

SERBIA: Foreign trade

Decree on Offsetting Foreign Trade Receivables and Payables¹

The latest amendments to the Serbian Law on Foreign Exchange Transactions (*Zakon o deviznom poslovanju*, Official Gazette of the RS 62/2006, 31/2011 and 119/2012) ("**Forex Law**"), adopted in 2012, liberalized in a nutshell the regime applicable to foreign trade set-offs by scrapping the requirement for the approval by the Ministry of Finance. However, the liberalization paved by the Forex Law took effect only on 13 July 2013, when the governmental Decree implementing the statutory provisions came into force.

According to the Decree, legal entities, branches of foreign legal entities and entrepreneurs registered in Serbia ("**Residents**") may offset their determined and mature receivables and payables arising out of foreign trade transactions. A set-off is not permitted under foreign trade transactions which provide for advance or deferred payment subject to interest or for advance/deferred payment period that is longer than 12 months (irrespective of whether the interest is due or not).

Under the Decree, a set-off may be bilateral (between unrelated parties), intra-corporate (between a resident and non-resident which conduct business within the same multinational corporation), or on the basis of an international agreement or rules of an international association of which the resident and its counterpart are members.

A bilateral set-off is effected by each party signing a separate agreement or exchanging written statements on set-off.

An intra-corporate set-off is effected by a third-party resident or non-resident that is a member of the same multinational corporation as the parties to the set-off operation and is in charge of administering set-offs and payments on behalf of members of the group according to intra-corporate procedures. The intra-corporate set-off may not be effected if the third-party administrator has its seat, headquarters or place of effective management in a tax haven.

Finally, a resident and a non-resident may offset their mutual claims under cross-border transactions for the provision of services based on an international agreement or membership in an international association, if the relevant international agreement or the rules of the international association foresee the set-off as a manner of settling parties' or, as the case may be, members' mutual claims.

¹ Uredba o načinu prebijanja dugovanja i potraživanja po osnovu realizovanog spoljnotrgovinskog prometa robe i usluga ("Official Gazette of the Republic of Serbia", No. 59/2013)

A set-off may not be performed if the Resident's bank accounts are attached in forced collection proceedings.

Residents must keep the documentation on effected set-offs for a period of 10 years but are no longer obliged to report on each effected set-off to the Foreign Exchange Inspectorate, which ceased to exist, following the latest amendments to the Forex Law.

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