

SERBIA: Tax – Amendments to a set of tax laws Corporate Income Tax¹

Permanent Establishment

- Provisions concerning permanent establishment (PE) are amended by specifying in Article 3 of the Law that the profits of a PE are taxed in the manner prescribed by Serbian corporate income tax law unless a Double Tax Treaty (DTT) prescribes otherwise. This was not necessary to specify because the Constitution already provides for supremacy of international treaties over national legislation. By emphasizing this supremacy in particular instances (such as with respect to PE taxation and withholding tax), there is a risk of a false impression being created that where supremacy is not stressed, DTT does not apply. A treaty overrides domestic law in respect of all issues regulated by the treaty, and there is no need to specify this truism.
- DTT is relevant for qualification (whether a business activity of a non-resident corporation in Serbia amounts to PE or not), for the allocation of taxing rights (whether Serbia has a taxing power over such PE and to what extent), as well as for the purpose of avoidance of double taxation.
- In Article 5 of the Law, a new paragraph has been added, imposing a requirement that tax return and tax balance sheet be filed with tax authority even if under the relevant DTT criteria the presence of a non-resident would not create a PE. In this case, the non-resident and/or his PE in Serbia (qualified as such under the domestic law) will not be obliged to pay tax in Serbia, but will have an obligation to file tax return and balance sheet. An example of disparaging definitions of PE under the Serbian law and DTTs can be found in the construction business. The Serbian CIT Law requires construction works last at least 6 months for a PE to arise, while under some DTT's the works need to last 12 or even 18 months in order to create a PE.

Deductibility of expenses

- Expenses for healthcare, educational, scientific, humanitarian, religious, sport etc. purposes, as well as expenses for investments in cultural activities, now including cinematography, are recognized as deductibles in the amount capped at 5% of the total revenue, which represents an increase from 3,5% applicable until the latest changes.

¹ Corporate Income Tax Law, *Zakon o porezu na dobit pravnih lica*, "Official Gazette RS", Nos. 25/2001, 80/2002, 80/2002, w, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012 and 47/2013

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- Article 16 of the Law now specifies that, along with the fulfilment of other conditions for deductibility of write-offs, a write-off is deductible also in case enforcement procedure is initiated against the debtor. Earlier version of this provision conditioned deductibility of the write-offs with the condition that the debtor be "sued", which assumed lawsuit and full litigation. Since the Law on Enforcement Procedure allows, in certain cases, initiation of enforcement procedure without the need to previously conduct litigation, the Law on Corporate Income Tax has rightly recognized this situation as one on the basis of which a write-off can be regarded as a deductible expense.
- It has been the case also prior to the amendments that claims which were not collected within 60 days from the due date could be treated as a deductible expense ("adjustment of the claims value"). If such claims were written-off afterwards, they would be included in income for the year when write-off took place, unless the conditions for recognition of write-off as deductible are cumulatively fulfilled. The Law now provides that this rule is also applicable to the adjustments of certain claims made by banks and insurance companies (Article 22a).
- New Article 16a prescribes that the loss incurred from the sale of claims is recognized as a deductible expense in the amount recognized in the P/L statement in accordance with the IAS/IFRS.

Income adjustments

- A new paragraph to Article 25a has been added, which provides that income realized in relation to expenditures which are not recognized as a deductible expense will not be included in the taxable base in the period in which it is recorded. The manner of such exclusion will be further regulated by the Rulebook. For example, if the competent body repays to a company the amount of a fine as a result of its decision imposing the fine being overturned, such income will not be treated as income for tax purposes.

Capital Gains

- Article 27 of the Law specifies that capital gains realized by a resident from the sale of industrial property is taxed regardless of whether the industrial property was used for business activities or not. Prior to this amendment, capital gains from the sale of industrial property rights (patents, trademarks) were taxed in Serbia only if the non-resident used the respective industrial property was used to perform the business activity.
- A further novelty is that non-residents are no longer subject to tax on capital gains from the sale of industrial property rights. Non-residents are subject to taxation of capital gains resulting from the sale of:
 - real estate – regardless of whether the property was used to perform a business activity. In this respect, residents are in a more favourable position because they are subject to tax on capital gains from the sale of real property only if the property has been used for business activities;
 - shares, bonds and other securities;
 - investment units of open investment funds.

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Withholding tax

- Withholding tax is imposed on income earned by non-resident from subletting of immovable and movable property. Previously, the law stipulated that withholding tax was payable by non-residents only on income from lease. Tax on income from lease and sublease of immovable and movable property on the territory of Serbia, realized by a non-resident from a natural person is assessed on the basis of a decision and not on withholding basis.
- Special withholding tax on purchase of secondary raw materials / waste has been introduced. Tax is calculated and paid by resident purchaser of secondary raw material / waste from resident or non-resident. Withholding tax rate is 1% of the amount of the compensation paid, without VAT. This tax is in its substance more of a sales tax than an income tax.

Tax credit for investment in development of intangibles

- Until now, tax credit has been available only for investments in fixed assets. An important novelty is that tax credit is now being granted for investments in the development of intangible assets. Investing in development is defined as the *application of research findings or other knowledge to produce significant new improved materials, devices, products, processes, systems or services prior to commercial production or use*.
- This credit is granted in the amount of 20% of the investment, but not more than 33% of assessed corporate tax liability (40% and 70% for small businesses, respectively). Credit is recognized in the tax period in which the conditions for recognition of intangible assets in accordance with IAS / IFRS are fulfilled, and can be carried forward over a period of 10 years. In case of disposal of intangible assets in less than 3 years from the granting of tax credit, the right to tax credit is lost, except in the case of disposal resulting from changes of corporate status.
- It is primarily pharmaceutical and software companies which may receive benefits from this tax credit. Multinational companies that already have their R & D departments or manufacturing in Serbia have been given an opportunity to review their group structure and transfer pricing policy and may eventually come up with a plan on restructuring their internal transactions for tax savings at the group level.

Tax Holiday

- One of conditions for tax holiday provided under Art. 50a is to hire 100 new employees (instead of former 200).

Property Taxes²

Property Tax (PT)

- Subject-matter of taxation has been considerably expanded and now includes the following rights:

² Law on Property Taxes, *Zakon o porezima na imovinu* "Off. Gazette RS", No. 26/2001, "Off. Gazette SRJ", No. 42/2002 - decision SUS and "Off. Gazette RS", Nos. 80/2002, 80/2002 - oth. law, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 - decision US and 47/2013

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- Right to use property in public domain. This is the right held by the municipalities, institutions, public agencies, NBS etc., however budget users are exempt from property tax.
- Use of property in public domain (by state-owned enterprises and other legal entities which were granted the right to use property in public domain, for example, by concession).
- Possession of a publicly owned real-estate without a legal basis.
- Possession of immovable property "with unknown or unspecified owner." It is unclear whether this refers to the illegal buildings.
- Possession and use of real estate on the basis of financial lease – taxpayer is lessee.
- Right to use more than 10a of the land, whereby tax is paid on the entire surface.
- Lease of construction land in public ownership and agricultural land owned by the state are not taxed.
- Significant novelties have been introduced regarding tax base in case of real property owned by legal entities:
 - Tax base for taxpayers that record immovable on their books at fair value in accordance with IAS / IFRS
 - this fair value shall be the tax base.

Otherwise, tax base consists of:

- The value of undeveloped land, and/or
- The value of buildings increased by the value of the associated land that is determined on the basis of:
 - Useful surface, and
 - The average value per square meter in the relevant n area according to the parameters published by the relevant municipality on its website.

