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8<sup>th</sup> annual seminar  
**"Expatriate Tax Planning 2010  
in the Baltics"**

will be held on March 4, 2010  
At the Reval Hotel Ridzene, Kronvalds conference room,  
18:00-18:45

Followed by buffet by the Gencs Valters Law Firm  
organized jointly by the Gencs Valters Law Firm and SCC in Latvia

Speakers -

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

Individual meetings may be scheduled or after the conference and  
questions asked before to Valters Gencs e-mail: [valters.gencs@gencs.eu](mailto:valters.gencs@gencs.eu)

Attendance is free

# Most Recent Tax Changes in Lithuania

During the year of 2009 Lithuania as well as other Baltic states faced a heavy challenge to combat the adverse financial situation in their country. However 2010 have started with an ease – this time decision-making bodies decreased the burden of tax.

Please find the further update on taxes implied in Lithuania as below.



## Value Added Tax

Value added tax rate has been increased from 19% to 21% since 1<sup>st</sup> September 2009. It was the second major value added tax increase. Value added tax rate has been increased previously from 18% to 19% in January 2009.

## Corporate Income Tax

First of all from 2010 corporate income tax has been reduced from 20 to 15%. Additionally to this, small companies employing not more than 10 employees and having its annual income at not more than LTL 500 000 shall be subjected to 5% of Corporate income tax. Previously in the year 2009 the tax applied was at 13% rate.

## Investment Projects

It is important to note that companies in the period until the year 2013 may take part in the Investment Projects which offers attractive tax benefits.

It is provided that 50% of reinvested profits will not be taxable. The companies will be allowed to invest 50% of their

profit into long-term assets for production of new products or services, increase of capacity, implementation of new processes and technologies and such reinvested profit will be not included in taxable income. This Governmental decision is believed to increase company productivity and competitiveness. However, investments into replacement of production assets with new similar assets will not be deemed as investment project.

## Personal Income Tax

Personal income tax rate in Lithuania remains at 15%. As well as dividends and other profit distributions are subjected to 15% tax rate.

From August, 2009 amendments to the law on personal income tax came into force. The law provides the complete list of benefits in kind and the list income which will not be interpreted as benefit in kind for the tax period starting from 2010. The amendment to the law on personal income tax sets the new rule for calculation of non-taxable amount of income which will not be applicable for members of non-limited liability companies as previously.

## Tax on Real Estate

Local tax authorities in Lithuania emphasizes that tax on immovable property must be declared in Lithuania not later than until 1<sup>st</sup> of February, 2010. It is expected that legal and natural persons will pay more than LTL 260mln (EUR 75.3mln).

According to the law on the real estate, if real estate is used by individuals for business or individual activities with several exceptions or disposed to the legal persons for the period longer than 1 month or term less is subject to 0.3% – 1% real estate tax calculated on the value of the real estate. The council of the municipality on the territory where buildings and structures are located determines the exact rate of the tax.

Lithuanian and foreign entities owning buildings and structures located in Lithuania are obliged to pay real estate tax. The rate of the real estate tax remains unchanged and is rated at 0.3% - 1% of the taxable value of buildings and structures.



# Income tax refund to resident and non-resident natural persons in Estonia

## In general

The Estonian Tax and Customs Board shall refund the overpaid Estonian income tax to resident and non-resident natural persons post factum once a year, refund applications should be submitted not later than by March 31, 2010.

In order to get back the overpaid income tax amount, the application on form TM3 for a refund of the Estonian income tax withheld at source has to be submitted to the Estonian Tax and Customs Board on paper or electronically with E-Tax Board.

## Resident and non-resident

Income tax returns must be presented by Estonian residents. An Estonian resident is someone whose permanent residence is in Estonia or who stayed in Estonia for 183 days or more during one year. Estonian residents must also declare the income that they have received abroad.

Deductions are allowed to non-resident natural persons, who comply with the conditions specified as follows:

1. Resident natural person of another EU Member State,
2. Has derived at least 75% of his or her taxable income in Estonia
3. Submits an income tax return of resident natural person.

Taxable income means income before deductions pursuant to the legislation of the state of residence of the person.

