

February 2018

In focus: Law on Amendments and Supplements to the Corporate Profit Tax Law

On December 14th 2017, the National Assembly of the Republic of Serbia adopted the Law on Amendments and Supplements to the Corporate Profit Tax Law, which applies from January 1st 2018, except for provisions where another application date is indicated (hereinafter: **“Amendments to the Law”**).

The reasons for the adoption of the Amendments to the Law are primarily contained in the necessity to create conditions for more adequate implementation of the law in terms of specifying certain provisions, equalizing tax treatment of individual expenditures, and simplifying the conditions for writing off the bank's claims based on irrecoverable loans.

The most important changes are:

1. SERVICES SUBJECT TO WITHHOLDING TAX

For many taxpayers, the most important novelty of the Amendment to the Law concerns the calculation of the withholding tax at a rate of 20% on the revenues which a non-resident legal entity derived from services by a resident legal entity.

In this regard, it has been specified that the **subject of taxation are revenues which foreign legal entities realize from domestic legal entities based on:**

- reimbursement for market research services,
- accounting and auditing services,
- other services in the field of legal and business consulting,

regardless of the place where the service is provided or used, i.e. place where the service shall be provided or used.

In accordance with the Amendments to the Law, domestic legal entities at the payment of fees for services received from foreign legal entities shall no longer calculate and pay withholding tax, i.e. they shall not be required to, on that basis, obtain a certificate of residence for the purpose of application of international treaties on avoidance of double taxation, whereas in addition to the services listed in the above three areas, all other services (transport services, marketing services, etc.) shall not be subject to taxation with withholding tax.

The above amendment shall apply **from April 1st 2018**, until which time the Minister of Finance should adopt a rulebook that will specify the services listed below.

Related to the aforementioned is the Amendment to the Law concerning the **deadline for submitting the tax application for withholding tax (Form PDPO / S), which is now three days from the date of payment of income. Also, the deadline for**

paying the withholding tax will be three days from the date of payment of income.

2. RECOGNITION OF WRITE-OFF OF RECEIVABLES

Amendments to the Law stipulate that, also recognized as an expense of the bank shall be the cost of write-off of values of individual claims based on the loan which is considered as non-performing loans, in accordance with the regulations of the National Bank of Serbia.

Bearing in mind that, irrespective of the executed write-off, the bank has not given up the same claim, it is obliged to, in the case of its collection, include the amount collected in the tax period in the taxable income.

The listed Amendments to the Law shall be applied when determining the profit tax for 2017.

3. DETERMINATION OF CAPITAL GAIN/LOSS

Amendments to the Law specifically define that, for the purpose of determining capital gain, taken into consideration is the contracted price i.e. market price (in case of sale to a related party), **without value added tax**, and without the tax on transfer of absolute rights, which resulted in the precise defining of the existing solution whereby it was determined that the agreed, i.e. market price without the tax on transfer of absolute rights was taken into consideration for the purpose of determining capital gain.

It is prescribed that for the purpose of determining capital gain, the purchase price of other assets (and not only real-estate), is

adjusted to the estimated or fair value, if the change to fair value is recorded as income in the period in which it was performed.

4. BANKRUPTCY AND LIQUIDATION

Amendments to the Law extend the obligation to file a tax application also in the case of **suspension of liquidation proceedings**, and not only in the case of initiating and completing the liquidation procedure, as previously provided.

Also, the period of bankruptcy is precisely defined by specifying that the same lasts from the moment of the **final and enforceable decision on continuing the bankruptcy procedure until the final and enforceable decision on the conclusion of the bankruptcy procedure, or until the final and enforceable decision on termination of the bankruptcy procedure due to the sale of the debtor as a legal entity**. In this regard, it is stipulated that the taxpayer is obligated to file a tax application within 15 days from the day of validity of the decision on suspension of the bankruptcy procedure due to the sale of the debtor as a legal entity.

The above listed amendments regarding bankruptcy and liquidation shall apply starting **from August 1st 2018**.

5. TAX EXEMPTIONS

In keeping with the aim of facilitating the fulfillment of conditions for tax exemption, the Amendments to the Law precisely define the concept of newly employed persons by establishing that they are the persons that the taxpayer employed during the investment period, so that at the moment of fulfilling the conditions for the

application of tax exemption, the taxpayer has at least an additional 100 employees employed for an indefinite period of time, **as compared to the number of employees employed for an indefinite period of time that the taxpayer had on the last day of the period preceding the period in which the investment began.** In this way, the fulfillment of conditions for tax exemption is facilitated, since the number of persons employed for an indefinite period is taken as the criterion for comparison, and not the total number of employees.

6. TRANSFER PRICING

Amendments to the Law have established that the taxpayer is not obliged to determine the value of a transaction in line with the "arm's length" principle, **if the transaction with a related party is one-off and is not higher than the value of turnover for which VAT registration is mandatory, i.e. if the total value of transactions with one related party does not exceed the value of turnover for which VAT registration is mandatory,** but it is obliged to submit documentation as a report in shortened form, together with the tax balance. The total value of the transactions does not include interest on loans and credits, advances paid or advances received, as well as value added tax.

Also, the Amendments to the Law stipulate that, in case of the sale of assets to a related party in accordance with Article 27, based on which capital gain (loss) is calculated, the taxpayer is not obliged to disclose the price of the transaction with the related party under the "arm's length"

principle, i.e. the taxpayer is not obliged to file documentation in accordance to transfer price regulations, having in mind that in that case, for the purpose of calculating capital gain (loss), **the sale price is the contracted price, or the market price in case of sale to a related party (if the contracted price is lower than the market price).**

*Disclaimer: The text above is provided for general guidance and does not represent legal advice.
Copyright Cvetkovic, Skoko & Jovicic 2018*