

LAW FIRM
GENCS VALTERS

Valters Gencs

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TAX & LEGAL NEWS FOR THE BALTIC STATES

In this issue:

LATVIA

Corporate Tax

VAT

Changes in tax laws

ESTONIA

Euro in Estonia

LITHUANIA

Tax changes 2011

**Swedish Chamber of Commerce
in Latvia and
Gencs Valters Law Firm
invite to 9th
annual
seminar**



“Expatriate Tax Planning 2011 in the Baltics”

will be held
on March 10, 2011
16:00 – 17:00
in the office of
Gencs Valters Law Firm,
Kr. Valdemara 21,
Valdemara Center

Speakers – **Valters Gencs** (Latvia, Riga)
Dovile Alekniene (Lithuania, Vilnius)
Annika Trass (Estonia, Tallinn)

Individual meetings may be either scheduled or after the
conference and questions asked before to Valters Gencs.

Attendance is free / Number of seats is limited

**Winner of Full Service Law
Firm of the Year in Latvia
award in 2010 by Corporate
Intl Magazine**



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Initiated proceedings regarding the compatibility of provisions of the Corporate Income Tax Law

On 11 November 2010, the Latvian Constitutional Court initiated proceedings regarding the compatibility of provisions of the Corporate Income Tax Law regarding treatment of losses in the case of change of control of a company, with the Art. 91 (principle of equality) and Art. 105 (which guarantees the right to property) of the Constitution.

The applicant - SIA „Kuldīgas RPB” - indicates that in the year 2007 company's control had changed. The new owner, assessing the company's operations during the economic crisis, changed its ordinary activity. The disputed provisions forbid SIA „Kuldīgas RPB” to cover losses (overpaid corporate tax), incurred to the company before change of the owner.

SIA „Kuldīgas RPB” believes that such provisions violate their property rights and puts the company in an unequal position in comparison with those companies in which control has not been changed, or which have not changed their ordinary activity.

Covering Losses of Previous Years

Current wording of the Corporate Income Tax Law (articles 14 (2) and 14 (3). prescribes “if in a taxation period control of a commercial company or co-operative society is acquired by a person or a group of persons that previously did not control such commercial company or co-operative society, losses of pre-taxation periods of such commercial company or co-operative society shall not be covered in the taxation period or in subsequent taxation periods”.

The aforementioned provisions are not applicable “in cases where the commercial company or co-operative society in which a change of control has taken place maintains its previous type of ordinary activity, as conform to the ordinary activity of the

commercial company or co-operative society for two taxation periods before the change in control, for five taxation periods after the change in control”.

Ordinary activity is deemed to be a business activity with the largest proportion of the taxpayer's total turnover. If the two-year period prior a change in control there were different ordinary activities, then it is considered that an ordinary activity is that with the largest proportion.

Constitution of the Republic of Latvia

Article 91 of the Constitution of the Republic of Latvia sets out that “all persons within the Latvia are equal before the law and the courts. Human rights shall be implemented without any discrimination”.

Article 105 declares that “everyone has the right to property. Property may not be used against the interests of society. Property rights may be restricted only in accordance with the law. A forced alienation of property for the needs of society is permissible only in exceptional cases on the basis of an individual law, for fair compensation”.

Constitutional Court interpreting the term “property” in the context of the article 105 has declared that it has to be interpreted widely. With “right to property” one should understand all property nature rights that the empowered person can act in its favor including the right deriving from company's shares.

Saeima, the Latvian legislative body, has been invited to submit response to the statement of the facts and legal grounds to the Constitutional Court until the January 11, 2011.

In its turn the term of case preparation in the Constitutional Court is April 11, 2011.

VAT conference

Conference „VAT refund problems and solutions” were held on November 25, 10 in Radisson Pak Hotel Ridzene in Riga, Latvia. The conference prime organizer was the Norwegian Chamber of Commerce with assistance of the Norwegian Embassy, but was supported by the Swedish Chamber of Commerce, Finish Chamber of Commerce and Danish Chamber Commerce as well as the Embassies of the respective countries.

Also the conference was of interest to the academic audience with participation of Riga Graduate School of Law Ass. Prof. Peter Gjortler. Conference was attended by 74 persons and by 4 speakers total number of persons were 78.

