

Rödl & Partner

LITHUANIAN LEGAL AND TAX ENVIRONMENT: AN ATTRACTIVE DESTINATION FOR YOUR BUSINESS


Rödl & Partner

Riga, November 15, 2018

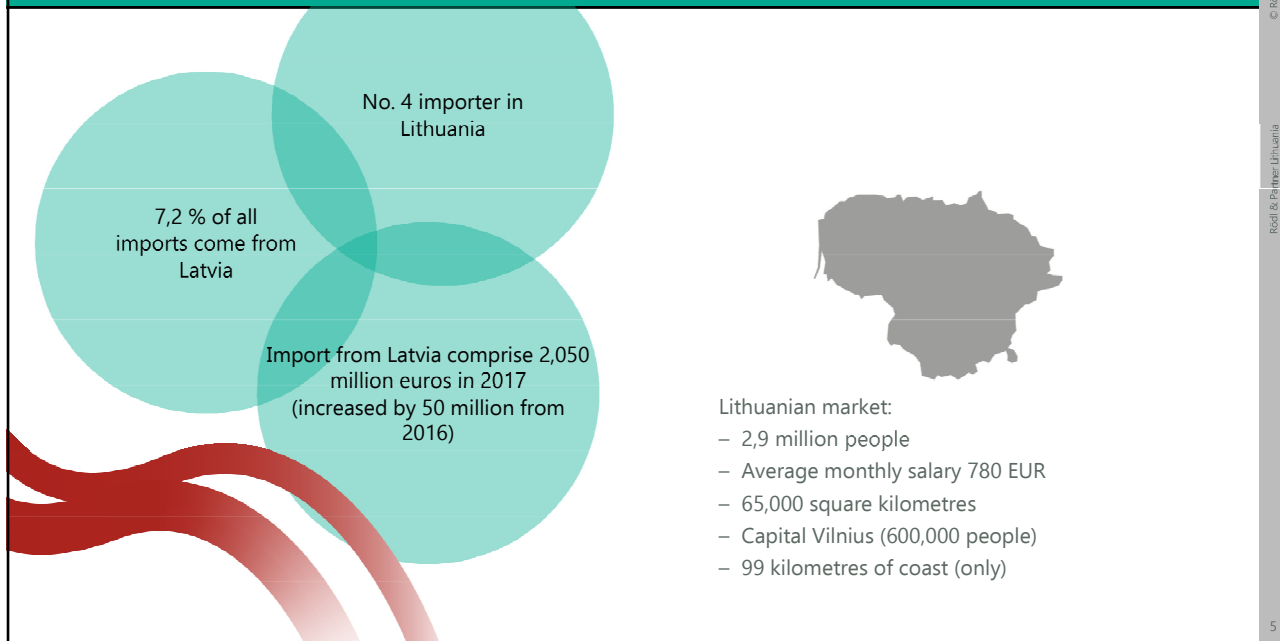


AGENDA	
1	Lithuanian corporate landscape
2	Establishing business in Lithuania
3	Employment relations and related issues
4	Taxation
5	Tax changes from 2019

1	
LITHUANIAN CORPORATE LANDSCAPE	
1.1	Market in Lithuania
1.2	Forms of business
1.3	Subsidiary, branch or representative office
1.4	Recent developments



1.1 MARKET IN LITHUANIA



1.2 FORMS OF BUSINESS

Principal forms of business entities are:

- Small Partnership (MB)
- General partnership or limited partnership entities
- Private / public limited liability company (UAB / AB)

	Small Partnership (MB)	Private limited liability company (UAB)	Public liability company (AB)
Minimum number of stakeholders	1 member (individual)	1 shareholder	1 shareholder
Maximum number of stakeholders	10 members	249 shareholders	Unlimited
Minimum amount of capital	None (MB members define contributions)	≥ EUR 2,500	≥ EUR 40,000
Liability	Limited civil liability – shareholders are not held personally liable for MB obligations	Limited civil liability – shareholders are not held personally liable for UAB obligations	Limited civil liability – shareholders are not held personally liable for AB obligations

