Tax&Legal Highlights

Serbia

New Ministry of Finance Rulings – Value Added Tax

Determining the VAT debtor for the supply of goods and services in the field of construction

The delivery with installation of refrigeration equipment that represents an integral part of the refrigerated warehouse, performed by a VAT payer to another VAT payer within the construction of a refrigerated warehouse, is considered to be supply of goods in the field of construction as an activity listed in the activity code 41.20 – Construction of residential and non-residential buildings.
However, when it comes to servicing refrigeration equipment that forms an integral part of the refrigerated warehouse, the tax debtor for such a supply is a VAT payer performing the supply.

(Ministry of Finance Ruling no. 430-00-240/2017-04 as of September 26, 2017)

New Ministry of Finance Rulings – Value Added Tax

The right of tax exemption for the supply of BITCOIN digital currency

The provision of Article 25 para 1 item 1) of the VAT law that prescribes tax exemption without the right to deduct input VAT on transactions, including mediation, concerning legal means of payment (legal tender), cannot be applied for the supply of bitcoin digital currency since bitcoin digital currency does not represent the legal means of payment in Serbia.

(Ministry of Finance rulings, no. 413-00-168/2017-04 as of October 27, 2017)

New Ministry of Finance Rulings – Value Added Tax

Determining the VAT debtor for the supply of services involving cutting and transport of trees for the purpose of clearing the land for future railway construction

When a VAT payer provides to another VAT payer services involving cutting and transport of trees in order to clear the land for the construction of a railway (i.e. within the preparation of the construction site for the construction of the railway), whilst the construction site is defined as a land or facility, marked separately, on which the construction, reconstruction and removal of facility or maintenance works are carried out, such supply is considered to be supply of services in the field of construction as an activity listed the activity code 43.12 – Preparation of the construction site.

(Ministry of Finance ruling no. 413-00-225/2017-04 as of October 26, 2017)

New Ministry of Finance Rulings – Value Added Tax

The right of a VAT payer to correct the amount of VAT in the new invoice in case VAT was computed for services provided abroad

In case a VAT payer issued an invoice for the supply of goods or provided services stating a higher VAT amount than prescribed by the VAT law, the VAT payer has the right to correct (reduce) the amount of computed VAT in the tax period in which the VAT payer issued a (new) invoice with corrected VAT amount, that is:

- with a lower VAT amount (e.g. if a VAT payer supplied goods or services for which a reduced VAT rate of 10% is prescribed by the VAT law, but mistakenly issued an invoice with 20% VAT and subsequently issued a new invoice with 10% VAT) or,
- without VAT (e.g. if for supplied goods or services for which the tax exemption with the right to deduct input VAT is prescribed by the VAT law, a VAT payer mistakenly issued an invoice with 20% VAT and subsequently issued a new invoice without VAT, or if for goods or services supplied abroad the VAT payer mistakenly issued an invoice with 20% VAT and then issued a new invoice without VAT).

(Ministry of Finance ruling, no. 011-00-1038/2017-04 as of November 27, 2017)

New Ministry of Finance Rulings – Value Added Tax

VAT treatment of import of machine that was temporarily exported for repair within the warranty period

On the import of machine that was temporarily exported for repair within the warranty period, VAT is computed on the tax base that consists of the fee that a VAT payer paid or should pay for the repair of machine in question. Computed VAT is paid in accordance with the VAT law. If repair of the machine that was temporarily exported for repair within the warranty period is performed free of charge and the competent customs authority does not determine the value of the machine during importation in line with customs regulations, the VAT is not computed and paid on import of such machine given that it is considered that there was no increase in the value of the machine in accordance with the VAT law.

In addition, the provision of Article 6, paragraph 1, item 2) of the VAT law and the Rulebook on the procedure for the replacement of goods within the warranty period is not applicable for imports of goods.

(Ministry of Finance ruling, no. 430-00-541/2017-04 as of December 22, 2017)

New Ministry of Finance Rulings – Value Added Tax

Determining the VAT debtor for the supply of services involving excavation, loading and removal of soil from the construction site

When a VAT payer performs earthworks – excavation, loading and unloading of soil from the construction site, to another VAT payer, the VAT payer performs the supply of services in the field of construction for which the VAT debtor is a VAT payer - recipient of services, since this is an activity listed in the activity code 43.12 - Preparation of Construction sites.

