ON THE APPROVAL OF THE RULES FOR SUBMITTING THE TAXPAYER APPLICATION TO ENDORSE THE APPLICATION OF THE PROVISIONS OF TAX LEGISLATION TO THE FUTURE TRANSACTION, EXAMINATION OF THE APPLICATION, TAKING AND CHANGE OF THE DECISION THAT IS BINDING ON THE TAX AUTHORITY

19 October 2011 No VA-105
Vilnius


1. I hereby approve the enclosed hereto:
   1.1. the Rules for submitting the taxpayer application to endorse the application of the provisions of tax legislation to the future transaction, examination of the application, taking and change of the decision that is binding on the tax authority.
   1.2. The form of the Decision on the application of the provisions of tax legislation to the future transaction (form FR1111).

2. I hereby establish that this Order shall become effective from 1 January 2012.

MODESTAS KASELIAUSKAS, THE HEAD

APPROVED
by the Order No VA-105 of the Head of the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania of 19 October 2011

NEW EDITION from 25 July 2017 (the set of legal acts, 2017, No 2017-12559)

RULES FOR SUBMITTING THE TAXPAYER APPLICATION TO ENDORSE THE APPLICATION OF THE PROVISIONS OF TAX LEGISLATION TO THE FUTURE TRANSACTION, EXAMINATION OF THE APPLICATION, TAKING AND CHANGE OF DECISION THAT IS BINDING ON THE TAX AUTHORITY

SECTION I
GENERAL PROVISIONS

1. AMENDED: by the Order No VA-90 of 4 December 2019 (from 5 December 2019) (the set of legal acts, 2019, No 2019-19520)

The Rules for submitting the taxpayer application to endorse the application of the provisions of tax legislation to the future transaction, examination of the application, taking and change of the decision that is binding on the tax authority (hereinafter – the Rules) set the procedure of submitting the taxpayer Application to endorse the application of the provisions of tax legislation to the future transaction (the annex to the Rules) (hereinafter – the Application), examination of the Application, taking and change of the decision that is binding on the tax authority regarding the application of the provisions of legal legislation to the future transaction, the form of which FR1111 is approved by the Order by which the Rules are approved (hereinafter – the Decision). The tax authority shall examine the Application and shall take the Decision on future transactions in accordance with the National tax legislation of the Republic of Lithuania, international treaties and other international agreements.

2. The Rules have been prepared in accordance with the Law of the Republic of Lithuania on Tax Administration (hereinafter – the LTA), the Law of the Republic of Lithuania on Public Administration, and other legal acts of the Republic of Lithuania.

3. The notion used in the Rules:
   3.1. Future transaction – a taxpayer transaction, business operation, or any group thereof, the
conduction of which will be started after the date of submitting the application to the tax authority. When a long-term transaction has been entered into before the application is submitted to the tax authority, the business transactions that are carried out after the date of submitting the application to the tax authority are classified as a future transaction.

3.2. Other notions used in the Rules correspond to the notions used in the LTA and other legal acts of the Republic of Lithuania.

4. The provisions of these Rules do not apply if the application relates to examining and coordinating comparabilities of the pricing principles of future controlled transactions, i.e. of the pricing methods, of critical assumptions under which the selected controlled transfer pricing policy is possible, and of other issues related to controlled transfer pricing

SECTION II
SUBMITTING THE TAXPAYER APPLICATION TO ENDORSE THE APPLICATION OF THE PROVISIONS OF TAX LEGISLATION TO THE FUTURE TRANSACTION

5. A taxpayer may submit an application only regarding future transactions.
6. An application cannot be submitted for the tax rate.
7. A taxpayer must submit an application to the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (hereinafter – the STI under the MF).
8. An application can be submitted by a taxpayer or a person authorized by a taxpayer. When the authorized person applies, the documents attesting to authorization must be enclosed.
9. An application can be submitted for one transaction or a group of transactions, and for one or several taxes relating to it/them, by providing one or several reasoned charging options.
10. An application can be submitted to the tax authority only in respect of transactions and the related taxes whose statutory summarized explanations are prepared by the STI under the MF.
11. An application submitted by a taxpayer (the Annex to the Rules) must contain:

11.1. the specified taxpayer name (in case of a natural person – forename, surname), ID number (code), address of the registered office or of the place of usual residence, contact telephone number, e-mail address;
11.2. it must be specified regarding which transactions and the application of tax legislation the claimant applies for
11.3. the precisely and unambiguously described future transaction, by justifying each fact with the documents enclosed to the application, and by specifying counterparties and their relationships, when this affects taxation.
11.4. all circumstances relevant to taxation must be disclosed, and it must be confirmed that the main purpose or one of the main purposes of the sequence of transactions/business transactions (or of their groups) or of the chain of transactions/business transactions is not to seek tax advantage;
11.5. all circumstances with which tax laws relate taxation must be described in detail;
11.6. other transactions related to a future transaction, affecting the decision making, and other information that is relevant to taxation must be specified;
11.7. a period within which a transaction is foreseen to be entered into and/or to be executed must be specified
11.8. questions regarding uncertainties related to the application of tax legislation, and problem described;
11.9. the specified provisions of tax legislation which, in the taxpayer opinion, are applicable to the described future transaction, and formulated statements for which approval is sought;
11.10. in cases where the taxpayer has previously applied for explanations from the tax authority, copies of the tax authority’s explanations received on these matters must be enclosed;
11.11. it must be confirmed that the information contained in the application is correct, and all circumstances relevant to taxation must be specified.
11.12. if the applicant applies for a transaction that has an international element (where one of the counterparties is a foreign entity), it must be also confirmed that the main purpose or one of the main purposes of the transaction is not to seek tax advantage due to tax differences between the states;
11.13. if a legal entity applies for a transaction that has an international element (where one of the counterparties is a foreign entity), the direct of ultimate owner(s) of this legal entity must be specified.
12. The application must be accompanied by documents or their copies (evidences) attesting to the circumstances specified in the application (for example, a contract concluded, a drawn up draft contract, letter of intent, official letters with the future counterparties and other documents).
13. **AMENDED:**

by the Order No VA-90 of 4 December 2019 (from 5 December 2019)

(The set of legal acts, 2019, No 2019-19520)

The application must be made in the official language. The application must be signed.

SECTION III
EXAMINATION OF THE TAXPAYER APPLICATION TO ENDORSE THE APPLICATION OF THE PROVISIONS OF TAX LEGISLATION TO THE FUTURE TRANSACTION

14. **AMENDED:**

by the Order No VA-90 of 4 December 2019 (from 5 December 2019)

(The set of legal acts, 2019, No 2019-19520)

The tax authority must examine the application at the latest within 60 days of the date of its receipt. During the examination of the application, the taxpayer has the right to submit additional documents necessary for making a decision, to clarify the application. In such case, a 60-day time limit for examining the application shall be calculated from the date of submitting additional documents to the tax authority/clarification of the application.

15. A permanent Working Group, formed by the Order of the Head of the STI under the MF, examines an application, and notifies taxpayers thereof, also performs other functions described in Section III and IV of these Rules.

16. The Working Group is accountable to the Head of the STI under the MF.

17. The Working Group consists of civil servants from different departments of the administration of the STI under the MF with experience in education and/or tax consulting and/or in interpretation of tax legislation and/or in handling tax disputes and/or in analysing case law. The Head, the Deputy Head(s) and the members of the Working Group are appointed by the Head of the STI under the MF. The Working Group is renewed every three years by one third. The Head of the Working Group is appointed for a term of three years.

18. The Working Group is led and the meetings of the Working Group are chaired by the Head of the Working Group, in his/her absence – by the Deputy Head of the Working Group.

19. If the member of the Working Group is the spouse, close relative of the taxpayer whose application is being processed, or a person who has a relationship with the taxpayer by virtue of his/her marriage, or if there are other circumstances which call into question the impartiality of the member of the Working Group, the member of the Working Group must refrain from such examination and decision making under the procedure laid down in the Law of the Republic of Lithuania on the Adjustment of Public and Private Interests in the Public Service.