1.2 FORMS OF BUSINESS

Total by legal form	104 117
Sole trader (Į)	10 671
Public enterprise (VŠĮ)	4 193
Small partnership (MB)	3 843
Limited liability company (UAB)	67 442
Public limited liability company (AB)	287

- 81% out of all legal entities have 1 to 9 employees
- In 2017 number of newly established SME's – 9900
- In 2017 number of deregistered SME's – 4200
- In 2017 there were 2973 insolvency procedures initiated (increasing every year)

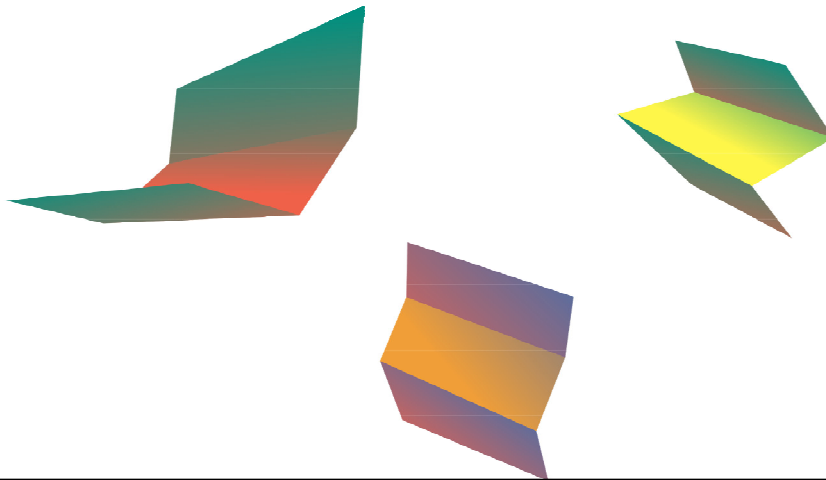
1.3 SUBSIDIARY, BRANCH OR REPRESENTATIVE OFFICE

- A **branch** is not considered a distinct legal entity from the foreign company, whereas a subsidiary is regarded as an independent Lithuanian company.
- **Representative office** is allowed to perform very limited non-commercial activities (sufficient vehicle for purposes of marketing, representation and promotional activity on behalf of the parent company).
- The registration of a branch in Lithuania would automatically lead to the presence of a **permanent establishment**, whose income is taxed under similar rules as a Lithuanian company (with some exceptions).



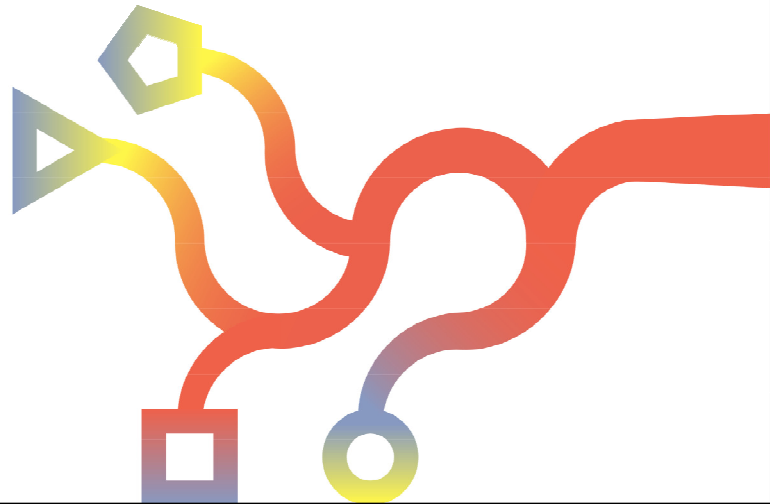
1.4 RECENT DEVELOPMENTS

- Science and business valleys
- Industrial parks (free economic zones)
- Booming shared service centers (Barclays, Western Union, Danske Bank, etc.)



