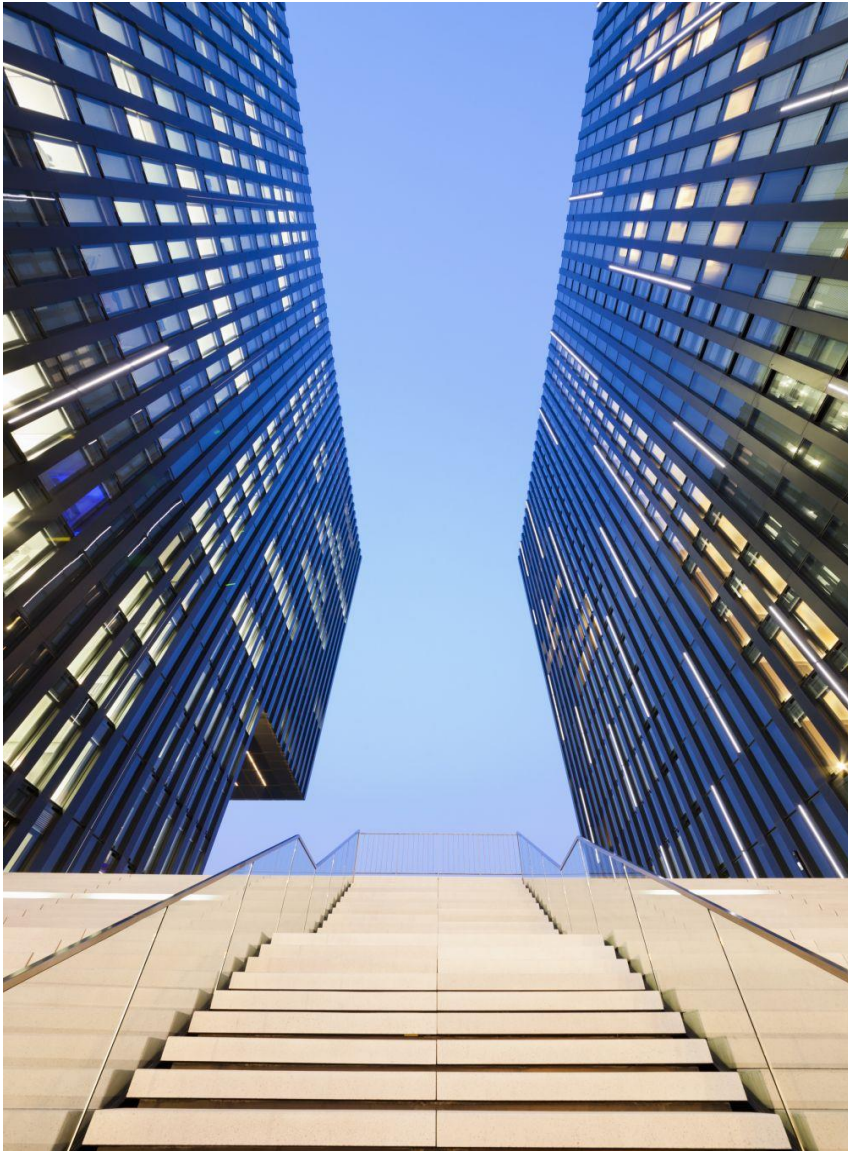


Tax Alert

October 2014



Postponed application of rules regulating the exclusive e-submission of certain tax returns

According to the latest changes of the Law on Tax Administration and Tax Procedure (“Off. Gazette RS” no. 105/2014) the new dates for exclusive e-submission of tax returns were introduced as follows:

- **April 1, 2015** for corporate income tax (except for withholding tax), as well as for annual personal income tax;
- **January 1, 2016** for excise duties, withholding tax, income tax from independent business activities, for entrepreneurs that keep business records and for tax on non-life insurance; and
- **January 1, 2017** for all other tax returns.

New Rulings of the Ministry of Finance

The Ministry of Finance has released several new Rulings in the previous period that further explain the application of Value Added Tax and Corporate Income Tax Law provisions. The following were selected:

- **Taxation of royalties paid by a Serbian resident company to a non-resident company** – The Ministry of Finance has taken the position that royalties paid to a related, non-resident company from France, which are not in line with the arm’s length principle, are subject to 20% WHT in Serbia.