## The list of deductions 2010

- Basic exemption per year EEK 27 000/ EUR 1730;
- Increased basic exemption EEK 27 000/ EUR 1730 for each child of up to 17 years of age, starting with the second child;
- Increased basic exemption in event of state or mandatory funded pension of up to EEK 36 000/EUR 2300;
- Increased basic exemption in event of compensation for accident at work or occupational disease of up to EEK 12 000/ EUR 770;
- Maintenance support which a natural person pays on the basis of a court judgment, agreement confirmed by a court ruling, or a notarized agreement between the parties;
- Housing loan interest;
- Training expenses and student loan interest;
- Gifts, donations and trade union entrance and membership fees, implementing the 5% deduction limit;
- Insurance premiums and acquisition of pension fund units, implementing the 15% deduction limit;
- Mandatory social security contributions;

- Compulsory social insurance contributions in foreign state.

The deductions for housing loan interest, training expenses, gifts, donations and trade union entrance and membership fees are altogether limited to 50 000 EEK per taxpayer during a period of taxation, and to not more than 50 per cent of the taxpayer's income of the same period of taxation, after the deductions relating to enterprise have been made.

## Example for illustration

Swedish resident has worked for 5 months in Estonia for the Estonian employer. The amount of salary to the Swedish resident for a month was EUR 1300. The employer has withheld income tax at a rate of 21% from monthly payments in the amount of EUR 273. The taxable amount in Estonia for a year 2009 has been EUR 6500, the taxable income from resident country (Sweden) for the same year has been EUR 1900. The Estonian income constitutes 77% of the taxable income of the Swedish resident. Thus, the person has a right to submit income tax return for resident natural person in Estonia and make deductions from the Estonian taxable income. Let us suppose that the Swedish resident had two children of up to 17 years of age and has paid training expenses in the amount of EUR 640 in 2009.

### Simplified example of calculation of the final amount of income tax payable in Estonia for 2009:

Taxable income in Estonia	6500
Income tax withheld in Estonia	1400
Unemployment insurance premium withheld in Estonia	38
Basic exemption	1730
Increased basic exemption in case of children of up to 17 years	1730
Training expenses	640
Total deductions	4138 (= 38+1730+1730+640)
Estonian taxable income after deductions	2362 (= 6500 - 4138)
Final amount of income tax payable	496 (= 2362 x 0,21)
Amount of income tax to be refunded	904 (=1400 - 496)

# The new cross-border VAT refund system in Estonia

Company established in Estonia or representative acting on behalf of Estonian company will be able to apply for a VAT refund from any other EU country by filling **electronic application** available at Estonian e-Tax Board internet portal. Board forwards application to appropriate EU country's tax authority. Old paper-based recovery process is replaced with electronic system in all fields in refund process. New legislation has been brought in line with Council Directive 2008/9/EC and is available to businesses from 04.01.2010. Electronic VAT refund system does not affect applications submitted by non-EU companies.

The applications per year 2009 can be submitted until 30<sup>th</sup> of September 2010. The refund period is from three calendar months till one calendar year, which is not limited to calendar quarters. An exception for a "three months minimum" rule is an application submitted for the remaining of a calendar year.

During the refund period, a taxable person must not have the seat of economic activity, a fixed establishment or a place of residence nor may he provide supplies in the Member State of refund. Only VAT incurred on business related activities may be refunded. The application will not be available for non-taxable persons or a taxable person with limited liability.

## Changes in VAT refund limits

Minimum VAT amount on application for calendar year or the remainder of a calendar year may not be less than **EUR 50** or the equivalent in national currency. The amount will be shown in national currency if Member State has provided this information to Estonian tax authority.

Minimum VAT amount on application for period of less than one calendar year may not be less than **EUR 400** or the equivalent in national currency. The amount will be shown in national currency if Member State has provided this information to Estonian tax authority.

Appropriate limits in Estonia are EEK 782 and EEK 6258.

## Original invoices are not required

In accordance with the new electronic refund system Member State of refund may request scanned copies of invoices to be provided along with application for values that are equal or more than 1000 EUR (250 EUR in case of fuel) in country's national currency. Before submitting an application applicant is advised to carefully review requirements of Member State of refund. Minimum thresholds may differ per country and certain countries do not require scanned copies of invoices at all (Austria, Bulgaria, Denmark, Ireland, Italy, Luxemburg, The Netherlands, Portugal, Slovenia and Sweden). In Baltic States the scanned copies of invoices/import declarations are required.

Renewal is to show in application the proportion of input tax, if taxable person is only able to make a proportional deduction in his Member State. An applicant will need to correct proportion at the end of calendar year if proportion has changed.