20. **AMENDED:**

by the Order No VA-90 of 4 December 2019 (from 5 December 2019)

(The set of legal acts, 2019, No 2019-19520)

At the decision of the tax authority, the time term for examining an application can be extended for another 60 days if further investigation is required to examine the application (voluminous material or supporting documentation has been provided, the opinion of another competent authority is required, etc.), by giving a written notice thereof to the taxpayer within 7 days. In examining an application, the tax authority shall have the right, at its own initiative or at the request of the taxpayer, to organise a meeting with taxpayers and / or with the taxpayer representatives to discuss the issues that arose. Minutes of the meetings are made and audio record thereof is made, and is transferred to a computer medium. Before making a record, the taxpayer and others who are present at the meeting are notified thereof orally. The record shall be enclosed to the minutes of the meeting and shall be stored at the establishment in accordance with the procedure laid down in the Rules for Document Storage approved by the Order No V-157 of the Chief Archivist of Lithuania of 28 December 2011 on the Approval of the Rules for Document Storage, and in the Index of retention periods of general documents approved by the Order No V-100 of the Chief Archivist of Lithuania of 9 March 2011 on the Approval of the Index of retention periods of general documents.

21. **AMENDED:**

by the Order No VA-90 of 4 December 2019 (from 5 December 2019)
The examination of an application shall be suspended and the taxpayer shall be notified thereof in ways that are embedded in Article 164 of the LTA at the latest within 7 days in the following cases:

21.1. when, in examining the application submitted by a taxpayer, the tax authority requires additional documents and/or data for the proper assessment of the taxation option provided by the taxpayer. The tax authority shall specify the documents and/or data that are required to be submitted additionally, translations of the documents, as well as the deadline for their submission that meets the criteria of reasonableness in the notification addressed to the taxpayer or a person authorized by the taxpayer.

The day of dispatch of the notification drawn up by the tax authority for the submission of additional documents and/or data shall be deemed to be the day of suspension of the application examination process.

21.2. the question raised in the application concerns transactions in another Member State of the European Union. For this reason, information from the tax authorities in other countries is required to examine the application.

The day on which an inquiry of the tax authority was filed to the tax authority of another country shall be deemed to be the day of suspension of the application examination process.

22. The suspended examination of the application shall be resumed when:

22.1. the tax authority receives all documents and/or data specified in the notification addressed to the taxpayer. The date on which examination of the application is resumed is the day of receipt of the said documents and/or data by the STI under MF.

22.2. information has been received from the tax authorities of other countries in case specified in Sub-Clause 21.2 of the Rules.

Once examination of the application has been resumed, the deadline for the examination of the application shall be calculated in accordance with the procedure laid down in Clause 14 of the Rules.

23. If the taxpayer fails to provide the requested documents and/or data within the deadline specified by the tax authority, the application shall not be examined further. The taxpayer shall be notified thereof in writing no later than 14 days after the deadline for submitting documents and/or data to the tax authority.

24. The tax authority shall not examine an application and shall notify the taxpayer thereof by a motivated official letter no later than 30 days after receipt of the application if:

24.1. the application has been submitted for transactions (business transactions) that have already taken place;

24.2. the application has been submitted for a tax rate or for the interest on late payment calculated in accordance with the procedure laid down in the LTA;

24.3. the application has been submitted for the clarification of the provisions of foreign legislation;

24.4. the application does not meet other requirements established in the Rules;

24.5. the taxpayer applies to the tax authority for an identical issue that is pending before the European Court of Justice or the Supreme Administrative Court of Lithuania (hereinafter – the SACL).

