Tax Newsletter, May 2017

New Ministry of Finance Rulings

Several Ministry of finance rulings have been published in the past period, aimed at clarifying and elaborating on the implementation of provisions of the Law on Value Added Tax (hereinafter "VAT law"), Law on Corporate Income Tax and Law on Tax Administration and Tax Procedure.

Value added tax

Rulebook on amendments to the Rulebook on defining the supply of food and drinks for immediate consumption for the purposes of determining the place of supply pursuant to the VAT Law

In Article 2 of the Rulebook on defining the supply of food and drinks for immediate consumption for the purposes of determining the place of supply pursuant to the VAT law, a new paragraph 3 is added and reads:

"Additional services that allow immediate consumption of food and drinks, in terms of pg. 1 and 2 of this Article, shall not include serving food and drinks in bakeries."

The place of supply of services of providing exhibitors the possibility of presenting their goods or services in a particular facility during the fair along with other related services, provided by the fair organizer to local and foreign exhibitors

When a VAT payer – fair organizer provides exhibitors the possibility of presenting his goods or services in a particular facility during the fair along with other related services, whereby the exhibitor is a taxpayer from Article 12 of the VAT law, the place of supply of services is considered to be the place where the service recipient has its head office or a permanent establishment, if the supply is performed to a permanent establishment that is not in the place where service recipient has its head office, i.e. the place in which the service recipient has permanent or temporary residence.

However, for services involving the lease of conference halls with accompanying equipment (as an ancillary supply), provided by a VAT payer – fair organizer to exhibitors or other persons during the fair, the place of supply for such services is the place wherein the immoveable asset is located, i.e. the place where the conference hall is located. This means that when the conference hall is located in Serbia, the VAT payer – fair organizer is obliged to compute and pay VAT in accordance with the VAT law, regardless of whether the service is provided to a taxpayer from Article 12 of the VAT law or not.

(Ministry of Finance explanatory note, no. 430-00-00136/2017-04 as of April 10, 2017)

The obligation to compute VAT on cash assets that a football club realized based on transfer of players

Cash assets designated as solidarity contributions received by a football club from Serbia as contributions to the development of players, based on the transfer of a player from a foreign club to another foreign club, in accordance with FIFA Regulations on the status and transfer of players, are not considered to be a fee nor a part of a fee for the supply of service involving assignment of players on an indefinite period, i.e. transfer of players, meaning that the Serbian football club – recipient of solidarity contribution is not obliged to compute and pay the VAT on that basis.

(Ministry of Finance ruling, no. 430-00-00138/2017-04 as of April 4, 2017)

Tax obligation arising from the supply of goods and services in the field of construction

Depending on whether it is agreed that during the course of construction works, i.e. during the financing of construction works, interim payment certificate shall be handed over or the projects shall be concluded according to the turnkey principle, the time of supply and the day when tax obligation arose on that basis shall vary. Namely, when interim payment certificates are handed over during the subject project, it is considered that a partial supply was performed on the day of certification of each interim payment certificate by the construction supervisor. However, when agreement does not stipulate the issuance of interim payment certificates, but the projects are concluded based on turnkey principle instead, it is considered that the supply was performed on the day of completion of subject projects.

(Ministry of Finance ruling, no 011-00-181/2017-04 as of April 10, 2017)

The obligation to compute and pay VAT in case the City of Belgrade claims reimbursement of expenses from public fund users

When the City of Belgrade claims reimbursement of expenses from public fund users or other entities, based on giving the right to use of publicly owned property, such costs of right to use represent the lease, and this shall be considered as supply for which the City of Belgrade is obliged to compute and pay the VAT.

(Ministry of Finance ruling, no. 011-00-1223/2017-04 as of April 10, 2017)

Tax liability arising from the supply of goods and services in the field of construction in case construction supervisor does not sign an interim payment certificate but issues an interim valuation certificate

When constructing power transmission lines and transformer stations (for which the issuance of interim payment certificates was agreed), which, among other things, involve equipment delivery with installation in case the contractor issues interim payment certificates to an investor for equipment which at the time of the issuance of said certificate may be dispatched to the country where the construction is performed, i.e. that are on the way to the construction site or delivered and stored at the construction site (although not installed), whilst the subject certificate is not certified by the construction supervisor, but the construction supervisor based on that document drafts the interim valuation certificate, based on which the investor executes the payment to the contractor, in terms of the VAT law it is considered that the investor paid the part of the fee to the contractor before performed supply.

(Ministry of Finance ruling, no. 430-00-104/2017-04 as of April 11, 2017)

The place of supply of services related to attending an international conference held in Serbia

On participation fees charged by the Faculty of Mechanical Engineering, University of Belgrade based on participants' attendance in international conference held in Serbia, meaning that the place of supply of said services is Serbia, the general VAT of 20% applies, since these are not services from the field of science for which the tax exemption is prescribed.

