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Baltic Newsletter

Law and Taxes in Estonia, Latvia and Lithuania

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Internal

Dear Readers,

The first half of 2017 is over and the old economic order seems to have been reversed by Brexit, Trump and the relationship between NATO states and Russia. Economic news may have been overshadowed by global political events but the fact remains that the global economy is still picking up. Surprising new alliances are emerging and Europe seems willing to come together again.

The Baltic States are representative of this situation. Everything indicates that projected growth rates of between 2 and 3 percent for this year will once again be achieved.

Two factors for this success stand out. In addition to their cutting-edge use of digital technology, all three countries have focused on investment-friendly tax systems. Estonia's tax system is even considered to be one of the most innovative in Europe. But the progress does not stop there. There are further comprehensive tax reforms in the pipe-line intended to secure future growth for Estonia.

This planned new tax reform by the new Estonian government is this time in the "Targeting" section of our "Baltic Newsletter". Our focus is on the small but subtle and significant differences between "insufficient capitalization" and "thin capitalisation".

About the highly successful first conference on food safety and healthy food "Life Sciences Conference - Ensuring the safety and consumers' rights" in the Lithuanian capital, organized by Rödl & Partner in cooperation with the Lithuanian Foreign Ministry and well-known institutions, you may read in the "Review". And as always, you will find news in brief.

I hope that you will find the following valuable reading,

Alice Saluments
Partner, Head of Office Estonia

> Targeting: Tax reform in Estonia – Getting your company ready

Verner Silm, Rödl & Partner Estonia

In brief:

- The new Estonian government plans to introduce a number of new taxes and to fundamentally reform the current system.
- This article presents the most significant changes that companies need to be prepared for.
- According to the government, companies will be granted a long transition period in order to have sufficient time to incorporate the new rules into company policy; in addition, extensive guidelines will be published to help interpret and apply the new rules.

Starting point

Estonia has had a new government since November 2016. It has set itself the goal of giving new impetus to growth and promoting public welfare and cohesion in the same way.

This also means that the new government has proposed many new bills and draft resolutions concerning the Estonian tax system and has already abandoned the previous government's proposed increase of VAT on accommodation services (from 9% to 14%) and decrease in social tax (form 33% to 32.5%) for the year 2017. Numerous new bills and draft resolutions have been drawn up and swiftly put before parliament.

As a result, the new government has had to change its stance on some key issues (new bills) and, due to the enormous controversy generated by the proposed new bills, has had to abandon the following:

1. "Pledge income tax" (on intra-group loans);
2. environmental fee on cars; and
3. also excise duty on packages (as of June 1, 2017).

The Estonian Income Tax Act has remained essentially unchanged for many years but the new government plans to make significant changes to it, starting with basic exemption for physical tax residents (from 180 euro in 2017 to 500 euro in 2018) and ending with lowering income tax for companies that distribute dividends yearly (from 20% to 14%). This article will mainly focus on the new plans under the proposed Income Tax Act and other taxes planned from the start of 2018.

Estonian corporate income tax

One peculiarity of Estonia corporate income tax is that only distributed profits are taxed; there is no annual corporate income tax. If profits are reinvested in the company, they are tax-free. According to the draft bill of the Estonian Income Tax Act, corporate income tax will be reduced for companies which distribute profits – from 20% (20/80) to 14% (14/86) – on a regular basis, but only if dividends are paid to a legal entity (when paying out dividends to natural persons the tax level remain the same).

The draft bill aims to establish a corporate tax system that rewards the stable dividend policy for companies with lower profits distributed at an actuated tax rate. The lower tax rate of 14% will apply only to companies which regularly distribute profits. The regular profit distribution amount, which is below or equal to the preceding three years, will be taxed at a lower rate. The amount of dividends that are higher will still be taxed at 20%.

This lower tax rate for profit distribution would not transfer to natural persons and would not distort the various types of neutrality of income taxation for natural persons. The company has to withhold 7% of income tax if dividends are paid to resident or non-resident natural persons. This only applies when the payment is based on the share of profit taxed at a level of 14%. Of this tax, 7% is for resident natural persons' final rate of income tax; resident natural persons do not have to pay any extra taxes on dividends (14%+7%). For non-resident natural persons, the final tax liability will appear in his/her country of residence.