However, for the supply of service of removal of soil from the construction site, the obligation to compute and pay VAT in accordance with the VAT law has a VAT payer that performs such supply.

(Ministry of Finance ruling, no. 011-00-489/2016-04 as of January 12, 2017)

New Ministry of Finance Rulings – Value Added Tax

Obligation to compute and pay VAT when a VAT payer – recipient of transport service related to export of goods claims from a VAT payer – transporting company, the remuneration in the amount of the value of goods destroyed during the transport

When a VAT payer – recipient of transport service related to export of goods claims remuneration from a VAT payer who is obliged to perform the transport of goods, for value of goods destroyed during the transport in the road accident that happened abroad, such remuneration is considered to be compensation for damages.

(Ministry of Finance ruling, no. 430-00-00597/2017-04 as of December 12, 2017)

New Ministry of Finance Rulings – Corporate Income Tax

Tax treatment of fees for software development (design and implementation), software maintenance, software license that a resident legal entity pays to its related legal entity from Germany

In case of so-called mixed contracts (in relation to which the payment is made based on software license as well as based on the provision of services), a resident legal entity should request from a non-resident legal entity issuance of two invoices instead of a single invoice, whilst one of those invoices should refer to payment based on provision of services (e.g. maintenance, upgrading, or distribution of software) and the second to software license fee.

As regards the tax treatment (in accordance with the Double Tax Treaty), the fee that is payable under the software license as well as other software related transactions are in accordance with Article 7 and 13 of the Double Tax Treaty treated in the following way:

It is a royalty fee - subject to withholding tax:

1. Software license fee;

2. Software deployment license fee.

It is not a royalty fee (it is not subject to withholding tax) but profit from business (subject to verification by applying Article 9 of the Law on Tax Procedures and Tax Administration):

1. Software purchase fee;

2. Software implementation fee;

3. Software maintenance fee (condition: existence of a basic license agreement);

4. Software upgrade fee (condition: existence of a basic license agreement);

5. Software distribution fee (condition: existence of a basic license agreement).

It is assumed that the taxpayer should pay attention to the fact that the amounts on each individual invoice are realistically determined – not resulting in the situation in which e.g. the amount of the invoice for the provision of the service is unrealistically high in relation to the amount of the software license invoice that is in that case unrealistically low, which the competent tax authorities, if necessary and in accordance with the regulations, will most likely not accept).

(Ministry of Finance ruling, no. 413-00-249/2017-04 as of December 14, 2017)

New Ministry of Finance Rulings – Corporate Income Tax

Tax treatment of fees paid by a resident legal entity to a resident of the United Kingdom and Northern Ireland based on the use of a service with constantly updated information relating to financial market

The fee paid by a resident legal entity to a resident of the United Kingdom and Northern Ireland based on the use of a service that allows access to constantly updated information related to financial market, has a character of business profit that is taxable only in the United Kingdom of Great Britain and Northern Ireland.

In this particular case the fee in question does not fall within the definition of royalty fees referred to in Article 12 (royalty fees) para 3 of the DTT – particularly not in the part of definition according to which royalties include the fee that is paid out for the use or the right to use information having an industrial, commercial or scientific character (which implies that the payment of the fee is made for the transfer of expert knowledge or know-how under which, in general, the payment is made for notices that constitute publicly unavailable industrial, commercial and scientific information as a result of previous experiences and that may have a practical application in the companies' businesses or whose disclosure can have some economic benefit).

In contrast to the above-mentioned concept of transfer of know-how in this specific case, the payment is made for a transaction that allows a user (resident legal entity) to download (via electronic means) digital product (publicly available information from the financial market, over which the fee recipient, a non-resident legal entity has no intellectual property right) for his own use with the notion that payment (essentially) is made to obtain the data (rights) transferred in the form of a digital signal, and not for its use or the right to use (in which case it could be a question of royalty).

At the same time, the respective fee can not represent a royalty fee, either on the basis of the use or the right to software usage ("E ..." service) because referring to "E..." service relates exclusively to the web site through which information from the financial market can be accessed (which will continue to remain on that website) whereby the user (resident legal entity) makes a payment for access to information rather than for the software royalty (software usage) by means which the information is downloaded.

