

SERBIA: TAX

The Law on Corporate Income Tax

We set forth below an outline of the most significant amendments to the Serbian Law on Corporate Income Tax, which came into force on 25 December 2012:

Tax Rate

- Corporate income tax rate has been increased from 10% to 15%. This change will affect income generated in 2013 onwards.

Special regime applicable to non-residents from tax havens

- Any transaction between a Serbian company and a non-resident company incorporated, with its registered seat, or with a place of effective management in a jurisdiction with the preferential tax regime, will be deemed to be a transaction between the related parties for the purpose of the application of transfer pricing rules. Furthermore, income generated by such non-residents from royalties, interest and income from the lease of movable or immovable property will be taxed on a withholding basis at the rate of 25%, compared to the general rate of 20% applicable to such income generated by non-residents from countries not considered to be tax havens.
- Furthermore, a new withholding tax at the rate of 25% is imposed on income generated from services rendered by non-resident entities from tax havens to Serbian entities. Income from services generated by non-residents originating from countries not considered as tax havens is not taxable in Serbia.
- The Minister of Finance will prescribe a list of jurisdictions considered to be tax havens by the end of June 2013. No country with which Serbia has concluded a double taxation treaty will be considered as a tax haven.

Transfer Pricing

- The threshold for the determination of a qualifying level of ownership and control has been decreased from 50% to 25% of shares or votes.
- As aforementioned, a Serbian entity and a legal entity from a tax haven are considered related parties in mutual transaction.
- The amendments bring the rules on transfer pricing in line with the OECD Transfer Pricing Guidelines for

Multinational Enterprises and Tax Administration and provide clearer guidance to tax payers. The Minister of Finance is supposed to prescribe the content of mandatory transfer pricing documentation, which should be filed along with the CIT assessment form and tax return. Failing to provide documentation may result in imposition of a penalty on defaulting taxpayer.

- For the purpose of determining the arm's length price, the tax payers are entitled to apply a uniform approach to a large number of individual transactions (grouping of transactions) or an individual approach to complex transactions. Furthermore, the amendments introduce the rules applicable to the so-called arm's length range. If the arm's length price is specified as a range and the transfer price is within such range, the two prices will be considered to be the same, while if the transfer price is outside of the range, the arm's length price shall be equal to the median value of the specified range.
- In addition to the comparable uncontrolled price method, the cost-plus method (increased for gross margin) and the resale price method, the amendments introduce the following additional methods for the determination of the arm's length price:
 - a.) transactional net margin method,
 - b.) profit split method,
 - c.) any other method, provided that application of any of the above methods is impossible or inadequate.

For inter-company loans, the Minister of Finance may specify the arm's length interest rate. Taxpayers are nevertheless entitled to apply one of the arm's length transfer pricing methods to calculate the market arm's length interest level, if they deem it more favourable than the interest rate set forth by the Minister, but are then obliged to apply those rates to all related party loans.

Determination of the taxable base

- The deductibility threshold for marketing expenses has been increased from 5% to 10% of total revenue.
- Liquidation proceeds exceeding the amount of invested capital will no longer be treated as capital gain but as income from dividend. Accordingly, the exemption from taxation in the source country, which some DTTs prescribe with respect to capital gains, will no longer be applicable.
- Interest generated from debt securities issued by the Government, local municipalities or the National Bank of Serbia is not subject to income tax.
- The sale of immovable property or IP can result in taxable capital gain only when the asset sold was used as a fixed asset for conducting business activities. The sale of shares or other securities can lead to taxable capital gain only if the securities sold were classified as a long-term investment according to the IFRS .
- The rule for recognizing an asset for tax depreciation has been changed and aligned with IFRS and IAS. According to the proposed changes, each asset that qualifies as a non-current asset for accounting purposes will be recognized for tax depreciation.
- The condition prescribed for tax deductibility of write-off of uncollectible receivables (evidence of unsuccessful collection through court procedure) has been changed. According to the amendments, expenses resulting from a write-off will be tax deductible if the taxpayer provides evidence that court procedures were initiated, that non-

judicial process of settlement of claim secured by mortgage has been initiated, or by submitting a claim in bankruptcy proceedings against the debtor. No such evidence shall be required if court fees and other public charges exceed the value of the written-off receivable.

- In addition, the amendments introduce the possibility for the taxpayer to exclude revenue accrued on the basis of subsequent collection of written-off bad debt that was declared as a non-deductible item in the previous years from the tax base.
- Penalty interest between related parties will be non-deductible for tax purposes.

Tax Incentives

- Tax exemptions for concession companies, companies investing in undeveloped regions, and for income generated from a production activity pursued in free zones have been abolished.
- The amendments reduce the maximum cap on tax credit for investments in property, plant and equipment, from 50% to 33% of the total corporate income tax liability. Furthermore, tax credit for investments in fixed assets for taxpayers classified in specific industries such as the production of textile, basic metal, machines and equipment, medical instruments and agriculture, has been completely abolished, whereas previously the tax credit for such investments was recognized up to 80% of the amount of investment and up to 100% of the total corporate income tax obligation.

- Before the amendments, Serbian legal entities were entitled to a tax credit on income generated in the form of intercompany dividends under the condition that the income recipient owned 25% or more of capital in the foreign subsidiary for a continuous period of at least one year prior to the date the tax return was filed. The amendments reduce the requisite ownership threshold to 10%. The amount of tax credit should not exceed the amount of tax paid in Serbia on that income, whereas the tax basis represents 40% of the received income.

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Submission of Tax Returns

- The deadline for the submission of tax returns has been increased to 180 days from the end of the relevant reference period, i.e. the deadline has been extended from March 10th to June 30th. The deadline for submission of 2012 tax returns remains unchanged, i.e. it is 11 March 2013.