

## LEGAL AND ECONOMIC REGLAMENTATION ASPECTS OF INDIVIDUAL ENTERPRISE FUNCTIONING

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*The operation of individual enterprises established in Lithuania was regulated by various separate laws which caused much inconvenience. Therefore, the Lithuanian law on individual enterprises entered into force on 1 January 2004. The article aims to present the outstanding peculiarities of an individual enterprise as a legal entity which could be considered as advantages and disadvantages. The article considers the individual enterprise before and after the entry into force of the Lithuanian law on individual enterprises.*

**Key words:** individual enterprise, legal entity, legal and economic aspects.

### Introduction

Individual enterprises in every country form the majority of the subjects of commercial law (Baumol 2006; Bennour et al., 2007; Clayton et al., 2008; Cowley et al., 2002; Heffernan, 2006; Čiburienė, 2005; Johansson, 2004, Greičius, 2003; Lee et al., 2003; Kuodys, 2004; Kuodys, 2003 and others). Lithuanian is no exception. According to the data of the Lithuanian Department of Statistics, in 2003 individual enterprises amounted to 51%, in 2004 to 48% and in 2007 40.5% of registered economic entities. Part of individual enterprises

engage in agriculture-related activities and 263 of them are owners of land holdings.

From the national point of view, individual enterprises on private initiative increase budget receipts of the municipalities and the state, decrease the shadow economy, offer new work places and prerequisites for the formation of the middle layer of the population, and decrease the demand of social support.

The article considers the legal aspects and peculiarities of individual enterprises in modern legal theory and practice. The Lithuanian law on individual enterprises specifies the requirements

that make a direct impact on the operation of individual enterprises and on their owners. Also, emphasis is made on the importance of this law for the further operation, establishment and liquidation of individual enterprises.

**The purpose of the present research** was, on the basis of analysis, to present the legal and economic aspects and peculiarities of the individual enterprise as a legal entity.

**The object of the research** is the individual enterprise.

**The methods of the research:** monographic, comparative, logical analysis and synthesis, analysis of legal acts.

### **Reglamentation of the activities of individual enterprises**

The majority of the subjects of commercial law (i.e. economic entities which have the right to professionally conduct commercial economic activity in the name of their company) in the Republic of Lithuania are companies. The general legal principles of the establishment and operation of companies are set forth in the Law of the Republic of Lithuania on Companies. The requirements on the legal foundation of the establishment, operation, reorganization and liquidation of particular types of companies as well as other specific requirements are established in the laws and other legal acts for particular types of companies (Šatas, 1998).

The following types of companies may operate in the Republic of Lithuania:

- 1) individual (personal) enterprises;
- 2) real partnerships;
- 3) commandite (trust) partnerships;
- 4) public limited-liability companies and private limited-liability companies;
- 5) state-owned (municipality-owned) companies (Kirsienė et al., 2004).

The Lithuanian laws empower people to possess companies. Such companies are called individual enterprises. An individual enterprise is a private legal entity of unlimited liability. It should be emphasized that after the new Civil Code entered into force on 1 July 2001, individual enterprises became legal entities. The general norms of the Civil Code are applied to them similarly as to other legal entities. The Law on Companies is applied to a certain extent unless it contradicts the Civil Code (Railaitė, 2003).

Establishment, management, transformation, liquidation of individual enterprises, the rights and duties of the owners of these enterprises are regulated by the Law on Individual Enterprises which entered into force on 1 January 2004. Before that date, the operation of individual enterprises had not been defined by any particular law. The arguments for the necessity and purpose of preparing the new law are as follows:

1. The individual enterprise was the only type of companies that was not regulated by any particular law.
2. Legal provisions regulating individual enterprises were scattered in different laws, which caused inconvenience. The need to solve "arising problems which constrained the existence of individual enterprises" emerged (Vileita, 1997).

According to the Law, the individual enterprise may also be owned by right of ownership by non-production organizations which have the rights of the legal entity. The owner of the individual enterprise may be a natural person by right of ownership or several natural persons by right of joint partial ownership. However, attention should be drawn to the fact that after the Law on Individual Enterprises had entered into force, individual enterprises whose owners were non-production organiza-

tions became considered as established until 31 December 2004 and had to be transformed, liquidated or transferred to other persons before a specified date (Tobulevičienė, 2005).

Before the rights of the individual enterprise as a legal entity had been specified in the Law, the property of the enterprise was not separated from the enterpriser's property. Now, the enterpriser is fully liable for the obligations of the enterprise during its operation and after its liquidation. This provision was clearly specified in the Law on Individual Enterprises.