Procedure for the taxation of company cars (fringe benefits)

The free use of a company car or at a preferential price for activities not related to employment, service duties or to the employer's business is regulated by Subsection 48(8) of the Income Tax Act, which states that the maximum price of a fringe benefit is 256 euro per month for each automobile used for the activities specified. The maximum price is taken as the basis for taxation if no records are maintained, and the maximum tax obligation therefore amounts to 169.60 euro despite the actual market value of the benefit (income tax 64 euro, social tax 105.60 euro). However, in accordance with Regulation No 2 of the Minister of Finance of January 13, 2011, the Procedure for Determining the Price of a Fringe Benefit, the taxpayer may also maintain records of private trips based on the amount of kilometres driven. If such a record is kept, the price of a fringe benefit is calculated based on the kilometres driven in connection with activities not related to employment, service duties or to the employer's business. The tax exemption limit of compensation is 0.20 euro per kilometre in the case of automobiles older than 5 years and with a cylinder capacity of up to 2,000 cm3 (incl.). The limit is 0.30 euro per kilometre in other cases. If the

price of a calculated fringe benefit exceeds 256 euro, the price of a fringe benefit is considered to be 256 euro per month for each automobile used for activities not related to employment, service duties or to the employer's business.

Based on the draft legislation, the new basis for a fringe benefit is 1.96 euro per kilowatt per month on the basis of information concerning the vehicle recorded in the traffic register. The price of a fringe benefit will consequently be higher for vehicles with a larger engine capacity and lower for vehicles with a lower engine capacity. The tax obligation of a fringe benefit (income and social tax) will be 1.30 euro per kilowatt per month.

Taxation of sweetened beverages

According to the draft bill, a tax on sweetened beverages will be established to influence health-related behaviour. The main purpose of the tax is to direct manufacturers to reduce the amount of sugar and sweeteners in drinks and to influence consumers to consume fewer sweetened beverages. The Estonian Ministry of Social Affairs has stated in the draft bill that the tax on sweetened beverages will be a unit-based tax in order to effectively achieve its objective (final rates and calculations are still being debated).

The sweetened beverages in line for taxation have a sugar content of not less than 5 grams per 100 millilitres per beverage and/or additional sweeteners. The tax rate depends on whether and how much sugar and/or sweeteners beverages contain. Drinks which are used to make other beverages, food and pharmaceuticals are exempt from the new tax. The tax will be levied at the point when drinks are made available to the Estonian market (first instance). A two-year transitional period will be established to allow producers to change product recipes and for consumers to get used to the new taste of their favourite drinks. Tax rates will remain the same during the transitional period although products with a high level of sugar/sweeteners will be taxed at lower rates.

The tax on sweetened beverages will also be levied on products that are made for consumption in liquid, solid, and powder form, and for products which have to be diluted for consumption. According to the draft bill, the new tax will not be levied on pharmaceuticals covered by the Medicinal Products Act, food for particular nutritional uses and food supplements under the Food Act, and dairy products. Food for specific nutritional uses are not subject to taxation as this is mainly used by people with special dietary and food quality requirements that have already been legally defined. Food supplements are also not subject to taxation due to their purpose of supplementing a normal diet and providing an additional source of nutrition and other physiological benefits in concentrated form.

Milk and dairy products are not subject to taxation for the reason that they are not competing with sweetened beverages, as well as the fact that milk and dairy products form a significant part of the average Estonian’s diet. According to the draft bill, dairy products are neither consumed as food or drinks.

Notes and Advice:

> The Ministry of Finance is working on another, as-yet-unpublished draft of the CIT law. This is what we know about the new draft so far:
  - loans granted to mother and sister companies have to be declared;
  - new general anti-abuse provisions will be drafted;
  - If loans are not repaid within five years they will be regarded as profit distribution and will be taxed accordingly;
  - The Estonian Tax and Customs Board will draft a detailed definition of what constitutes intra-group loans and how all obligations to the state must be met.

> Although the new Estonian government has announced a long-term transitional period, companies should already start preparing for the changes in order to leverage new opportunities and eliminate risks before the law enters into force.

> Should you have any questions, Rödl & Partner will be pleased to assist you as a consultant in tax issues.

