreover, persons, who committed the mentioned criminal offenses, when the amount of the avoided taxes exceeded 500 MLS, or while participating in an organized group, would be only sentenced to imprisonment up to eight years.

Upon adoption of the proposed CAO amendments, administrative liability for the inclusion of the data concerning natural or legal person's income, profit, property or its usage, knowing that such data is incorrect, into the returns, reports approved in accordance to the established procedure or other documents submitted to the tax authorities or other state authorized institution with an aim to avoid taxes would apply, if the amount of seeking to avoid taxes exceeded 10 to 50 (currently – up to 10) amounts of the basic penalties (where an amount of basic penalties equals to 37.66 euros).

More information is available here.

The Government approved suggestions of Seimas to extend the application of the corporate income tax incentive for FEZ enterprises

On 21 June 2017 the Government approved the project No XIII-455 of the Law amending the Article 58 of the Law on Corporate Income Tax of the Republic of Lithuania (hereinafter – Law on CIT) and should provide the adjusted project of this Law for the consideration of Seimas together with the project of the Law confirming the financial indicators of the state budget and the municipalities' budgets for 2018.

Taking into account the proposed amendments, CIT incentive would apply to free economic zone (hereinafter – FEZ) enterprises carrying out any activities (currently FEZ incentive is applicable to enterprises carrying out only those activities which are specified in the Law on CIT), except the determined exemptions. The list of exempted activities is not determined yet.

Upon implementation of the proposed changes, the application of the mentioned CIT incentive would be also extended by determining that FEZ enterprises in which capital investments amount to at last 1 million euros would not pay CIT for 10 tax periods (currently – 6 tax periods) beginning with the tax period in which such investment amount has been reached and would be subject to a 50% reduction

in CIT for 6 subsequent tax periods (currently – 10 subsequent tax periods).

More information is available here.

The Amendment to the Law on CIT extending the application of the CIT incentive for FEZ enterprises has been adopted

On 27 June 2017 the amendment to the Law on CIT on extending the application of the CIT incentive for FEZ enterprises was adopted.

Upon the entry into force of this amendment, for the purpose of calculating CIT for 2018 and the following tax periods the application of CIT inventive in respect of FEZ enterprises will relate to the fact of activities actually carried out in FEZ, i.e. companies incorporated in the territory of FEZ that carries out economic – commercial activities will be allowed to apply this CIT incentive even when the FEZ management enterprise has not been established yet.

This amendment will come into force on 1 January 2018.

More information is available here.

The procedural rules concerning the binding ruling of the tax authorities has been changed

On the ground of the Order No VA-64 issued by the Head of the STI under MF on 24 July 2017 the Rules on Submission of a Taxpayer's Request to Confirm the Application of Tax Legislation Provisions in Respect of a Future Transaction, Examination of the Request, Adoption and Amendment of a Binding Ruling of the Tax Authorities (hereinafter – the Rules) has been changed.

Taking into account the amendments of the Rules, from now on taxpayers do not have a possibility to submit a request to confirm the application of tax legislation provisions in respect of a future transaction (hereinafter – the request) and/or its annexes (documents) prepared in other than state language.

The new recast of the Rules provides updated regulation concerning the formation of a permanent working group that examines the requests, as well as its operating procedures. The Rules also wider regulates the cases due to which the examination of the requests is suspended, the Rules determines that taxpayers should be informed about the suspended examination of the requests within 5 business days.

The new recast of the Rules also determines renewal of the examination of the request in case the tax authorities receive additional documents from a taxpayer, as well as extends the list of cases, when the tax authorities do not issue a decision concerning the application of tax legislation provisions in respect of a future transaction, but provides a response according to the general established rules, by including those cases when a taxpayer applies to the tax authorities with an identical question, which is being

examined by the Court of Justice of the European Union or the Supreme Administrative Court of Lithuania.

More information is available here.

Social security taxation rules restored on income received under copyright agreements, as well as income received by sportsmen, performers and authors

On 11 July 2017 the amendments of the Articles 10, 11 of the Lithuanian Law on State Social Insurance were approved. As from 1 August 2017, social security contributions will be due on half of the remuneration received under copyright agreements as well as on income received from sports or performer's activities. Besides, social security contributions will not be calculated on royalties received by authors under license agreements for the use of their works.

More information is available here.