25. CEASED TO HAVE EFFECT:

By the Order No VA-90 of 4 December 2019 (from 5 December 2019) (the set of legal acts, 2019, No 2019-19520)

SECTION IV
TAKING OF THE DECISION THAT IS BINDING ON THE TAX AUTHORITY

26. After examining the taxpayer application, the tax authority, having considered the material submitted with the application, shall take a decision whereby:

26.1. it endorses the application of the provisions of tax legislation specified in the application to the
future transaction;
26.2. does not endorse the application of the provisions of tax legislation specified in the application to the future transaction.
27. Applications are examined during the meeting of the Working Group. The meeting of the Working Group shall be deemed to have taken place if it is attended by at least ½ of the members of the Working Group (including the Head of the Working Group).
28. The Working Group shall take decisions regarding applications by majority voting (votes are counted against the number of members that are present at the meeting) by a public recorded vote. The decision of the Working Group regarding an application shall be deemed to have been taken if it is supported by more than a half of the members of the Working Group who are present at the meeting. In case of a tied vote, the Head of the Working Group shall have the casting vote.
29. The Working Group shall take decisions in accordance with tax laws, international treaties, the criteria of equity and reasonableness, the principle of the primacy of content over form, other principles of legal regulation and application of taxation set forth in the LTA, and having regard to the practice of tax disputes on similar matters.
30. If the tax authority does not endorse the taxation option provided by the taxpayer, the decision must state the motives and reasons for such decision.
If the tax authority endorses the taxation option provided by the taxpayer, the decision must state the motives and reasons for such decision, it must also describe the principles of taxation, the applicable provisions of tax legislation, the conditions and/or circumstances under which the tax authority takes such a decision.
If several alternative taxation options are included in the application and one of them is endorsed, then the arguments and reasons why the option is endorsed must be described.
31. The decision shall be drawn up in duplicate, one of two copies shall be given to the taxpayer in the ways embedded by Article 164 of the LTA, and another copy shall stay with the tax authority. The original copy of the application and other documents related to it shall stay with the tax authority.
32. The decision shall be signed by the Head of the STI under the MF or by a person authorized by the Head of the STI under the MF.
33. CEASED TO HAVE EFFECT:
By the Order No VA-90 of 4 December 2019 (from 5 December 2019)
(the set of legal acts, 2019, No 2019-19520)
34. The tax authority must comply with the decision taken, and it is, however not binding on the taxpayer.
35. The tax authority shall undertake to comply with the decision only in respect of the taxpayer having submitted the application.

SECTION V
VALIDITY AND CHANGE OF THE DECISION THAT IS BINDING ON THE TAX AUTHORITY
36. The decision shall be valid only for the future transaction or group of transactions specified in the taxpayer application.
37. The decision shall take effect from the date on which it was taken and shall remain in force during the entire period of execution of the transaction regarding which the request was made, but for no more than the current year and five calendar years from the date on which the decision has been taken.
38. In the event that, during the period of validity of the decision, the provisions of tax legislation directly related to taxation are changed, the decision shall cease to have effect from the date of entry into force of new provisions of tax legislation.
39. The tax authority shall not apply the decision if:
39.1. it turns out that the taxpayer provided in the application incorrect, inaccurate or incomplete information/data about the future transaction, or not all circumstances relevant to the assessment of the future transaction that are relevant in assessing the application submitted by the taxpayer are specified;
39.2. the actual circumstances of the transaction execution, which substantially affected the decision taking on the taxation of future transaction, do not correspond to the circumstances specified in the taxpayer application;
39.3. the tax authority finds out that the taxpayer applied for a decision in pursuit of a tax advantage within the meaning of Article 69 of the LTA;
39.4. it turns out that the transaction for which the request was made has been completed before the date on which the application was submitted.
The taxpayer must immediately notify the tax authority of the change in material facts and circumstances on the basis of which the decision was taken so that the tax authority could assess the reasonableness of further application of the decision taken.

40. If, after the decision has been taken, interpretations of laws and other tax legislation by the SCAL or the judicial authorities of the European Union, that are contrary to the decision, are published in the bulletin of the SCAL or in the official journal of the European Union, the decision shall be valid until the date on which these interpretations were published. The tax authority must notify the taxpayer thereof in writing, by specifying until when the decision is valid if the period of validity of the decision has not expired.