(Ministry of Finance ruling, no. 430-00-61/2017-04 as of May 8, 2017)

VAT treatment of intermediary services for the supply of goods dispatched from abroad to Serbia and from Serbia to abroad

When a VAT payer provides intermediation services for the supply of goods sent or shipped to Serbia, to a taxpayer from Article 12 of the VAT law – legal entity with a seat in Serbia, after April 1, 2017, the general 20% VAT applies on the supply of said service (amount of intermediation fee), without VAT, considering that the place of supply of such services is considered to be the place in which the service recipient has a seat.

(Ministry of Finance ruling, no. 430-00-144/2017-04 as of May 8, 2017)

Based on a court decision which adopts the pre-prepared plan of reorganization in accordance with the Law governing bankruptcy (a decision that simultaneously opens the bankruptcy proceedings, confirms the adoption of pre-prepared plan of reorganization and suspends bankruptcy proceedings), a VAT payer - creditor cannot reduce the tax base for computing the VAT and the amount of computed VAT on fee that is not collected.

(Ministry of Finance ruling, no. 413-00-00059/2017-04 as of May 8, 2017)

Corporate income tax

Tax incentive for investments based on a purchase of a legal entity as part of bankruptcy proceedings

In case of investments made by another individual for the purchase of the taxpayer – bankruptcy debtor as a legal entity, such investments are not made pursuant to Article 50a of the Law on Corporate Income Tax, and the taxpayer (for which, in this case the bankruptcy proceeding is suspended) is not entitled to a tax incentive.

(Ministry of Finance ruling, no. 011-00-255/2017-04 as of May 4, 2017)

Recognizing expenses in the taxpayer's balance arose for registration and accommodation fees for participation in a pharmaceutical symposium

Expenses that a taxpayer, engaged in wholesale of pharmaceutical products, stated in its ledger as registration and accommodation fees for participation of its employees and clients in the pharmaceutical symposium organized with an aim to get acquainted with the new medicines and new treatment approaches, whilst at the end of the symposium participants take tests and collect

credits necessary for maintaining the pharmaceutical license, are recognized for tax balance purposes.

In terms of regulations governing accounting, every taxpayer should divide advertising and propaganda costs on one hand and entertainment costs on the other hand in accordance with its general act, i.e. such an act should regulate in more detail the question of approval and the amount of entertainment costs. Additionally, in determining whether a particular cost should be considered as advertisement and propaganda or entertainment, it should be considered that advertising and propaganda activities performed were intended for a larger number of (anonymous) individuals under the same conditions, as opposed to entertainment activities intended for predetermined (known) individuals.

Considering the above, the expenses that a taxpayer (in this particular case) stated in its ledger based on a fee for participation and accommodation of its business partners in a symposium, represents entertainment expenses which are recognized for tax balance purposes in accordance with Article 12, para 7 of the Law.

However, when it comes to expenses that the taxpayer stated on the same bases for participation of its employees in the said symposium, such a stated expense does not represent an entertainment expense.

(Ministry of Finance ruling, no. 011-00-154/2017-04 as of May 8, 2017)

Determining what is considered as total taxpayer's revenue for the purpose of determining the amount of expenses referred to in Article 15 of the CIT law

For the purpose of determining the amount of expenses referred to in Article 15 of the CIT law, which are recognized as such for tax balance purposes, the total amount of taxpayer's revenue is considered as the total revenue that a taxpayer stated (in tax period) in its ledger, including revenues stated in the account of the group 62 (Revenue from activating own products and goods) and 63 (Change in value of inventories of work in progress and finished products).

Considering that the tax recognized expenses on these grounds shall be determined as a percent amount of the total taxpayers income, the total taxpayer's revenue is considered to be the total revenue that the taxpayer stated (in the tax period) in its ledger, irrespective of the manner in which the said revenues were stated in the income statement for the same period for which the tax balance was filed and submitted. In this regard, said revenue includes all the amounts stated in the accounts of the class 6 (Revenues), including revenues stated in the accounts of the group 62 (Revenue from activating own products and goods) and 63 (Change in value of inventories of work in progress and finished products), irrespective of the fact that revenues from said accounts are not stated in the income statement in appropriate (ADP) positions in which revenues shell be stated, but the adjustment of business expenses stated (in the appropriate ADP position) in income statement shall be performed instead.

(Ministry of Finance ruling, no. 413-00-99/2017-04 as of May 10, 2017)

Tax procedure and tax administration

The manner of proving that the service was performed pursuant to VAT Law

The form and content of a document, that represents evidence on services provided, is not regulated by the VAT law, and such facts are determined by economic substance in accordance with the Law on Tax Procedure and Tax Administration.

(Ministry of Finance ruling, no. 430-00-536/2016-04 as of May 8, 2017)