Chairman of the NCCL and attorney Valters Gencs, who was also the head of panel stated the presentation with total overview of the problems in Latvia, focusing on the actual cases of the members,

The conference created interest not only in business, but also the trade representatives from the other European countries such as Germany as the Cultural and trade Attaché Mr. Dresselhauss was also in attendance. In total more 80 participants were present. From companies such as VOLVO, AIR BALTIC, NORDEA BANK, SVEASKOG BALTFOR, BALTIC FEED, SKOGSKALKALPET, RADISSON, STOCKMAN, PLOCKMATIC, BALTSHIP and RIGA SHIP MANAGEMENT.

which was followed by marina Kuzenko, who is Deputy Head of VAT department of the SRS (Tax administration). She addressed the issues of general changes in VAT laws in the recent year.

She indicated that The Law On Value Added Tax does not provide for the automatic transfer of the excess amount of value added tax accumulated for the taxation periods before June 30, 2010, to the next taxation period anymore. Refunds sooner, without waiting for the end of the year, if:

- 1) the amount of transactions liable to 0 percent tax rate or transactions closed outside inland of the taxable person makes at least 90 percent from the total value of transactions liable to the tax;
- 2) the excess amount of tax exceeds 1000 lats and the amount of transactions liable to 0 percent tax rate, 10 percent tax rate or transactions closed outside inland of the taxable person makes at least 20 percent from the total value of transactions liable to the tax;
- 3) the excess amount of tax exceeds 100 lats and is established for fixed assets;
- 4) the excess amount of tax exceeds 1000 lats and is established for goods purchased and services received to secure transactions with lumber;
- 5) the excess amount of tax exceeds 15 000 lats.

Her presentation was followed by Kristine Kosinska, principal lawyer of Large taxpayers department of the SRS addressing VAT refund possibilities for foreign companies. She indicated that VAT is not refunded

- if the conditions have not been complied with, the documents have not been prepared correctly or tax invoices do not meet the requirements specified in the Law On Value Added Tax
- for transactions, which have not taken place
- for the acquisition of unused real estate and services received in relation to the construction, reconstruction, renovation, restoration or repair of the real estate
- for goods purchased and services received for personal use:
 - ✓ rental, maintenance, repair of a passenger car
 - ✓ purchase of fuel, lubricants and spare parts intended for a passenger car
 - ✓ recreation activities, catering (including restaurant) services
 - ✓ health improvement activities and entertainment costs
- to tourism (travel) firms and agencies.



In the same time it was indicated items which are refunded to Norwegian companies- VAT on costs of:

- clothing design and fabric production
- bus transport and carriage
- retail sales of marine equipment and fishing accessories
- production and supply of oil, natural gas, aircraft fuel
- management consultants
- car import and sales
- PC and office equipment sales
- air transport
- production of measurement and navigation devices;

and VAT on types of services received

- purchasing of fabric, stitching and sewing accessories
- purchasing of diesel fuel
- purchasing of chairs
- hotel services
- electronic communication services
- computer and office equipment maintenance services
- luggage reloading services
- Installation of airplane landing system in Riga airport.

The Conference was closed with in-depth speech from the Lubova Sevcova, the deputy Head of SRS Financial

Police and the Chief of Investigations unit which resulted in many questions regarding black economy. It was stressed that In 2010 following criminal procedures were sent for initiation of prosecution:

- tax evasion – 58
- legalisation of illegally gained funds – 22
- fraud - 21

(losses for national budget in total Ls 20935918), part of which are connected to VAT fraud, what puts additional burden to the financial police to examine the VAT refunds.

Objective of the VAT conference was to assist Scandinavian companies with the issues related to VAT, and the speakers excellent summary what is the tax office the Ministry of Finance stand on VAT questions. The VAT refund system is changed and starting from February 2011 first refunds based on new system will be performed. The conference reached its goal of wide attendance, problem solving and education of tax payers to better employ the VAT refund system. ■ ■

Slides of the presentations are available in English at <http://www.gencs.eu/news/view/15>



Most recent tax changes in Lithuania

In 2009, Lithuania and other Baltic countries faced a difficult challenge combating financial instability. Lithuania increased most taxes to offset economic losses and bolster public finances in 2008-2009. However, 2010 has started with ease, as the tax burden has decreased. As a result, Lithuania remains attractive to foreign investors because of favorable tax planning opportunities. Notably, the corporate income tax has dropped to 15 per-

cent (from 20 percent). Moreover, small businesses that employ 10 or fewer employees and have annual income of LTL 500,000 or less are eligible for a special 5 percent corporate income tax rate (previously 13 percent). Also, a new law allows the transfer of losses from 2010 and earlier between a Lithuanian resident parent company and its domestic subsidiaries. Other 2010 tax developments are outlined below.