ESTABLISHING BUSINESS IN LITHUANIA

- 2.1 Establishment of limited liability company or subsidiary of foreign entity
- 2.2 Documents required
- 2.3 Requirements for the CEO & Board members in Lithuania



2.1 ESTABLISHMENT OF LIMITED LIABILITY COMPANY OR SUBSIDIARY OF FOREIGN ENTITY

Step	Time	Costs	Comments
Preparing founding documents	1-3 days	Legal costs, if carried out by a legal advisor	A Lithuanian address is needed for the company registration documents (consent is required from the owner of the premises)
Opening an accumulative bank account (not necessary for the establishment of subsidiary).	< 1 Day	Free	The accumulative bank account is only used for depositing share capital
Transferring share capital to the accumulative account (not necessary for the establishment of subsidiary).	< 1 Day	Free	If the share capital is higher than the minimum requirement of EUR 2500, only part of it needs to be transferred to the accumulative account (25%, but no less than EUR 2,500)
Notarising the founding documents at the notary's office.	1-3 days	EUR 60 - 290, depending on the amount of share capital.	
Registering the company in the Register of Legal Entities.	1-3 days	EUR 57	The company may be established electronically or confirmed by the notary
Signing an employment agreement with the company's general manager.	< 1 Day	Free	The employment fact has to be notified to State Social Insurance Fund Board

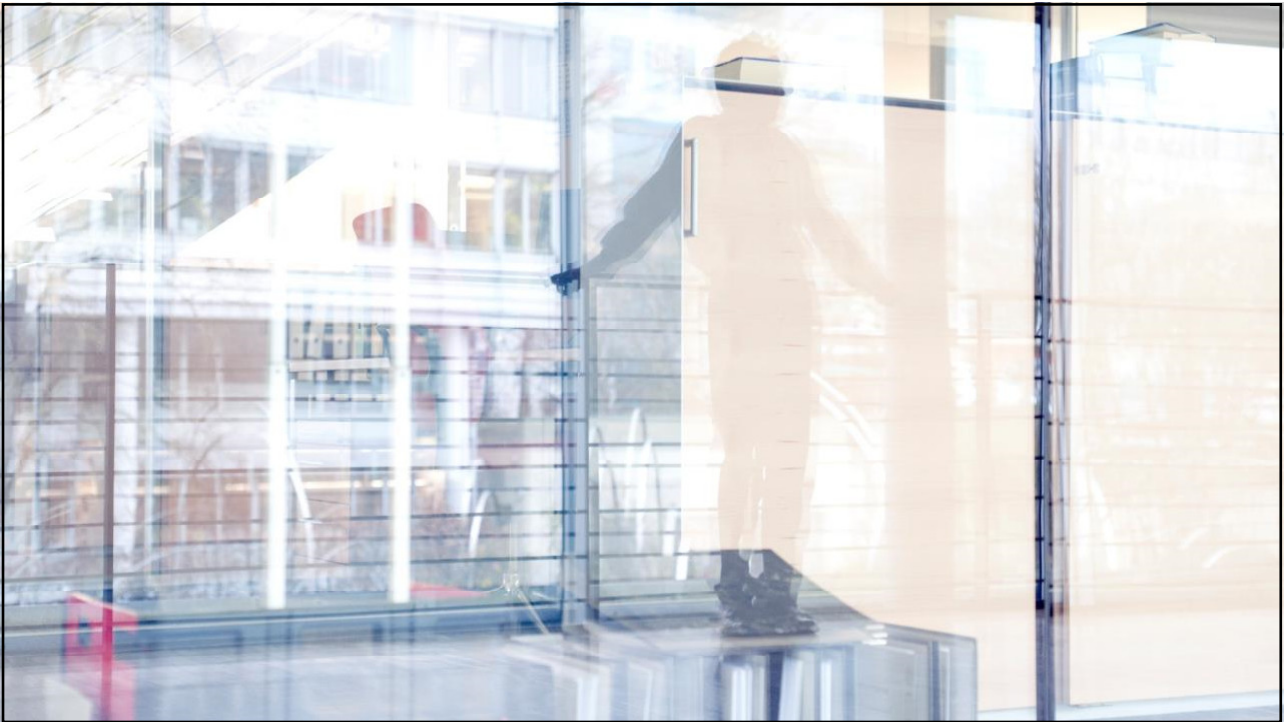
2.2 DOCUMENTS REQUIRED

For the purpose of establishment of the subsidiary of a foreign company the founder shall have the following documents:

- the extract from the Commercial Register of the foreign state confirmed with an Apostille or duly legalized;
- a copy of its Articles of Association confirmed with an Apostille or duly legalized;
- a copy of the annual financial statements of the founder of the last financial year confirmed with an Apostille or duly legalized (in case according to the laws applicable to the founder the consolidated annual financial statements shall be prepared – it is required a copy of the annual consolidated financial statements).
- Apostille is not required for Latvian and Estonian documents.

2.3 REQUIREMENTS FOR THE CEO & BOARD MEMBERS IN LITHUANIA

- CEO and members of the Board shall be individuals.
- Employment agreement has to be concluded with the CEO.
- In case CEO is a citizen of an EU/EFTA member state, he is entitled to be and work in Lithuania without limitations. A citizen of an EU/EFTA member state is not required to receive any residence or work permit.
- However, if he intends to reside and work for a longer period than 3 months, he is obliged to receive a Certificate Confirming the Right of Temporary Residence in Lithuania.



3

EMPLOYMENT RELATIONS AND RELATED ISSUES

- 3.1 Notice of Termination of Labor Agreement
- 3.2 Agreement of non-compete / Types of Labor Agreements
- 3.3 Payroll Features
- 3.4 Work and Rest Time



3.1 NOTICE OF TERMINATION OF LABOR AGREEMENT

Conditions of Termination		Before	Now
Under employee's initiative	Non-important reasons	14 working days	20 calendar days
	Important reasons	3 working days	5 working days
Under employer's initiative	Without employee's fault	2 months notice period	1 month or 2 weeks notice period
	Without employee's fault (for employees, who have 5 or less years remaining until retirement age)	4 months notice period	doubled notice periods
	Without employee's fault (for employees under 18; for disabled employees; for employees, who raise a kid under 14)	4 months notice period	tripled notice periods
	Under employer's will (without employee's fault)	-	3 working days. Payment of severance compensation shall be no less than 6 average monthly salary (AMS)

3.2 AGREEMENT OF NON-COMPETE / TYPES OF LABOR AGREEMENTS

	Before	Now
Agreement of non-compete	Non regulated	<ul style="list-style-type: none"> • Agreement shall be valid for no longer than 2 years after the end of labor agreement; • During the time of non competing the employer shall pay to the employee compensation, which shall be not less than 40 % of employee's AMS.
Types of Labor Agreements	<ul style="list-style-type: none"> • Of unlimited term; • Of fixed term, temporary, seasonal; • Due to secondary job function; • Due to remote work; • Other. 	<ul style="list-style-type: none"> • Of unlimited term; • Of fixed term, • Of temporary work; • Of apprenticeship; • For project work; • Of workplace sharing • Of work for several employers; • Seasonal.

3.3 PAYROLL FEATURES

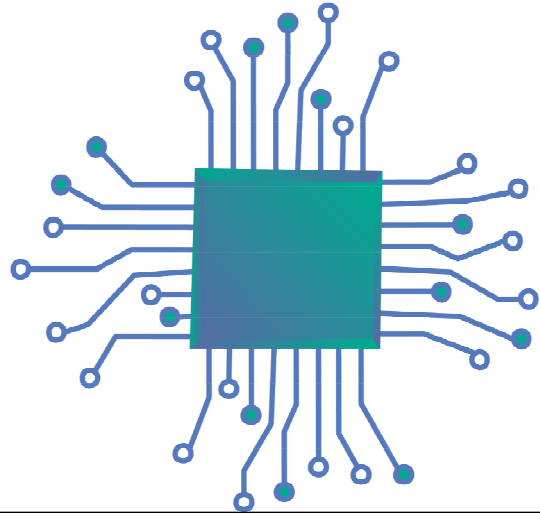
Payroll	Before	Now
Minimum salary	Not limited	The minimum salary is allowed to pay only for unskilled jobs
Payment for bank holidays	Paid at least double employee's salary	
Compensation for weekends and holidays	Time for working on weekends or bank holidays can be taken as another day off or additional day added to annual leave time. Employee's request is necessary.	Time for working on weekends or bank holidays is multiplied by special rates and this time added to annual leave time. Employee's request is necessary.
Payment for work on night time	Night work hours shall be paid not less than 1,5 employee's salary	