Book value is only recognized for:

- exploitation fields and exploitation facilities;
- certain industrial facilities;
- facilities for treatment and disposal of waste;
- facilities used for processes necessary for the re-use of materials;
- storages and storage facilities;
- infrastructure (railways, roads ...);

For real estate acquired in the course of a financial year - tax base for the purpose of property tax for that year is the purchase cost of such property as stated in the taxpayer's books.

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- Real estate intended exclusively for resale is exempt from property tax for the year in which the tax liability has occurred as well as for the following year.
- Self-assessment is introduced with respect to taxes on property.

Inheritance and gift tax

- Income forming part of the corporate income tax base cannot be at the same time considered as a gift (e.g. discharge of debt).
- Income which is exempt from or included in the base for personal income tax (eg. discharge of debt or write-offs that do not qualify for exemption from income tax) cannot be at the same time taxed as a gift.
- Non-taxable amount of gift and inheritance is increased from 30,000 to 100,000 RSD.
- The deadline for filing of tax returns has been extended from 10 to 30 days.

Property Transfer Tax (PTT)

- PTT is now introduced on:
 - Transfer of motor vehicles - unless such transfer is subject to VAT. Previously, the PTT was payable only on transfer of used vehicles.
 - Sale of bankruptcy debtor as legal entity, unless the buyer has assumed all liabilities of bankruptcy debtor. If the debtor is wholly or partially state-owned, PTT is not payable, i.e. it is not payable to the extent ownership is state-owned. It should be stressed that bankruptcy law provides that in the event of sale of debtor as legal entity, liabilities of the debtor are not transferred. It still has to be tested whether it is possible to derogate from this rule by an agreement.
- PTT no longer applies to:
 - Transfer of property resulting from change of corporate status. The law no longer condition the exemption with the requirement that the shareholders have received cash compensation in the amount exceeding 10% of the nominal value of shares.
 - Transfers made to shareholders of a company in liquidation, i.e. liquidation proceeds. This eliminates double taxation, since such payment is considered as distribution of dividend and is taxed accordingly.
 - Acquisition of real estate by means of division of co-ownership, if division is performed along the ownership shares.
 - Transfer of right of use on the basis of expropriation.
 - Real estate acquired in the procedure for restitution.
 - Ownership acquired by conversion of the right of use or lease on the construction land.

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- The deadline for filing of the tax returns has been extended from 10 to 30 days.

Personal Income Tax³

Residency of natural persons

- According to the Law on Personal Income Tax, natural persons – residents pay taxes in relation to their world-wide income, whereas natural persons – non-residents pay taxes in relation to the income generated on the territory of Serbia. According to the Law, natural person is considered resident of Serbia if:
 - he/she has on the territory of Serbia permanent abode or center of vital interests, OR
 - he/she has stayed on the territory of Serbia, continuously or with interruptions, 183 or more days within 12 months commencing or ending in the fiscal year concerned.

By the amendments to the Law, the legislator has specified that the two above listed conditions are set out alternatively and not cumulatively.

- Prior the amendments to the Law came into the force, in practice there was a problem with determining the beginning and the duration of the residency. To this extent, the legislator has stipulated that in order to determine the period of stay in Serbia (i.e. the period of staying 183 and more days), for the purpose of residency, any stay between 00 and 24 hours in Serbia will be included into the period of stay, apart from the period in which the natural person was in transit. Also, the legislator has stipulated that the natural person who was not a resident of Serbia in the year preceding the year of his/her arrival to Serbia, shall not be considered as the resident of Serbia for the period which is preceding the day of his/her first arrival to Serbia (under the presumption that he/she does not have permanent abode or center of vital interest in Serbia). Further, natural person who is not a resident of Serbia in the year following the year of his/her final departure from Serbia shall not be considered as resident of Serbia for the period following the day of his/her final departure (assuming he/she does not have permanent abode or center of vital interest in Serbia).

Example: Natural person arrived to Serbia on 1 July 2013 and will have left Serbia on 31 January 2014. Having in mind the period of stay in Serbia (more than 183 days), this natural person will be considered as resident of Serbia for the period between 1 July 2013 until 31 December 2013 and between 1 January 2014 and 31 January 2014. With reference to the period preceding his/her first arrival to Serbia (i.e. period from 1 January 2013 until 30 June 2013) this natural person will not be considered as resident of Serbia, provided he/she was not considered as resident in 2012 and further provided that he/she did not have during the relevant period (i.e. from 1 January 2013 until 30 June 2013) permanent abode or center of vital interests in Serbia. Also, this natural person will not be considered as resident of Serbia in relation to the period following his/her departure from Serbia (i.e. period from 1 February 2014 to 31 December 2014) under the condition that he/she will not be considered as resident of Serbia for 2015 and further provided that in the

³ Law on Personal Income Tax, *Zakon o porezu na dohodak građana* "Official Gazette RS" nos. 24/2001, 80/2002, 80/2002, 135/2004, 62/2006, 65/2006, 31/2009, 44/2009, 18/2010, 50/2011, 91/2011, 7/2012, 93/2012, 114/2012, 8/2013, 47/2013 and 48/2013

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relevant period (i.e. from 1 February 2014 until 31 December 2014) he/she will not have permanent abode or center of vital interest in Serbia.

- Natural person who at the moment of his/her first entry into Serbia knows that he/she will fulfil any of the two above mentioned general conditions will be considered as resident of Serbia as of the moment of his/her first entry into Serbia.
- Prior to the amendments to the Law, natural person sent abroad to carry out the work for natural or legal person – resident of Serbia was considered resident of Serbia purely on the ground of being assigned to work abroad for that person, i.e. irrespectively of whether any of the two above-mentioned general conditions was fulfilled. By the amendments to the Law, this provision has been changed in the way that only natural person who has been assigned from Serbia to another country for the purpose of carrying out work in diplomatic or consular representation office of Serbia or in an international organization shall be considered resident of Serbia (irrespective of whether any of the conditions under a.) and/or b.) has been fulfilled).

Salary tax

- The term „salary” has been expanded to include, *inter alia*, income generated by employee on the basis of his/her work with employer from a person related to the employer, in accordance with the definition of related party under the Law on Corporate Income Tax.
- Apart from securities (other than shares acquired in the process of privatisation) acquired by employee from employer, salary also includes securities acquired by employee from person related to the employer, as well as securities acquired by the employee on the basis of share option plan of employer or employer's related party. It remains unclear whether the acquisition of option itself is considered as salary or only the acquisition of shares on the basis of option is salary for this purpose.
- In case of the acquisition of securities, it is deemed that salary has been generated at the moment of acquiring the right to dispose of such securities. This is the moment of acquiring ownership over securities. With reference to the shares issued in Serbia, this should be the moment when employee is registered as owner in the Central Depository Agency. If the costs related to acquisition of securities granted by a person related to employer are born by the employer, the moment when the salary is deemed to be generated is the moment when employer records the cost on its books.
- In case of acquisition of securities, taxable base is market value increased for costs of taxes and social contributions borne by employee from his/her salary (at the moment of acquiring the right of disposal), i.e. the difference between the market value and the amount paid by the employee increased for costs of taxes and social contributions borne by employee from his/her salary.
- Premium for voluntary health insurance paid by employer for its employees, as well as premium which employer withholds and pays from employee's salary is exempt from salary tax up to the total amount of RSD 5.214 per month.