Our firm's office is located in building on highway Riga-Vilnius on 6th floor, Vilnius Gates, A. Tumeno 4, Lithuania.

I. New Developments in Lithuanian Tax Laws

A. It Will Be Easier For Companies To Write-Off Bad Debts

The administrative burden for the recognition of bad debts to be allowable deductions, lowering the taxable income, was reduced for companies by the decision of the Ministry of Finance on June 10th, 2010. The new rules will be applied for the tax period of the year 2010.

The administrative burden decreases because the bad debts proof and calculation setting rules changes (approved by the Minister of Finance) and coming into force shortly. Its essence is to simplify the requirements for certain bad debts approving documents.

One of the most important changes to the rules is that doubled amounts till which will not be required to have debts' proof documents or a simpler procedure for the recognition of bad debts will be applied.

In addition, companies no longer need to have documents proving small debts hopelessness, and their efforts to get back them even in case it is a legal person (so far, this provision was applied only in cases when an individual was in debt).

Additionally to this, new rules set mandatory documents' alternative in the rules. As for instance, to prove the bad debts, resulting from another company's bankruptcy it will be sufficient to have document, proving the company's, which was liquidated due to bankruptcy, deregistration from the register of legal persons. By now, in such case it was necessary to have a final court order to liquidate the company because of bankruptcy, or the creditors' meeting resolution to declare the company's liquidation due to bankruptcy.

This and other changes to the rules will be applicable in counting taxable income of the year 2010 and of subsequent tax periods.

B. Business Certificates Will Be Issued On More Flexible Conditions

According to the proposal of the Ministry of Finance, the conditions for people who obtain business licenses are facilitated- they can pay a fixed-rate income tax due to the individual activities operational period. The Governmental decision is in force since May 23, 2010.

Previously the minimal period of usage of business certificates was one month. Today business certificates will be issued for 5 days and a longer period (excluding commercial

business licenses, which as yet will be issued for the preferred term, even for one day). Under previous rules, even a resident had an individual activities, e.g. for 5 days, they had to pay fixed-rate income tax for a whole month, because this was the minimum period for business certification.

Reducing the minimum period for business certification through the possibility for residents carrying individual business to pay a smaller flat-rate income tax will be made. That means, if the individual will acquire a business certificate, e.g. For 5 days, he will pay a fixed-rate of income tax for only 5 days.

It is believed that this decision will contribute to business competitiveness, job creation and reducing the informal economy.

C. Complex Real Estate Agreements

Tax authorities, according to the recent practice, alerted to a series of complex financial transactions between related parties, have concluded that the transactions did not have a legitimate business purpose and were undertaken solely to decrease the main party's tax liability. An individual acting on behalf of a Swiss company entered into a variety of agreements in which the same property was sold numerous times in order to artificially increase its value for tax purposes. The individual did not pay taxes on the sale or declare the income it received from a company in Lithuania. The individual was assessed tax in the amount of LTL 1 million.

D. Value Added Tax

Starting this year, taxpayers may apply for a refund of VAT paid in other EU member states by filing an electronic form with local tax authorities in Lithuania. The local tax authorities will forward the application to the tax administrator in the applicable EU member state. Lithuania's VAT rate increased to 19 percent from 18 percent in January 2009 and to 21 percent from 19 percent on September 1, 2009. During a transitional period that runs through December 2010, the 19 percent tax rate will apply for cigarettes and manufactured tobacco if the excise duty stickers for those products were ordered before September 1, 2009. In July 2009 Lithuanian President Ms. Dalia Grybauskaitė



signed a law introducing a reduced VAT rate of 9 percent for the heating of residential premises and water. The reduced rate will be in force through August 31, 2010.

