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## Declaration Property

### *Draft Law "Declaration of the Property Status of Physical Persons"*

It is seen that after so many years of discussions and work finally the parliament of Latvia (Saeima) will in the nearest future finish its work on law "Declaration of the property status of physical persons". The aim of this draft law is to establish the property status of individuals and to secure control possibilities over individuals` property status, the correspondence of persons` income with their expenses, and accordingly payment of taxes and legality of income. This law is very long awaited in the society as it could finally bring some clarity and transparency about persons` financial and property status, especially about some highly situated persons whose property status and the origin of it is very unclear.



**Gencs Valters Law Firm** has established a business presence in Estonia to better serve clients on the Baltic level. The office address is in the Tornimäe business center in the new A class building, having the following address – Tornimäe 5, 2<sup>nd</sup> floor, 10145, Tallinn, Estonia.

### *To Whom it will apply?*

It is foreseen that the law will apply to the following persons: citizens of Latvia, non-citizens, persons who has permanent residence permission or permanent residence certificate. Those persons will be obliged to submit declarations about their property status if their place of residence is in Latvia and if they have an obligation to declare

their place of residence in Latvia.

According to the draft law the obligation to submit the declaration will arise if:

- 1) the person has an immovable property in Latvia or abroad;
- 2) the person has made a transaction due to which this person has obtained

or lost rights to immovable property which have not been yet registered (collaborate) according to the law of the respective state;

3) the person owns or has in a joint ownership abroad a road vehicle, water or air vehicle as well as the person has obtained such vehicle abroad or in Latvia on the basis of rent (leasing) agreement;

4) the person owns financial instruments the value of which exceeds 100 minimal monthly salaries (in 2008 minimal monthly salary is 160 LVL which is approximately 228 EUR);

5) the person owns other financial instruments as well as shares in Latvia or abroad;

6) the person has cash or non-cash savings (including in private pension funds or in life insurance funds) in Latvia or abroad the amount of which exceeds 100 minimal monthly salary;

7) the person has credits in Latvia and abroad the amount of which exceeds

100 minimal monthly salaries;

8) the person has issued loans the amount of which exceeds 100 minimal monthly salaries;

9) the person has any other property in Latvia or abroad the value of which exceeds 100 minimal monthly salaries.

It should be noted that in order to prove the real existence of cash savings the person would be obliged to transfer those savings to any his bank account in the bank registered in Latvia or other EU Member State or European Economic Area Member State till 31<sup>st</sup> December of any calendar year about which the declaration was submitted. After this procedure is done the person is allowed to choose any for him the most appropriate method for managing those savings.

If the person will not submit the declaration it will be assumed that person does not have any from the previously-mentioned property and that he has not made any of the previously mentioned

transactions. However, if it will be realized that person have had an obligation to submit the declaration and he has not done it and, moreover, he disputes such obligation, such person will be obliged to prove such understanding as well as to prove the legality of origin of his property and financial resources.

The declarations will be submitted to the tax authority and the person will be allowed to correct his declaration within 3 years after the end of the calendar year about which the respective tax declaration was submitted. However, such correction will be allowed only before the tax authority has decided to start the tax audit.

It is planned that the parliament could approved this draft law in the nearest two months and the law could come into force in 2009. Wherewith everybody will have time to consider his financial and property status and realize whether he has the obligation to submit the declaration about his property status.

# VAT

*Latvia's parliament has approved amendments to the Law on Value Added Tax and the Law On Taxes and Duties.*

## Deductible VAT

The amendments in the Law on VAT clarify deductible amount and order how overpaid VAT may be transferred to other taxes and state payments.

## Information in VAT invoices

The Law on VAT determines if invoice with 0% VAT is issued, there have to be included reference according to which Article of the Law on VAT rate 0% is used. Amendments supplement that reference may be given to Law or to Directive 2006/112/EK.

## Responsibility

Recent amendments in Law on VAT changes tax payers' responsibility for not completing requirements of this law.

Amendments determine if a person (or a company) issues an invoice with VAT without being VAT payer and receives VAT which it not suppose to receive, tax authority has rights to collect tax and charge penalty in amount of 100% from received amount. Before amendments, tax authority had a right to charge penalty in amount of 200%.

According to the law VAT may not be paid if fixed assets are imported for VAT taxable transactions, but



# New UK Tax Residence Rules

On 6 December 2007 the Government of the United Kingdom published a consultation document "Paying a fairer share: a consultation on residence and domicile"<sup>1</sup> where it was announced a package of reforms regarding the residence and domicile personal tax rules. One of points of this announced tax reform regards the counting of the days in order to establish tax residence in the United Kingdom.