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- Salary tax rate has been reduced from 12% to 10%, whereas on the basis of a special law, the applicable rate for pension and disability insurance contributions payable by employee has been increased from 11% to 13%. Non-taxable amount of salary has been increased from RSD 8.776 to RSD 11.000.

Tax on income from capital

- Income from capital subject to taxation now includes income generated from renting immovable property. Prior to the amendments, income generated from renting immovable property was considered income from immovable property.
- Use of company's property and service by owner for his/her personal needs is no longer considered as income from capital, but as so-called other income.
- It has been specified that dividend includes liquidation surplus exceeding the value of invested capital.
- Taxable base is monetary, i.e. non-monetary amount of generated income, whereas with reference to income generated from renting immovable property, taxable base is gross amount reduced for recognized expense. Recognized expense has been increased from 20% to 25% (50% in relation to property rented to tourists, as before). Exceptionally, tax payer is entitled to actual expense which has to be documented.
- Tax rate applicable to income from capital remains at 15%, while in relation to income from renting immovable property, tax rate remains at 20%. Having in mind that recognized expense has been increased to 25%, effective tax rate applicable to income from renting immovable property is 15%, which equals the tax rate applicable to income from renting of personal immovable property to tax rate applicable to other types of income from capital. In case where recognized expense of 50% applies, effective tax rate is 10%.
- Unlike other types of income from capital, income from renting of personal immovable property remains subject to annual income tax.

Tax on capital gains

- After the amendments to the Law have come into the force, transfers of permanent right of use of and the right to build on construction land, investment unit of voluntary pension fund and accumulated funds on the basis of scheduled payments from the accounts of member of voluntary pension fund is no longer subject to capital gains tax.
- Capital gains generated on the basis of the sale of property rights on immovable property, copyrights and rights related to the copyrights and industrial property rights, stakes and securities inherited from the first line of kin is exempt from tax on capital gains.
- Provisions on acquisition price for the purpose of capital gains have been specified:
 - For securities traded on a stock exchange, acquisition price is the price the tax payer documents as actually paid, or the lowest recorded price at which the securities were traded in the period of one year preceding their sale. If securities were not subject to trade in the period of one year, acquiring price will be considered as the lowest recorded price in the first preceding year in which the trade occurred,

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- For securities purchased by the tax payer and which securities are not traded on the stock exchange, acquiring price is the price the tax payer documents as really paid. Otherwise, the acquiring price is the nominal value. When shares do not have a nominal value, acquiring price is proportional value of the net asset of the company at the moment of acquiring,
- Acquiring price of immovable property is no longer reduced on the ground of depreciation.
- Deadline for submission of tax return has been prolonged from 15 days to 30, i.e. 120 days in case of sale for the purpose of resolving his/her housing issue. New deadlines are applicable as of 1 January 2014.

Tax on other income

- Other income subject to taxation has been expended to include income from sub-renting of the immovable property and taking of company's property and usage of company's services by the owner of company for his/her personal needs. Prior to the amendments to the Law, income from sub-renting of the immovable property has been considered as income from immovable property, whereas taking of company's property and usage of company's services by the owner of the company for his/her personal needs was considered as income from capital.
- Reimbursement of documented expenses incurred on the basis of the business trips if the reimbursement of these expenses has been made by the payer to the natural persons who have been assigned by their employer to the payer in connection with the employer's activity are exempt from tax on other income up to the amount which is exempt from salary tax (i.e. allowances for business trips in the country up to the RSD 2.086, reimbursement of expenses for accommodation as per invoice, etc.).
- Write-off of receivable held by bank will not be considered as taxable income of bank's debtor under the condition that the costs of suing the debtor are higher than the debt and the amount which has been written off by the bank is recognized as expense in accordance with the Law on Corporate Income Tax. Also, the remaining amount of receivable written-off by the bank will not be considered as taxable income of the debtor provided the receivable is classified under the rules of the National Bank of Serbia as 100% covered by reserves and the debtor has, in accordance with a settlement agreement concluded with the bank, sold the immovable property at usual market price and the proceeds of the sale, which are short of total debt to the bank, were transferred to the bank for the purpose of covering the debt under a loan taken from the bank.

Annual income tax

- The most important change in relation to annual income tax is that natural persons – non-residents of Serbia are obliged to pay annual income tax in relation to their income generated on the territory of Serbia, under the condition that they exceed the relevant threshold and the respective income is of the type that forms part of annual income tax base). Prior to the amendments to the Law, only those foreigners who were residents of Serbia were subject to annual income tax. The questions which follow are what is considered as income generated on the territory of Serbia by non-residents, as well as which income should be reported into the annual income tax base. The Law itself does not provide explicit answers to these questions.

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- In situation where the natural person is coming from a country with which Serbia has concluded a Double Taxation Treaty, the question is whether Double Taxation Treaty applies to annual income tax. The answer depends on the interpretation whether the annual income tax is considered as special type of tax and if yes, whether the Double Taxation Treaty applies to it.

Self-taxation

- Prior to amendments, taxes were levied in the form of withholding taxes and on the basis of an assessment issued by the Tax Authority. Amendments to the Law introduce a third method – self-taxation.
- Self-taxation is applied for calculation and payment of taxes imposed in relation to the following income:
 - Income of entrepreneur maintaining books;
 - Capital gains;
 - Income paid by a payer who is not legal entity or entrepreneur:
 - income from copyright and related rights and from industrial property rights;
 - interests;
 - income from renting the immovable property and movable property;
 - other income from article 85 of the Law.
- Self-taxation also applies where natural person generates income from abroad, from diplomatic or consular representation office, or international organization, and in relation to income generated from non-resident legal entity on the basis of share option plan.
- Deadline for submission of tax return is 45 days, except in relation to capital gains/losses and income from renting immovable property, where the deadline is 30 and 120 days, respectively.
- Provisions on self-taxation will be applicable as from 1 January 2014.

Tax Procedure and Administration ⁴

Electronic Tax Return

- As of 1 January 2014, taxpayers will be able to submit a single electronic tax return for withholding taxes. This application is filed before any payments of income and tax and contributions. Before filing the e-return, taxpayers will be able to check its formal validity. The formal correctness and mathematical accuracy of return can be

⁴ – (Law on Tax Procedure and tax Administration "Off. Gazette RS", No. 80/2002, 84/2002 - corr., 23/2003 - corr., 70/2003, 55/2004, 61/2005, 85/2005 - oth. law, 62/2006 - oth. law, 63/2006 - corr. oth. law, 61/2007, 20/2009, 72/2009 - oth. law, 53/2010, 101/2011, 2/2012 - corr., 93/2012 i 47/2013)

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checked on the portal of the tax administration. If it happens that the application is defective and inaccurate, the tax authority will be required to immediately notify the taxpayer, by electronic means, which can eliminate any mistake, and such correction shall not be considered as amended tax return.

- If the application is formally and mathematically correct, the tax authority shall communicate an approval number to taxpayer electronically. Furthermore, banks will not be able to pay, for instance, salaries if the payer fails to submit the approval number delivered by the Tax Administration upon submitting of the e-return.
- If the taxpayer fails to file a tax return, the tax authority will file it *ex officio*.
- The Ministry of Finance is expected to issue a Rulebook that will further regulate procedure related to individual tax return for withholding tax. Interested taxpayers may participate in the pilot project of the Ministry and the Tax Administration that is expected to be launched on 1 October 2013.