However, enterprises cannot be identified with the property of their owners, used to satisfy their needs and the needs of their family. The enterprise's assets are accounted separately by keeping the books on the enterprise operation and turnover and drawing up its balance sheets. The enterprise balance does not include the private property of its owner's family. The profit, income and other taxes are paid in the name of the enterprise (Vileita, 1997).

The advantages of an individual enterprise as a business organization entity are as follows: 1) no minimum initial capital is required by laws; 2) an individual enterprise may keep accounting in a simplified way; 3) the owners of individual enterprises may manage them on their own or together with the members of their family, i.e. they do not need to employ other people or conclude contracts of employment with them (Free Market..., 2007).

The generalized definition of individual entities in the commercial law of various foreign countries is slightly different. The commercial economic entities of this type found in the laws and commercial practice of the countries that inherited the British legal system or in which the so-called monistic (unified) civil legal system is applied (i.e. the commercial law

is not separated from the civil law) are most often called sole or individual owners (in England – *sole proprietorship*, *sole trades* or *ownership*; in the USA – *individual proprietorship*; in Italy – *ditta individuale*) (Heffernan S, 2006).

Two Codes – the Civil Code and the Commercial Code – are applied in the countries in which the so-called dualistic civil (private) legal system, i.e. the commercial law, is separated from the civil law. The entities of commercial law of this type are most often called individual entrepreneurs (Fr. *eterpreneur individuel*, *enterprise individuelle*) (Šatas, 1998).

In the USA, the individual enterprise (*sole proprietorship*) is the most ordinary economic entity. A person who has selected this type of business and the business itself are inseparable. An individual enterprise may exist as long as it is managed by its owner (Uniform Commercial Code, 1964).

On comparing Lithuanian and French individual enterprises which, however, are regulated by different legal acts, obvious similarities are observed such as the sole owner, unlimited liability, the owner's full liability for the enterprise's obligations, etc.

The dualistic private legal system is also applied in the German legal system. Thus, the civil and commercial relations are regulated by separate, unified codes of laws: the Civil Code and the Commercial Code. Although the legal system of the two countries is similar, the definition of the individual enterprise is quite different.

Russia, as well as Lithuania or any other post-Soviet country, is carrying out an active publishing and improvement activities with regard to new legal acts which regulate private commercial and economic relations. However, the business organization and legal regulation acts adopted during the Soviet regime are, in contrast to Lithuania, still in force in Russia.

The most important legal source is the Law on Companies and Entrepreneurship (Labutiene, 1995).

Russian individual entrepreneurs are considered to be individual natural persons who conduct private entrepreneurship without establishing a company and individual (family) enterprises of small craftsmen and traders. All Russian economic entities of this category as well as similar entities in other countries expand commercial activities *sui juris* and at one's own risk only. Their liability for obligations and debts to creditors covers not only the part of assets apportioned for company needs, but also all the other private property.

It should be noted that the Law of the Republic of Lithuania on Companies includes new provisions on protection of the enterprise participant in case an individual enterprise is established by a married person. It should be borne in mind that the individual enterprise may not be owned by spouses under joint partial ownership, and a written consent of the other spouse to establish the enterprise shall be received. If such consent is not received, an individual enterprise may be established by a sole owner, and only his/her individual property can be considered to be the enterprise's property. The Law on Individual Enterprises provides for that the enterprise is managed by the sole management body – the individual enterprise manager (Perkumienė et al., 2006; Mačernytė-Panomarioviienė, 2006).

The important bylaws governing the activities of the individual enterprise are the bylaws of the individual enterprise. This document is also considered to be a constitutive agreement.

It should also be emphasized that until now no special individual enterprise bylaws have existed. The basis for establishment and operation of individual enterprises was a special application form submitted to the ad-

ministration of a corresponding municipality. From the day when the Law on Individual Enterprises entered into force, each individual enterprise shall have the bylaws of the enterprise. However, this document is significantly simpler as compared with the constitutive documents of other legal entities.

Attention should be drawn to the fact that a submitted application to possess a legal entity or amendments to the documents of the individual enterprise registered in the Legal Entities Register will not always be satisfied. Should such applications not comply with the specified requirements, they will be rejected. There are cases specified in the legal acts when the Legal Entities Register officer has the right to refuse to register a legal entity or amendments to the documents or data of a legal entity. Such cases have been specified and a detailed list thereof has been prepared. So other laws may not contain any other reasons for which a legal entity or the documents or alterations to the data of a legal entity could not be registered in the Legal Entities Register.