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> Focus: Insufficient Capitalisation or Thin Capitalisation – a Difference with Consequences

Alice Salumets, Rödl & Partner Estonia
Kristīne Zvejniece, Rödl & Partner Latvia
Hans Lauschke, Rödl & Partner Lithuania

In brief:

- Though similar-sounding, insufficient capitalisation and undercapitalisation must be strictly differentiated.
- While insufficient capital is subject to company law and liability, thin capitalisation derives from corporation tax law and is of great importance to tax optimization.
- Estonia, Latvia and Lithuania have very different rules on insufficient capitalisation and thin capitalisation - Estonian law does not recognize the concept of thin capitalisation; in Latvian law there is no such thing as insufficient capitalisation.

Through our consulting practice we are frequently confronted with two areas which are superficially similar and therefore repeatedly mistaken for each other. The two areas in question are so-called insufficient capitalisation on the one hand and so-called thin capitalisation on the other.

Whereas the term "thin capitalisation" refers to the ratio between debt and equity and is relevant in the context of corporate income tax, the term "insufficient capitalisation" (or undercapitalisation) refers to the ratio between equity and authorised capital and is regulated by company law.

In the Baltic States, the regulations significantly differ in regard to the two concepts.

Insufficient capitalisation

Insufficient capitalisation is when a certain amount of assets or a certain turnover does not meet the necessary capital for a business venture of a certain scope. Insufficient capitalisation may already be present at the time a company is founded, resulting from financing that does not keep pace with the expansion of the business or through continued losses.

According to the Estonian Commercial Code, the minimum size of share capital for a private limited company is 2,500 euro. For companies which have a share capital of 2,500 – 5,000 euro (under AoA), equity (net assets) cannot fall below 2,500 euro on the last day of the accounting period.

The management board must call a meeting of shareholders if it is necessary for the interests of a private limited company, or if the net assets (the total assets minus the total obligations shown under liabilities on a balance sheet) of the private limited company are less than one-half of the share capital, or less than 2,500 euro (the minimum size of share capital) or other minimum amount of share capital stipulated by law.

Payments cannot be made to shareholders if the net assets of the private limited company, as apparent from the company's annual report approved at the end of the previous financial year, are less than, or would be less than, the total of share capital and reserves. In such cases, pursuant to the law or the articles of association, payments cannot be made to shareholders.

The minimum requirement for net assets also applies to companies which are founded without making contributions to share capital (no first payment of 2,500 euro). For these companies, the size of net assets at the end of the accounting period largely depends on how contributions (or in this case no contribution) have been accounted for (is it a claim against the shareholder or not), as well as how profitable the period following its founding has been.

Latvian law does not stipulate any required ratio between equity and authorised capital, except where equity is lower than the share capital. In such cases, the company is not allowed to distribute its profits as dividends.

According to Lithuanian law, a company's equity must always amount to at least 50% of its authorised capital. If the required minimum ratio of 1:2 between equity and authorised capital is not maintained, the Managing Director or Management Board must convene a Meeting of Shareholders to increase the equity no later than 3 months from obtaining knowledge of this fact. The insufficient equity must be restored to the required level within 6 months (at the latest) of the Management Board becoming aware of insufficient capitalisation.

Consequences of insufficient capitalisation

In Estonia, insufficient capitalisation can have the following consequences:

- Insolvency – If the ratio of one-half of the share capital or 2,500 euro (the minimum size of share capital) has not been restored, then the shareholders have to decide on whether to petition for bankruptcy. Please see below for liability regarding management board members.
- Liability regarding members of the management board – A member of the management board shall perform his or her duties with due diligence. Members of the management board who cause damage to a private limited company through violating their obligations shall be liable for compensation for the damage

caused. A member of the management board is released from liability if he or she proves that he or she has performed his or her obligations with due diligence (general liability clause). The Estonian Supreme Court has found that having net assets below less than one-half of the share capital, or less than the amount of 2,500 euro (the minimum size of share capital), and a subsequent delay in the submission of a bankruptcy petition, may be considered a grave error in management.

In Latvia, as mentioned above, the sole consequence is that the company may not distribute its profits to the shareholders as dividends. However, that does not in itself automatically mean liability for the directors or iniating insolvency.

If insufficient equity is not restored to the required level in Lithuania, the following risks arise for the company:

> The Lithuanian company register (in Lithuanian: *Registrų centras*) may impose penalties on the company; such penalties may include monetary sanctions against the Managing Director, or, in extreme cases, initiating liquidation proceedings;

> Financial statements disclosing insufficient capitalisation could induce creditors to file a petition for insolvency even in cases where insufficient capitalisation alone provides no grounds for declaring the company insolvent;

> If creditors file a claim with the court, the statutory liability limitation may not apply and, if further conditions are met, the Managing Director and/or the Management Board of the company may be held personally liable to creditors.