3.4 WORK AND REST TIME

	Before	Now
Maximum working time	Including overtime, seven days should not exceed 48 hours	Including overtime and work on an agreement for extra work cannot be longer than 12 hours per day and 60 hours per week
Overtime	Overtime may not exceed 120 hours per year	Overtime may not exceed 180 hours per year. Exception: the higher number of hours is agreed in a collective agreement
Annual leave	28 calendar days per year	<ul style="list-style-type: none"> ▪ 20 working days per year (if employee works 5 days a week) ▪ 24 working days per year (if employee works 6 days a week)

TAXATION

4.1	Taxes in Lithuania
4.2	Corporate income tax
4.3	Personal taxation
4.4	VAT



4.1 LITHUANIAN TAX SYSTEM



4.2 CORPORATE INCOME TAX

CIT rate

- 15% / 5% / 0%

Taxable income

- All income sourced in Lithuania or outside

Allowable expenses

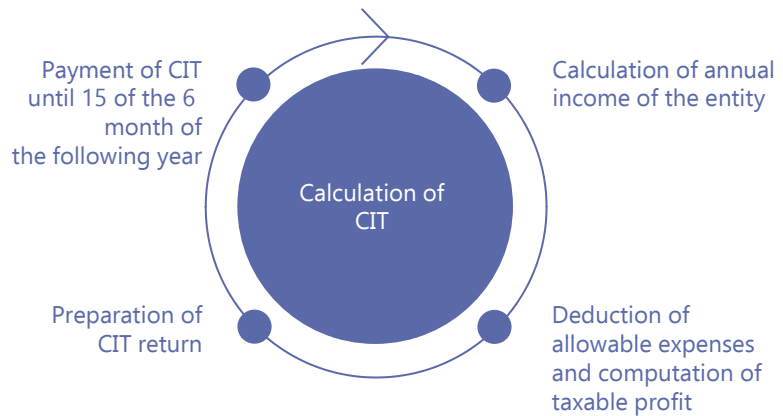
- All business related expenses
- 50% of representation expenses (<2% annual income)

Loss carry forward

- Unlimited, up to 70% per year
- No loss carry back

Anti-avoidance rules

- Transfer pricing
- Thin-cap rules (4:1)



4.2 CIT - PERMANENT ESTABLISHMENT AND WITHHOLDING TAX

- Foreign (nonresident) companies, which are defined as companies not incorporated in Lithuania, are subject to profit tax on their **Lithuanian-source income only (such as royalties, dividends or interests)**.
- A foreign enterprise is deemed to have a permanent establishment in Lithuania if it satisfies any of the following conditions:
 - It permanently carries out activities in Lithuania.
 - It carries out its activities in Lithuania through a dependent representative (agent).
 - It uses a building site or a construction, assembly or installation object in Lithuania.
 - It uses installations or structures in Lithuania for prospecting or extracting natural resources, including wells or vessels used for that purpose.

Subject to particular provisions of Treaty on the Avoidance of Double Taxation.



4.2 CIT - CAPITAL GAINS

- Capital gains are included in taxable profit and are subject to tax at the regular profit tax rate, except for gains and losses derived from disposals of securities and derivatives.
- A capital gain derived from the **sale of shares** of a company registered in an EEA country or in a tax treaty country is **exempt from tax** if the shares have been held for an uninterrupted period of at least 2 years and if the holding represents more than 25% of the shares of the company throughout that period.
- Capital gains derived from the transfer of shares in a **reorganization** or from another transfer specified in the law is **exempt from tax** if the shares have been held for an uninterrupted period of at least 3 years and if the holding represents more than 25% of the shares of the company throughout that period.