According to the provisions regulated in the Law on Individual Enterprises, an individual enterprise may not be reorganized, i.e. it may not be incorporated into another legal entity, merged with another or several other legal entities, shared out to several operating legal entities or divided into several newly established legal entities.

The only case prescribed for reorganization of an individual enterprise is when an individual enterprise is inherited by a person who is the owner of another individual enterprise. In this case, the successor has the right to join one enterprise to the other or merge them. Moreover, some more cases when individual enterprises may be (or more precisely shall be) reorganized are prescribed in the provisions regulating the entry of the Law into force.

Thus, the main cases when the individual enterprise may be reorganized are as follows:

- when the individual enterprise owners possess two or more individual enterprises;
- when in the name of an individual enterprise both spouses are indicated as the owners.

Since an individual enterprise is recognized as a legal entity, it is liquidated on the grounds and according to the procedure of liquidation of legal persons as set forth in the Civil Code. Therefore, the general grounds related to liquidation of companies, individual enterprises and legal entities will be considered.

The grounds for liquidation of an enterprise may be:

- 1) the enterprise owner's decision to cease operation of the enterprise;
- 2) when by court decision the enterprise is recognized as an insolvent debtor;
- 3) the decision adopted by state institutions to cancel the registration of the enterprise because of a violation of law specified in the laws of the Republic of Lithuania.

The institution which has adopted the decision to cease the operation of the enterprise assigns the liquidator of the enterprise or obliges the enterprise founder to perform as that. After the liquidator has been assigned, the enterprise acquires the status of an enterprise under liquidation: the enterprise body loses its authorities, the functions of the enterprise body are performed by the enterprise liquidator, and the enterprise may enter only into agreements that do not contradict the laws regulating the operation of an enterprise under liquidation. An enterprise under liquidation shall be reregistered.

It is very important for an enterprise in liquidation or any other company to settle accounts with its creditors.

Meanwhile, the liability covers all assets (both enterprise and private property). Thus, claim to all property may be imposed. However, giving the veto to creditors provides opportunities to abuse the creditor's rights, drag out processes or evade the law (Čiburienė, 2005).

The law on individual enterprises has influenced the number of individual enterprises, which decreased.

According to the register of legal persons, on 01-01-2007 in Lithuania there were registered 76516 individual enterprises of which 23106 (30.2%) were functioning. The number of recorded individual enterprises in comparison with 2002 decreased by 32.6% and in 2006 by 5.7%. The part of functioning individual enterprises in the general number of individual enterprises from 50.1% in 2002 decreased to 30.2% in 2007, i.e. by 19.9 structural points (Table 1). The safe and effective economics and the possibility for citizens to work and to earn are best reflected by the number of enterprises per 1000 residents. This number for Lithuania in 2002 was 20 enterprises. It is gradually increasing, but in comparison with the average number of other EU countries it is half as low (Grīzibauskienė, 2004).

When realizing the Lisbon strategies it is necessary to increase the residents' initiative and to reach the development of economics.

The large number of individual enterprises in Lithuania determined the situation that for their establishment there is no need of a minimal capital, they can use many concessions, simpler is the procedure of the establishment, lower are tariffs of income taxes, the accountability is simpler.

Changes of the number of individual enterprises are determined by the registration intensity of new enterprises – check in and sign out. When we count the number of enterprises

Table 1. Number of registered and operating individual enterprises by 1 January

Year	Registered	In operation	Enterprises in operation					
			share %	change%		number per 1000 population fixed-base (2002 = 100)	change%	
				fixed-base (2002 = 100)	Link (previous year = 100)		fixed-base (2002 = 100)	Link (previous year = 100)
2002	68 426	34 284	50.1	100.0	--	20	100.0	--
2003	68 356	32 497	47.5	94.8	94.8	20	100.0	100.0
2004	69 861	27 898	39.9	81.4	85.8	20	100.0	100.0
2005	72 330	25 469	35.2	74.3	91.3	21	107.3	107.3
2006	73 344	24 496	33.4	71.4	96.2	22	109.5	102.1
2007	76 516	23 106	30.2	67.4	94.3	23	114.8	104.9

Source: Statistics (Database), Lithuanian Department of Statistics, <http://www.stat.gov.lt/en/pages/view/?id=1351>

from 2001 to 2004, we can see that during each year the number of registered individual enterprises (with the Law of individual enterprises in force) is almost stable, but the number of enterprises cancelled per year greatly varies (Figure 1). After the law on individual enterprises of the Republic of Lithuania has entered into force, the absolute number of individual enterprises in operation is annually decreasing,

but the number in operation per 1000 population is increasing.

