

Changes and Amendments to the Law on Tax Procedure and Tax Administration

Tax Alert, May 2013



One of the reasons behind the changes and amendments to the Law on Tax Procedure and Tax Administration (hereinafter: the Law) is the consolidation of payment obligations for withholding tax, through which all existing tax returns and other forms submitted until now (35 forms) have been replaced by a single tax return. Additionally, the changes also establish the mandatory nature of the acts published by the Ministry of Finance, the possibility of a statute of limitations for mandatory social security contribution, as well as increased punitive measures. The text below contains an overview of the most significant changes.

A single tax return for withholding tax

The application of the new tax return form for withholding taxes will begin from January 1st 2014, which will contain all single and aggregate data about calculated taxes and contributions for all income recipients on the payer level. This tax return will only be filed electronically, before all salaries, salary compensation and other income payments are made.

Namely, this is a report that the taxpayer submits to the Tax Authority (hereinafter: the single tax return), which is then subject to a prior control of the Tax Authority before it is accepted. If it is established that the single tax return consist formal or mathematical mistakes, the Tax Authority will notify the taxpayer in the electronic form regarding these mistakes. In other words, the single tax return is considered to be submitted on the day when the Tax Authority confirms the formal and mathematical correctness of the displayed data. After that, the Tax Authority issues the number of the return, the payment clearance number for the entire amount of the stated liability and submits this data in the electronic form to the taxpayer.

Further, it has been regulated that withholding tax becomes due either on the day prescribed by the Law or on the day designated in the single tax return as the day of payment, whichever of these two dates comes first.

It has been prescribed that, during the prior tax control, the Tax Authority will in the decision in which withholding tax is levied instruct the taxpayer to, amongst other things, submit an single tax return in which the determined errors have been removed.

Furthermore, the Tax Authority will submit the single tax return for mandatory social contributions instead of the taxpayer, ex officio, in the case when the taxpayer fails to submit it within the prescribed timeframe.

The Minister of Finance should pass a bylaw pertaining to the single tax return within three months from the entry into force of the changes and amendments to the Law.

Valid aggregate and single tax returns for withholding tax will be submitted under the old system until the end of the current year, since withholding taxes that were calculated and paid until December 31st 2013 will be submitted in accordance with the previous rules.

Mandatory nature of rulings and other acts published by the Ministry

Through the amendments and changes to the Law the mandatory nature of the Ministry of Finance acts (rulings, guidelines and the like) for the Tax Authority is introduced.

The aforementioned regulation will apply to the Minister's acts passed after the entry into force of the changes and amendments to the Law, i.e. all acts issued as of May 30th, 2013 will be mandatory for the Tax Authorities.

Abolishment of the banks' reporting obligations to the Tax Authority

As of January 1st, 2014 the obligation for banks, through which payment orders are realized for salaries and salary compensations, as well as for payment orders for tax and social security contributions on these payments, to electronically submit to the Tax Authority information about the payments made, will be abolished. At the same time, banks are allowed to perform payments of salaries and salary compensations only if the payment order for salaries, salary compensations or withholding taxes contains the reference number which serves as a permission to make the entire payment on that basis and is issued by the Tax Authority.

Delivery of tax acts

The method of delivery for tax acts has been altered. It has been prescribed that the said acts are to be delivered personally or by mail. It will be deemed that personal delivery has been done on the day of reception of the tax act by the taxpayer or any authorized person (reception is confirmed by signature), and mail delivery will be deemed to have been done with the expiration of the 15th day from the day the tax act was submitted to the post office.

Tax return submission

The tax return can now also be signed by, apart from the taxpayer and other persons in specific cases, any person so authorized by the taxpayer, legal representative, and appointed representative.

The provision stating that the amended tax return cannot be submitted electronically has been abolished, though the Minister is required to further regulate the electronic submission of the amended tax return.

Informative tax return

The penalties for not submitting the informative tax return and for submitting an incorrectly filled informative tax return have been aggravated. If a taxpayer – a legal entity does not submit an informative tax return to the Tax Authority, a fine of up to 3% of total income obtained in the previous business year will be charged. If the tax return does not contain complete data, the taxpayer will have to pay a fine from 100.000 to 1.000.000 RSD.

On the other hand, if a taxpayer that – an individual does not file an informative tax return, or does not state all of his assets therein, he or she will be sanctioned with a fine of up to 3% of the market value of the unreported property.

Interest calculation

Provisions of Article 75 of the Law amended in order to explain the means of interest calculation in more detail. Namely, from January 1st 2013, interest is calculated and paid on the amount of overpaid and underpaid tax, according to the rate equal to the annual reference rate of the NBS, increased by ten percentage points, by applying the simple interest calculation of one hundred.

In that sense, Article 75, par. 1 of the Law specifies that interest is calculated and paid on the amount of over and underpaid tax and ancillary tax payments, with the exclusion of previously calculated interest.

This specification was necessary because interest belongs to the group of ancillary tax payments, and the calculation of interest on interest would be contrary to the method of interest calculation applied from January 1st 2013.

The rest of the provisions further specify the method of interest calculation, by setting that interest is calculated for the number of calendar days which have passed from the day of default, proportionately to the number of calendar days in a given year. Further, this is to be done using the decursive method, without the adding of interest to the principal amount after the expiration of the calculation period.

Statute of limitations for mandatory social security contributions

The provisions of Article 114e of the Law have been altered, which have until now set out that the provisions of the Law regarding the statute of limitations for the right to determination, payment and reimbursement do not apply for mandatory social security contributions. According to the new rule, the aforementioned provisions will apply to all public revenue for which a statute of limitations has been prescribed by another tax law in a different way. In other words, mandatory social security contributions are now subject to statute of limitations under the terms prescribed by the Law.

Foreign residency certificate

With the goal of introducing a more effective application of the double taxation treaties (hereinafter: DTT), when proving the foreign resident status of a state with which a DTT is signed, certified translations of residence certificates issued on forms prescribed by the State with which a DTT is signed will also be accepted.

Up until now, the foreign resident status of a non-resident could have only been proved using the certification form prescribed by domestic law (POR-2 Form). A residence certificate which was not issued on the aforementioned form was not valid as proof of residence. A common occurrence in practice was that the foreign state would refuse to issue a certificate of residence on the POR-2 Form, because the foreign law would prescribe a different form of certificate.

Coming into force

The Law entered into force on May 30th, 2013.

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