



**GENCS
VALTERS**
LAW FIRM

NEWSLETTER
MARCH
2015

THINK DIFFERENT. THINK VICTORY.
TAX & LEGAL NEWS FOR THE BALTIC STATES

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LATVIA

■ Minimum wage

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■ Competition regulation changes
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15 YEAR
ANNIVERSARY

Our firm was started on March 2, 2000 and this year we will have a 15 year anniversary. We thank our clients, friends, and collaboration partners for mutually beneficial cooperation and wish for further successful development.

WE WELCOME YOU TO OUR OFFICES IN:



VILNIUS



RIGA



TALLINN

Tax Rates in Baltics

ESTONIA

VAT

Declaring invoices which exceed 1000 EUR. Invoices (both sales and purchase invoices) where the amount exceeds 1000 EUR have to be declared. Till the end of 2015 the declaration can be made as summarized for each cooperation partner and client.

Starting from December 1st, 2014 maximum 50%, instead of previous 100% of the input tax can be deducted on purchasing a vehicle or on costs related to the vehicle.

Income tax

Starting from January 1st, 2015 the income tax rate is 20%, instead of 21%.

Income Tax Act clause § 29 section 2 is specified and made more clear, and it states that income which non-resident receives from a resident legal person for its management or supervisory board member's obligations or from non-resident legal person's permanent establishment in Estonia for fulfilling its management obligations, shall be taxed with income tax. As for taxation, it is important that income is received from a company or permanent establishment for fulfilling the management obligations, not the fact that the income is paid by a resident or non-resident.

To Income Tax Act is added clause 29 section 4 point 2¹, according to which if non-resident transfers timber which is obtained from the property he owns in Estonia, the non-resident will be subject to income tax.

To Income Tax Act is added clause 38 section 1¹, which states the principle that if a person who has obtained assets by inheritance, transfers the same assets, the person can calculate to the acquisition cost only the costs that he has incurred and the costs that the testator made, will not be added to the acquisition cost. With this principle

it is necessary to keep in mind that the inheritance received is income tax exempt to the legatee, however if the assets of inheritance will be sold, the tax exemption is not applicable anymore and income tax will be calculated.

Income Tax Act clause 50 section 2 is specified and states an exemption that in case of mergers and divisions of companies the payments made to the companies equities by each other shall not be taken into consideration. The aim of this is to avoid unjustified double tax exemptions, which would happen if one company would make payments to the other company with the payment in his equity and those payments would be added in case of mergers. Same principle applies to the divisions of the companies.

Social tax

Starting from January 1st, 2015 the social tax rate is 33%. Minimal monthly base of the social tax is 355 EUR, instead on 320 EUR, which mean the minimum social tax on salaries/ management board members fees is 117,15 EUR per month.

Tax free minimum

The tax-free minimum is 154 EUR per month (1848 EUR per year), instead of 144 EUR.

Additional tax-free minimum in case of pension is 220 EUR per month (applies to pension fund I and II).

Additional tax-free minimum in case of work related accident is 64 EUR per month.

Unemployment insurance tax and Pension Fund

Starting from January 1st, 2015 the unemployment insurance tax for employee is

1,6%, instead of 2%, and tax rate for employer is 0,8%, instead of 1%.

Pension Fund payment is 2% or 3% depending of the employee's fund.

LITHUANIA

VAT

From January 1st, 2015 accommodation/hotel services is taxed with 9% VAT instead of general 21% VAT tariff.

Corporate income tax

Capital gains from transferring of shares of unit established in EEA or country with whom Lithuania has double taxation treaty are exempt from corporate income tax, if more than 25% of shares were held for more than 2 years, 3 years in case of restructuring. Tax benefit does not apply if shares are transferred back to issuing unit.

Calculating corporate income tax for 2014, companies will be allowed to deduct previous year losses equal up to 70% of current years taxable profit. Thus 30% of profit will be taxed notwithstanding that company has accrued losses in previous periods.

Company which made a donation for movie production (certain donation recipient requirements apply) during 2014 is allowed to minimize its corporate income tax by subtracting the sum donated from the tax due. Deductible amount can not be higher than 75% of calculated corporate income tax. However if amount is higher, remaining amount may be deducted from corporate income tax during 2 subsequent tax periods.