Payments to the board members will be subject to compulsory health insurance contributions

On 11 July 2017 the amendment of the Article 17 of the Lithuanian Law on Health Insurance was approved. As from 1 January 2018, payments received by the members of Management Board, Supervisory Board and certain related payments will be imposed with health insurance contributions for the individuals and companies amounting to 6% for the recipient and 3% for the companies making such payments. Thus, the total amount of social security contributions will be equal to 9% for the recipient's and 25.3% for the companies.

More information is available here.

Obligation to report labelling of excise goods repealed

On 28 June 2017 STI under MF repealed the Order No VA-3 on notification on labelling of excise goods. From now on, there is no obligation to report labelling of excise goods by AKC403 form.

More information is available here.

Amendments of the Rules on the application of preferential tariff

On 6 July 2017 the Customs Department under the Ministry of Finance of the Republic of Lithuania (hereinafter – Customs Department) amended the Rules on application of preferential tariff.

These amendments confers responsibility of importer for keeping proof of preferential origin (previously, such documents had been kept in Customs Department). If the local customs authority finds that importer does not keep documents which serves as proof for preferential origin, it shall withdraw preferential tariff.

More information is available here.

Clarification and supplementation of services falling within the scope of the local reverse-charge mechanism applied in respect of construction services

On 7 July 2017 STI under MF, in cooperation with Ministry of Environment of the Republic of Lithuania, clarified and supplemented the list of services falling within the scope of construction works within the meaning of Article 2 Paragraph 90 of the Lithuanian Law on Construction. The aim of such publications is to ensure consistency of tax law application considering that construction works may be subject to local VAT reverse-charge mechanism.

More information is available here.

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

C-386/16 UAB Toridas versus VMI prie FM

On 26 July 2017 CJEU has issued a ruling in case regarding application of zero VAT rate for Intra-EU supplies of goods (VAT Directive (2006/112/EC) Art. 138(1)).

Toridas UAB, registered for VAT in Lithuania, imported frozen fish in Lithuania, which was sold to Estonian VAT payer Megalain OU. Under an agreement, Megalai OU undertook to have the goods at issue taken out of Lithuania within 30 days and to submit corresponding documentation to Toridas UAB. In practice, Megalain OU on the very day of purchase or the following day, resold the goods to purchasers established and identified for VAT purposes in other Member States. Some of the goods were dispatched immediately after their resale from Lithuania to those other Member States without passing via Estonia. Others were transported to the premises, locatd in Lithuania, of the company Plungės Šaltis, in order to be graded, glazed and packaged, before being transported directly to the purchasers in the Member States of destination. Related costs were assumed by Megalain OU.

Toridas UAB applied zero rate VAT under Art. 49(1) (VAT Directive Art. 138(1)) in respect of these transactions. The Lithuanian tax authorities argued that the supplies are to be regarded as internal supplies, subject to standard VAT rate. After reaching LVAT , the referring court submitted prejudicial questions to CJEU. LVAT wanted CJEU to clarify whether the provisions of VAT Directive Art. 138(1) should be interpreted as under the circumstances of current case, the supply of goods by a taxable person who is established in the first Member State must be exempt under those provisions in the case where, before that supply transaction is entered into, the purchaser expresses an intention to resell the goods immediately, before transporting them from the first Member State, to a taxable person established in a third Member State, for whom those goods are transported (dispatched) to that third Member State. Additionally, LVAT inquired whether the answer is affected by the fact that a portion of the goods was processed on the instructions of the taxable person established (identified for tax purposes) in the

second Member State, prior to their being transported to the third Member State.

CJEU ruled that an acquisition can be classified as an intra-Community acquisition only if the goods have been transported or dispatched to the person acquiring them. Therefore, the conditions for exemption cannot be fulfilled if the goods being supplied are not transported or dispatched to the person whose acquisition is the corollary of the supply at issue.

In the case of two successive supplies that have given rise to only a single intra-Community transport, it should firstly be determined to which of the supplies the transportation should be ascribed. In order to do so, it is necessary to undertake an overall assessment of all the specific circumstances of the case, including the moment of the second transfer of the right to dispose of the goods as owner, to the person finally acquiring the goods. In case the second supply has taken place before the intra-Community transport occurs, the intra-Community transport cannot be ascribed to the first supply to the first person acquiring the goods.

Taking the circumstances of the case into consideration, the CJEU ruled that the first supply in the situation provided did not fall within the scope of VAT Directive Art. 138(1). Furthermore, the processing of goods carried out at the request of an intermediate supplier prior to dispatch of the goods does not affect the conditions for exemption for the first supply, when this processing has been effected after the first supply took place.

Text of the ruling.

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.

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.

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