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In focus: Law on Amendments and Supplements to the Law on Value Added Tax

On September 28th 2015, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Law on Value Added Tax which entered into force on October 4th 2015 and became applicable on October 15th 2015, provided that provisions which pertain to submitting VAT tax returns and issuing approvals for a tax representative became applicable as of October 1st 2015. Further, provisions relating to establishing the same deadline for filing VAT tax returns shall be applicable starting from January 1st 2016, while provisions regarding the obligation of submitting the breakdown of VAT calculation shall apply as of January 1st 2017 (hereinafter: the “**Amendments to the Law**”).

The purpose of the Amendments to the Law is to harmonize the taxation of value added tax (hereinafter: “**VAT**”) with EU regulations governing this field, to specify certain legal solutions, prevent possible misuse and enable a higher level of control by the Tax Administration, which together contributes to the improvement of business conditions for business entities.

Some of the most important novelties brought by the Amendments to the Law are:

1. Foreign entities as VAT taxpayers

In accordance with the Amendments to the Law, an entity that does not have a business seat, i.e. residence (hereinafter: “foreign entity”) in the Republic of Serbia, shall also be considered a taxpayer. Previous solutions did not allow foreign entities to be taxpayers, but rather they could appoint tax representatives. Consequently, the obligation to pay value added tax in situations where the seller is a foreign entity almost always shifted to the local recipient of goods and services.

A foreign entity registers for VAT by appointing a tax representative, however this obligation shall not exist for foreign entities which exclusively provide services deemed to be provided electronically, as well as services of passenger bus transport. Amendments to the Law stipulate rules for the appointment of VAT representatives, their duties, revocation and cancellation, wherein the VAT representative cannot be the permanent business unit of a foreign entity, and the representative is jointly liable for all obligations of a foreign entity as a VAT taxpayer.

Amendments to the Law have retained the previous solution thus, in the event that a foreign entity does not register as a VAT taxpayer, the taxpayer shall be the local recipient of goods and services, and also opens the possibility that foreign VAT taxpayers or their tax representative, as well as local recipients of goods and services, can deduct input VAT that has

been realized in dealing with foreign entities.

2. Transfer of whole or part of the property

On the other hand, Amendments to the Law regulate the actions of the acquirer in the event of transfer of whole or part of the property, which is not considered turnover, and introduces the obligation of the acquirer to perform his business activity for at least three years, in contrast to the earlier generalized formulation in terms of continuing the business activity without specifying the time period. Otherwise, he is obliged to calculate VAT. This change does not apply to equipment and facilities for the performance of business activities, and investment in facilities for the performance of business activities for which there is an obligation to correct the deduction of the previous tax in accordance with this Law.

3. Supply of electricity and gas

Amendments to the Law introduce new rules for the supply of electricity and gas in terms of the place of supply, as well as the time of occurrence of the obligation to calculate VAT.

In case of the supply of electricity and gas for resale, the place of supply is considered to be the seat of the reseller, and the obligation to calculate VAT occurs at the time when the rights of disposal are transferred to the reseller. In case of supply for end use, the place of supply is the address of the consumer, and the obligation of calculation occurs on the day of reading the amount of received electricity and gas. In addition, Amendments to the Law

introduce the obligation of customers to calculate output VAT which they will be able to use for deduction at the time of calculating tax obligations.

In accordance with the Amendments to the Law, the seat of the recipient shall also be considered the place of supply shall in cases of providing access and transport or transmission through distribution networks for natural gas and electricity and other related services, as well as in cases of providing services to enable participation on the stock exchanges of electricity and gas.

Also, according to the Amendments to the Law, energy used for cooling is also considered as goods which are subject to VAT taxation, in addition to water, electricity, gas and heating energy.

4. Construction activities and the VAT regime

Amendments to the Law expand the circle of persons considered as taxpayers. Besides investors (in terms of the Law on Planning and Construction), who were previously the only ones considered as taxpayers and in practice invoiced VAT to contractors, now all participants in construction projects are considered as taxpayers, from investors and contractors to their subcontractors.

5. Deduction of input VAT

One of the major novelties brought about by the Amendments to the Law is that input VAT is deducted for the purchase of products used in furnishing business premises, such as various electric and kitchen appliances. On the other hand, this

law does not explicitly govern the purchase of furniture, i.e. the rules regarding VAT paid in such situations, and thus we may expect the Ministry of Finance to issue an explication in this sense.

Another novelty is that the Amendments to the Law abolish the possibility of deducting input VAT for services which pertain to the meal allowance and transport allowance for employees, i.e. other employed persons for commuting to and from work.

Also, specifically defined are entertainment costs for which there is no right to deduct input VAT.

6. VAT at the execution of pledged assets

Amendments to the Law treat situations such as execution of mortgage on real-estate or pledge on movables in such a way that the acquirers (buyers) of mortgaged or pledged assets have an obligation to charge VAT, and use the amount of such calculated VAT as a deduction. According to the previous legal solution, mortgage or pledge debtors were unable to issue invoices with the calculation of VAT.

The mentioned solution also applies to the sale of assets in an enforcement procedure.

7. Supply of used vehicles

Until the Amendments to the Law, the supply of used vehicles was not subjected to VAT. Instead, the tax on transfer of absolute rights was calculated, and in case the seller was a taxpayer, VAT was calculated on the difference between the

selling and purchasing price of the used vehicle. Amendments to the Law introduce a solution whereby either VAT or the tax on transfer of absolute rights shall be paid depending on the amount of tax, i.e. the higher tax shall be paid.

8. Providing intellectual property services

Amendments to the Law introduce the rule whereby VAT for the providing of intellectual property services is calculated at the moment of issuing the invoice, rather than at the moment of supply or payment, as was previously stipulated.

9. Obligation to submit tax returns and tax accounting period

Amendments to the Law introduce a single deadline for filing tax returns for all taxpayers, regardless of whether they have a monthly or quarterly obligation so that, starting from January 1st 2016, all taxpayers shall file VAT returns by the 15th of the month following the end of their accounting period.

Also introduced is a census of 50.000.000 dinars, thus taxpayers with a turnover lesser than this amount shall have the obligation of filing quarterly VAT returns.

Finally, Amendments to the Law introduce the obligation of taxpayers to, as of January 1st 2017, compose and submit an overview of VAT calculation for each tax period. If a taxpayer fails to submit the mentioned overview with his VAT return, it shall be deemed that he did not file the VAT return.

The content and form of the overview of VAT calculation shall be regulated by a separate bylaw.

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