Binding Opinions and Guidelines

- Acts (explanations, opinions, guidelines, instructions, etc..) on the implementation of tax legislation ,issued by the Ministry of finance are binding for the Tax Authorities. This novelty is welcome because practice has shown that tax administration often acts contrary to the opinions of the Ministry of Finance and its practice was not consistent. Although this change has a potential to provide higher legal certainty to taxpayers, it should not be regarded as the so-called constitute of "Binding ruling", a well-known practice under comparative law, which is binding on the tax authority in relation to its treatment of a particular taxpayer.

Removal from the Commercial Registry

- Confirmation issued by the tax administration of the termination of tax liabilities, not older than 5 days, is a pre-requisite to deletion of the company from the competent commercial registry.

Delivery of documents

- According to a new, drastic provision of the Law, documents sent by tax authority via e-mail shall be considered as delivered within 15 days after the submission of the document to the post office, regardless of whether and when the taxpayer actually received the document.

Tax attorney

- The rule that a tax attorney can sign the tax return only in exceptional cases has been amended. Now, the tax attorney can sign tax returns on a regular basis.

Due date for withholding tax

- It is stipulated that withholding tax is due on the date stated in the individual tax return as the date of payment of relevant income, if that day is earlier than the due date set forth under another law.

Statute of limitations

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-
- From now on, social security contributions can become time-barred just like tax liability. So far, these liabilities were not subject to the statute of limitations.
 - Now it is possible to write-off liabilities for social security contributions for the companies in bankruptcy, subject to the condition that the bankruptcy procedure has been concluded or the company is declared bankrupt, except if there is a registered pledge securing such liability a person who is jointly and severally liable with the debtor.

Residency Certificate

- Non-residents are allowed to prove their residency in a foreign country on a certificate issued by the competent authority of the country. According to the previous solution, it was required that a foreign authority issues residency certificates only on the form prescribed by the Serbian Ministry of Finance.

Other

- There is no more computing of compound interest. Interest is calculated for each calendar day, while before it was for calculated for each working day.
- Minimum fines for misdemeanours have been increased from RSD 50,000 to RSD 100,000. Maximum amount of fines for legal persons, banks and registries is RSD 1,000,000;
- Severe penalties are prescribed for companies and entrepreneurs for a failure to file information tax return, i.e. 3% of the annual income for businesses STA and 3% of unreported assets for individuals.

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SRBIJA: Poresko pravo – *Izmene seta poreskih zakona*

Porez na dobit⁵

Stalna poslovna jedinica

- Član 3 Zakona dopunjen je preciziranjem da se oporezivanje dobiti stalne poslovne jedinice vrši na način predviđen zakonom ukoliko ugovorom o izbegavanju dvostrukog oporezivanja (DTT) nije drugačije određeno. Ovo preciziranje nije bilo neophodno jer iz samog Ustava sledi da međunarodni ugovor ima primat nad nacionalnim zakonom. Naglašavanjem samo kod pojedinih pitanja (kao što je oporezivanje stalne poslovne jedinice ili porez po odbitku) da međunarodni ugovor preovlađuje nad domaćim zakonom stvara se pogrešan utisak da se tamo gde to nije rečeno primjenjuje isključivo domaći zakon. Međunarodni ugovor po svim pitanjima koja reguliše ima primat nad domaćim zakonom i to nije potrebno naglašavati.
- DTT je relevantan za pitanje kvalifikacije (da li nešto jeste ili nije stalna poslovna jedinica), kao i za pitanje da li Srbija ima pravo oporezivanja i po kojoj stopi.
- U članu 5 Zakona dodat je novi stav koji propisuje da je stalna poslovna jedinica, utvrđena po kriterijumima iz srpskih propisa, obavezna da podnosi poreske prijave i bilanse čak i ako je po kriterijumima iz DTT prisustvo nerezidenta u Srbiji takvo da ne kreira stalnu poslovnu jedinicu. U tom slučaju, nerezident, odnosno njegova stalna poslovna jedinica u Srbiji (kvalifikovana tako prema domaćem zakonu) neće biti u obavezi da u Srbiji plaća porez na dobit iako jeste u obavezi da podnese poresku prijavu i poreski bilans. Primer za različit tretman stalne poslovne jedinice prema srpskom zakonu i DTT može se naći u građevinskoj oblasti. Za postojanje građevinske stalne poslovne jedinice je po Zakonu neophodno da građevinski radovi traju 6 meseci dok po pojedinim DTT koje je Srbija zaključila radovi trebaju da traju 12 ili čak 18 meseci da bi se kreirala stalna poslovna jedinica.

Priznavanje rashoda

- Rashodi za zdravstvene, obrazovne, naučne, humanitarne, verske, sportske itd. svrhe, kao i izdaci za ulaganja u oblast kulture, gde je sada naglašeno da kinematografska delatnost spada u oblast kulture, priznaju se u iznosu najviše do 5% od ukupnog prihoda, što je povećanje u odnosu na dosadašnjih 3,5%.
- U članu 16 Zakona, precizirano je da se, u prisustvu ostalih uslova za priznavanje otpisa potraživanja kao rashoda, otpis priznaje kao rashod i u slučaju da je protiv dužnika pokrenut izvršni postupak (recimo na osnovu verodostojne isprave). Ranija verzija odredbe uslovljavala je otpis time da je dužnik „utužen“ što je podrazumevalo tužbu i parnični postupak. Pošto Zakon o izvršnom postupku poveriocima u određenim slučajevima dozvoljava da pokrenu izvršni postupak bez prethodnog vođenja parničnog postupka, dakle bez „utuženja“, opravdano je što je Zakon o porezu na dobit priznao ovu situaciju kao situaciju na osnovu koje se otpis potraživanja može priznati kao rashod.

⁵ Zakon o porezu na dobit pravnih lica "Sl. glasnik RS", br. 25/2001, 80/2002, 80/2002 - dr. zakon, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012 i 47/2013

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- I ranije je bilo propisano da se potraživanja koja nisu naplaćena u roku od najmanje 60 dana od dana dospelosti mogu tretirati kao rashod („ispravka vrednosti potraživanja“). Ako ova potraživanja kasnije budu otpisana, „vraćaju“ se u prihode u godini u kojoj je izvršen otpis, osim ako su kumulativno ispunjeni uslovi iz zakona za priznanje otpisa kao rashoda. Sada je u Zakon dodato da se ovo pravilo odnosi i na ispravke određenih potraživanja koje vrše banke i osiguravajuća društva (član 22a).
- Dodat je i novi član 16a kojim se propisuje da se gubitak od prodaje potraživanja priznaje kao rashod u iznosu u kom je prikazan u bilansu uspeha koji je sačinjen u skladu sa MRS/MSFI.

Usklađivanje prihoda

- Dodat je novi stav u članu 25a Zakona koji propisuje da prihodi nastali u vezi sa rashodima koji u poreskom periodu nisu bili priznati kao rashod, ne ulaze u poresku osnovicu u periodu u kom su iskazani. Način izuzimanja biće detaljnije regulisan Pravilnikom. Primera radi, ukoliko nadležni organ obvezniku vrati iznos naplaćene novčane kazne usled ukidanja ili preinačenja odluke kojom je izrečena kazna, takav priliv se neće tretirati kao prihod za poreske svrhe.