SECTION VI
FINAL PROVISIONS

41. Civil servants shall be liable for the violation of these Rules in accordance with the procedure established by the legal acts of the Republic of Lithuania.

Annex to the Rules for submitting the taxpayer application to endorse the application of the provisions of tax legislation to the future transaction, examination of the application, taking and change of the decision that is binding on the tax authority

AMENDED:
by the Order No VA-90 of 4 December 2019 (from 5 December 2019) (the set of legal acts, 2019, No 2019-19520)

(Example of the application form)

Taxpayer name (forename, surname) __________________________________________________________
Taxpayer ID number (code) ________________________________________________________________
Taxpayer address _________________________________________________________________________
Head of the legal entity ___________________________________________________________________
Telephone number _________________________________________________________________________
E-mail address __________________________________________________________________________
Ultimate owner(s) _________________________________________________________________________
Representatives __________________________________________________________________________

To: State Tax Inspectorate under
the Ministry of Finance of the Republic of Lithuania

APPLICATION
TO ENDORSE THE APPLICATION OF THE PROVISIONS OF TAX LEGISLATION TO THE FUTURE
TRANSACTION

.................................................................................................................................
(date)
.................................................................................................................................
(place where the document has been drawn up)

(Taxpayer name (in case of a natural person – forename and surname), taxpayer ID number (code), address of the registered office or of the place of usual residence, other information about the taxpayer)
(Facts of the future transaction (information of the future transaction must be specified: objectives and unambiguous description of the future transaction, date, place, period within which the transaction is expected to be entered into and/or executed, circumstances and reasons for entering into the transaction))

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(the counterparties and their relationships must be specified; it must be explained whether this has any effect on taxation and what effect)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(questions related to the application of the provisions of tax legislation; tax issues must be described)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

/legal basis must be specified (provisions of tax legislation), substantiation – arguments and reasons which, in the taxpayer opinion, are applicable to the future transaction described and which are requested to be endorsed)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(confirm that the taxpayer applies for a decision not in pursuit of a tax advantage (all circumstances/facts relevant to taxation, showing that the transaction/business transaction (or their group/sequence) or a chain of transactions/business transactions are not intended for the pursuit of tax advantage must be disclosed)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(if request is made for transaction that has an international element (when one party to the transaction is a foreign unit) – it must be also confirmed that the transaction is not intended for the pursuit of tax advantage due to tax differences between the states)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(transactions related to the future transaction which influence/can influence decision making, and other information that is relevant to taxation)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(in cases where the taxpayer has previously applied for explanations from the tax authority, copies of the tax authority’s explanations received on these matters must be enclosed)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

(confirm that information contained in the application is correct and all circumstances that are relevant to taxation are specified)
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Endorsement to the following is requested:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

ENCLOSED:
(documents (copies)/evidences justifying every fact must be enclosed to the application).
________________________________________________________________________

(Forename, surname and signature of the applicant)
DECISION ON THE APPLICATION OF THE PROVISIONS OF TAX LEGISLATION TO THE FUTURE TRANSACTION

................................. No ....................................
(date) (registration number)

(place where the document has been drawn up)

The State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania

______________________________________________________________________________________,

after having examined an application of the taxpayer

______________________________________________________________________________________
(name or forename, surname of the taxpayer,

taxpayer ID number (code), address of the registered office or of the place of usual residence)

______________________________________________________________________________________
(date of the application) (application number)

has found out as follows:

(specify information contained in the taxpayer application about the future transaction and justification, conditions and arguments of its compliance with the provisions of legislation,

specify the legal basis and the arguments of the tax authority, and reasons for which the tax authority endorses/does not endorse the application of the provisions of legal legislation specified in the application

and other relevant information, under which the tax authority takes a decision)

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

______________________________________________________________________________________

decides to endorse/not endorse the application of the provisions of tax legislation specified in the application to the future transaction.

The decision is valid until

(specify the term of validity of the decision if a decision to endorse the application of the provisions of tax legislation specified in the application is taken)

______________________________________________________________________________________

(name of position) (signature) (forename, surname)

L. S.