How to remedy insufficient capitalisation

If the net assets of a private limited company are less than one-half of the share capital, or less than 2,500 euro (the minimum size of share capital) or another minimum amount of share capital provided by law, the shareholders shall decide on:

> a reduction or increase of share capital on the condition that the net assets would thereby form at least one-half of the share capital and at least the 2,500 euro (the minimum size of share capital) or other minimum capital provided by law; or

> the implementation of other measures as a result of which the net assets of the private limited company would form at least one-half of 2,500 euro (the minimum size of share capital) or other minimum capital provided by law; or

> dissolution, merger, division or transformation of the private limited company; or

> submission of a bankruptcy petition.

Shareholders generally use the option of either redcuing or increasing a company's share capital. It is quick, effective and, depending on the amount involved, often the cheapest option. Dissolution, merger, division or transforming a private limited company are often extremely time-consuming.

The best option ultimately depends on the particular company (its structure and economic activity) and the size of its share capital.

In Latvia, equity may be increased either by covering the losses accrued from the profit of the current financial period, or by increasing share capital with or without agio. Covering losses means that profits cannot be distributed to shareholders, but achieves the result that the company's equity is equal to or larger than its share capital. Increasing share capital, in turn, requires an infusion of additional funds, fully paying up the additional share capital amount.

There are basically three options in Lithuania to adjust a company's equity:

> Cover the losses (with or without the offset/waiver of receivables); this option is only recommended if the company has a single shareholder or if all shareholders cover the loss in equal shares. Where additional contributions are not paid in equal shares, the equity stake of the shareholder paying a substantial portion of the contributions will not increase in relation to that of the shareholders either contributing to the loss coverage to a lesser extent or not contributing at all.

> Increase the equity by issuing new shares with or without the share premium (agio)/with or without the offset against the shareholder's receivables (the so-called debt equity swap);

> Reduce the authorised capital unless it already equals the (statutory) minimum capital.

Of course, a combination of the above measures is possible as well.

Equity can also be increased via an increase of authorised capital so as to reach the required Equity-to-authorised-capital ratio (1:2). However, this requires significantly more capital compared with the covering of losses.

Furthermore, another negative effect of an increase in authorised capital is that it further complicates the legal requirements regarding the amount of equity; this may cause problems in the future and, in certain circumstances, may necessitate a prompt reduction of authorised capital.
However, if the new shares are issued at a low par value but with a high premium (agio), the premium is disclosed under capital reserves in the company's balance sheet, thus increasing the company's equity.
This procedure also requires an amendment to the articles of association, including notarisation.

Advice:

> Insufficient capitalisation often occurs unnoticed and the risk is usually underestimated.

> Regulations vary considerably from country to country.

> The worst-case scenario can result in insolvency and the "piercing of the corporate veil".

> Companies should continuously keep an eye on their equity-to-capital ratio.

> Regular internal audits can help to uncover critical situations in advance – Rödl and Partner will gladly assist you with its service lines for accounting and auditing.

Thin Capitalisation

Thin capitalisation rules do not apply in Estonia.

Latvian law stipulates that interest payments are tax non-deductible for CIT purposes in proportion to the extent to which the average amount of debt obligations within the taxation period exceeds the equity of the taxpayer multiplied by four times. The equity used for proportion calculation purposes is the equity at the beginning of the taxation period as reported in the financial statements, excluding long-term investment revaluation reserve, and any other reserves that did not arise as a result of profit distribution.

According to the Lithuanian CIT Act, we speak of thin capitalisation if, for example, a company grants an intragroup loan to a related company (controlled liability) and the loan amount is at least four times the equity of the debtor company (1:4 ratio).

Consequences of Thin Capitalisation

In Latvia, interest payments in excess of the 1:4 debt-to-equity proportion are tax non-deductible and should be added to the taxable income amount in the taxpayer's tax return. If, for example, at the beginning of the taxation period the proportion does not increase, but the amount of debt obligation on which interest is calculated increases later in the taxation period, then taxpayers run the risk of having an amount of interest expense as tax non-deductible for CIT calculation purposes. Please note that interest expenses are fully tax non-deductible in cases of negative equity capital at the beginning of the taxation year.