Kapitalni dobitak

- U članu 27 Zakona precizirano je da se kapitalni dobitak koji rezident ostvari prodajom industrijske svojine oporezuje bez obzira na to da li je industrijska svojina korišćena za obavljanje delatnosti. Prema ranijem rešenju, kapitalni dobitak ostvaren prodajom industrijske svojine (patenti, žigovi) oporezivao se u Srbiji samo ako je predmetna industrijska svojina bila korišćena za obavljanje delatnosti.
- Novina je da nerezidenti više ne podležu porezu na kapitalni dobitak ostvaren prodajom prava industrijske svojine. Kada je o nerezidentima reč, oporezuje se kapitalni dobitak ostvaren prodajom:
 - nepokretnosti - bez obzira da li je korišćena ili ne za obavljanje delatnosti. U ovom pogledu, nerezidenti su stavljeni u nepovoljniji položaj jer rezidenti podležu porezu na kapitalni dobitak ostvaren prodajom nepokretnosti samo ako je nepokretnost korišćena za obavljanje delatnosti
 - udela, akcija i ostalih hartija od vrednosti.
 - investicionih jedinica otvorenog investicionog fonda..

Porez po odbitku

- Porez po odbitku plaća se i na prihode nerezidenta ostvarene po osnovu naknade za podzakup nepokretnosti i pokretnih stvari Raniye je Zakon propisivao da se porez po odbitku plaća na prihod nerezidenta samo po osnovu naknade za zakup. Porez na prihod od naknada za zakup i podzakup nepokretnosti i pokretnih stvari na teritoriji Srbije koji nerezidentni obveznik ostvari od fizičkog lica kao isplatioca utvrđuje se rešenjem.
- Uveden je i poseban porez po odbitku na otkup sekundarnih sirovina/otpada. Obveznik je rezident koji otkupljuje sekundarne sirovine/otpad od rezidenta ili nerezidenta. Porez po odbitku se plaća u iznosu od 1% od iznosa isplaćene naknade bez obračunatog PDV-a. Ovo po svojoj suštini više liči na porez na promet proizvoda nego na porez na prihod.

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Poreski kredit za ulaganja u razvoj

- Do sada je poreski kredit priznavan samo za ulaganja u osnovna sredstva. Značajna novina je priznavanje poreskog kredita za po osnovu ulaganja u razvoj kao nematerijalnu imovinu. Ulaganje u razvoj definisano je kao *primena rezultata istraživanja ili drugog znanja radi proizvodnje novih značajnije poboljšanih materijala, uređaja, proizvoda, procesa, sistema ili usluga pre pristupanja komercijalnoj proizvodnji ili korišćenju.*
- Ovaj kredit se priznaje u iznosu od 20% od izvršenog ulaganja, ali ne više od 33% obračunatog poreza (40%, odnosno 70% za mala pravna lica). Kredit se priznaje u poreskom periodu u kom su ispunjeni uslovi za priznavanje ulaganja kao nematerijalnih ulaganja u skladu sa MRS/MSFI, i može se preneti u naredne poreske periode tokom narednih 10 godina. U slučaju otuđenja nematerijalne imovine u roku kraćem od 3 godine od priznavanja prava na kredit, gubi se pravo na kredit, osim u slučaju otuđenja usled statusnih promena.
- Od ovog poreskog kredita koristi mogu imati farmaceutske i softverske kompanije. Multinacionalne kompanije koje imaju svoja R&D odeljenja ili proizvodnju u Srbiji dobine su priliku da razmotre svoju grupnu strukturu i politiku transfernih cena te da eventualno restrukturiraju interne transakcije radi poreskih ušteda na nivou grupe.

Poreski raspust

- Poreski podsticaj iz čl. 50a se daje za 100 novozaposlenih radnika (umesto dosadašnjih 200).

Porezi na imovinu⁶

Porez na imovinu (PI)

- Predmet oporezivanja je znatno proširen i sada obuhvata sledeća prava:
 - Pravo korišćenja nepokretnosti u javnoj svojini. Ovo pravo imaju gradske opštine, ustanove, javne agencije, NBS itd. ali su budžetski korisnici oslobođeni poreza na imovinu.
 - Korišćenje nepokretnosti u javnoj svojini (državna preduzeća i druga pravna lica kojima je nepokretnost u javnoj svojini data na korišćenje, na pr. putem koncesije).
 - Državina nepokretnosti u javnoj svojini bez pravnog osnova.
 - Državina nepokretnosti „na kojoj imalac svojine nije poznat ili nije određen“. Nejasno je da li se ovo odnosi na nelegalne objekte.
 - Državina i korišćenje nepokretnosti po osnovu finansijskog lizinga – obveznik je korisnik lizinga.
 - Pravo korišćenja zemljišta preko 10 ari porez se plaća na celokupnu površinu.
 - Zakup građevinskog zemljišta u javnoj svojini i poljoprivrednog zemljišta u državnoj svojini se ne oporezuje.

⁶ Zakon o porezima na imovinu "Sl. glasnik RS", br. 26/2001, "Sl. list SRJ", br. 42/2002 - odluka SUS i "Sl. glasnik RS", br. 80/2002, 80/2002 - dr. zakon, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 - odluka US i 47/2013

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- Unete su značakne novine u pogledu osnovice za oporezivanje nepokretnosti u vlasništvu pravnih lica:
 - Osnovica za poreske obveznike koji vode knjige o vrednosti nepokretnosti po MRS/MSFI – ako ih po toj vrednosti poreski obveznik vodi u knjigama

U suprotnom, osnovicu čini:

- Vrednost neizgrađenog zemljišta, odnosno i
- Vrednost objekata uvećana za vrednost pripadajućeg zemljišta koja se određuje na osnovu:
 - Korisne površine i
 - Prosečna vrednost kvadratnog metra u dатој зони prema parametrima koje na svojoj internet strani objavi nadležna opština.

Knjigovodstvena vrednost se priznaje samo za:

- eksplotaciona polja i eksplotacione objekte;
- određene industrijske objekte;
- objekte za tretman i odlaganje otpada;
- objekte u kojima se odvijaju procesi neophodni za ponovnu upotrebu materijala;
- skladišne i stvarišne objekte;
- infrastrukturu (žičare, putevi...);
- kablovske i drugu podzemnu mrežnu infrastrukturu;

Za objekte stečene u toku godine- osnovica za porez na imovinu za tu godinu je nabavna vrednost iskazana u knjigama obveznika.

- Nepokretnosti isključivo namenjene daljoj prodaji oslobođene su poreza na imovinu za godinu u kojoj je poreska obaveza nastala, kao i za narednu godinu.
- Uvedeno je samooporezivanje u pogledu poreza na imovinu.

Porez na nasleđe i poklon

- Poklonom se ne smatra prihod koji ulazi u osnovicu za porez na dobit (na pr. otpust duga).
- Poklonom se ne smatra prihod koji je oslobođen poreza na dohodak ili ulazi u osnovicu za porez na dohodak (na pr. otpust duga ili otpis duga koji ne ispunjava uslove za oslobođenje od poreza na dohodak).
- Neoporezivi iznos poklona i nasleđa podignut je sa 30.000 na 100.000 RSD.

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- Rok za podnošenje poreske prijave produžen 10 na 30 dana.