Company executing an investment project (purchase of long term property such as machinery, software, IT equipment,

starting from 2015

buildings, ownership/license rights, trucks, trailers, and semitrailers, etc.) may deduct such expenditure, suffered during 2014, from corporate income tax due. Deduction (subtraction from tax due) is limited to 50% of calculated corporate income tax. Sums over the limit may be deducted from corporate income tax during 2 subsequent tax periods. Objects purchased during investment project shall be new, produced within 2 years. Trucks, buses, trailers and semitrailers shall not be older than 5 years. Deductible amount for vehicles is limited to 300 000 EUR.

Personal income tax

Tax advantages related to sale of shares acquired before year 1999 and dividends from such shares were abolished, thus profits from share sales and dividends received from such shares in 2014 shall be taxed with 15% Personal income tax, save for 3000 EUR non-taxable minimum applicable to gains received from securities and derivatives.

Tax advantage related to interest received from loans which are repaid after 1 year, was abolished. Interest from loans received in 2014 is taxed with 15% Personal income tax.

Interest from non-equity securities issued by Lithuania and EU Member States acquired after January 1st, 2014 and interest for deposits held in EU Member States banks (if contracts entered after January 1st, 2014) are taxed with 15% Personal income tax, save for non-taxable 3000 EUR minimum applicable to gains from all financial instruments.

Interest from non-equity securities acquired before January 1st, 2014 which redemption starts later than 366 days after issue, is tax exempt.

Interest received during 2014 by foreign person from Lithuanian establishment, foreign establishment having Permanent establishment or other foreign person acting via permanent base in Lithuania are class A income and shall be reported in annual tax return by May 1st, 2015.

LATVIA

Personal income tax

Personal income tax is decreased from 24% to 23%. Relief of personal income tax will also be applicable for 19 year old children, who are working during summer holidays and receive taxable income.

Micro company tax

Micro company tax of 9% is applicable for companies with turnover till 7000 EUR, but micro companies with turnover from 7001 to 100000 EUR are subject to tax of 11%. In year of 2016 micro company tax will be raised to 13%, but from 2017 all companies will be subject to same corporate company tax rate of 15%.

Property tax

Owners of building, which is built on land owned by a third party, will no longer be subject to compulsory property tax.

Minimum wage raised in Latvia

Minimum monthly salary and the minimum hourly wage rate

According to amendments in the Regulations of the Cabinet of Ministers of the Republic of Latvia regarding the Minimum Monthly Salary and the Minimum Hourly Wage Rate, from January 1st, 2015 the minimum monthly wage in Latvia has been raised from 320 EUR to 360 EUR. The minimum hourly wage rate has been increased from 1.933 EUR to 2.166 EUR. For teenagers and workers at particular risk with normal running time seven hours a day and 35 hours per week, minimum wage rate per hour will be 2,477 EUR.

Changes in requirements regarding residence permits

Amendments to minimum monthly salary have triggered changes in requirements regarding legal provision for subsistence for receipt of a residence permit. Therefore from January 1st, 2015 third country citizen who is requesting or has received the residence permit of Latvia must have following income:

- If investors purchase and own a real estate (functionally bounded with buildings) worth over 250 000 EUR, income have to be 1080 EUR per month (instead of 960 EUR);
- If a person (individual) invests at least 150 000 EUR or 35 000 EUR in the share capital and a company income have to be 1080 EUR per month (instead of 960 EUR);
- If a person (individual) invests at least 280 000 EUR in a credit institution for (at least) 5 years term (without rights to discontinue this investment earlier) income have to be 360 EUR per month (instead of 320 EUR);
- A representative of a foreign corporate entity income have to be 360 EUR per month (instead of 320 EUR);
- Person spouse income per month must be 360 EUR, a child—216 EUR (instead of 320 EUR and 192 EUR).

Competition regulation changes in Estonia

Starting from 1st of January 2015 the new versions of Competition Act and Penal Code became effective. With the amendments made to the respective acts, new competition regulation and sanctions for violation of the rules were adopted. Most of the competition rules set in the Penal Code were deleted as criminal offences and they are now classified as misdemeanours, which means that the sanctions for these offences have decreased as criminal offences are sanctioned more strictly.

Abuse of dominant position

Starting from 1st of January abuse of dominant position is not a criminal offence but a misdemeanour. The sanction for abuse of dominant position according to the Penal Code was pecuniary punishment or up to 3 years imprisonment, which is according to new version of Competition Act clause 735 substituted by pecuniary punishment for natural person up to 1200 EUR or detention, and in case of legal person a fine up to 400 000 EUR.