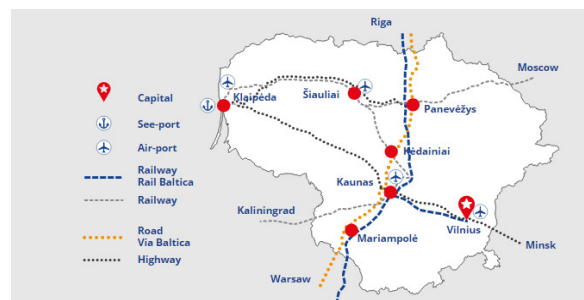
4.2 CIT - INCENTIVES

- Entities registered and operating in a free economic zone benefit from 100% exemption from profit tax for 10 years and a further 50% reduction in profit tax for an additional 6 years if they satisfy either of the following conditions:
- They make investments in fixed assets of at least EUR 1 million, and at least 75% of their income is derived from the activities in FEZ.
- The list of activities in which the entity has to be involved in order to apply the tax exemption was eliminated from 2018. This means that the tax exemption will be applicable for entities involved in any sort of activity in a FEZ, except for sales activity



4.2 CIT - INCENTIVES

- FEZ incentive would also apply to companies doing investments in fixed assets of at least EUR100,000, when their average number of employees is no less than 20, and at least 75% of their income is derived from the activities in FEZ.
- The above benefits are not available to credit institutions and insurance companies.
- No tax is applied on dividends paid to foreign entity, no property tax and other reliefs.
- Currently, seven free-economic zones are located in Akmenė, Kaunas, Kėdainiai, Klaipėda, Marijampolė, Panevėžys and Šiauliai.



4.2 CIT - INCENTIVES

Incentive	Main benefits of the relief
Investment project incentive	The companies implementing investment projects are entitled to deduct 2 times the costs of fixed asset.
Research and Development (R&D) incentive	Expenses incurred for qualifying R&D works may be deducted 3 times during the tax period in which they are incurred.
Patent box	CIT rate of 5% will be applied on the profit from the usage and sale of intangible assets.
Tax relief for funds granted for film production	The company granting the support could get a cash-back from the budget, i.e. a grant of EUR 100 would result in EUR 111.25 cash-back from the budget.

4.2 CIT - VENTURE CAPITAL FUNDS

- Introduction of one-level taxation (tax apply for final investors – individuals)
 - all investment income earned by funds is non-taxable
 - units or other securities in funds transferred by investors are non-taxable
 - fund's profit paid out to investors (legal entities) is not taxable at the fund or investor's level
 - dividends paid out to investors (legal entities) are not subject to corporate income tax

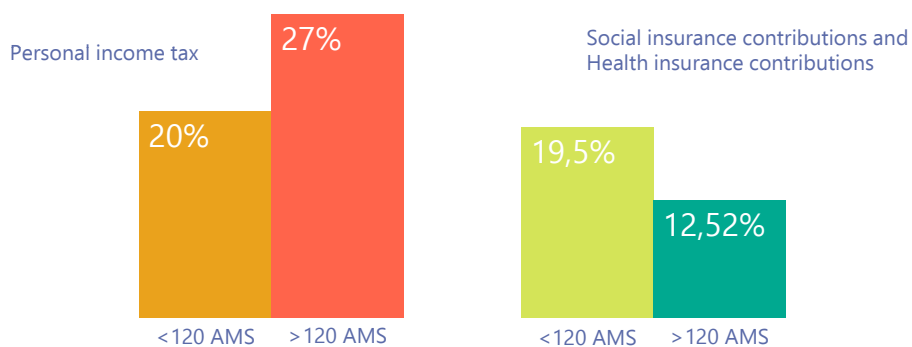
4.2 CIT - CRYPTOCURRENCIES

- Mining – nontaxable, until the crypto is sold. Acquisition costs can be deducted.
- Sale-purchase of cryptocurrency – taxation of profit (difference between purchase and sales price).
- ICO (initial coin offering)
 - Securities token – taxation similar to securities.
 - Utility tokens – subject to tax when the token is utilized.
 - Equity tokens – taxation when the cryptocurrency is received.