Namely, where a Serbian resident company pays royalties to a French resident company and the appropriate residence certificate is obtained, the WHT rate of 0% prescribed under the Double Taxation Convention concluded between Serbia and France may be applied.

However, in the case where Serbian and French companies are related (according to the Serbian Corporate Income Tax Law) the mentioned 0% rate may be applied only on the part of the of the royalty that fits within the arm’s length range. On the other hand, 20 % WHT rate will be applied on the remaining part of the royalty (which exceeds the determined range).

(Ruling of the Ministry of Finance, no. 430-00253/2014-04 issued on August 20, 2014)

The impact of the Ruling

Pursuant to Article 40 of the Law on Corporate Income Tax, a withholding tax of 20% is levied on the payment of income to a nonresident taxpayer by a Serbian resident legal entity, including the income from royalties and interest income. The payer of income will apply the provisions of the double taxation treaty provided that the conditions for treaty application are fulfilled, i.e. provided that the nonresident supplies his certificate of residence and provided that the nonresident is a beneficial owner of the income.

The Ruling of the Ministry of Finance is significant because it is the first Ruling issued by the Ministry that covers both the withholding tax aspect of the income generated by a nonresident legal entity and the application of a double taxation treaty, in the situation where the resident payer (debtor) and the non-resident recipient of income (creditor) have the status of related parties.

Even though the present Ruling regulates royalty taxation it is also applicable to interest income paid by a tax resident of Serbia to nonresident legal entities with the status of related parties.

Pursuant to the Ruling, when establishing tax deductible royalties and interest expense in transactions with nonresident related parties, a taxpayer should observe the terms from the treaty and keep in mind that the treaty terms apply only on arm's length interest income and royalties. On the portion of interest and/or royalties in excess of this amount, the tax rate prescribed by law (20%) will apply.

- **Influence of discounts and other price reductions on the VAT base** – The VAT base should not contain discounts and other price reductions granted by the VAT payer to the buyer and the Ministry of Finance stipulates that there are no specific regulations limiting or regulating the volume of discounts or other price reductions.

(Ruling of the Ministry of Finance, no. 413-00-10/2014-04 issued on August 25, 2014)

- **Amending the VAT base, based on a binding court decision regarding bankruptcy proceedings** – When a VAT payer has made a supply to a company that underwent bankruptcy procedure which ended with a final, enforceable court decision on bankruptcy, the VAT payer can decrease the VAT base and output VAT for the uncollected amount.

(Ruling of the Ministry of Finance, no. 011-00-919/2014-04 issued on August 14, 2014)

- **Determining the tax debtor for supplies made during the reconstruction of a building** – When the VAT payer – contractor, supplies goods and services for the reconstruction of a building, the tax debtor will be the contractor itself, and not the goods and services recipient. Namely, the goods and services recipient is not considered to be an investor under the Serbian Law on Planning and Construction in this case.

(Ruling of the Ministry of Finance, no. 413-00-329/2013-04 issued on August 27, 2014)

- **The deduction of input VAT for purchase of newspapers and magazines used for analyzing media presence** – When a VAT payer purchases newspapers and magazines for the purpose of analyzing own media presence and activities, as well as to follow activities of the competition, the VAT payer can deduct such input VAT.

(Ruling of the Ministry of Finance, no. 011-00-929/2014-04 issued on August 25, 2014)

- **VAT treatment of the fee determined under a court decision for the use of business premises after terminating the lease agreement** – When a lease agreement is concluded for an indefinite time period and the lessor terminates this agreement in accordance with the Law on Contracts and Torts, the use of premises after the termination and the related fee determined under a court decision are not subject to VAT.

(Ruling of the Ministry of Finance, no. 413-00-195/2013-04 issued on October 22, 2014)

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Contacts

For more information, please contact our experts:

Srdjan Petrovic
Partner

Terazije no. 8
Tel: + 381 11 3812 222
spetrovic@deloittece.com

Svetislav V. Kostic
Director

Terazije no. 8
Tel: + 381 11 3812 148
skostic@deloittece.com

Tamara Dmitrovic
Senior Manager

Terazije no. 8
Tel: + 381 11 3812 172
tdmitrovic@deloittece.com

Dejan Mrakovic
Manager

Terazije no. 8
Tel: + 381 11 3812 164
dmrakovic@deloittece.com

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