E. Companies Will Not Pay Advance VAT

The decision to exempt business from paying the advance payment of VAT supports local companies facing diverse financial situation. These resources can be used for other needs, and in addition, this will reduce company's administrative burden. The new amendments are in force since 1st of May, 2010.

Paying the attention on the needs of business and opportunities, the Government approved the Finance Ministry's proposal from 100 thousand up to 10 million LTL to increase the limit from which companies must pay the advance payment of VAT. Companies, which are exempted from paying the advance payment of VAT, will pay generally VAT monthly for the previous period.

Only very large companies, which have high turnover and which activities are mainly focused only on the domestic market and domestic consumption, will have an obligation to pay the advance payment of VAT. However, these advance payments of VAT will help to avoid higher tax burden after the tax period when at the end should pay the full amount of tax. Additionally to this exports are subject to 0 percent VAT rate.

Currently, the advance payment of VAT is required when company's average amount paid to the budget for the fiscal period, within 3 consecutive calendar months is higher than 100 thousand LTL.

F. Corporate income tax

In addition to the tax breaks for corporations and small businesses, the withholding tax on interest will be revoked if the interest is paid to legal entities registered or organized within the European Economic Area. The same rule applies for countries with which Lithuania has signed an income tax treaty. As of 2010, a corporate tax exemption is available for budget-financed institutions; Lithuanian banks; state and municipal institutions, agencies, and organizations; state company deposit and investment insurance programs; and European Economic Interest Groupings.

G. Investment Projects

Until 2013, companies can take part in investment projects that offer attractive tax benefits. Companies can invest 50 percent of their profit into long-term assets used in the production of new products or services, to increase capacity, or to implement new processes and technologies, and the reinvested profit will not be included in the companies' taxable income. Investment in

the replacement of production assets with similar new assets will not, however, be deemed a tax beneficial investment project.

H. Personal Income Tax

The personal income tax rate in Lithuania remains at 15 percent in 2010. Dividends and other profit distributions are taxed at a rate of 20 percent. Amendments to the Law on Personal Income Tax came into force in August 2009. The law provides a complete list of benefits in kind and lists income that will not be classified as a benefit in kind for the tax period starting in 2010. The amendment to the Law on Personal Income Tax sets a new rule for the calculation of nontaxable income, a benefit that will no longer be available to members of non-limited liability companies.

I. Excise Duty

As of January 1, 2010 electricity is taxed by way of an excise duty. The amended Law on Excise Duty states that for one megawatt-hour of electricity, there will be two excise duties applicable: LTL 3.5 and LTL 1.8. A second excise duty of LTL 1.8 applies to electricity used for business purposes. The excise duties on electricity apply to owners of excisable goods warehouses, registered and unregistered traders, and persons manufacturing or using excise-free energy products, alcohol, alcoholic drinks, or tobacco for purposes other than the established purpose. For imports, the excise duty is paid by the importer, provided that the imported goods are not brought to an excisable goods warehouse. The applicable tax base is the tax base of goods produced or imported in Lithuania.

J. Tax on Real Estate

Lithuanian tax authorities expect legal and natural persons to pay more than LTL 260 million on immovable property, which had to be declared by February 1, 2010. According to the Law on Real Estate, if real estate is used by individuals for business or individual activities (with several exceptions) or is transferred to legal persons for longer than one month, it is subject to a 0.3 to 1 percent real estate tax calculated on the value of the real estate. The council of the municipality or territory where the buildings and structures are located will determine the exact tax rate. Lithuanian and foreign entities owning buildings and structures in Lithuania are required to pay real estate tax. The rate remains unchanged at 0.3 to 1 percent of the taxable value of buildings and structures. The real estate tax return should be submitted to the state tax authorities within one month after the date of acquisition of the real estate. Legal enti-

ties (as opposed to individuals) should pay advance installments on a quarterly basis. Both individuals and legal entities should provide an annual real estate tax return to the state tax authorities by February 1 of the next year.



Previously the minimal period of usage of business certificates was one month. Today business certificates will be issued for 5 days and a longer period



II. System of tax payments in Lithuania

A. Deferred payments of tax

Taxpayers are entitled to defer the payment of certain taxes for a period of one month to one year. Unpaid taxes are subject to a late payment fee. Late payment amounts no longer increase when the late payment is equal to the original debt amount.