4.3 PERSONAL INCOME TAXATION - EMPLOYMENT

From 2019

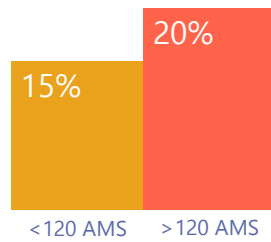


AMS – average monthly salary. In 2018 it was 926 EUR (gross)

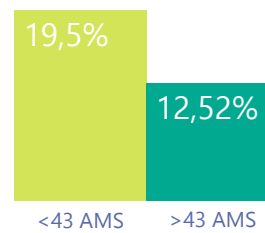
4.3 PERSONAL INCOME TAXATION - ENTREPRENEUR

From 2019

Personal income tax



Social insurance contributions and Health insurance contributions



AMS – average monthly salary. In 2018 it was 926 EUR (gross)

4.3 MINIMUM SOCIAL INSURANCE CONTRIBUTION AMOUNT

- Employers in Lithuania must calculate and pay social insurance contributions not lower than the ones calculated for minimum monthly salary (which is 555 EUR from 2019).
- Example:

- employee is working a half-time and his salary amounts to 200 EUR;
- the amount of monthly social insurance contribution paid by the employer will be:

$$555 * 1,79 \% = 9,93 \text{ EUR}$$
$$(555 - 200) * 19,5\% = 69,22 \text{ EUR}$$

- The amount of monthly social insurance contributions paid by the employee will be:

$$200 * 19,5\% = 39 \text{ EUR}$$

4.3 MINIMUM SOCIAL INSURANCE CONTRIBUTION AMOUNT

Exceptions for the social insurance contributions to be calculated for a lower amount than MMS:

- The person has more than one insurer in Lithuania;
- The person receives social insurance pension (from sources in Lithuania);
- The person is not older than 24 years;
- Employee did not work due to non-insurance period (e.g. unpaid leave, educational leave or other);
- Employee received allowance for sickness, maternity or paternity leave.
- The person has an A1 certificate confirming the payment of taxes in another state.

4.3 VACATION FROM CONTRIBUTIONS DURING THE FIRST YEAR OF BUSINESS

Newly established business entities may not pay state social insurance contributions in first year of business.

This tax exemption may only be applied to:

- Self-employed persons;
- Owners of personal enterprises;
- Members of small partnerships;
- Farmers and their partners.

The person, must:

- Be self-employed for the first time;
- Have not been self-employed for at least 10 years until 1st January 2018.

4.4 VAT - REGISTRATION

	Lithuanian tax payers	Foreign entities	Foreign entities	Distance sellers
Condition	Income from economic activity	VAT related activity in Lithuania	Acquisitions of goods in Lithuania from another EU Member State	Sales to Lithuanian customers (B2C) online
Threshold (during the last 12 calendar months)	EUR 45 000	No threshold	EUR 14 000	EUR 35 000

4.4 VAT - RATES

- The standard VAT rate is 21 % and it applies to the majority of goods and services supplied in Lithuania

21 %



- Books, newspapers, other printed material;
- Public transport services;
- Heating of residential premises;
- Hotel accommodation.

9 %



- Pharmaceuticals, subject to restrictions;
- Technical aid devices and their repair for disabled persons.