Now it is more difficult to establish an individual enterprise because a new order of juridical persons' registration in the Register Centre came into force. Before, juridical persons were registered in the municipalities, and they had to pay 100 Lt. Now all documents of each juridical subject that is going to be estab-

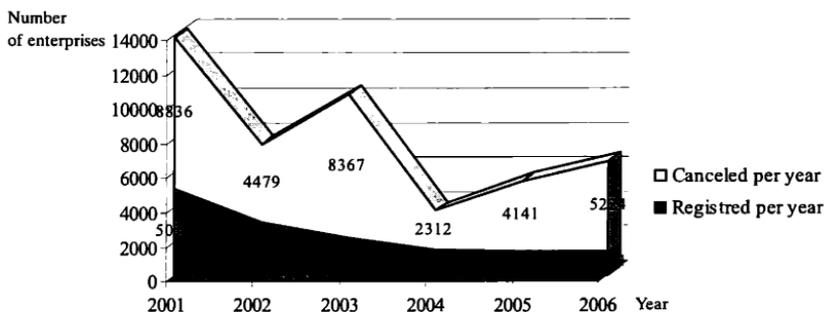


Figure 1. Annual change of the number of individual enterprises

Source: data of official statistics <http://www.stat.gov.lt>

lished should be confirmed by a notary. For this reason, the process of establishment is longer and more expensive.

The absolute number of individual enterprises and thus of bankrupts is decreasing. In 2006, enterprises close to bankruptcy made 34.7% of the general number of failed enterprises. As compared with the previous year, the number of enterprises close to bankruptcy and failure increased. In 2004 versus 2003, the number of enterprises close to bankruptcy increased by 22.9%, in 2005 versus 2004 by 40.7%, and in 2006 versus 2005 by 44.0%. Only 15.3% of the owners of enterprises are initiators of bankruptcy. The initiators of bankruptcy are mostly the State Social Insurance Fund Board of the Republic of Lithuania under the Ministry of Social Security and Labour (39.4%) and creditors (12.9%).

Individual enterprises are mostly small enterprises employing the owner and members of his family (Kuodys, 2003; Čepinskis et al., 2005). Even in 77% of all individual enterprises

the number of employees is 1 to 5, in 14.6% 5 to 10. The number of individual enterprises engaging 100 and more employees is less than 0.59% (Figure 2).

In some EU countries, for example, in Sweden, such kind of enterprises comprise up to 90% of the total number of all economy subjects and even 70% of individual enterprises are enterprises of one person (Tobulevičienė, 2005).

In the case of bankrupt, the employees suffer even if the enterprises are not big. The property of enterprises close to bankruptcy in 2006 reached about 68% of creditor demands. Administrators of bankrupt uphold that increasing is the number of individual enterprises whose owners went abroad and left their enterprises. There are no laws to obligate the owner of an individual enterprise to close the enterprise before leaving, and only administrative liability for undeclared declarations and financial accounts is foreseen. It is difficult to identify also cases when the owners initiate the

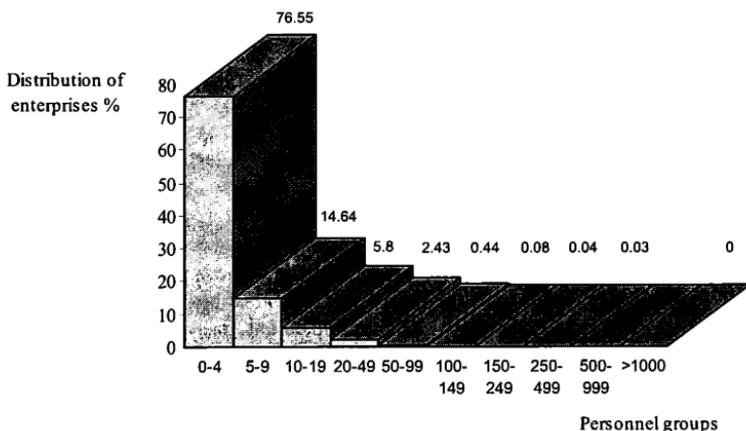


Figure 2. Distribution of individual enterprises in operation by personnel groups by 1 January 2007.