B. Penalties

The amount of tax penalties imposed depends on the type and period of noncompliance. Late filing of tax returns triggers penalties of no more than LTL 500 for the first violation. The second violation results in an increased penalty of up to LTL 1,000. In the event of tax evasion, the penalty is LTL 2,000 to LTL 4,000 if no criminal charges are filed.

C. Voluntary rectifications of tax declarations

A taxpayer is allowed to make voluntary corrections to a tax return for a five-year period after the payable term if an audit by the tax authorities has not commenced. This cancels any penalties pending for noncompliance. The taxpayer retains the right to apply for a voluntary correction to the tax return if an audit has commenced, but in that case, the tax authorities have the right to deny the application.

D. Appeals process

All decisions by the tax authorities may be appealed to the tax administrator, Tax Litigation Commission, and tax court. Decisions of the tax administrator may be appealed to the Tax Litigation Commission within 20 days of receipt of the tax administrator's decision.



Euro in Estonia: all estonian companies shall change the share capital

On January 1th, 2011 the currency in Estonia will be Euro instead of Kroon, which had been Estonian currency since 1992. Currency change brings within the other changes, some of them are obligatory for everybody, who are managing an Estonian company OÜ or AS.

In the night before January 1th, the Estonian bank accounts and loans will be converted to the Euro with the rate 1 EUR = 15,6466 EEK. In Commercial Register the conversion of share capitals is not made automatically, because it will cause the changes in proportions of shares of different share holders, which accordingly is prohibited. It means every company owner in Estonia shall change the currency in Commercial Register by himself.

The practical example will explain the situation more clearly:

The share capital of Estonian company OÜ is 100 000 EEK.
Share holder A- 10 000 EEK and the proportion is 10%
Share holder B- 50 000 EEK and the proportion is 50%
Share holder C- 40 000 EEK and the proportion is 40%

CONVERTING: 1EUR = 15,6466 EEK

The share capital of Estonian company OÜ is 6 391 EUR.
Share holder A- 639 EUR and the proportion is 9.9984 %
Share holder B- 3196 EUR and the proportion is 50.0078 %
Share holder C- 2556 EEK and the proportion is 39.9937 %
Different proportions are prohibited!

In order to solve the situation, the share capital shall be changed- decreased or increased, in order to remain the proportions of shares of share holders as they were before. It is important to note, that making the decrease or increase- the share capital cannot be less than 2500 EUR (for OÜ) and 25 000 EUR (for AS).

The practical example will explain the solution:

The share capital of Estonian company OÜ is 6391 EUR.
Share holder A- 639 EUR and the proportion is 9.9984 %
Share holder B- 3196 EUR and the proportion is 50.0078 %
Share holder C- 2556 EEK and the proportion is 39.9937 %

DECREASE OF SHARE CAPITAL WITH 1 EUR

New share capital of Estonian company OÜ will be 6390 EUR
Share holder A- 639 EUR and the proportion is 10%
Share holder B- 3195 EUR and the proportion is 50%
Share holder C- 2556 EUR and the proportion is 40%
The proportions are the same again.



The decrease or increase shall be done according to the amount of share capital and number of share holders and their stakes calculating the most closest result. It is important to note that if the change is connected only with the conversion share capital into Euros, no state fee will apply. If the application is submitted through the Notary (Estonian Members of Board may use the Portal of Enterprises for submitting the application) the notary fee applies still.

The change of share capital makes it necessary to change of Memorandum of Association, where the new share capital should be reflected. In order to change the Memorandum of Association, the General Meeting of Share Holders shall be convened.

The Decision of share holders (Minutes of Meeting) shall be formed in writing, in order to submit it to the Commercial Register. The Application for changing the share capital of company shall be issued and signed by the Member of Board of company or the representative person of Member of Board. In case of representation, the Power of Attorney shall be notarized.

Therefore the list of documents, required to prepare and submit to the Commercial Register are the following:

- 1) Application, signed by Member of Board, Notarized or issued through the Portal of Enterprises;
- 2) Minutes of Meeting/Decision of share holders- reflexes the list of share holders, the proportions of shares (in EEK)

and the Decision (to change the Memorandum of Association and increase/decrease the share capital);

3) New full text of Articles of Association- including the clause about share capital of company - in EUR.

