

December 2019

In focus: Law on Amendments and Supplements to the Law on Personal Income Tax

On 6 December 2019, the National Assembly of the Republic of Serbia rendered the Law on Amendments and Supplements to the Law on Personal Income Tax (hereinafter referred to as: the “Law”). The Law entered into force on 14 December 2019 and became applicable as of 1 January 2020, apart from several provisions which will become applicable on 1 March 2020.

It is important to emphasize that the Law on Contributions for Mandatory Social Security was simultaneously amended, in order to be harmonized with the Law. The Law provides for many amendments and novelties, of which we point out:

Amendments regarding flat-rate taxation

Unlike previous solutions, the Law now enables taxpayers from the fields of accounting, bookkeeping and auditing, as well as tax consulting, to settle their tax obligations through flat rate taxation.

Additionally, the deadline for filing for flat-rate taxation has been shortened from 30 November to 31 October of the current year for the following year, provided that the person who starts performing business activities can file for flat-rate taxation exclusively at the moment of registration with the Register of companies run by the Serbian Business Registers Agency (SBRA) which will forward such request to the Tax Administration. Persons who do not register

their business activity with the SBRA’s Register of companies, must file for flat-rate taxation within 5 days as of the registration date, in electronic form via the Tax Administration’s portal.

It is also important to note that the Decree on Detailed Conditions, Criteria and Elements for Flat Rate Taxation of Payers of Self-employment Income Tax entered into force simultaneously with the beginning of application of the Law.

However, the most significant amendments which drew the most attention of the media and public alike, especially the IT sector, relate to flat-rate taxation of the income of self-employees. Namely, it is now stipulated that remuneration which an entrepreneur receives on the basis of performing activities for a certain principal will be considered as “other incomes”, provided that he fulfils 5 out of 9 conditions of the so-called “independency test”. If this is the case, these “other incomes” will be taxed at the rate of 20% (whereas such incomes are not subject to standardized expenses reduction) and considered as the base for calculation of contributions for pension and disability insurance at the rates prescribed by the Law on Contributions for Mandatory Social Security.

Subject taxes and contributions for pension and disability insurance will be calculated

and paid by deduction, which means that the payment of taxes and contributions shall be borne by the principal, as the payer of such incomes, when the entrepreneur earns income from a domestic legal entity – principal, i.e. borne by the entrepreneur when his income is generated from a foreign legal entity – principal.

The goal of the abovementioned independency test is to establish whether the person performing certain activities for his principal truly operates as an independent entrepreneur or performs jobs which an employee of the given principal would perform. The independency test criteria imply, inter alia, that the principal determines the entrepreneur's working hours, that the entrepreneur earns at least 70% of his total income in the 12-month period starting or ending in the respective tax year from one principal, or that the entrepreneur performs his activities in the place determined by the principal.

Tax reliefs for newly incorporated companies and companies employing qualified newly employed persons

Starting from 1 March 2020, employers – newly incorporated companies performing innovative activities may be exempt from paying taxes on the salaries of founders employed with the company, provided that:

- a) the employer – company is not related to any entity in the sense of the law regulating corporate income tax and doesn't generate more than 30% of its total income from other entities which are considered related to any of the employer's/company's founders;
- b) the natural person – founder, i.e. each of the founders, if more than

one, concluded the employment agreement and is registered for mandatory social security; and

- c) the founder owns at least 5% of the stocks or shares in the newly incorporated company in the period for which the right to tax relief is exercised.

Such tax exemption applies exclusively to salaries paid within 36 months following the incorporation of the company (whereby the amount of RSD 150,000 per month will be recognized as the maximum amount of salary subject to such exemption) and shall be exercisable by employers incorporated by 31 December 2020.

It is important to emphasize that the use of such tax reliefs excludes the possibility of using subsidies for employment or self-employment.

Furthermore, an employer who establishes a labor relation with a person who, during the year 2019, didn't have the status of an insured employee or person insured on the basis of self-employment who is the founder or member of the company and established a labor relation with said company, and who acquired such status by establishing a labor relation in the period from 1 January 2020 until 30 April 2020 (qualified newly employed person) will be exempt from the obligation of paying calculated and withheld tax arising from the salary of the newly employed person, for salaries paid inclusive with 31 December 2022.

The condition for such tax exemption is that establishment of a labor relation with a qualified newly employed person leads to an increase in the total number of

employees with an employer who seeks such exemption.

The employer will be exempt from the obligation to pay the salary tax in the amount of 70% of the taxes (for salaries paid in 2020), 65% of the taxes (for salaries paid in 2021) and 60% of the taxes (for salaries paid in 2022), as well as the contributions for pension and disability insurance in the amount of 100% of the contributions (for salaries paid in 2020), 95% of the contributions (for salaries paid in 2021) and 85% of the contributions (for salaries paid in 2022).

Salary tax for a newly residing taxpayer

Starting from 1 March 2020, the taxpayer who fulfils legally prescribed conditions in terms of special professional education, age and duration of residence in the territory of the Republic of Serbia prior to conclusion of the employment agreement with a qualified employer, will be regarded as a newly residing taxpayer in terms of the Law and will be entitled to a reduction of the salary tax base in the amount of 70%, for the period of 5 years from the date of concluding the employment agreement, provided that his salary is higher than the amount stipulated by the Law.

The main precondition for exercising such reduction implies that the newly residing taxpayer is employed for an indefinite period of time, with a qualified employer (whereby the Law defines a qualified employer as an employer residing in the Republic of Serbia who cannot be considered a related entity of the previous employer of the newly residing taxpayer, or an employer residing in the Republic of

Serbia who establishes a labor relation with the newly residing taxpayer who, in the period of 25 years preceding the year in which the labor relation is established, met the criteria required to be considered as a resident of the Republic of Serbia for at least 3 years).

Certainly, the right to such reduction doesn't exclude the right to previous deduction of the non-taxable amount of salary (which was, apropos, increased by the Law and now amounts to 16,300 dinars, instead of the previous 15,300 dinars).

Taxation of a non-residing taxpayer's income

In case a non-residing taxpayer spends up to a maximum of 90 days per year in the Republic of Serbia, he will be exempt from paying the income tax, provided that such income has been earned from a non-residing principal who doesn't perform activities in the Republic of Serbia, i.e. who performs his business activities in the Republic of Serbia, under the condition that the specific service provided to the non-residing principal doesn't serve the principal's business activities in the Republic of Serbia.

Amendments regarding reimbursement of commute expenses

In accordance with the Opinion rendered by the Ministry of Finance which drew significant media attention in the previous period, the Law now stipulates that exemption from paying an employee's salary tax arising from expenses for his travel to and from work will be applied only when such expenses are duly documented.

The maximum monthly amount of such expenses is subject to annual harmonization, and in the year 2020 it amounts up to 3,988 dinars per month.

The above clarified amendments were rendered with the aim to create a more favorable business climate in Serbia, i.e. in order to increase employment and suppress the so-called 'shadow economy'. It remains to be seen in the upcoming period whether application of the Law will see these goals successfully met.

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