In Lithuania, interest on a controlled loan amount that is four times the equity amount is not deductible for CIT purposes.
If the company has an authorised capital of 250,000 euro, any loan exceeding 1,000,000 euro is to be regarded as a controlled liability for corporate income tax purposes. Interest accrued on the amount by which the loan exceeds the authorised capital may not be claimed as deductible expenses for CIT purposes. Non-deductible expenses are taxed at a CIT rate of 15%.

Options to remedy Thin Capitalisation

Thin capitalisation in Latvia may be eliminated either by increasing the amount of paid up share capital, or by recording profit for the taxable period. However, for the taxation period within which an excess of 4:1 debt-to-equity ratio has occurred and, accordingly, the excess interest expenses were booked, thin capitalisation cannot be eliminated because the equity used for calculation is as it stands at the beginning of the taxation period.

Thin capitalisation can be eliminated by:

> appropriate adjustment of the company's authorised capital

> obtaining confirmation from a financial institution stating that it would grant a loan on the same terms and conditions (in line with the arm's length principle).

Advice:

> Thin capitalisation should be avoided or, if necessary, corrected for reasons of tax optimization.

> If a company generates losses in Latvia or Lithuania, these losses would be reduced by non-deductible expenses and taxable profit.

> In order to optimise a company's corporate income tax obligations, we strongly recommend examining the debt-to-equity ratio at least to the change of the financial year.

> Rödl & Partner is an experienced companion in all financial and tax questions. If you have any questions, please do not hesitate to contact our colleagues.

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> Review I: "Life Sciences Conference – Ensuring the safety and consumers' rights" in Vilnius

Hans Lauschke, Rödl & Partner Lithuania

In brief:

- The "Life Sciences Conference – Ensuring the safety and consumers' rights" took place on May 5, 2017 at the Quadrum Business Center in Vilnius, Lithuania. A total of 120 listeners and 17 speakers attended the conference.
- The conference was initiated and organized by Rödl & Partner in partnership with the Ministry of Foreign Affairs of the Republic of Lithuania, the State Food and Veterinary Service, Enterprise Lithuania, the Lithuanian Food Exporters Association and the Food Supplement Manufacturers Association.
- In addition to figures from leading public and private decision-making bodies, the speakers included high-ranking political representatives.
- The conference gave a comprehensive overview of topics covering recent developments in European food law and policies, including food safety, labelling requirements for food and food supplements.

A broad range of experts offered their insights during the "Life Sciences Conference – Ensuring the safety and consumers' rights". These included Mr. Vytenis Andriukaitis, the EU Commissioner for Health and Food Safety, Mr. Bronius Markauskas, the Minister of Agriculture of the Republic of Lithuania, prof. Aurelijus Veryga, the Lithuanian Minister of Health, Mr. Dirk Jacobs, Deputy Chairman of FoodDrinkEurope, Mr. Patrick Coppens, the Managing Director of Regulatory & Scientific Affairs at Food Supplements Europe, as well as Dr. Barbara Klaus, an attorney at Rödl & Partner. The guests used their expertise to shed light on food issues both from a national and EU perspective. The overall aim of the conference was to raise awareness of safer and healthier food production and consumption.

Vytenis Andriukaitis, EU Commissioner for Health and Food Safety

The European Union can proudly boast of probably having the most comprehensive and stringent system for the management of food risk in the world. Nevertheless, it cannot rightly be claimed that food safety has been satisfactorily "achieved", nor can the EU afford to relax its approach in any way. Europeans attitudes and concerns about food have changed significantly in recent times. We all now expect and demand not only safe but nutritious and healthy food that is produced in a sustainable and ethical way. The speakers at the conference all agreed that the European Union's policy of food security, which is already highly developed and rigorously enforced (making food in the EU the safest in the world), should be steered towards healthier diets for all. We are clearly still falling short in some areas.

From left: Patrick Coppens, Managing Director Regulatory & Scientific Affairs at FoodSupplementsEurope; Dirk Jacobs, Deputy Chairman of FoodDrinkEurope; Tobias Kohler, Head of Rödl & Partner Lithuania; Prof. Aurelijus Veryga, Lithuanian Minister of Health; Bronius Markauskas, Minister of Agriculture of the Republic of Lithuania

Despite Lithuania's successful adaptation to European Union standards in most health-related areas and increasing awareness of nutrition, Lithuania still is near the bottom of the EU when it comes to healthy eating, with a large portion of the population suffering from malnutrition, especially regarding vitamins, according to Minister of Health, Aurelijus Veryga. The Ministry of Health aims to raise public awareness of healthy eating over the next few years, particularly with regard to lowering consumption of salt and sugar. Carbonated beverages containing high levels of sugar may be subject to taxation as it is in other countries around the world.