Failure to perform obligations of undertakings in control of essential facilities

A person who denies other undertaking's access to a network, infrastructure or other essential facility under reasonable and non-discriminatory conditions, or engages in other activities which create violation of the obligations provided by law for undertakings with essential facilities, if a punishment for a misdemeanour has

been imposed on the offender for the same act, was according to the Penal Code punishable by a pecuniary punishment or up to 3 years imprisonment. If the same violation was committed by a legal person, the sanction used to be a pecuniary punishment. According to the new regulation in the Competition Act such violation is now punishable by pecuniary punishment for natural person up to 1200 EUR or detention and in case of legal person a fine up to 400 000 EUR.

Enforcement of concentration without permission to concentrate and concentration which damages competition

Repeated enforcement of concentration without permission to concentrate, as well as violation of a prohibition on concentration or the terms of the permission to concentrate, was also deleted from the Penal Code and according to the Competition Act is now punishable by pecuniary punishment for natural person up to 1200 EUR or detention and in case of legal person a fine up to 400 000 EUR.

Concentration control

Last but not least the clause regarding concentration control is amended in the Competition Act and it states that a concentration shall be subject to control by the Competition Authority if, during the previous financial year, the aggregate turnover in Estonia of the parties to the concentration exceeded 6,000,000 EUR and the aggregate turnover in Estonia of each of at least two parties to the concentration exceeded 2,000,000 EUR. The respective amounts used to be 6 391 200 EUR and 1 917 350 EUR.

Agreements, decisions and concerted practices prejudicing free competition

Agreements, decisions or concerted practices between undertakings which have as their objective or effect the restriction of competition are still left in the Penal Code and are regarded as criminal offence.

Agreements, decisions or concerted practices between competitors, including upon participation in public procurements, which: 1) directly or indirectly determine price or other trading terms with respect to third persons; 2) limit production, service, goods markets, technical development or investment; or 3) share markets or sources of supply, restrict access to goods markets to third persons or attempt to exclude third persons from these markets, are punishable by a pecuniary punishment or by 1 to 3 years' imprisonment.

An act stated above which is committed by a legal person, is punishable by a pecuniary punishment of up to 5 to 10 per cent of the turnover of the legal person.

Taxation of 2014 investment income in Lithuania

Beginning of a new financial year brings the need to review legal requirements applicable to taxation of the income received during 2014. There were several substantial amendments of Personal income tax law in Lithuania, which concern declaration and taxation of the income of investors and shareholders received during 2014.

Taxation of capital gains

- Tax advantages related to sale of shares acquired before year 1999 and dividends from such shares were abolished, thus profits from sales of share and dividends from such shares received in 2014 shall be taxed with 15% Personal income tax. Non-taxable minimum of 3000 EUR is applicable to gains received from sales of financial instruments.

- Tax advantage related to interest received from loans which are repaid after 1 year was abolished. Interest from loans received in 2014 is taxed with 15% Personal income tax.

Taxation of interest

- Interest from non-equity securities issued by Lithuania and EU Member States acquired after January 1st, 2014 and interest for deposits held in EU Member State banks (if contracts

entered into force after January 1st, 2014 are taxed with 15% Personal income tax. 3000 EUR non-taxable minimum applicable to gains from all financial instruments.

- Interest from non-equity securities acquired before January 1st, 2014, which redemption starts later than 366 days after issue, is tax exempt.

- Interest received during 2014 by foreign person from Lithuanian company, foreign company having permanent establishment in Lithuania or other foreign person acting via permanent base in Lithuania, are held to be Class A income and shall be reported in annual tax return by May 1st, 2015.

Taxation of income from derivatives

- Income from realization of derivatives and interest received during 2014 is held Class A income in Lithuania.

- This change puts obligation on companies who pay out profits and interest to natural persons, to calculate and pay attributable personal income tax on recipient's behalf.

- Calculating taxable profit from realization of derivatives, purchase price and purchase attributed government levies may be deducted from the sales revenue received, non-taxable minimum applies.

Non-taxable minimum

- Minimal monthly salary was increased in January 1st, 2014 from 289 EUR to 300 EUR.

- General non-taxable monthly minimum is 166 EUR (if monthly income is less than 290 EUR). When monthly income is higher, non-taxable minimum is calculated under formula given in law. When monthly income is above 925 EUR, non-taxable minimum does not apply. Applicable to work employment/service related income.

