



## Tax&Legal Highlights

### Serbia

#### **New rulings of the Ministry of Finance – Value Added Tax**

##### **Computing VAT on a free of charge supply of spare parts by the service provider to the buyer as a part of a contractual penalty**

Conclusion from the Ruling: In case that the service provider performs an import of spare parts as a recipient of goods, and afterwards transfers those parts free of charge to a person in Serbia, such transfer will be considered as a taxable free of charge supply. This is regardless of the potential basis for such transfer that may exist between the recipient of goods and the third person in the form of a foreseen contractual penalty. An invoice does not have to be issued for such supply.

The above-mentioned ruling is particularly significant for taxpayers that participate or are obligated with guarantees for goods or products.

##### **Computation of VAT using a recalculated tax rate in case the conditions for the application of a zero-rate are not met**

Conclusion from the Ruling: If a VAT-payer dispatches goods from the territory of the Serbia outside APKM to the territory of APKM and does not

possess the prescribed evidence, VAT is computed using the recalculated tax rate of 16.6667% on the amount of the fee for supply of goods that is taxed using standard VAT rate of 20%, i.e. using the recalculated tax rate of 9.0909% on the amount of the fee for the supply of goods that is taxed using reduced VAT rate of 10%.

The above-mentioned ruling is especially significant to VAT-payers with supplies to APKM.

**The day when the tax liability is triggered for supplies where delivery and installation of goods are performed within different periods**

Conclusion from the Ruling: In case when the delivery of construction material is performed within one tax period, and installation of the same is performed within another, the supply has occurred (and accordingly the tax liability was triggered) in the period within which the installation has been performed. This is regardless of the fact that within the contract separate fees for delivery and installation are determined, due to commercial reasons. Consequently, the payments performed before the moment of supply represent an advance payment in line with the VAT Law.

The above-mentioned ruling is especially significant to VAT taxpayers who perform business activity in the field of construction, as well as the contractors, considering the fact that within these contractual relations is frequently foreseen the separation of the moment of delivery and the moment of installation, and therefore, a non-compliance with requirements of VAT Law can occur.

**New rulings of the Ministry of Finance – International Taxation**

**The existence of a permanent establishment in the case of conclusion of a sale contract with buyers of goods by a non-resident taxpayer.**

Conclusion from Ruling: Therefore, if a non-resident taxpayer performs a supply in terms of conclusion of a sale contract on the territory of Serbia with domestic and foreign buyers and on this basis realizes a revenue, it will be considered that there exists a permanent establishment of that taxpayer on the territory of Serbia, as well as the obligations that accompany existence of this establishment. On the other hand, keeping stocks of goods in the warehouse by itself should not lead to the existence of a permanent establishment.

The above-mentioned ruling is significant because it demonstrates the increasing attention that is drawn to the question of the existence of permanent establishments, which would also require from taxpayers to deal more seriously with this issue.

This ruling is particularly significant to non-residents who sell or intend to sell goods on the territory of Serbia.

**Existence of an obligation to compute and pay a withholding tax on revenue on the basis of management services**

Conclusion from Ruling: When a parent company abroad realizes a revenue from a resident on basis of management services, the payment of all these services will be subject to a withholding tax, regardless of the fact whether

the services in question have been performed by the parent company or subcontractor.

The above-mentioned ruling is significant because it determines that when most of the services are provided through the subcontractor, this will not affect the qualification of the nature of the services, which will be considered with all circumstances involved. Moreover, the ruling is significant because it indicates that the matter of real ownership of revenue is potentially not necessary to consider in the situations described, however, only the formal recipient of the paid fee is relevant.

Ruling is particularly significant to legal entities that receive services from non-resident legal entities.

### **New rulings of the Ministry of Finance – Corporate Income Tax**

#### **Recognition in the tax balance sheet of expenses that include computed value added tax**

Conclusion from the Ruling: If the taxpayer in his/her business records displays expenses in the amounts that include the computed value added tax, the expenses displayed in such manner should be recognized in the tax balance sheet.

The above-mentioned ruling is significant because it indicates that the fact that the taxpayer has not been entitled to right to deduct the input tax, as a result of which the value added tax was included in the value of the expenses, should not affect recognition of these expenses for the purposes of the tax balance sheet. However, we emphasize that the basic rules for recognition of expenses should still be applied (e.g. obligatory business nature of these, documentation, etc.).

The above-mentioned ruling is significant to most taxpayers of corporate income tax in Serbia.

### **New rulings of the Ministry of Finance – Accounting Law**

#### **Electronic signing of the inventory report and accompanying documentation**

Conclusion from Ruling: Legal entities, i.e. entrepreneurs, can compile their inventory reports and its accompanying documentation in electronic form and sign it electronically.

The above-mentioned ruling is significant to legal entities and entrepreneurs who strive toward digitalization of electronic financial reporting.

#### **Number of an invoice as an identification mark within the meaning of Accounting Law**

Conclusion from Ruling: The invoice number can fill out the purpose of the identification mark, but it is needed that this option be prescribed by an internal act of a legal entity, i.e. entrepreneur.

This ruling is significant to legal entities and entrepreneurs who strive toward digitalization of the billing process.

## **New rulings of the Ministry of Finance - Law on Fiscal Cash Registers**

### **Eliminating an error in the fiscal cash register in case when a complaint for a good purchased in one retail facility can be made in another retail facility**

Conclusion from Ruling: There is a possibility that a buyer, on a basis of a fiscal receipt, makes a complaint for goods in different retail facilities of the same business entity, under condition that this is in line with the business policy of that business entity.

The above-mentioned ruling is particularly relevant to persons operating in the retail sector.

### **The absence of obligation to record through the fiscal cash register a supply performed from the sale of gift vouchers**

Conclusion from Ruling: There is no obligation to record through the fiscal cash register a supply performed from the sale of a gift voucher. If such supply is performed, it is necessary to separate the supply from selling gift cards from the supply of goods and services and keep a record of the number of vouchers indebted.

The above-mentioned ruling is particularly significant to retailers that sell gift vouchers.

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