The alcohol industry may also face significant changes in the coming years. Commissioner Mr. Andriukaitis confirmed that the European Commission intends to invite the alcohol industry to develop a proposal for improved self-regulation. Since the report on the mandatory labelling of the list of ingredients and nutrition content for alcoholic beverages was adopted by the European Commission last March, the right of consumers to be fully informed about what they drink has been increasingly recognised and there is growing pressure to reveal more information about exactly what goes into the things we drink.

The world is changing and food law and policy is evolving alongside it. New technology, trade agreements, consumer demands and industry goals will change the relationship between the government and private sector, and domestic and international stakeholders. And since many hands make light work, the experts at the conference concluded that the public and industrial sector must work hand in hand in order to ensure that consumers' rights are being met in the form of safer and healthier food and drink products.

Presentation Practice Group "Food Law" of Rödl & Partner:

As a leading law firm in the Baltic States, Rödl & Partner consults with a team of specialists a broad range of national and international companies from the food and beverage industry regarding all issues - from product development, production and distribution to marketing.

We accompany companies in the following areas:

- foods and food supplements labelling issues
- nutrition and health claims
- advertising of food supplements
- advertising of food products, including drinks and alcoholic beverages
- food contact materials, including packaging and its labelling
- genetically modified organisms and novel foods
- traceability
- labelling of cosmetic products
- issues on food safety, including risk assessment and crisis management
- representation in food supplements notification proceedings
- representation before public authorities and courts on a variety of issues relating to food law
- Crisis management (product withdrawal from the market, RASFF, RAPEX)
- issues on intellectual property, such as trademark registration, trademark owners' rights protection
- legal contracts, including the production, co-operation, supply and distribution, distribution preparation
- compliance assessments

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> Review II: Spring Conference of the International Association of Young Lawyers in Riga

Kristīne Zvejniece, Rödl & Partner Latvia

In brief:

> From 17th to 20th May 2017, the spring conference of the International Association of Young Lawyers AIJA (Association Internationale des Jeunes Avocats) was held under sponsorship of Rödl & Partner.

> 300 lawyers from 43 countries participated in the event taking place in the Latvian capital.

AIJA is the world's largest association of young attorneys and in-house lawyers under the age of 45. Since 1962, AIJA offers young lawyers opportunities to network, learn and develop internationally. AIJA has 4,000 members in 90 countries worldwide.

The organisation of the conference took place under the leadership of Kristine Zvejniece, Senior Lawyer and Associate Partner of Rödl & Partner Riga.

In the course of the conference, two seminars were held on "Environmental & Energy transactions – how to conduct / avoid litigation?" and "Start-up World - from seed to crop: current trends and developments".

Whether they are central to a transaction or merely a minor aspect to a deal environmental and energy matters are capable of derailing a transaction or becoming an expensive dispute. Legal disputes in this field are very complex, time-consuming and price-intensive. It is therefore essential to have the right legal dispute strategy, alternative dispute resolution methods and experienced experts in many areas of law that are familiar with the specificities of dealing with states and public authorities. Tobias Kohler, head of Rödl & Partner Vilnius office, therefore, spoke appropriately about "Defending against state interventions and successfully protecting energy related investments – EU-law and arbitration under BIT and ECT".

The second seminar focused on the topic of start-ups and explored current trends in the industry as well as best practices for their support. Creating a start-up friendly and supportive environment is an important issue for many governments around the world. The Baltic countries are often seen as revolutionary in this field. Special attention is given to key drives for choosing suitable legal setting for business idea, investment and financing strategies for start-ups, negotiation terms with investors, protection and marketing of IP rights, FinTechs, management and employment incentive programs for start-ups. On the podium, successful start-up representatives from the Baltic countries discussed - among others representatives of SPORT ID from Estonia as well as Bio2You and Creamfinance from Latvia. The discussion was moderated by Alice Salumets, head of Rödl & Partner Tallinn office.