Source: data of official statistics, <http://www.stat.gov.lt>

case of bankruptcy themselves due to big debts. In this case, for the owner it is better to pay the administrative tax than to pay debts (Pranckevicius et al., 2003).

Individual enterprises are mostly engaged in retail trade (28.1%), land transport, transport via pipelines (9.0%); sale, maintenance and repair of motor vehicles and motorcycles, retail sale of automotive fuel (8.6%), health care and social work (6.4%), hotels and restaurants (5.9%), construction (4.6%).

The Law on Taxes does not specify the issues of the individual enterprise (sole proprietorship) owners' contribution to the enterprise, therefore, a special publication was issued by the State Tax Inspectorate in 2007 (Individualių ..., 2007).

If a resident decides to calculate the income tax by subtracting the available deductions from the individual business income, the remaining income is taxed at 24% of the income tax.

The taxable profit of an individual enterprise is levied with reference to a business type, average number of employees on the list and the amount of earnings, and is taxed at the following profit tax rates:

- 15% of profit tax rate if the individual enterprise is not entitled to any other (preferential) tax rates;
- 13% of profit tax rate if the average number of employees on the list does not exceed 10 persons and the income during the tax period does not exceed 500 thousand LTL;
- 0% (zero) of profit tax rate for the taxable profit of up to 25 thousand LTL and 15% for the rest part of the taxable profit;
- 0% (zero) of profit tax rate for social enterprises.

An individual enterprise can be offered the established tax relief. If the income of an agri-

cultural enterprise from agricultural business makes and exceeds 50% of the tax period income, the tax is levied on the taxable profit of such enterprises at 0% of the profit tax rate.

Residents running individual business shall register as VAT payers when the total income for their economic activities exceeds 100 000 LTL per year.

An individual enterprise pays compulsory health insurance contributions of its owners. The contributions make 2% of the state economics average monthly salary of the previous quarter. Following the regulations of the Law of the Republic of Lithuania "On State Social Insurance", owners of individual enterprises are insured by the state social insurance on a mandatory basis. Owners of individual enterprises pay the state social insurance contributions to the funds of the base pension that comprise 50% of the base pension, and pay 15% of the income declared for the state social insurance to acquire the additional part of pension. Paying the said state social insurance contributions, people have the right to obtain the old-age or disablement pensions. In case of death, the spouse and children of the insured person have the right to obtain widow's, widower's or orphan's pensions.

The new Law on Immovable Property Tax has come into effect since 1 January 2006. It changed the Law on the Tax of Immovable Property of Enterprises and Organizations. Following the regulations of the new law, the immovable property used for diverse purposes in an individual business is also taxed. If an individual enterprise uses the property of its owners and their family members in its business, the immovable property tax for such property shall be paid by the said individual enterprise. The rate of the immovable property tax for 2006 constituted 1% of the property taxing value, and for 2007 and the follow-

ing tax years it ranges from 0.3 to 1% of the immovable property value. Until 1 June of the current year the Municipality Board shall have established the definite tax rate which will be in effect since the beginning of the next tax period in the territory of a respective municipality.

Individual enterprises shall array financial accountability if this is foreseen in their regulations.

Individual enterprises as one of the main legal forms of enterprises create working places for their owners and employees.

## Conclusions

1. The Law defines the individual enterprise as a private legal entity of unlimited liability. This means that if the enterprise obligations cannot be covered by its assets, they shall be covered by the owner. However, it should be pointed out that the individual enterprise acquired the rights of a legal entity only after the new Civil Code had been adopted. Prior to that, the individual enterprise was not deemed to have legal entity rights. Also, this provision is of high importance for individual enterprise owners since they are fully liable for enterprise debts and outstanding obligations. Therefore, this provision is considered to be one of the strongest disadvantages and the prior reason to have the enterprise transformed into some other type of enterprises for which the extent of liability would not be so high.
  2. Emphasis should be made on the fact that the present Law on Individual Enterprises indicates that the individual enterprise owner may only be a sole person. According to the previous Law on
- Companies, a few persons could be individual enterprise owners. The Law specifies that the individual enterprise owner may not own another individual enterprise. Thus, one person may possess only one individual enterprise.
3. The Law on Individual Enterprises provides for that the individual enterprise may be transformed into a public limited-liability company, private limited-liability company as well as a public establishment. The specified general transformation requirements as well as the peculiarities of transformation into a public limited-liability company or a private limited-liability company are related to the European Union Company Law. The most popular are transformations into a private limited liability company, and the main reason for that is limited civil liability.
  4. An individual enterprise may not be reorganized, except for the case when it is inherited by a person who is the owner of another individual enterprise. During the transitional period specified in the final provisions of the Law, persons that possess two or more individual enterprises as well as the individual enterprises in whose name both spouses are indicated as the owners will be able to reorganize their individual enterprises. In the first case, such opportunity can be considered as an advantage and in the second case as a disadvantage since it overburdens the spouses.
  5. An individual enterprise may be liquidated on the grounds and according to the procedure of liquidation of legal persons as set forth in the Civil Code. Only liquidation peculiarities are specified in the Law.

