

March 2021

In focus: Implementation of the Law on Determining the Origin of Property and Special Tax

The Law on the Determining the Origin of Property and Special Tax (hereinafter: the “Law”) was adopted by the National Assembly of the Republic of Serbia on 29 February 2020. The Law entered into force on 11 March 2020 and began with the application as of 12 March 2021.

Prior to implementation of the Law, on 25 February 2021, the National Assembly adopted the Law on Amendments to the Law whereby certain changes were made by which, among other things, certain terms defined by the Law were redefined. These amendments entered into force together with the Law.

Below is a brief overview of Law’s provisions, which includes the newly adopted amendments.

I. Introduction:

The Law was passed with the aim of uncovering, i.e. determining the existence of illegally acquired property and its taxation, thus the same should assist competent authorities in their fight against corruption. Namely, the Law prescribes the conditions, manner, and special procedure in which the **Tax Administration will examine property and look for increases in property whose legal acquisition cannot be proven by a natural person**. In case of finding such property, the same will be subject to special taxation.

II. Course of the procedure:

The Tax Administration initiates and conducts a two-part procedure ex officio:

- 1) **preliminary procedure** and
- 2) **the procedure of inspection and determination of the special tax.**

1) Preliminary procedure:

The Law stipulates that the preliminary procedure is conducted based on a risk analysis. The preliminary procedure may also be initiated based on a report of another body or on the initiative of a natural or legal person.

In the preliminary procedure, the Tax Administration unit determines the increase of property based on data at its disposal and data collected from other bodies and organizations, legal or natural persons and compares them with the reported revenues in a certain period.

If in the preliminary procedure, the Tax Administration unit *makes probable that in a maximum of three consecutive calendar years in which a natural person has an increase in property, there is a difference between the increase in property and reported income of a natural person exceeding 150,000 euros* in RSD counter value at the middle exchange rate of the National Bank of Serbia on the last day of the calendar year of the audit period, it **shall initiate the procedure of inspection**, in the manner prescribed by the Law on Tax Procedure and Tax Administration.

Therefore, it is sufficient for the competent Tax Administration unit to determine in the preliminary procedure that it is **probable** that there is a **difference between the increase in property and the reported income of a natural person**, in order to start the next phase of the procedure.

2) Procedure of inspection:

The procedure of inspection serves to identify the property for which the special tax of a natural person and its value shall be determined. According to the legal definition, the term “property for which a special tax is determined” is the difference between the sum of the increase in property and expenditures for the private needs of a natural person, on the one hand, and the declared income increased by the amount of income not taxable in the Republic of Serbia, unencumbered acquired property, property acquired through borrowing, i.e. property acquired in another lawful manner.

The natural person whose property is subject to inspection is entitled to participate in the procedure of inspection and submit evidence proving the legality of acquiring the property. Failure of the natural person to participate in the procedure of inspection does not delay the further conduct of the procedure. Upon completion of the procedure of inspection, if the Tax Administration unit identifies the existence of property for which the special tax is determined in accordance with the Law, it shall issue a **decision on determining the special tax**. The decision on determining the special tax may be appealed to the Ministry of Finance, which appeal shall postpone its execution. After the Ministry renders its final decision regarding that matter, the party can initiate an **administrative dispute** against such final decision.

If during the procedure facts are revealed that indicate the existence of grounds for suspicion that a criminal offense has been committed, the Tax Administration unit shall inform the police, the public prosecutor’s office and other competent authorities. However, if in the criminal procedure, a binding decision determines the property gain obtained by the criminal offense, but also that the special tax according to the Law has been paid, the court includes the amount of such paid special tax in the property gain obtained by the criminal offense. Inclusion of the paid special tax is also applied in procedures of confiscation of property derived from a criminal offense.

III. Determining the value of property:

When determining the value of property, the entire property of a natural person is considered, and in particular:

- 1) immovable property (apartment, house, office building and premises, garage, land and other);
- 2) financial instruments;
- 3) shares in a legal entity;
- 4) equipment for performance of self-employment activity;
- 5) motor vehicles, vessels and aircraft;
- 6) savings, deposits and cash;
- 7) other property rights.

IV. Determination of the tax base:

The special tax base is determined in the value of the property for which the special tax is determined, and which consists of the sum of the revalued value of that property for each calendar year that was the subject of inspection. The value of such property is revalued by the consumer price index from the last day of the calendar year for which that property was determined until the day of the decision on the special tax. Proceeds from the

special tax belong to the Budget of the Republic of Serbia.

V. Special tax rate:

The Tax Administration unit determines the special tax for the entire inspection period, by applying a special tax rate of **75%** to the tax base determined in accordance with the Law.

VI. Burden of proof:

The burden of proof is borne by both the Tax Administration and the person whose property is being inspected. The Tax Administration will bear the burden of proving the increase in property in relation to the reported income of a natural person, and the natural person will have the obligation to prove that he legally acquired the property in the part where the increase of his property is not in accordance with the reported income.

VII. Authority responsible for conducting the procedure and tax collection:

A **special organizational unit formed within the Tax Administration**, which consists of tax inspectors specially trained to conduct this procedure, is responsible for conducting the procedure of determining property and special tax, as well as its collection.

VIII. Cooperation of the Tax Administration with other bodies:

All state bodies and organizations, bodies of the autonomous province, bodies of the local self-government unit, holders of public authorizations, natural and legal persons assist the Tax Administration unit in the entire course of the procedure.

Also, the Tax Administration has the right to inspect and obtain data from all types of records and data kept by or in possession of the competent authorities and other persons on immovable and movable property, economic entities, financial instruments, deposits and accounts with commercial banks, as well as other records and data from which the property of a natural person can be determined, as well as business books and documentation of companies and other persons, in order to determine the property of a natural person.

In order to effectively cooperate and submit the data required by the Tax Administration unit to conduct the procedure prescribed by this Law, the Ministry of Interior, the National Bank of Serbia, the Anti-Money Laundering Administration, the Anti-Corruption Agency, the Republic Geodetic Authority, the Business Registers Agency and the Central Registry, securities depot and clearing, are obliged to designate one or more employees to liaise with the Tax Administration unit.

IX. Misdemeanors for non-cooperation:

The Law states that a fine in the amount of 500,000 to two million RSD will be imposed on a legal entity that fails to submit the available data at the request of the Tax Administration office; an entrepreneur will be fined from 100,000 to 500,000 RSD, and the natural and responsible person in a legal entity, state body, local self-governments from 50,000 to 150,000 RSD.

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