In addition to the two programme streams, there was a selection of activities including interactive sessions on key skills required to produce legal texts, a corporate counsel event, and a human rights session with prominent speakers, concentrating on the currently significant aspect of fake news and their impact, as well as many more.

The AIJA Conference is not only a place for exchanging current issues in the field of legal advice, but also an ideal platform for international networking, which not only gives the participating lawyers, but also their companies new perspectives and insights.

> News in Brief

Estonia

Country-by-country reporting for large corporations

The Estonian Parliament passed laws amending the Tax Information Exchange Act and the Taxation Act to commence with country-by-country reporting (also known as CbCR) for large corporations (from March 2017).

An Estonian tax resident corporation is deemed a reporting entity if its consolidated turnover is 750 million euro and it engages in cross-border activities (also a permanent establishment). The reporting entity as a rule is the group's parent company. If the parent company does not fulfil its reporting obligations then another reporting entity, which is also a tax resident of Estonia, is obliged to convey all the information required of it or submit a country-by country report if it fails to obtain all the information required to perform its reporting obligations.

Country-by country reporting is a report concerning multinational enterprise groups that includes aggregate information on multinational enterprise groups relating to the amount of revenue, profit or loss before income tax, income tax paid and income tax accrued, stated share capital, accumulated earnings, the number of employees and tangible assets other than cash or cash equivalents with regard to each such state and jurisdiction in which the multinational enterprise group operates, and information enabling the identification of the members of the multinational enterprise group, including information concerning the state or jurisdiction of tax residency of the members of the group or under the legislation of which it is formed if it is different from the jurisdiction of tax residency, and information on the main business activities of the members of the group.

Reporting entities which are tax residents of Estonia have to collect the information necessary to submit a country-by-county report specified under the Tax Information Exchange Act and submit the country-by-county report to the tax authority by December 31 of the calendar year following the previous financial/reporting year.

In cases where a group has more than one member that complies with the definition of a reporting entity, the group may notify the tax authority of the appointment of one member of the group to submit the county-by-country report on behalf of the group. This member of the group shall be ensured access to all information pertaining to the group which is required for the submission of the country-by-country report.

If a member of a group that is a tax resident of Estonia is not a reporting entity, the tax authority must be notified which members of the group are a reporting entity and be informed of the tax residency of any such entity. The notification obligation shall be performed within six months of the end of the financial year that is the reporting year of the group.

Latvia

Companies of Importance to National Security

On March 29 of this year, amendments to the Law on National Security and Commercial Law came into force introducing the notion that a company can be of importance to national security. The amendments concern large telecommunication companies, national electronic mass media companies, as well as specific gas, electricity and heating companies in the energy sector.

The amendments require approval from the Latvian government (the Cabinet of Ministers) before a person or persons acquire a substantial role or considerable influence in a company of importance to national security or become a member of such a company. This extends to involvement in a company registered in Latvia that is part of a company of importance to national security.

The government shall determine the responsibilities of companies of importance to national security and will ultimately approve their proposed dealings, including changes in beneficiaries and new partnerships. There are exceptions to the aforementioned rules, such as when shares are obtained by the company itself or are transferred to a public undertaking. Any decision by the government can be legally challenged.

The Company Register will publish information on companies that meet the conditions of a company of importance to national security on its website. This information will be available from June 15, 2017.

Decision of the Latvian Constitutional Court regarding Good Faith Acquirer of Real Estate in Criminal Proceedings

On March 8, 2017, the Latvian Constitutional Court passed judgment in a case in which the constitutionality of some provisions of the Latvian Law on Criminal Procedure were assessed. The provisions in question concerned how properties owned by third parties are declared illicitly and get returned to their wrongful owners in pre-trial criminal proceedings. The Constitutional Court declared as constitutional those provisions covering cases whereby someone buys real estate property that later turns out to have been fraudulently obtained by the seller or other previous owner (and as such indicated in the land book) or by other criminal means. This should ensure that illegally acquired property is returned to the original owner (the victim of the crime), and the buyer has the right to claim damages.

The aforementioned judgment is significant for the interpretation of the law and case law involving disputes over real estate ownership. Case law was previously incon-

sistent in this area but the new clarification will make it easier to resolve such disputes.