## Deadlines for decisions

An extended period is nine months in which to submit VAT application for previous calendar year, whereas old system allowed only 6 months doing so. Standardized application processing time is limited of 4 months up to 8 months in case the Member State needs additional information. Payment is taking no longer than 10 working days after approval and the Member State will pay an interest of amount of refund in case of a late payment. In accordance to Estonian legislation the interest rate is 0,06% per day. The interest will not be paid if the payment failed because of incorrect bank account details or if applicant did not provide additional information upon request of Estonian Tax and Customs Board.

It is possible to submit a maximum of five claims during a calendar year to each Member State. Generally it is forbidden to have coinciding periods (e.g. 01.01.2010-01.06.2010 and 01.03.2010-01.08.2010) however an additional "yearly" application is an exception to such rule.

*„An exception for a "three months minimum" rule is an application submitted for the remaining of a calendar year.“*

## Submitting applications on behalf of a company

A company established in Estonia will need to provide the Power of Attorney through Estonian e-Tax Board portal authorizing a representative to submit and receive refunds on company's behalf. This is done by writing a free form notification to Estonian e-Tax Board, which is considered to have the same legal power as the Power of Attorney.

A company established elsewhere in EU will need to send a hard copy of the Power of Attorney to Estonian Tax and Customs Board by post. A single Power of Attorney may authorize a whole company and there is no need to mention persons.

Non-resident representative will need to sign an authentication contract that grants an access to online services provided by Estonian Tax and Customs Board. The contract is always concluded between a private person and the Board, which means that in case of every member of a company who is planning to use Estonian portal will need to sign this document. Along with a copy of contract every non-resident will receive a username, a list of codes and a non-resident code.

The system interface is available in Estonian, English and Russian.

As of 1 January 2010 new amendments to Law "On Personal Income Tax" are in force. Below is a summary of the new regulation as to regards capital taxation.

# Tax on capital and capital gain in Latvia

## Capital related taxes

The Law states that income tax now is payable also for every income a person receives from capital gain and capital other than capital gain.

Exempt from income tax are income from treasury bills and bonds issued by the Republic of Latvia and other European Union member states or European Economic Area member states.

Income from capital gain and capital other than capital gain shall be strictly separated due to several dissimilar issues as tax rate and others.

## Income from Capital gain

Capital gain is determined as a difference between sales price of capital asset and value of acquisition, as well as difference between liquidation quota (in the meaning of Commercial Law)<sup>1</sup> and value of investment.

Income from capital gain is taxed at a rate 15%. The person, who receives the income, is solely responsible for tax payment and reporting to State Revenue Service (see Section III).

As regarding to income gained by non-resident from sale of capital assets (other than financial instruments) based in Latvia, the income is taxed at a rate of 2% if the payer of income withholds the tax at the place of income payment.

For clarification of how the capital gain is determined the terms of *capital assets*, *value of acquisition* and *set-off* are explained below.

## Capital assets:

The term *capital assets* include such financial instruments: stocks, shares, investments in private partnerships and others as mentioned in the Financial Instruments Market Law.

Another group that capital assets include is transferrable securities as certificates of Investment funds and that certify share in investment funds or equal mutual investment companies.

Debt instruments such as bonds, deposit certificates, short-term bonds and other monetary instruments that are traded in money markets constitutes a part of capital assets as well.

The last part that is included in capital assets is real estate (including rights to acquire real estate),

undertakings (in the meaning of Commercial Law)<sup>2</sup> and intellectual property.

Finally an income from sale of capital assets includes also income that is gained from transactions directed to sale of rights to acquire capital assets.

Capital assets: value of acquisition

The value of acquisition depends on how the capital asset is acquired. Therefore there are several issues on how the value is to be set.

If capital asset is acquired by purchase, its value is the purchase price; similarly if capital asset is acquired by way of gift agreement or legacy, its value of acquisition is the value specifically prescribed for the particular capital asset in the gift agreement or value of capital included in the legacy.

The value of acquisition is adjusted also with costs related to the acquisition of the capital asset – any state taxes, loan interest (paid for acquisition of the particular capital asset) and other like expenses- and costs related to purchase of the security and its custody.

However, if not specified otherwise, any cost and income in form of good or service is to be valued in monetary terms at market prices that are in force at the moment, when income and costs are incurred.

If an agreement is concluded, but the deal is broken or some part of the obligation is not performed and a person has received an income not subject to repayment – it is deemed as income from capital gain. This income may be adjusted with costs related to the abandoned deal.

## Capital assets: Set-off

Capital gains are summed in the taxation period if within the taxation period several capital assets are sold. If the calculated capital gain or its total amount is negative, it is ignored for tax purposes. However, if the capital gains of the taxation year from the sale of one capital asset is negative, but from the other – positive, the resulting losses may be covered by the positive capital gain.

