

Ideas that pay off.

Monthly Newsletter

January, 2022

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THE NATIONAL ASSEMBLY OF MONTENEGRO ADOPTED THE LAW ON AMENDMENTS TO THE LAW ON CORPORATE INCOME TAX

Changes of CIT Law envisage the following:

OBLIGATION TO PREPARE TRANSFER PRICING DOCUMENTATION

Large taxpayers are obliged to prepare and submit transfer pricing documentation when submitting the application, while other taxpayers should have the relevant documentation when submitting the application and submit it within 45 days at the request of the tax authorities.

A materiality threshold of EUR 75,000.00 is provided (if the amount of the transaction between related parties does not exceed the stated amount) in which case the taxpayer may have the documentation in abbreviated form.

All five OECD transfer pricing methods are introduced (comparable market price method, cost price increase method for normal earnings, resale price method, transaction net margin method, profit-sharing method), with the possibility of applying other methods not explicitly stated, as well as by combining the above transfer pricing methods. It is planned to publish interest rates "out of reach" for loans, and other financial instruments.

The taxpayer must submit, ie possess, the documentation on transfer prices by June 30 of the current year for the previous year, until 2027, and after that, the documentation will be submitted together with the tax return, no later than three months from the end of the tax period.

PROGRESSIVE INCOME TAX RATE

A progressive corporate income tax rate is introduced, the applicable tax rate depends on the taxpayer's realized profit, as follows:

- On the profit of up to € 100,000, the tax rate is 9% fixed,
On the realized profit from € 100,000.01 to € 1,500,000 tax shall be paid in the amount of € 9,000 fixed + 12% on the profit above € 100,000.01,
- On the profit above € 1,500,000 tax shall be paid of € 177,000 fixed + 15% on the profit above € 1,500,000.01.

INCREASE THE RATE ON WITHHOLDING TAX RATES AND CAPITAL GAINS

The withholding tax and capital gains tax rates have increased from the previous 9% to 15%.



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POSTPONEMENT OF THE DATE OF APPLICATION OF THE RULEBOOK ON ELEMENTS OF AN ELECTRONIC INVOICE, RULEBOOK ON THE MANNER, AND PROCEDURE OF REGISTRATION FOR ACCESS TO THE ELECTRONIC INVOICE SYSTEM

Postponement of the date of application of the Rulebook on elements of an electronic invoice, form and manner of delivery of accompanying and other documentation through the system of electronic invoices, manner and procedure of electronic recording of value added tax calculation in the system of electronic invoices, manner of application of electronic invoicing standards, and Rulebook on the manner and procedure of registration for access to the electronic invoice system, the manner of access and use of the electronic invoice system and the manner of using the data available in the electronic invoice system.

Rulebook on elements of electronic invoice, form, and manner of delivery of accompanying and other documentation through the system of electronic invoices, manner, and procedure of electronic recording of value-added tax calculation in the system of electronic invoices and manner of application of electronic invoicing standards prescribes:

- ▶ the minimum content of the electronic invoice necessary for its processing through the system of electronic invoices referred to in Article 5 of the Law on Electronic Invoicing,
- ▶ cases in which certain elements of the electronic invoice may be omitted,

- ▶ cases in which the obligation to state additional elements is envisaged, based on other regulations governing the issuance of certain types of invoices,
- ▶ form and manner of delivery of supporting and other documentation through the system of electronic invoices,
- ▶ manner and procedure of electronic recording of value-added tax calculation in the system of electronic invoices.

The date of application of the Rulebook is February 1, 2022, instead of January 1, 2022.

The Ordinance on the manner and procedure of registration for access to the electronic invoice system, the manner of access and use of the electronic invoice system, and the manner of use of data available in the electronic invoice system prescribes:

- ▶ manner and procedure of registration for access to the electronic invoice system,
- ▶ how to access and use the electronic invoice system, as well as,
- ▶ how to use the data available in the electronic invoice system.



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TAX TREATMENT OF DIGITAL ASSET

INDIVIDUALS

With the adoption of the Law on Digital Property, the tax treatment of the alienation of digital property is much more favorable than before, when digital property was not regulated by our legislation.