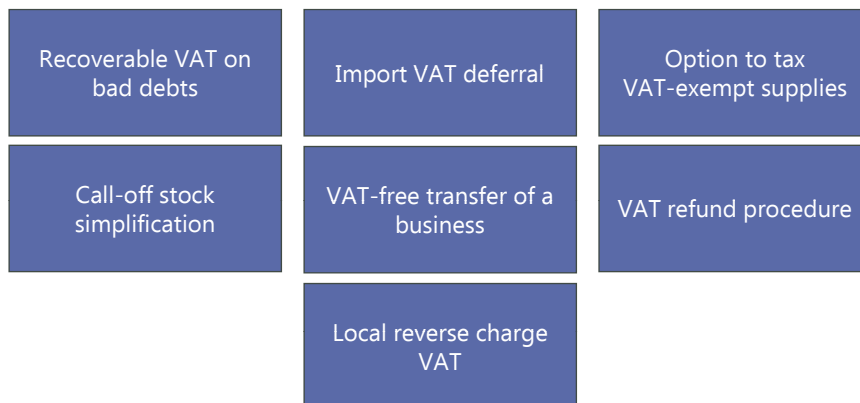
5%



4.4 VAT - COMPLIANCE

Report	Frequency	Deadline
VAT returns	monthly	25 th day of the following month
iSAF reporting (electronic system for invoice register)	monthly	20 th day of the following month
EC Sales Listing	monthly	25 th day of the following month
Intrastat	monthly	10 th working day of the following month

4.4 VAT - THINGS YOU SHOULD KNOW



TAX CHANGES FROM 2019

8.1 Changes in taxation of salary

8.2 Future steps

8.3 Tax amnesty

8.4 Status of reliable tax payer

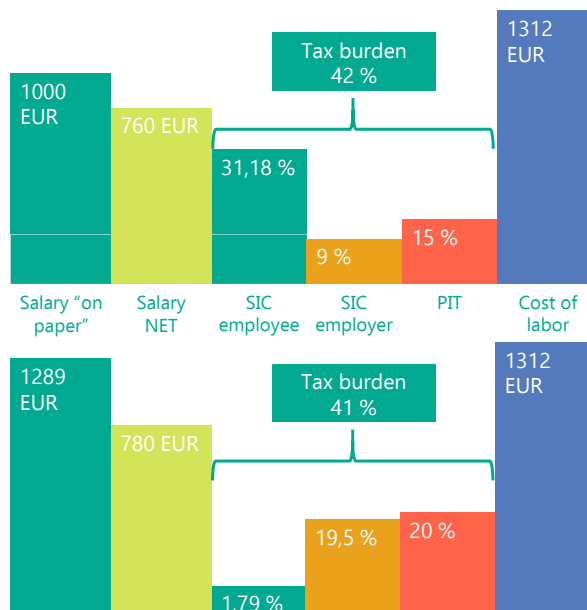
8.5 Status of reliable tax payer

5.1 SALARY TAXATION REFORM FROM 2019

2018

2019

- Not taken into account:
 - Contributions to pension funds
 - Non-taxable income



5.2 SALARY TAXATION REFORM FROM 2019

What to do:

- Multiply the current gross salary by the coefficient of 1,289.
- Amend the employment agreement with each employee until year 2019.

Result

- The costs of the employer remains the same, whereas the salary of the employee slightly increases.
- Amended rates of personal income tax and social security contributions will come into force as from 1 January 2019.

5.3 TAX AMNESTY

There is a scheduled "tax amnesty", according to which taxpayers for the period from 2019 1 January until 1 July 2019 have the opportunity to voluntarily declare and tax unpaid unduly taxable income on fines and latency.

Violation still might be subject to criminal law, if the amount of tax exceed 37,500 EUR (there is lack of clarity if the criminal code will be amended respectively). It is highly recommended to evaluate the risks.



5.4 RELIABLE TAXPAYER

The tax authorities has introduced the concept of reliable taxpayer

The taxpayer fails to meet the minimum criteria for a reliable taxpayer when:

1. During the three years prior to the assessment, a fine was imposed on fraudulent bookkeeping or related offenses and such violations resulting in more than 15,000 EUR of unpaid taxes.
2. During the three years before the assessment, a taxpayer was charged for illegal employment.
3. The company or its director has been convicted of fraud, unjust enrichment, etc.
4. During the year prior to the assessment, a fine of 1,500 Eur or more was imposed for administrative offenses.

Taxpayers who do not meet one of these criteria will be made public and restricted their ability to participate in public procurement.

5.5 INCREASE OF FINES

A fine of 50 to 100 percent of the amount of unpaid tax shall be imposed. It also establishes the possibility of doubling the amount of the fine if the same violation has been committed repeatedly for a period shorter than 3 years.

CONTACT

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