It should be noted that a person, who receives income from capital in foreign countries, is subject to income tax irrespective of whether the income is taxable or not in the place of income. If any tax is withheld in the place of disbursement, it may be set-off as expense to the income tax payable in Latvia, subject to tax conventions.

The Law does not describe which costs exactly may be covered by the capital gain. For example, if any

stock is acquired at different pricing, which particular price of acquisition should be taken into account.

## Income from Capital other than capital gain

Income from capital other than capital gain is taxed at a rate 10%. Obligation to make tax payments lay on the person, who disburses the income, for example, a bank (in case of interest payment for a deposit) or a company (in case of dividends).

As regards to this it shall be clarified what includes a term *income from capital other than capital gain*.

## Income from capital other than capital gain

by Latvian law includes dividends from company shares and stocks and income from other rights (not deriving from debt obligations) to participate in distribution of profit and income from private partnerships, interest income and similar income, also income related to interest income, income from investment in private pension funds and incomes from life insurance agreements with savings; It shall be taken into consideration that no adjustment with costs is permitted for capital income from dividends and interest income.

**Day of income** is significant matter especially for separating an income gotten before or after year 2010 when the new amendments in law have come into force.

In general, the day, when income is deemed to be received, is the day, when a person receives money or other things. However, the day is set differently regarding income from capital gain or income from capital other than capital gain.

## Income from capital gain:

As regards to the income from capital gain three situations shall be separated.

If the income from capital gain is to be received during several taxation periods, it is deemed that income is gained in that taxation period, when the income is actually received.

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If the income from capital gain is to be received in more than 3 taxation periods (as from the year of sale agreement), it is deemed that income is gained in the first 3 taxation periods. In such case in the third taxation period the outstanding amount is to be calculated in the taxable income irrespective of whether the income is actually received.

In case of shares swap (without any other consideration), the day of income is the day, when the swapped shares are sold. The day of sale is the day, when consideration is received, or the day, when changes are recorded in the commercial register. If consideration is received before changes are recorded, the day of income is the day, when consideration is received.

## Income from capital:

As regards to the income from capital the day of income is the day, when the income is calculated. The same rule applies to dividends, i.e. day of dividend income and respectively the day of dividend income disbursement is the day, when the dividends are calculated. However, if dividends are calculated for the publicly listed companies, the day of dividend income is the day, when dividends are paid. The custodian, who settles with the shareholder, is obliged to pay the tax into the state budget.

### NEWLY EMPLOYED



**Jana Orlova** joined the firm in beginning of 2010.

Before she obtained her experience as a senior legal counsel in one of the biggest banks in Latvia.

She practices banking and finance matters. She is also at the moment obtaining her L.L.M in Law and Finance from the Riga Graduate School of Law.

## Reporting to State Revenue Service

Regarding capital and capital gain issues there are news in reporting to State Revenue Service as well. What applies to both types of income is that tax is due in 15 days after reporting is made.

### Income from capital gain:

All income from capital gain should be reported to the State Revenue Service, if income tax is not withheld at the place of disbursement. Non-resident has to report on all income from capital gain he/she has received in Latvia, if income tax is not withheld at the place of disbursement.

Tax payer-resident has to report on all transactions initiated, but not finished, with capital assets in Latvia and foreign countries but tax payer-non-resident has to report on all such transactions in relation to sale of real estate located in Latvia. Report has to be submitted to the State Revenue Service once a year, but no later than 1 April of the year following the taxation period.

If income tax is not withheld at the moment of income disbursement, reporting must be made in relation to income from capital gain until 15<sup>th</sup> day of the month following the month, when income was received. If the income is less than 500 lats per month, reporting can be made quarterly until 15<sup>th</sup> day of the month following the respective quarter.

### Income from capital:

If tax is not withheld at the place of disbursement, the tax payer has to report to the State Revenue Service his/her interest income received in January and February of 2010 and make respective tax payment. Report has to be submitted no later than 31 March, 2010.

<sup>1</sup>After the claims of creditors have been satisfied or the monies due them are deposited and the liquidation expenditures have been covered, the liquidator compiles a liquidation closing financial account and a plan for the division of the remaining property, in which a liquidation quota is determined.

<sup>2</sup>An undertaking is an organizational economic unit. The undertaking includes both tangible and intangible things belonging to a merchant, as well as other economic benefits (value), which are utilized by the merchant to perform commercial activities.

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