In regard to this the consultation document says that: „according to current practice only whole days are counted towards establishing residence. As a result a non-resident can spend substantial periods of time in the UK without becoming resident, and therefore without becoming subject to UK tax on their worldwide income and gains. For example, it is currently possible for someone to spend five working days in the UK with these only counting as 3 days once the day of arrival and day of departure are discounted. This is increasingly anachronistic in an age of rapid modern transportation.”<sup>2</sup>



The discussions whether the United Kingdom has started to develop new rules for establishment of residence for tax purposes in the United Kingdom has already started last year. The discussion started due to some cases of HM Revenue and Customs. One of those cases was the case of Robert Gaines-Cooper, a wealthy British born businessman based in the Seychelles, who taught that he was scrupulously following one of the UK's tax residence rules called a 90-day rule<sup>3</sup> which was established in the IR20.

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tax have to be presented in tax report as payable and deductible. New amendments determine if tax is not presented in VAT report as payable, penalty in amount of 10% from not presented amount is payable.

There are still effective previous rules determining that in case previously mentioned fixed assets are sold within 1 year after importing, penalty 18% have to be paid. This is not deductible amount.

General penalties now are calculated according to the law On taxes and duties (please see below in part *Tax penalties*). Requirements regarding responsibility came into force on March 4, 2008.

## Tax penalties

Before amendments, tax authority calculated tax penalties in amount of 100% if tax payer has not declared payable tax repeatedly. Now penalty amount is reduced to 70%.

If tax payer has made the same breach of law within 3 years, the tax authority will charge penalty 100%, before it was 150%.

There are new regulations about reduction of penalties. If penalty in amount of 300% about employing individuals without employment agreement is charged or 150% penalty to person who needed to register as tax payer, but has not registered, is charged – tax authority

may reduce penalty by 45%, if individual or company agrees with additionally calculated tax.

## Electronical reporting

It is determined that after January 1, 2010 all reports to the tax authority have to be submitted electronically. Exception is individuals who do not do any business activities.

Tax payers whose legal address is in administrative territories where internet connection is not available are allowed to submit reports in a paper form until January 1, 2011.

COMMERCIAL  
LAW

The Commercial Code is amended providing that limited companies (both private (OÜ) and public (AS) types) may exempt certain down payment objects of non-monetary nature, for example, securities, from the compulsory auditing; however, in such a case the company must comply with some supplementary requirements of public disclosure.

In addition the changes provides that a company may permanently possess or take as security its own shares in amount of 1/10 of its share capital. In the event of reduction of the share capital of the company the creditors may, in addition to recovery of their claims, also require securing of their claims.

It is specified that the provisions regarding the prohibited loans. It is now prohibited to give loans for the purpose of acquiring own shares by subsidiaries wishing to give loans to parent company, or to shareholder of a parent company, or to a company belonging to the same group as the lending subsidiary. Besides the period during which the shareholders may allow acquiring of company's own shares has been extended to five years from previous one-year period for both types of companies. The general meeting of an SE can be called by a court which territorial jurisdiction covers the location of that SE

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The IR20 is guidance for residents and non-residents of the United Kingdom for estimation of their liabilities to tax in the UK. The IR20 provided for 90 day rule for non-residents during which they may be allowed to spend time in the UK and would be not regarded as residents for tax purposes in the UK. According to this rule the days into and the days out of the UK did not count in for establishing person's tax residence in the UK. However, in the case of Robert Gaines-Cooper the HMRC counted also days of arrival into and departure from the UK arguing that the 90 day test is only one of a number of factors which must be taken into account for establishing the tax residence in the UK.

Now this new practice of the HMRC is going to be confirmed and implemented in the law. The Government has decided that the days of arrival in and the days of departure from the UK will count toward establishing residence in the UK.

According the Government's view this will bring the UK into the line with international practice. It is seen that the draft law will come into force on 1<sup>st</sup> April 2008.

Wherewith, according to those new tax residence rules persons who are currently not resident in the UK will always be treated as resident in the UK if they spend 183 days

or more in the UK in a tax year. If they visit the UK on a regular basis, and spend, on average, 91 days or more in the UK in a tax year (taken over a period of 4 years) they will be treated as residents in the UK. In the calculation of those days the days of arrival and departure will be taken into the account. An exception will be introduced for "transit passengers" providing that they remain in a part of an airport or port not accessible to members of the public.

It should be noted that those UK citizens who are living and working in Latvia and are visiting the UK very rarely should not be worried very much about those changes in the UK tax residence rules as the new UK tax residency rules are more designed for those UK citizens who are living in such low or zero tax countries as Seychelles, Monaco and in other so called offshore countries with which the UK does not have any tax treaty.



6<sup>th</sup> Annual Expatriate tax Seminar was held jointly with the Swedish Chamber of Commerce in Latvia on March 12, 2008. More than 40 participants and companies attended the event. Slides of the seminar may be viewed under <http://www.gencs.eu/resource/show/18>

<sup>1</sup> *Paying a fairer share: a consultation on residence and domicile*, HM Treasury, December 2007, Crown Copyright 2007.

<sup>2</sup> *Ibid.*

<sup>3</sup> *The other test for the tax residence in the UK is the 183 day rule.*