Porez na prenos absolutnih prava (PPAP)

- PPAP se sada plaća i na:
 - Prenos motornoga vozila – osim ako se na njihov prenos plaća PDV. Prema ranijem rešenju, PPAP se plaćao samo na prenos polovnih vozila.
 - Prodaju stečajnog dužnika kao pravnog lica, ako kupac nije preuzeo obaveze pravnog lica ili je preuzeo samo deo tih obaveza. Ako je stečajni dužnik u celini ili delom u državnom vlasništvu, PPAP se ne plaća, odnosno ne plaća se srazmerno delu koji je u državnom vlasništvu. Ovde treba imati u vidu da Zakon o stečaju propisuje da u slučaju prodaje dužnika kao pravnog lica na kupca ne prelaze obaveze i tek treba testirati da li je ovo pravilo moguće derogirati ugovorom.
- PPAP se ne plaća na:
 - Prenos imovine u statusnim promenama. Zakon više se ne precizira da oslobođenje važi samo ako su članovi ili akcionari primili novčanu naknadu u vrednosti koja prelazi 10% nominalne vrednosti akcija ili udela.
 - Prenos imovine članovima i akcionarima privrednog društva u likvidaciji po osnovu isplate likvidacionog ostatka. Ovim se eliminiše dvostruko oporezivanje, jer se isplata likvidacionog ostatka smatra isplatom dividende po Zakonu o porezu na dobit pravnih lica, kao i po Zakonu o porezu na dohodak građana pa se plaća porez na dobit, odnosno dohodak.
 - Sticanje svojine na nepokretnosti deobom suvlasničke zajednice, ako je deoba srazmerna udelima.
 - Prenos prava korišćenja po osnovu eksproprijacije.
 - Nepokretnosti stečene u postupku restitucije.
 - Pravo svojine stečeno konverzijom prava korišćenja ili zakupa na građevinskom zemljištu.
- Rok za podnošenje poreske prijave produžen 10 na 30 dana.

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Porez na dohodak građana⁷

Pojam poreskog rezidentstva fizičkog lica

- U skladu sa Zakonom o porezu na dohodak građana, fizička lica – rezidenti plaćaju porez na dohodak ostvaren u Srbiji i na dohodak ostvaren u drugoj državi, dok fizička lica – nerezidenti plaćaju porez na dohodak ostvaren na teritoriji Srbije. Prema Zakonu, rezidentom Srbije se smatra fizičko lice koje:
 - na teritoriji Srbije ima prebivalište ili centar poslovnih i životnih interesa, ILI
 - na teritoriji Srbije, neprekidno ili sa prekidima, boravi 183 ili više dana u periodu od 12 meseci koji počinje ili se završava u odnosnoj poreskoj godini.

Izmenama i dopuna Zakona, zakonodavac je precizirao da su prethodno nabrojani uslovi postavljeni alternativno, a ne kumulativno.

- Pre izmena Zakona, u praksi se javljao problem prilikom utvrđivanja početka i trajanja rezidentstva. Zakonodavac je sada predviđao da se radi utvrđivanja boravka na teritoriji Srbije za potrebe rezidentstva (tj. boravka u periodu od 183 ili više dana), punim danom boravka u Srbiji smatra boravak u bilo kom periodu između 00 i 24 časa, osim dela dana koji fizičko lice proveđe u tranzitu. Zakonodavac je predviđao i da se fizičko lice koje nije bilo rezident Srbije u godini koja prethodi godini dolaska u Srbiji neće smatrati rezidentom Srbije u odnosu na period pre dana kada je prvi put ušlo na teritoriji Srbiju (pod uslovom da na teritorije Srbije nema prebivalište ili centar poslovnih i životnih interesa). Takođe, fizičko lice koje nije rezident Srbije u godini koja sledi godini u kojoj je to fizičko lice konačno napustilo Srbiju neće se smatrati rezidentom Srbije u odnosu na period godine koji sledi danu njegovog konačnog napuštanja Srbije (pod uslovom da na teritorije Srbije nema prebivalište ili centar poslovnih i životnih interesa).

Primer: Fizičko lice je ušlo u Srbiju 1. jula 2013 godine, a napustilo je Srbiju 31. januara 2014. godine. S obzirom na period boravka na teritoriji Srbije (više od 183 dana), ovo fizičko lice se smatra rezidentom Srbije i to za period od 1. jula do 31.12. za 2013. godinu, dok se za 2014. godinu smatra rezidentom za period od 1. januara do 31. Januara te godine. U odnosu na period koji prethodni danu njegovog prvog ulaska u Srbiju (tj. za period od 1. januara 2013 do 30. juna 2013), ovo fizičko lice se neće smatrati rezidentom Srbije pod uslovom da se nije smatralo rezidentom u 2012. godine i da u tom periodu (tj. od 1. januara 2013 do 30. juna 2013.) nije imalo prebivalište odnosno centar poslovnih i životnih interesa. Takođe, fizičko lice se neće smatrati rezidentom za period koji sledi danu njegovog napuštanja Srbije (tj. za period od 1. februara 2014 do 31. decembra 2014.) pod uslovom da se ne smatra rezidentom u 2015. godini i da u tom periodu (tj. od 1. februara 2014. do 31. decembra 2014.) nema prebivalište niti centar poslovnih i životnih interesa.

- Fizičko lice koje u momentu prvog ulaska u Srbiju zna da će ispuniti jedan od dva gore navedena opšta uslova za rezidentstvo smatraće se rezidentom od trenutka kada je prvi put ušlo u Srbiju.

⁷ Zakon o porezu na dohodak građana "Sl. glasnik RS", br. 24/2001, 80/2002, 80/2002 - dr. zakon, 135/2004, 62/2006, 65/2006 - ispr., 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 - odluka US, 7/2012 - uskladeni din. izn., 93/2012, 114/2012 - odluka US, 8/2013 - uskladeni din. izn., 47/2013 i 48/2013 - ispr.

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- Pre stupanja na snagu izmena Zakona, rezidentom Srbije se smatralo i fizičko lice koje je upućeno u drugu državu radi obavljanja poslova za fizičko ili pravno lice – rezidenta Srbije i to samo na osnovu činjenice da je upućeno, tj. bez obzira da li je ispunjavalo neki od dva opšta uslova za rezidentstvo. Izmenama Zakona, odredba o upućivanju fizičkih lica je promenjena tako da se po osnovu upućivanja rezidentom Srbije smatra samo ono fizičko lice koje je iz Srbije upućeno u drugu državu radi obavljanja poslova u diplomatskom ili konzularnom predstavništvu Srbije ili u međunarodnoj organizaciji (nezavisno od toga da li ispunjava uslove pod a.) i/ili b.).

Porez na zarade

- Pojam zarade je proširen tako da, između ostalog, uključuje i primanja koja zaposleni ostvari u vezi sa radom kod poslodavca od lica koje se u smislu zakona o porezu na dobit pravnih lica smatra povezanim licem sa poslodavcem.
- Zaradom se pored hartija od vrednosti (osim akcija stečenih u postupku svojinske transformacije) koje zaposleni ostvari od poslodavca, smatraju i hartije od vrednosti koje zaposleni ostvari od lica povezanog sa poslodavcem, kao i hartije od vrednosti stečene u vidu nagrađivanja (npr. opcije na akcije) od poslodavca ili od lica koje je povezano sa poslodavcem. Ovde nije jasno da li se zaradom smatra sticanje same opcije ili pak sticanje hartije od vrednosti na osnovu opcije.
- Kod primanja u vidu hartija od vrednosti, kao trenutak ostvarivanja zarade smatra se momenat sticanja prava raspolažanja na tim hartijama od vrednosti. To bi bio momenat sticanja vlasništva nad hartijom od vrednosti. Kada je reč o akcijama izdavalaca u Srbiji, to je momenat kada je zaposleni upisan kao vlasnik hartije u Centralnom registru hartija od vrednosti. Ukoliko trošak sticanja hartija od vrednosti od lica povezanog sa poslodavcem snosi poslodavac, kao trenutak ostvarivanja zarade uzima se momenat kada je poslodavac trošak evidentirao u svojim poslovnim knjigama.
- Osnovica zarade kod sticanja hartija od vrednosti je tržišna vrednost uvećana za pripadajuće obaveze iz zarade (u momentu sticanja raspolažanja), odnosno razlika između tržišne vrednosti i iznosa koji je zaposleni platio uvećana za pripadajuće obaveze iz zarade.
- Od oporezivanja porezom na zaradu izuzeta je premija za dobrovoljno zdravstveno osiguranje i to kako premija koju poslodavac plaća za zaposlene, tako i premija koju poslodavac obustavlja i plaća iz zarade zaposlenog, s tim što ukupan iznos oslobođenja ne može biti veći od RSD 5,214 mesečno.
- Poreska stopa poreza na zaradu je smanjena sa 12% na 10%, ali je posebnim zakonom izvršeno povećanje stope za doprinose za penzijsko i invalidsko osiguranje koji se plaćaju na teret zaposlenog sa 11% na 13%. Iznos za koji se vrši umanjenje poreske osnovice za porez na zarade je povećan sa RSD 8.776 na RSD 11.000.