- Non-taxable minimum of 3000 EUR per year, applies to gains from derivatives and sales of financial instruments (not applicable for gains received out of sales to persons registered in targeted territories and sales back to the issuing company).

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Gencs Valters Law Firm – recognised by Tax Directors Handbook 2015 as a first tier firm in Tax!

”” Gencs Valters Law Firm handles domestic and cross-border matters including tax planning, audits and litigation, and its expertise includes VAT and corporate taxation. ””

According to the amendments made to the Income Tax Act, which became in force from the January 1st, 2015, all companies and permanent establishments located in Estonia have to declare payments made to the company's equity.

Declaring payments made to the company's equity in Estonia

Deadline for submitting declarations

Payments made before February 10th will have to be declared with the Tax and Customs Board retroactively. Deadline for submitting the declarations is February 10th. Payments which will be made to the company's equity after February 10th will be declared following the month of payment.

What needs to be declared?

It is necessary to declare circumstances which enable to decrease the income tax amount from the later payments. Companies have to declare:

- Payments made to the company's equity;
- Income tax withheld and paid in a foreign state;
- Received income from where the company can pay out dividends without paying income tax.

If by February 10th these circumstances are not declared the tax payer will lose the right to use them for tax exemption when making payments in a later stage.

As an example:

Your Estonian company has received dividends from its subsidiary in Latvia. When the subsidiary paid the dividends to the parent company, income

tax was already withheld and paid in Latvia. In Estonia dividends can therefore be paid out to the shareholders without income tax, reference to Estonian Income Tax Act clause 50 section 1¹ which states that income tax is not charged on dividends if the resident company paying the dividend has derived the dividend which is the basis for the payment from a resident company of a Contracting State or the Swiss Confederation subject to income tax (except for companies located within a low tax rate territory) and at least 10 per cent of such company's shares or votes belonged to the company at the time of deriving the dividend.

In the case, when these received dividends are not declared, the company will lose to right to pay out the dividends it has received without income tax.

We have moved to new offices in Tallinn and Vilnius



World Trade Center, 6th floor
Ahtri street 12
10151, Tallinn, Estonia



Vilnius vartai, 6th floor
A. Tumėno street 4
LT-01109, Vilnius, Lithuania

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New amendments open floodgates for class action in Lithuania

From January 1, 2015 the amendments of the Civil Procedure Code regulating class action came into force. Prior to the amendments, class action was merely a theoretical possibility in Lithuania, while after January 1 clear guidelines regulating this institute took effect.

Conditions of class action

Not all the lawsuits where multiple claimants are involved are considered class action suits. According to the provisions of the Art. 441³, class action shall comply with the following conditions:

- There are at least 20 natural or legal persons (a group) which have suffered a common injury (injuries) of their rights and have expressed their will to file a lawsuit together;
- Legal or factual claims of the suit are common to the entire group;
- Class action will be more effective than numerous individual cases;
- The group has notified the defendant of the intention to file class action;
- The group shall have a representative which may be elected from the members of the group and act in the name of the group;
- The group shall also be represented by an attorney.

It shall be noted that according to the Art. 441² of the Code, the representative of the group shall send a notification to the defendant prior to engaging in class action. In the notification claims of the group shall be indicated as well as the deadline to satisfy the claims. The deadline shall be at least 30 days. If the claims indicated in the notification are not satisfied within prescribed deadline, the group can file a class action suit in court.

Group and representative

Unlike class actions in the United States, in Lithuania this type of lawsuit only applies to the parties who have already filed the lawsuit. The provisions of Civil Procedure Code do not allow a suit to be brought in the name of an unknown group of claimants.

The list of claimants (members of the group) shall be attached to class action suit. Members can be added to the group within 60 to 90 days after class action suit was accepted by court. Each claimant shall sign a consent form in order to be included in class action. Group members cannot lead the case individually, except individual pecuniary claims.

In order to make litigation more effective, a group shall be represented by a representative. The representative shall be a natural person which is interested in the outcome of the case or an association (trade union). In case where the group is represented by an association (trade union), the claims provided in class action suit shall be directly related with the goals or activities of such association (trade union). E.g. an association responsible for consumer right protection can represent a group of consumers.