6. The taxable profit of an individual enterprise is levied with reference to a business type, the average number of employees on the list and the amount of earnings, and is taxed at the following profit tax rates: 15% if an individual enterprise is not entitled to any other (preferential) tax rates; 13% if the average number of employees on the list does not exceed 10 persons and the income during the tax period does not exceed 500 thousand LTL; 0% (zero) for the taxable profit of up to 25 thousand LTL and 15% for the rest part of the taxable profit; 0% (zero) for social enterprises.
7. Residents running an individual business shall register as VAT payers when the total income for their economic activities exceeds 100 000 LTL per year.
8. The individual enterprise pays compulsory health insurance contributions for its owners. Owners of individual enterprises are insured by the state social insurance on a mandatory basis.
9. According to the Law on Immovable Property Tax, the immovable property used for diverse purposes in individual business is also taxed. The rate of the immovable property tax for 2007 and the following tax years ranges from 0.3 to 1% of the immovable property value.
10. On comparing peculiarities of Lithuanian and foreign individual enterprises, it was determined that among the considered foreign countries most of similarities were found between Lithuanian and American individual enterprises, although some differences such as enterprise management by both spouses were detected as well.

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### Summary

The paper analyses the problem which is relevant both theoretically and practically since it tries to disclose the legal and economical aspects of individual enterprise reglementation. The article considers the legal aspects and peculiarities of individual enterprises in modern legal theory and practice. The Lithuanian law on individual enterprises specifies the norms that make a direct impact on operating individual enterprises and their owners. Also, emphasis is made on the importance of this law for the further operation, establishment and liquidation of individual enterprises.

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Lithuanian Department of Statistics, in 2003 individual enterprises amounted to 51%, in 2004 to 48% and in 2007 to 40.5% of registered economic entities. Part of individual enterprises engage in agriculture-related activities, and 263 are owners of land holdings.

From the national point of view, individual enterprises on private initiative increase budget receipts of the municipalities and the state, decrease the shadow economy, offer new work places and create prerequisites for the formation of the middle layer of the population, and decrease the demand of social support.

Establishment, management, transformation, liquidation of individual enterprises, the rights and duties

of the owners of these enterprises are regulated by the Law on Individual Enterprises which entered into force on 1 January 2004. Before that date, the operation of individual enterprises was not defined by any particular law. The arguments on the necessity and purpose of preparing the new law are as follows:

1. The individual enterprise was the only type of companies that was not regulated by any particular law.
2. Legal provisions regulating individual enterprises were scattered in different laws, which caused an inconvenience. The need to solve "arising problems which constrained the existence of individual enterprises" emerged.

The generalized definition of individual entities in the commercial law of various foreign countries is slightly different. The commercial economic entities of this type found in the laws and commercial practice of the countries that inherited the British legal system or in which the so-called monistic (unified) civil legal system is applied (i.e. the commercial law is not separated from the civil law) are most often called sole or individual owners (in England – *sole proprietorship*, *sole trades* or *ownership*; in the USA – *individual proprietorship*; in Italy – *ditta individuale*).

It should be pointed out that the Law of the Republic of Lithuania on Companies provides for that the enterprise is managed by the sole management body – the individual enterprise manager.

The Law on Taxes does not specify the issues of the owners' contribution to the individual enterprise

(sole proprietorship). The taxable profit of the individual enterprise is levied with reference to the business type, the average number of employees on the list and the amount of earnings, and is taxed at the following profit tax rates: 15% if an individual enterprise is not entitled to any other (preferential) tax rates; 13% if the average number of employees on the list does not exceed 10 persons and the income during the tax period does not exceed 500 thousand LTL; 0% (zero) for a taxable profit of up to 25 thousand LTL and 15% for the rest part of the taxable profit, and 0% (zero) for social enterprises. An individual enterprise can be offered the established tax relief.