(Ministry of Finance ruling, no. 413-00-00167/2017-04 as of December 14, 2017)

New Ministry of Finance Rulings – Corporate Income Tax

The use of residual loss from a previous tax period of a transferor's company that ceases to exist, due to a change in status, by acquirer's company in a tax period that is shorter than a calendar year

In case that a transferor's company (that ceases to exist due to a status change, as in this specific case) in the tax balance sheet made for the period 1 January – 30 September 2017 determines the profit and decreases it for the corresponding amount of unused loss from pervious tax periods, the right to use potential residual loss (starting from the tax period in which the status change is made and registered) is transferred to the acquirer's company.

(Ministry of Finance ruling, no. 011-00-653/2017-04 as of October 3, 2017)

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2017 non-taxable threshold for annual income tax purposes and adjusted non-taxable amounts in Serbian currency (RSD) for 2018

2017 non-taxable threshold for annual income tax purposes

Based on the published data on average annual salary per employee paid out in 2017 in the Republic of Serbia from January 26th, 2018, the non-taxable threshold relevant for determining 2017 annual personal income tax filing liability is set at **RSD 2,375,136**. Annual income taxpayers for 2017 are natural persons, both tax residents and tax non-residents, whose annual net income for 2017 exceeded the afore-mentioned threshold.

Non–taxable amount, taxable amounts and personal deductions relevant for 2017 annual income tax are presented in the table no. 1.

Table no. 1:

Description	Amount in RSD
Non-taxable amount	2,375,136
Income taxable at 10%	4,750,272
Income taxable at 15%	Above 4,750,272
Personal deduction for a taxpayer*	316,685
Deduction for a dependent family member*	118,757

***** Total amount of deductions cannot exceed 50% of income to be taxed

2018 adjusted non-taxable amounts in Serbian currency (RSD)

In accordance with the Law on amendments to the Personal Income Tax Law **(hereinafter: the Law),** published in the "Official Gazette of the Republic of Serbia" no. 113/17 and adjusted amounts in Serbian currency (RSD) published in the "Official Gazette of the Republic of Serbia" no. 7/18, adjusted non-taxable amounts in Serbian currency (RSD) for the year 2018 have been prescribed.

The Law entered into force on January 1st, 2018 and the new non-taxable salary amount is applied in salary tax calculations and payments starting from the salary paid out for January 2018, whereby the non-taxable salary amount of RSD 11,790 ceases to apply ending with the payment of salary for December 2017.

The non-taxable salary amount, which is applied in salary tax calculations and payments for full-time employees starting from the salary for January 2018, is RSD 15,000.

Table no. 2 displays some of the non-taxable amounts for the purposes of personal income tax, which will be effective from February 1st, 2018.

Table no. 2:

Description	Amount in RSD
Commuting costs	3,837
Per diem for local business trip	2,303
Travel costs on a business trip	6,716
Private car for business purposes / business trips	
Anniversary award for employees	19,183
New year's and Christmas' present for employees' children, until the age of 15	9,592
Voluntary premiums for health insurance and pension contributions	5,757

2018 maximal monthly social security contribution base and 2017 maximal annual social security contribution base

2018 maximal monthly social security contribution base

In accordance with the new Law on amendments to the Law on Mandatory Social Security Contributions (hereinafter: the Law) published in the "Official Gazette of the Republic of Serbia", No. 113/17, the new method of determining maximal social security contribution base (hereinafter: the SSC base) has been prescribed.
The Law entered into force on January 1st, 2018, and the new data on the maximal monthly SSC base is determined in accordance with Article 15 of the Law, whereby the new maximal monthly SSC base amount was published in "Official Gazette of the Republic of Serbia", no. 2/18, which is applicable as of January 6th, 2018.
The maximal monthly SSC base, which is applicable as of January 6th 2018, is RSD 329,330. The maximal monthly SSC base shall be applicable until the end of 2018 December.

2017 maximal annual social security contribution base

The maximal annual SSC base for the year 2017 is RSD 3,793,175 ("Official Gazette of the Republic of Serbia", No. 2/18 and 7/18).

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