Lithuania

Amendments to the Law on Commercial Arbitration of the Republic of Lithuania come into effect as of July 1, 2017

Among other changes, the amended arbitration law will benefit parties to arbitration taking place in Lithuania by affording them the possibility of keeping the arbitration proceedings confidential, even during court interference (i.e. the granting of interim protection measures). This approach will increase Lithuania's attractiveness as a place to resolve disputes through arbitration and will provide parties with greater protection with respect to their particular dispute.

The Lithuanian Supreme Court decision of April 24, 2017 (No e3K-7-115-915/2017) on intentional bankruptcy regarding liability in bankruptcy

The Supreme Court of Lithuania (the Court) has rendered a decision whereby the court establishes the presumption of damages to creditors in the case of intentional bankruptcy. The decision makes it easier for creditors to settle their claims with regard to intentional bankruptcy. People that intentionally cause bankruptcy will be viewed as having caused damage to creditors, since creditors are put in a difficult position to prove that damage was caused to them. Unless a person who causes intentional bankruptcy can prove otherwise, it will be presumed that his/her actions were harmful to creditors.

Reminder that the new edition of the Labor Code comes into effect as of July 1, 2017

The newly amended Labor Code of the Republic of Lithuania is due to take effect on July 1, 2017 (regarding the new Labour Code: Baltic Newsletter, issue November 2016). Companies with employees in Lithuania are advised to be ready for the new regulations as they will bring about many changes.

> Internal

Latvia

New employee Kaspars Balodis, Senior Counsel, Rödl & Partner Riga

Kaspars Balodis was previously a judge for the Constitutional Court of Latvia for 10 years. He teaches private law at the Faculty of Law at the University of Latvia. He is the author of many legal publications and a respected attorney in civil and commercial law in Latvia.

Mr. Balodis studied law at the Faculty of Law of the University of Latvia and obtained his LL.M. degree, as well as a doctoral degree from the Faculty of Law of the University of Münster.

Mr. Balodis speaks Latvian, English, German, and Russian.

International conference "TransBaltica 2017"

Dainis Vodolagins

Dainis Vodolagins, Senior tax consultant at Rodl & Partner Riga, spoke at the international conference "TransBaltica 2017" which was dedicated to the development of new opportunities for the transport and logistics industries. He shared new trends in VAT application in transactions concerning the acquisition and delivery of goods by the tax authorities and what needs to be taken into account by entrepreneurs to mitigate possible VAT risks in their transactions.

Seminar "Aspects of Providing Services in Germany"

From left: Kaspars Fridenbergs-Ansbergs; Elīna Putniņa

Elīna Putniņa, Head of the Tax Department of Rodl & Partner Riga, and lawyer Kaspars Fridenbergs-Ansbergs spoke at the seminar "Aspects of Providing Services in Germany", which was organised by the Investment and Development Agency of Latvia as part of the Enterprise Europe Network project. The seminar was targeted at Latvian entrepreneurs in order to inform them of new business opportunities in Germany. Ms. Putniņa and Mr. Fridenbergs-Ansbergs shared some insights on the main legal and tax risks faced by Latvian companies when operating in Germany, as well as what issues need to be taken into account when entering the German market.

Lithuania

New employee Pranas Mykolas Mickus, Lawyer, Rödl & Partner Vilnius

Pranas Mykolas Mickus previously gained experience in other major law firms, where he was responsible for legal and tax matters. He was also working in the field of M&A.

Mr. Mickus studied law and politics in the University of Essex and also obtained LL.M. in International Business Law (with a particular focus on international commercial arbitration) in Central European University, Budapest.

Mr. Mickus speaks Lithuanian, English and French.

Advancing together

„In close collaboration with our clients we develop value-creating ideas that we implement together."

Rödl & Partner

„In connecting and striving for common thinking we regard unity as the clearest form of expression. It is an essential component of our ongoing repertoire."

Castellers de Barcelona

"Each and every person counts" – to the Castellers and to us.

Human towers symbolise in a unique way the Rödl & Partner corporate culture. They personify our philosophy of solidarity, balance, courage and team spirit. They stand for the growth that is based on own resources, the growth which has made Rödl & Partner the company we are today.

„Força, Equilibri, Valor i Seny" (strength, equilibrium, valour and common sense) is the Catalan motto of all Castellers, describing their fundamental values very accurately. It is to our liking and also reflects our mentality. Therefore Rödl & Partner embarked on a collaborative journey with the representatives of this long-standing tradition of human towers – Castellers de Barcelona – in May 2011. The association from Barcelona stands, among many other things, for this intangible cultural heritage."

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