Porez na prihode od kapitala

- Predmet oporezivanja porezom na prihode od kapitala sada uključuje i prihode od izdavanja sopstvenih nepokretnosti. Pre stupanja na snagu izmena Zakona, prihod od izdavanja sopstvenih nepokretnosti je predstavljaо posebno regulisan prihod od nepokretnosti.

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- Uzimanje iz imovine privrednog društva od strane vlasnika privrednog društva za njihove privatne potrebe se više ne smatra prihodom od kapitala, već su sada ti prihodi uključeni u tzv. druge prihode.
- Preciziran je pojam dividende, tako da se dividendom smatra i likvidacioni ostatak iznad vrednosti uloženog kapitala koji preostane nakon likvidacije društva.
- Kod prihoda od kapitala osnovica je novčani odnosno nenovčani iznos ostvarenog prihoda, s tim što kod prihoda od izdavanja sopstvenih nepokretnosti osnovicu predstavlja bruto prihod umanjen za normirane troškove. Normirani troškovi su sa ranijeg iznosa od 20% povećani na 25%, s tim što su normirani troškovi u iznosu od 50% zadržani u odnosu na prihode ostvarene iznajmljivanjem stanova, soba i postelja putnicima i turistima za koje je plaćena boravišna taksa. Izuzetno, poreskom obvezniku umesto normiranih troškova priznaće se stvarni troškovi koje može da dokumentuje.
- Poreska stopa kod prihoda od kapitala je ostala 15%, s tim što je kod prihoda od izdavanja sopstvenih nepokretnosti zadržana stopa od 20%. Međutim, pošto su normirani troškovi povećani na 25%, efektivna stopa kojom se oporezuju prihodi od izdavanja sopstvenih nepokretnosti je 15%, čime je stopa koja se primenjuje na prihode od izdavanja sopstvenih nepokretnosti izjednačena sa stopom koja se primenjuje na ostale prihode od kapitala. U slučajevima u kojima se priznaju normirani troškovi od 50%, efektivna stopa je 10%.
- Za razliku od ostalih prihoda od kapitala, prihod od izdavanja sopstvenih nepokretnosti je ostao uključen u osnovicu za obračun godišnjeg poreza na dohodak građana.

Porez na kapitalne dobitke

- Nakon stupanja na snagu izmena Zakona, porez na kapitalni dobitak više se ne plaća na prenos uz naknadu trajnog prava korišćenja i prava gradnje na gradskom građevinskom zemljištu, investicione jedinice dobrovoljnog penzijskog fonda i akumuliranih sredstava po osnovu programirane isplate sa računa člana dobrovoljnog penzijskog fonda.
- Od oporezivanja porezom na kapitalni dobitak izuzeta je i razlika koja je nastala prenosom prava, udela ili hartija od vrednosti kada su stečeni nasleđem u prvom naslednom redu.
- Prodaja akumuliranih sredstava više nije predmet oporezivanja porezom na kapitalne dobitke.
- U odnosu na nabavnu cenu izvršena su određena preciziranja:
 - Za hartije od vrednosti koje je obveznik stekao kupovinom, a kojima se trguje na tržištu kapitala nabavnom cenom se smatra cena koju obveznik dokumentuje kao stvarno plaćenu, odnosno najniža zabeležena cena po kojoj se trgovalo u periodu od godinu dana od dana koji prethodi prodaji hartija od vrednosti. Ukoliko se hartijama od vrednosti nije trgovalo u pomenutom periodu od godinu dana, nabavnom cenom se smatra najniža zabeležena cena u prvoj prethodnoj godini u kojoj je bilo trgovanja,
 - Za hartije od vrednosti koje je obveznik stekao kupovinom, a kojima se ne trguje na tržištu kapitala, nabavna cena je ona koju obveznik dokumentuje kao stvarno plaćenu, a ako to ne učini njena nominalna vrednost.

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Ukoliko se radi o akcijama bez nominalne vrednosti, nabavna vrednost je srazmerni deo neto imovine društva u momentu sticanja.

- Nabavna vrednost nepokretnosti se više ne umanjuje po osnovu amortizacije.
- Rok za podnošenje poreskih prijava je produžen sa 15 dana na 30, odnosno 120 dana u slučaju prodaje radi rešavanja stambenog pitanja. Ovi produženi rokovi primenjuju se od 1 januara 2014 godine.

Porez na druge prihode

- Pojam drugih prihoda koji podležu oporezivanju je proširen tako da uključuje i prihode od izdavanja nepokretnosti u podzakup i uzimanje iz imovine i korišćenje usluga privrednog društva od strane vlasnika za njihove privatne potrebe. Pre izmena Zakona prihod od izdavanja nepokretnosti u podzakup se smatrao prihodom od nepokretnosti, dok se uzimanje iz imovine i korišćenje usluga privrednog društva od strane vlasnika smatralo prihodom od kapitala.
- Dokumentovane naknade troškova po osnovu službenih putovanja izvršene fizičkim licima koja nisu zaposlena kod isplatioca a koja su upućena kod isplatioca po nalogu poslodavca i u vezi sa delatnošću poslodavca su izuzete od oporezivanja najviše do iznosa tih troškova koji su izuzeti od plaćanja poreza na zarade za zaposlene (npr. dnevnice za putovanje u zemlji do iznosa RSD 2.086, naknade troškova smeštaja na službenom putovanju prema priloženom računu, itd.).
- Kada banka izvrši otpis potraživanja prema fizičkom licu, iznos otpisanog potraživanja neće se smatrati prihodom fizičkog lica pod uslovom da su troškovi utuženja dužnika veći od ukupnog potraživanja banke od ovog dužnika i da se ovaj otpis priznaje kao rashod u skladu sa zakonom o porezu na dobit pravnih lica. Takođe, preostali iznos potraživanja koji banka otpiše ka fizičkom licu neće se smatrati prihodom tog fizičkog lica u situaciji kada fizičko lice u skladu sa ugovorom o poravnanju koji zaključi sa bankom proda nepokretnost u odnosu na koju mu je odobren kredit po približno uobičajenoj tržišnoj ceni i taj iznos uplati banci na ime izmirenja duga po osnovu kredita (a koji iznos je manji od iznosa potraživanja banke po osnovu ugovora o kreditu). Ovo važi pod uslovom da je prema pravilima NBS potraživanje svrstano u potražvanje za koje se utvrđuje 100% rezerve za procenjene gubitke.

