

16 January, 2012  
Riga

Dear readers,

In this Latvian Real estate and Construction law newsletter prepared by law office RAIDLA LEJINS & NORCOUS you will find an update on recent developments in this field.

We will be happy to answer your specific questions or to assist in dealing with a particular legal issue.

With kind regards,

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## Real Estate and Construction Law News

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### Law on Planning of Territorial Development

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On 1 December 2011 the new Law on Planning of Territorial Development came into force, replacing the earlier Law on Territorial Planning that was in force for more than nine years.

The law introduces a number of novelties, including a new type of territorial development planning document – the **local plan**. Earlier there were two types of planning documents at the local municipality level: territorial plan and detailed plan. The local plan is placed between those two in the hierarchy of planning documents. The local plan shall be developed at the local municipality level and cover a part of municipality's territory. It shall address some specific planning task or detail or amend the territorial plan.

One of the most serious shortcomings of the earlier regulation of territorial planning was the fact that the law did not set forth a specific timeframe for contesting the territorial plans adopted. The Constitutional Court has indicated that such situation contradicts the principle of legal certainty.

Under the new law the minister of the Environment Protection and Regional Development shall be entitled to suspend binding regulations of the municipality approving the territorial planning not later than **within 6 months** after the territorial or local plan becomes effective. Private persons shall be entitled to submit to the minister an application on challenging of the territorial or local plan **within 2 months** from the date when the binding regulations come into force. The right to submit a complaint to the Constitutional Court contesting validity of the territorial or local plan shall be granted only to those persons who have submitted an application to the minister contesting the plan at administrative level.

Detail plans no longer shall be approved by binding regulations of the municipality but rather will be issued as general administrative acts. In practical terms it means that there will be a possibility to **challenge the detailed plan in administrative court within one month** from the date of publication of the announcement on approval of the detailed plan. Resort to the Constitutional Court no longer will be available in respect of detail plans.

By the above amendments to appeal terms and procedure an end has been put to the practice when territorial planning documents were suspended and appealed even few

years after their approval. This development is welcomed by all land owners and developers who will have more certainty and security when working on new projects.

Municipalities will be entitled to approve detailed plans subject to imposition of a **term during which implementation of the detailed plan shall be commenced**. If such term has been provided, the detailed plan will become invalid once the term for commencement of the implementation has expired, unless the validity of the plan is extended within one year from expiry of the initial term.

The Ministry of Environment Protection and Regional Development as the ministry responsible for territorial development planning will establish and supervise the **information system for territorial development planning (ISTDP)**. ISTDP shall contain and make available for the public the territorial planning documents of all levels, as well as information related to the territorial planning. Municipalities are obliged to upload all territorial planning documents to ISTDP until 31 December 2014.

The Cabinet of Ministers shall issue regulations that will set forth specific requirements for drafting the territorial planning documents, the contents of each type of planning document, as well as determine conditions to be included in the agreements on drafting and financing of the local or detailed plan. The regulations have to be adopted by 31 May 2012.

Detailed plans, the drafting of which has been commenced prior to coming into force of the new law, shall be completed under those regulations that were in force at the moment when the drafting was commenced, however, not later than by 31 December 2012.

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### **Amendments to the Value Added Tax Law**

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The amendments to the Value Added Tax Law mainly deal with the application of reverse value added tax („VAT”) to the construction services and sale of real estate.

According to the amendments the reverse VAT will be applicable to **construction services** supplied pursuant to the construction services agreements concluded after 1 January 2012 and construction services supplied after 1 January 2013 on the basis of construction services agreements concluded prior to 31 December 2011. Application of reverse VAT regime allows the supplier of construction services issue invoice for the construction services without VAT. In such case the recipient of the construction services is liable for the payment of VAT into the state budget.

**The sellers of real estate** that have acquired real estate prior to 27 July 2011 and are selling it in 2012 may benefit from the recent amendments to the law. VAT shall be applied only to the first sale of unfinished construction objects and calculated on difference between the price at which the construction object is sold and its acquisition value. However, it has to be taken into account that already earlier the State Revenue Service has provided interpretation according to which (and contrary to express wording of the law) sale of unfinished construction objects is subject to VAT notwithstanding whether it is the first or repeated sale. Currently it is not clear whether such interpretation will be upheld. Therefore, it is advisable to request advance binding rulings from the State Revenue Service in each specific case.

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### **Amendments to the Real Estate Tax Law**

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The amendments to the Real Estate Tax Law clarify the list of real estates which are exempt from the application of real estate tax (RET). Thus, tax exempt are social houses and social apartments. As of year 2012 **auxiliary buildings** of the residential buildings (e.g. garages, basements, sheds, etc.) larger than 25m<sup>2</sup> will be subject to RET. RET will be imposed also on areas used as pay parking lots, in case if provided by the municipality in its binding regulations issued until 1 October of preceding taxation year.

Starting from 1 January 2013 municipalities will have a right to set **RET at the rate from 0.2% to 3%** from the cadastral value of the real estate. In order to apply such rates, municipality has to issue binding regulations no later than until 1 October of preceding taxation year. In case the municipality does not use this opportunity, the standard statutory rates are applicable, i.e. 1.5% from the cadastral value of land, engineering constructions and buildings, with exception of residential buildings to which, depending on their cadastral value, RET from 0.2% to 0.6% is applicable.

According to the amendments, in case the tax payer has not declared its place of residence as required under the law and has failed to inform the tax authorities about its address and notify the tax authorities within the statutory term that he has not received the tax payment order, tax payment order will not be sent but the tax calculated will be effective as of 22 March of then current taxation year.

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