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# Changes in tax laws in Serbia - New duties for foreign legal entities

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Tax

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The Law on Amendments to the Law on Value Added Tax (hereinafter: Law on VAT), the Law on Amendments to the Law on Tax Procedure and Tax Administration (hereinafter: Law on Tax Procedure), and the Law on amendments to the Law on Excise Duties (hereinafter: Law on Excise Duties) were published in the Official Gazette of the Republic of Serbia no. 108/2016 of 29 December 2016. All laws came into force on 1 January 2017, however, certain provisions will begin to apply at a later date, as outlined below, for every law individually.

Frequent changes to tax laws occur primarily for the sake of trying to gradually harmonize our legislation with the EU law. However, the frequency of changes contributes to creation of legal uncertainty for the participants in tax matters, so it is arguably necessary to find a certain balance.

## **The Law on VAT**

One of the major amendments to the Law on VAT concerns the criteria for determining the place of supply of services, and was carried out with the aim of further harmonization with the EU legislation, as well as of the elimination of double taxation or non-taxation of certain services that VAT payers carry out towards foreign entities and vice versa.

Namely, in accordance with the EU regulations, supply of services is generally taxed according to the place of the recipient of services, if the recipient of services is a taxpayer, or according to the place of service providers if the recipient of the service is not a taxpayer. In Serbia, the earlier rule stipulated that, generally, the supply of services is taxed based on the place of the service provider, regardless of whether the services are provided to taxpayers or subjects that are not taxpayers. Lack of harmonization of these rules with the laws of most European countries has led to situations of double taxation or non-taxation of certain services.

Another important amendment concerns the more specific definition of the notion "permanent establishment." The new law stipulates that permanent establishment is defined as an organizational unit of a legal entity which may conduct business, in accordance with the law.

This specification has a special significance when it comes to the permanent establishment of foreign entities, through which the foreign entities perform activities in the Republic of Serbia. Permanent establishment of a foreign entity is considered a taxpayer for supply that is carried out through that permanent establishment, while for the supply that a foreign entity does not carry out through the permanent establishment a taxpayer is that foreign entity.

Also, the following changes have been introduced:

- 1) unless the foreign entity conducts a non-taxable business in the territory of the Republic of Serbia, it does not have to designate a tax representative; the solution in our previous law was related to any supply of goods and services;
- 2) besides designating a tax representative, a foreign entity also has to register in the VAT system; however, it is noted that, in comparison to the previous law, a much larger volume of cases in which a foreign entity is not obliged to appoint a tax representative, and to register in the VAT system is prescribed;
- 3) the criterion of RSD 8,000,000 of the total turnover in the preceding 12 months, which is valid for all other taxpayers, does not apply to foreign entities as a condition for the fulfillment of the obligation of determining the VAT representative and registration for VAT; yet, this law does not stipulate a sanction for failure to fulfill this obligation, although the new Law on Tax Procedure introduced the offense applicable in case of failing to perform such actions.

The VAT Law entered into force on 1 January 2017, with remark that certain provisions will start being applied later, such as the beginning of implementation of the obligation to submit overviews to the calculation of the tax return of VAT, which is postponed for 1 January 2018.

## **Law on Tax Procedure**

The main reason for the adoption of the new law is the relocation of the second instance tax proceedings outside of the Tax Administration, which will be conducted by a separate and independent organizational unit, established within the Ministry of Finance. Upon the entry into force of the provisions regarding the second instance body (which will happen on 1 July 2017), the current second instance tax authority, which was a part of the Tax Administration, will cease to operate.

Although the law amendments were implemented for the sake of strengthening the independence of the new authority of the second instance, it is uncertain how much it will be possible to achieve such independence, bearing in mind the fact that all employees of the current second instance authority are

to be moved to the new authority.

On 30 June 2017, the new second instance authority will take over cases (appeals) which are still ongoing before the current second instance authority on that date, which is of particular importance for taxpayers.

In addition to the provisions relating to the second instance authority, changes concerning the conditions under which TIN cannot be assigned to a legal entity (if a founder of this legal entity who is another legal entity, entrepreneur or natural person, is at the same time a founder of an entity whose TIN has temporarily been seized) as well as the conditions under which TIN that was temporarily seized during bankruptcy proceedings can be returned (which is left to the discretion of the Tax administration) were introduced.

The exception of when the Tax Authority may make direct decisions on tax assessment (done on the basis of the data from the records of the competent authority), that is without prior declaration of tax payers of the relevant facts, has also been introduced.

### **Excise Tax Law**

#### *Tobacco products*

The new Excise Tax Law prescribes different specific amounts of the excise taxes on the cigarettes and other tobacco products, in order to gradually achieve the minimal level of taxation of the cigarettes by the excise taxes, with the intention of harmonizing the national legislation with the standards of the EU. The new amounts are prescribed for period from 2017 to 2020.

Namely, up until 1.1.2017, the amount of taxation by the excise taxes in the Republic of Serbia per 1000 cigarettes was 54€ in the category of the average pondered retail price. The gradual increase to 90€ is envisaged, in order to reach the minimal level of taxation by the excise taxes in the EU.

Also, it is considered that by prescribing an increase of the specific component of the excise taxes on cigarettes every six months the conditions for the steady income from the excise taxes on the cigarettes are met, considering that, in that case, the budget income is greatly independent from the manufactures pricing policies, i.e. the cigarettes importers.

Nonetheless, it is prescribed that determination of the average pondered retail prices of the cigarettes and other tobacco products is conducted once per year, instead of twice per year, as it was up until now.

#### *Coffee*

According to the new Excise Tax Law, the taxation of coffee is conducted not only in the cases of import, but as well in situations when the coffee is being processed, roasted, packed in the Republic of Serbia as well as in other related cases of coffee production which are conducted in the Republic of Serbia. Also, in the aim of combating the illegal trade of coffee, an obligation of labeling the coffee for the consumption with the control excise stamps is envisaged.

The intention of the legislator in the adoption of these solutions lies within combating the illegal trade of the coffee, which should be achieved by creating equal conditions for all market participants, i.e. by equalizing the position of the importers of coffee with persons in the domestic market who are engaged in processing, roasting, packaging, and similar operations that are being carried out for the purpose of production of coffee.

Provisions relating to the taxation of coffee, including the marking of coffee intended for consumption, will come into force on 1 January 2018. The rest of the provisions came into force on 1 January 2017.

#### *Wider range of entities which are considered as the excise tax payers in special cases*

The new law introduces the special cases in which, besides the manufactures and the importers of the excise goods, there are some other entities that are also considered as tax payers:

- any entity that trades in the excised goods, which are obtained in accordance with a law and which are kept in the business books of such entity; although, it is important to emphasize the fact that this obligation only arises in case of obtained goods for which the excise tax has not been paid;
- every entity which, in the Republic of Serbia, places on the market any excise goods contrary to the provisions of this law.

#### *The obligation of marking the beverages which contain less than 5% vol of alcohol with the control excise stamp is repealed*

Low-alcohol beverages which contain from 1.2% to 5% vol of alcohol do not have to be marked anymore with the control excise stamp, which overturns the decision made by amendments in December 2015.