The individual enterprise pays compulsory health insurance contributions for its owners, and the owners of the individual enterprises pay the state social insurance contributions to the funds.

According to the Law on Immovable Property Tax, the immovable property used for diverse purposes in an individual business is also taxed. The rate of the immovable property tax for 2007 and the following tax years ranges from 0.3 to 1% of the immovable property value.

The Law of Individual Enterprises influenced the number of individual enterprises.

Out of all considered foreign countries, most similarities were found between Lithuanian and American individual enterprises, although some differences such as enterprise management by both spouses were detected as well.

## TEISINIAI IR EKONOMINIAI INDIVIDUALIOS ĮMONĖS VEIKLOS REGLAMENTAVIMO ASPEKTAI

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### Santrauka

Straipsnyje nagrinėjami individualios įmonės teisiniai ir ekonominiai aspektai bei ypatumai, analizuojant Lietuvos Respublikos individualių įmonių įstatymą pabrėžiama, kokios jo normos turės tiesioginės įtakos jau veikiančioms individualioms įmonėms bei jų savininkams, akcentuojama šio įstatymo svarba tolesnei individualių įmonių veiklai, joms steigti bei likviduoti.

Kiekvienoje šalyje individualios įmonės sudaro didžiąją komercinės teisės subjektų daugumą, Lietuva taip pat ne išimtis. Lietuvos Respublikos statistikos departamento 2003 metų duomenimis, 51 proc. įregistruotų ūkio subjektų buvo individualios įmonės, 2004 m. – 48 proc. ir 2005 m. – 46 proc., 2007 m. –

40,5 proc. Dalis individualių įmonių vykdo veiklą, susijusią su žemės ūkiu, ir 43 iš jų yra žemės ūkio valdų savininkai.

Valstybės požiūriu individualios įmonės privati iniciatyva didina savivaldybių ir valstybės biudžetų pajamas, mažina šešėlinę ekonomiką, kuria naujas darbo vietas, sudaro prielaidas formuotis vidutiniškai pasiturinčiam gyventojų sluoksniui, mažina socialinės paramos poreikį.

Lietuvoje įsteigtų individualių įmonių veiklą iki 2004 m. sausio 1 d. Lietuvos Respublikos individualių įmonių įstatymo įsigaliojimo reglamentavo įvairūs atskiri įstatymai: Lietuvos Respublikos įmonių įstaty-

mas, Lietuvos Respublikos civilinis kodeksas ir kt. Tai kėlė daug nepatogumų ir individualių įmonių steigimo, reorganizavimo, likvidavimo neišskumų, nebuvusi visiškai aiškios individualių įmonių savininkų teisės ir pareigos.

Individualios įmonės steigimą ir valdymą, pertvarkymą, likvidavimą, šių įmonių savininkų teisės ir pareigas reglamentuoja 2004 m. sausio 1 d. įsigaliojęs Lietuvos Respublikos individualių įmonių įstatymas. Individualios įmonės veikla specialiu įstatymu nebuvusi apibrėžta. Šio įstatymo rengimo tikslo ir būtinumo argumentai šie:

1. Individuali įmonė buvo vienintelė įmonių rūšis, neturinti atskiro įstatymo;
2. Individualią įmonę reglamentuojančios teisinės nuostatos buvo išbarstytos įvairiuose įstatymuose ir tai kėlė nepatogumų. Reikėjo spręsti „kylančias problemas, varžančias individualių įmonių egzistavimą“.

Įvairiose šalyse individualūs komercinės teisės subjektai bendrai vadinami skirtingai. Anglijos teisės sistema paveldėjusiose šalyse, taip pat šalyse, kuriose taikoma vadinamoji monistinė (vieninga) civilinės teisės sistema (t. y. ten, kur komercinė teisė neišskirta iš civilinės teisės), įstatymuose ir komercinėje praktikoje šie komerciniai – ūkiniai vienetai dažniausiai vadinami vienasmeniais arba individualiais savininkais (Anglijoje – *sole proprietorship*, *sole trades* arba *ownership*; JAV – *individual proprietorship*; Italijoje – *ditta individuale*).