Godišnji porez na dohodak građana

- Kod godišnjeg poreza na dohodak građana uvedena je značajna novina u skladu sa kojom godišnji porez na dohodak građana plaćaju i fizička lica – nerezidenti za dohodak ostvaren na teritoriji Srbije (pod uslovom da pređu prag propisan za plaćanje godišnjeg poreza). Pre izmena Zakona, godišnji porez na dohodak stranci su bili obavezni da plate samo ako su se u skladu sa domaćim zakonom ili DTT smatrali rezidentom Srbije. Postavlja se pitanje šta se smatra dohotkom nerezidenta ostvarenim na teritoriji Srbije te koje je prihode fizičko lice – nerezident dužno da prijavi po osnovu godišnjeg poreza na dohodak. Sam Zakon ne daje eksplicitan odgovor na ova pitanja.
- Kada fizičko lice dolazi iz zemlje sa kojom Srbija ima zaključen ugovor o izbegavanju dvostrukog oporezivanja postavljaju se pitanje da li se ugovor o izbegavanju dvostrukog oporezivanja primenjuje na godišnji porez na

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dohodak građana. To će zavisiti od tumačenja da li je godišnji porez na dohodak građana posebna vrsta poreza na dohodak i ako da, da li se DTT primjenjuje na taj porez.

Samooporezivanje

- Pre stupanja na snagu izmena Zakona, Zakon je poznavao dva načina za utvrđivanje i plaćanje poreza: po odbitku i po rešenju. Izmenama Zakona uveden je treći način-samooporezivanje.

Samooporezivanjem utvrđuju se i plaćaju porezi na:

- Prihode od samostalne delatnosti preduzetnika koji vodi poslovne knjige;
- Kapitalne dobitke;
- Prihode koje isplaćuje isplatilac koji nije pravno lice ili preduzetnik, i to:
 - prihode od autorskih prava, prava srodnih autorskom pravu i prava industrijske svojine;
 - kamate;
 - prihode od izdavanja nepokretnosti i davanja u zakup pokretnih stvari;
 - tzv. druge prihode, nabrojane u članu 85. Zakona.

- Rok za podnošenje poreske prijave je 45 dana, osim kod kapitalnog dobitka/gubitka i prihoda od izdavanja nepokretnosti gde je rok 30 dana, odnosno 120 dana).
- Primena odredbi o samooporezivanju je odložena do 1. januara 2014. godine.

Poreski postupak i administracija⁸

Elektronska poreska prijava

- Od 1. januara 2014, obveznici će dobiti mogućnost da podnesu elektronsku pojedinačnu prijavu za poreze po odbitku na jednom obrascu. Ova prijava se podnosi pre svake isplate prihoda i doprinsa. Pre samog podnošenja, obveznici će moći da provere formalnu ispravnost i matematičku tačnost prijave na portalu poreske uprave. Ukoliko se dogodi da je prijava neispravna i netačna, poreska uprava će biti obavezna da elektronskim putem odmah o tome obavesti obveznika, koji može otkloniti nedostatak, što se neće smatrati izmenjenom poreskom prijavom.

⁸ Zakon o poreskom postupku i administraciji "Sl. glasnik RS", br. 80/2002, 84/2002 - ispr., 23/2003 - ispr., 70/2003, 55/2004, 61/2005, 85/2005 - dr. zakon, 62/2006 - dr. zakon, 63/2006 - ispr. dr. zakona, 61/2007, 20/2009, 72/2009 - dr. zakon, 53/2010, 101/2011, 2/2012 - ispr., 93/2012 i 47/2013

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- Ako je prijava formalno ispravna i matematički tačna, poreska uprava obvezniku dostavlja broj odobrenja elektronskim putem. Banke ne mogu isplaćivati zarade ukoliko im isplatilac ne dostavi broj odobrenja odbijen od poreske uprave podnošenjem elektronske prijave.
- Ukoliko obveznik propusti da u roku podnese poresku prijavu, poreska uprava će je podneti po službenoj dužnosti.
- Ministarstvo Finansija treba da doneše pravilnik koji će bliže regulisati postupak vezan za pojedinačnu prijavu za poreze po odbitku, a zainteresovani obveznici mogu učestvovati u pilot projektu Ministarstva i Poreske uprave od 1. oktobra 2013.

Obavezujuća mišljenja i uputstva

- Akti (objašnjenja, mišljenja, instrukcije, uputstva i sl.) o primeni propisa iz nadležnosti Ministarstva finansija F koje daje ovo Ministarstvo bavezujući su za postupanje Poreske uprave. Ovo je dobrodošla novena jer se do sada dešavalo da Poreska uprava postupa suprotno mišljenjima Ministarstva finansija i praksa je bila znatno neujednačena. Iako ova izmena ima potencijal da obezbedi veću pravnu sigurnost obveznika, ne treba je mešati sa institutom tzv. „binding ruling“-a poznatog u uporednoj praksi koji je obavezujući za poresku upravu u odnosu na tretman konkretnog obveznika.

Brisanje iz APR

- Potvrda poreske uprave o prestanku poreskih obaveza, ne starija od 5 dana, uslov je za brisanje privrednog društva iz nadležnog registra privrednih društava.

Dostavljanje

- Prema novom, drastičnom, zakonskom rešenju, akti koje poreska uprava dostavlja poštom smatraće se dostavljenim u roku od 15 dana nakon dostavljanja akta pošti, bez obzira na to da li je i kada poreski obveznik zaista primio akt.

Poreski punomoćnik

- Izmenjeno je pravilo da poreski punomoćnik može samo u izuzetnim slučajevima da potpiše poresku prijavu. Punomoćnik sada može potpisivati poresku prijavu u redovnom toku stvari.

Dospevanje poreza po odbitku

- Propisano je da porez po odbitku dospeva na dan koji je u pojedinačnoj poreskoj prijavi naveden kao datum isplate relevantnog prihoda, ako je taj dan raniji od roka propisanog nekim drugim zakonom.

Zastarevanje i otpis doprinosa

- Novina je i da će od sada i doprinosi zastarevati po istim pravilima kao i poreske obaveze. Do sada, obaveze po osnovu doprinosa nisu bile podložne zastarevanju.

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- Omogućen je otpis obaveza za doprinose za kompanije u stečaju, pod uslovom da je stečajni postupak zaključen ili je proglašeno bankrotstvo, osim ako je radi naplate u javni registar upisano založno pravo ili postoji lice koje je solidarno odgovorno sa dužnikom.

Potvrda o rezidentnosti

- Nerezidentima je omogućeno da rezidentstvo u stranoj državi dokazuju potvrdom nadležnog organa strane države na obrascu tog organa. Prema ranijem rešenju, zahtevalo se da strani poreski organ potvrde o rezidentsvu idaje na obrascu koji propisuje srpsko Ministarstvo finansija.

Ostalo

- Kod obračunavanja poreskog duga nema više računanja kamate na kamatu. Kamata teče za svaki kalnedarski dan, a ne kao ranije za svaki radni dan.
- Podignute su minimalne novčane kazne za prekršaje, sa RSD 50,000 na RSD 100,000. Maksimalni iznos novčanih kazni za pravna lica, registre i banke je RSD 1,000,000;
- Propisane su oštре kazne za pravna lica i preduzetnike za nepodnošenje informativne poreske prijave, u iznosu od 3% od godišnjeg prihoda za pravna lica, odnosno 3% od vrednosti neprijavljene imovine za fizička lica.

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