According to the Law on Personal Income Tax, digital assets are taxed with capital gains tax, which arises from the difference between the sale and purchase price of digital assets. The tax rate to which capital gains are subject is 15%. Compulsory social security contributions are not calculated or paid on the income from capital gains. Also, the profit realized through the transfer of digital property is not subject to taxation with the annual personal income tax.

However, there are certain tax reliefs, and they are:

- A taxpayer who invests funds generated by the sale of digital assets within 90 days from the date of sale in the share capital of a company resident in the Republic or the share capital of an investment fund, and whose center of business and investment activities is in the Republic, is exempt from 50% capital gain, which means that the tax rate in these circumstances will be 7.5%,
- If the taxpayer invests the funds generated by the sale of digital assets within 12 months from the date of sale for the above purposes, he is entitled to a refund of 50% of the paid capital gains tax.

The method of determining the amount of the purchase price is the biggest problem for determining the amount of the tax base, because there is no concrete evidence that would be acceptable to the Tax Administration when determining the purchase price. The screenshot is the only material evidence you could obtain by trading on foreign exchanges, but its authenticity would be questionable. Safer zones are local stock exchanges which obtain a document containing the purchase price.

LEGAL ENTITIES

LAW ON VALUE ADDED TAX

Following the amendments to the Law on Value Added Tax, a VAT exemption is envisaged in the case of the transfer of virtual currencies and the exchange of virtual currencies for funds in accordance with the Law on Digital Property. The transfer of virtual currencies and the exchange of virtual currencies for cash is a narrow formulation, and each transfer is considered separately whether it is subject to VAT, ie whether it can be subsumed under this formulation. The VAT tax rate is 20%.

LAW ON CORPORATE INCOME TAX

The transfer of digital assets by a legal entity is treated as capital gain in accordance with the Law on Corporate Income Tax and is taxed at a tax rate of 15%. Every transfer of digital assets is taxed as a capital gain, except for a legal entity that deals with mediation in the transfer of digital assets, then the legal entity is subject to a different type of taxation.

Capital gain represents the difference between the purchase and sale price, while the purchase price represents the price that the taxpayer documents as actually paid.

Tax exemption if the capital gain is invested in another legal entity or investment fund that are residents of the Republic of Serbia and if the investment is made in the same year in which he obtained the capital gain.

LAW ON CAPITAL MARKET

On December 23, the National Assembly of the Republic of Serbia passed the Law on Capital Market. By adopting this Law, the National Assembly expressed its intention to develop the efficiency of the domestic capital market, improve the transparency and legal security of entities in legal transactions. The law was passed in accordance with the Government Strategy for Market Development for the period from 2021 to 2026 and the Advance Payment Plan for the implementation of this strategy.

To achieve this goal, the Law regulates:

- Conditions for issuing licenses and performing activities of investment companies, market organizers and other entities,
- Conditions for public offering of securities and inclusion of securities in trading on a regulated market,
- Prohibition of fraudulent, manipulative and other illegal actions and acts related to the purchase or sale of financial instruments, as well as the exercise of voting rights related to securities issued by public companies,
- Regulated market, multilateral trading platform (MTP), organized trading platform and OTC markets in the Republic of Serbia,
- Disclosure of financial and other data, as well as reporting obligations of issuers, ie public companies in accordance with this Law,
- Clearing, settlement, and registration of transactions in financial instruments, as well as the organization and competence of the Central Registry, depository, and securities clearing,
- Organization and competencies of the Securities Commission as well as cooperation with other competent authorities.

The law was passed to harmonize national legislation with European Union legislation and lay the foundations for the development of a more modern capital market in the Republic of Serbia, which will be attractive to foreign investors already operating within the institutional framework introduced by the new Capital Market Law.

The Deposit Insurance Agency, the Central Securities Depository, as well as the Belgrade Stock Exchange are obliged to harmonize their operations with the provisions of the Law within nine months from the day of entry into force. Broker-dealer companies and credit institutions that have received a license from the Securities Commission until the day the Law enters into force, are obliged to harmonize their operations with the Law within one year from the day of its entry into force.

The new Law enters into force on January 5 this year, and is applied after one year from the entry into force, ie from January 5, 2023, in order for the entities concerned to get to know and coordinate their business.



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