Svarbu pažymėti, kad Individualių įmonių įstatyme nurodoma, jog individualios įmonės savininku gali būti tik vienas asmuo. Pagal ankstesnį įmonių įstatymą – galėjo būti keli asmenys. Įstatymas nustato, kad individualios įmonės savininkas negali būti kitos individualios įmonės savininku. Vadinasi, vienas asmuo gali turėti tik vieną individualią įmonę.

Individualių įmonių įstatyme numatoma, kad individuali įmonė gali būti pertvarkoma į akcinę bendrovę, uždarąją akcinę bendrovę, viešąją įstaigą. Nustatyti bendrieji pertvarkymo reikalavimai bei pertvarkymo į akcinę bendrovę, uždarąją akcinę bendrovę ypatumai siejami su Europos Sąjungos bendrovių teise. Pertvarkymai į uždarąją akcinę bendrovę yra populiariausi, o pagrindinė priežastis – ribota civilinė atsakomybė. Individuali įmonė negali būti reorganizuojama, išskyrus atvejį, kai tokią įmonę paveldi asmuo, kuris yra kitos individualios įmonės savininkas. Įstatymo baigiamosiose nuostatose nurodytu pereinamuoju laikotarpiu galimybė reorganizuoti indivi-

dualias įmones taip pat galės pasinaudoti asmenys, turintys dvi ir daugiau įmonių, bei individualios įmonės, kurių pavadinime nurodyti abu sutuoktiniai. Pirmu atveju tai gali būti įvardijama kaip privalumas, antru – kaip trūkumas, nes sutuoktiniams tai kelia papildomų rūpesčių.

Individuali įmonė gali būti likviduojama Civilinio kodekso nustatytais juridinių asmenų likvidavimo pagrindais ir tvarka. Įstatyme nustatyti tik likvidavimo ypatumai.

Mokesčių įstatymuose nėra atskirai aptarti individualios įmonės savininkų įnašų į įmonę klausimai.

Individualios įmonės apskaičiuotas apmokestinamasis pelnas, atsižvelgiant į veiklos pobūdį, vidutinį sąrašuose esančių darbuotojų skaičių bei uždirbtų pajamų dydį, apmokestinamas taikant tokius pelno mokesčio tarifus: 15 proc. pelno mokesčio tarifą, jeigu individuali įmonė neturi teisės taikyti kitų (lengvatinių) pelno mokesčio tarifų; 13 proc. pelno mokesčio tarifa, jeigu vidutinis sąrašuose esančių darbuotojų skaičius neviršija 10 žmonių ir mokesčio laikotarpio pajamos ne didenės nei 500 tūkst. litų; 0 proc. (nulinis) pelno mokesčio tarifą apmokestinamajam pelnui iki 25 tūkst. Lt ir 15 proc. likusiai apmokestinamojo pelno daliai; 0 proc. (nulinis) pelno mokesčio tarifas socialinėms įmoneis. Individualioms įmoneis gali būti taikomos numatytos pelno mokesčio lengvatos.

Nuo 2006 metų sausio 1 dienos įsigaliojo naujas Nekilnojamojo turto mokesčio įstatymas. Pagal naujojo įstatymo nuostatas apmokestinamas ir individualioje veikloje naudojamas tam tikru paskirčių nekilnojamas turtas. Nekilnojamojo turto mokesčio tarifas 2006 m. mokesčiniu laikotarpiu – 1 proc. turto mokesstinės vertės, 2007 m. ir vėlesniems mokesčiniams laikotarpiams – nuo 0,3 iki 1 procento nekilnojamojo turto vertės.

Gyventojai, besiverčiantys individualia veikla, privalo registruotis kaip PVM mokėtojai, kai bendra atlygio už jų vykdytą ekonominę veiklą suma viršija 100 000 litų per metus.

Individualios įmonės už jų savininkus moka privalomojo sveikatos draudimo įmokas ir jte privalomai draudžiami valstybinio socialinio draudimu. Mokėdami valstybinio socialinio draudimo įmokas šie asmenys įgyja teisę į senatvės ar netekto darbingumo pensiją. Mirties atveju apdraustojų sutuoktinis ir vaikai įgyja teisę į našlių ir našliačių pensijas.

Lyginant Lietuvos ir užsienio valstybių individualių įmonių ypatumus matyti, kad labiausiai panašumų iš visų nagrinėtų užsienio šalių turi Lietuvos ir JAV individualios įmonės, nors ir keli skirtumai dėl sutuoktinių valdymo šioje įmonėje.

*Įteikta 2007 m. birželio mėn.*

*Priimta spausdinti 2008 m. vasario mėn.*