Certifying class action

When class action suit is filed, the court shall certify the suit, meaning that the court shall verify whether the suit complies with of class action. In the resolution to certify the suit, court verify the following circumstances:

- Whether all claimants can be members of the group, in other words, whether legal and factual claims of each individual case are common to the group;
- Whether class action will be more effective than individual cases; the court shall take into consideration the nature of violated rights and interests, the members of the group, relation between claims of the group and individual pecuniary claims and etc.;
- Whether the representative of the group is eligible for this function; the court shall take into consideration reputation, honesty, competence of the representative, his/hers experience in other class action suits, his/hers procedural behavior, possible interest conflict.

The court resolution can be appealed.

State and litigation fees

The state fee for non-pecuniary class action suit is 145 EUR. This fee shall be divided in equal parts among all the members of the group.

If individual pecuniary claims are submitted in the class action, the state fee calculated following the rules of ordinary pecuniary lawsuit provided in the Civil Procedure Coder. The state fee shall be divided among all members of the group in proportion to the amount of their individual pecuniary claims.

The state fee shall be paid by the representative of the group. Group members shall reimburse the representative according to calculations provided.

Each member shall cover litigation fees proportional to his/hers pecuniary claims. If a group member opts out of class action, such member shall only cover litigation fees for procedural actions performed until his/hers decision to opt out.

Newly employed



Irena Nesterova (PhD)
has been practicing law since 2008

Irena specialises in dispute resolution at courts, civil law, administrative law, white collar crimes law, competition law, intellectual property law and ICT law.

Before joining Law firm “Gencs Valters”, Irena gained valuable experience working at the Ministry of Justice, Department of Cooperation with the Court of Justice of the European Union (CJEU). Her responsibilities were directly connected with application of EU law and included communication and cooperation with the CJEU and the European Commission as well as national institutions. In particular, her tasks included preparation of written observation and other documents in cases brought before the CJEU in different fields, e.g., judicial cooperation in civil matters (C-302/13 flyLAL-Lithuanian Airlines; C-681/13 Diageo Brands), value-added tax (C-527/11 Ablesio), common customs tariff (C-558/11 Kurcums Metal), the grant of agri-environmental aid (C-454/11 Pusts), border checks (C-23/12 Zakaria), public procurement (C-324/14 PARTNER Apelski Dariusz), patents (C-493/12 Eli Lilly). Previously Irena worked at another larger law firm assisting clients in civil, administrative, consumer rights, public procurement and other disputes.

Irena has earned PhD in law degree in 2013 and is an author of a number of publications, e.g., The Judgment of the CJEU in the Google Spain Case: the Right to be Forgotten and Personal Data Protection on the Internet. Jurista Vārds, 15.07.2014., Nr.27. She is a visiting lecture at Latvian Judicial Training Centre as well at Riga Stradiņš University supervising the courses on EU Human Rights Law and European Competition Law.



Egija Gitendorfa

Obtained her experience working in the Patent Office and Insolvency Administration of the Republic of Latvia. In our law firm practices intellectual property and insolvency cases.

Our law firm continues to host local and international trainees



Gencs Valters Law firm hosted three students from different countries: Finland, Italy and Latvia. We were able to incorporate interns into many attractive projects and legal matters with an international aspect, what gave them an opportunity to learn many new things and thus widen their personal legal knowledge and skills. Gencs Valters Law Firm promotes international cooperation and encourages youth to gain experience in various countries. This way European countries share an experience and can reach deeper integration. Internships like these are not only beneficial to students, but also allow to get acquainted with the cultural side of different countries and to see wider possibilities in European labor market.

“Gencs Valters Law Firm is an exceptional law firm as they truly respect their trainees. You are able to work with highly professional lawyers and feel that you are really part of the legal team.”

Tony Koivula

“Great opportunity to work with interesting cases and gain practical experience.”

Eduards Dzintars

“I’m really satisfied with my choice; I recommend this law firm to every aspirant lawyer to apply for an internship here.”

Attilio Valerio Giuliani

Think different. Think victory.

Riga office

Valdemara Center 3rd floor,
Kr. Valdemara street 21,
LV-1010, Riga, Latvia
T: +371 67 24 00 90
F: +371 67 24 00 91

Tallinn office

World Trade Center 6th floor,
Ahtri street 12,
10151 Tallinn, Estonia
T: +372 61 91 000
F: +372 61 91 007

Vilnius office

Vilniaus vartai, 6th floor,
A.Tumėno st. 4,
LT-01109, Vilnius, Lithuania
T: +370 52 61 10 00
F: +370 52 61 11 00

info@gencs.eu

www.gencs.eu

www.attorneys-at-law.eu