All documents shall be in Estonian or equipped with the Estonian translation.

The changes are made within 5 days without state fee, the notary fee (if non of the Board Members are Estonians, who may use the Portal of Enterprises with their ID card) will be around 15-70 EUR, translation costs, if necessary very around 15 EUR per page.

There is no deadline for making the changes in share capital, but from January 1th, 2012 is not possible to make any other changes in Commercial Register, if the currency of share capital is still in EEK.

With any assistance, related to changes in Estonian Commercial Register or other questions, please feel free to contact with Gencs Valters Law Firm, info@gencs.eu.

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Saeima adopts changes in tax laws

On Monday, December 20, 2010, Saeima, the Latvian legislative body, in the second reading by reviewing draft budget for the year 2011 as urgent adopted changes in several tax laws.

In the year 2011 rate of personal income tax will be 25% instead of 26% in the year 2010. Saeima has also approved changes in social tax rates by determining that commencing from January 1, 2011 social tax rate for employee in a general situation is 35,09 %, where an employer pays 24,09, but an employee- 11%. Previously an employee paid 9%.

From the next year value added tax (VAT) standard rate will be 22%, in its turn reduced rate – 12%. Reduced tax rate is maintained to tourism dwelling houses, printing of books, medication. Speaking of electricity supply to the public standard rate will be applicable.

By amending the Real property tax law, tax rate for dwelling houses has been increased. Depending on cadastral value of a dwelling house or an apartment the tax rate will be 0.2 to 0.6 %. Properties with higher cadastral value higher tax rate will be applied. Until now, the real estate tax rate varied from 0.1 to 0.3%.

Minimum property tax payment for each taxpayer in each municipality is set at 5 lats.

In its turn excise tax rate for non-alcoholic drinks next year will be 5, 2 lats (instead of former 4 lats) for 100 litres.

Changes have been adopted in the law "On corporate income tax" as well by determining that for big investments made in order to expand production in Latvian prior branches, tax relief is applied. In order to claim for tax relief a company will have to invest at least 5 million lats.

Besides, various other significant changes have been adopted in the laws, for example, State Revenue Service rights to prolong term of refund of overpaid VAT.

Several changes are provided for application of VAT, payment order in state budget and issue of an invoice in selling of a property of a taxable person carried out by a bailiff or an administrator of insolvency process.

NEWLY EMPLOYED



Eva Narovska

Before she obtained her experience as Chairman assistant in Riga Regional Court.

Eva has obtained Riga Graduate School of Law and School of Business administration Turība. In our firm practices litigation.



Vida Končus

Seven years experience in banking and legal matters. Graduated Law School of University of Latvia. Vida Končus joined our firm January 1, 2011, Before she was working in AS Swedbank; Financial Restructuring Department as Corporate banking specialist (2010) as well as in AS Swedbank, Corporate Banking Division, Real Estate Financing Department as Director assistant (2006-2010); AS Hansabanka, Legal department, Lawyer assistant (2004-2006).



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The screenshot shows the website header with navigation links: EN, LV, LT, SE, FI, DK, NO, DE, FR, RU, EE, NL, ES, IT. Below the header is a search bar and a navigation menu with links: HOME, LAW FIRM, BALTIC LAWYERS, SERVICES, PATENTS & TRADEMARKS, PUBLICATIONS, VAT. The main content area features a large image of a Stena Line cargo ship with the text: "Our firm registered Stena Transfer to Latvian flag, currently providing Helsinki-Muuga cargo ferry line in the Baltic Sea".



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Baltic Tax News

2010-12-28

Video from TV3 NEWS; Valters Gencs gives his opinion on Tax refunds

2010-11-26

Valters Gencs have been nominated by in-house counsel and peers to appear in the Guide to the World's Leading Tax Advisers as one of the pre-eminent Tax practitioners in the World.

Baltic Legal News

2011-02-01

Winner of Full Service Law Firm of the Year in Latvia award in 2010 by Corporate Intl Magazine

2011-01-20

Word Bank Doing Business Report 2011 Our firm contributed for the Baltics (Latvia, Lithuania, Estonia)

Events

2011-01-20

9th annual seminar "Expatriate Tax Planning 2011 in the Baltics" will be held on March 10

2010-12-22

Seasons greetings to all our clients and corporate clients

