



News

Amendments to the tax laws

1. Proposed amendment to the Law on Value Added Tax

The announced changes are related to:

- A new situation where the supply of goods and services is not subject to VAT computation;
- The use of the zero VAT rate on the supply of goods that the non-resident recipient dispatches in the baggage abroad and the abolition of VAT refund right of a non-resident citizens;
- The right to deduct input VAT on expenditures for food (including beverages) of employees and other work-engaged persons, or when importing goods;
- The right to deduct the computed VAT in case of incorrect application of the reverse charge mechanism;
- Places of supply for tourism services;
- Postponing the obligation to submit detailed breakdown of the VAT return together with the VAT return;
- Introduction of a new special taxation procedure –supplies of investment gold;
- Refund of the paid VAT to the buyer of the first apartment.

Most of the amendments to the Law on Value Added Tax (hereinafter: VAT Law) will apply as of January 1, 2018, except for the provisions regarding:

- **Supply of investment gold**, which will be deemed as a new special procedure for taxation, to be applied as of **1 April 2018**;
- **Compiling and submitting a detailed breakdown of the VAT return together with the VAT return**, which will apply as of **July 1, 2018**;
- **VAT zero rate regarding the supply of goods that the foreign recipient transfers in the luggage abroad, i.e. the abolition of VAT refunds to a non-residents** to be applied **as of January 1, 2019**.

Below is a review of the above mentioned changes that are covered by the VAT Law.

1.1 Amendments to the VAT Law

1.1.1 New supply where the supply of goods and services is not subject to VAT computation

In accordance with the new Article 6a of the VAT Law, it will be deemed that the supply of goods and services did not occur when the supply is made by the grantor of concession to the concessionaire i.e. supply made by the concessionaire to the grantor of concession within the framework of the implementation of the public-private partnership agreement with elements of the concession, concluded in accordance with the Law

regulating the Public - Private partnership and concessions, if the following two conditions are cumulatively fulfilled:

- Both parties are **VAT payers**, and
- Both parties would be entitled to deduct input tax **in full** in accordance with the VAT Law in case that the supply between them would be deemed as executed.

The above mentioned Article will not be applicable in case **that payment for this supply is paid i.e. collected in full or in part (advance payment) before January 1, 2018**, in which case the provisions of the VAT Law should be applied ("Official Gazette of RS" No. 84/2004 ... 108/16).

1.1.2 Zero VAT rate on the supply of goods that a non-resident recipient dispatches in the baggage abroad and the abolition of VAT refund right of a non-resident citizen

Amended Article 24, paragraph 1, item 4, of the VAT Law, specifies the conditions under which a taxpayer can use the VAT zero rate regarding the supply of goods to the non-resident recipients (travellers) based on the goods sold, which they dispatch abroad, with two important changes in relation to the current solution:

- It is not possible to use the VAT zero rate regarding the obligation to compute output VAT in case of supply of **excise goods and goods used for equipping and supplying transportation vehicles**;
- Total value of the goods for which the exemption can be used is reduced from **150 euros to 100 euros**.

In the context of the foregoing, the VAT refund mechanism for a non-resident citizens shall be abolished.

1.1.3 Amendments regarding the right to deduct the input VAT

1.1.3.1 Food (including beverages) of employees and other work-engaged persons

Pursuant to the amendment of Article 29, paragraph 1, item 3 of the VAT Law, input VAT **may be deducted for expenditures for food, including beverages, for employees and other work-engaged persons which are served in catering facilities (canteens) provided that the taxpayer charges a fee based on that.**

1.1.3.2 Adjustment of the input VAT deduction on importation of goods

In accordance with the amended Article 31a paragraph 6 of the VAT Law, from January 1, 2018, taxpayers will no longer be obliged to conduct the adjustment of the input VAT computed by the customs authority when importing the goods, which was deducted as an input VAT, in case of a subsequent **increase** of said VAT.

In this way, the aforementioned Article of VAT Law was harmonized with Article 5 of the Rulebook on the manner of adjustment of input VAT due to changes in VAT base ("Official Gazette of RS", No. 86/2015) which stipulates that if VAT deducted as input VAT, on importation of goods is **increased**, then the VAT payer **may** increase the

deduction of the input VAT that he had realized based on this, if the conditions for deduction of the input VAT, in accordance with the law, were fulfilled.

1.1.4 The right to deduct the computed VAT in case of incorrect application of the reverse charge mechanism

Amended Article 31a of the VAT Law stipulates that in case that the tax authority in the audit procedure determines that the taxpayer incorrectly applied Article 10 paragraph 1 item 3) and paragraph 2 of the same Article of the VAT Law (e.g. supply of goods and services in the construction industry) and accordingly computed VAT as the tax debtor and at the same time stated the same amount of VAT as the input vat, the **tax authorities will make an adjustment of the deduction of the input VAT via a decision.**

On the other hand, based on such a decision, the VAT payer **shall have the right to reduce the incorrectly computed VAT, no earlier than the tax period in which they received the respective decision of the tax authority.**

Additionally, if the abovementioned decision is annulled, amended or revoked in the part which has corrected the input vat, **the VAT payer is obliged to disclose the VAT due on that basis.**

1.1.5 Places of supply for a tourism services

In accordance with the amended Article 35 paragraph 3 of the VAT Law, the place of supply for a tourism services is the place where the service provider **has a head office or a permanent establishment if the service is provided from a permanent establishment which is not located in the same place where the service provider has its head office.**

1.1.6 Postponing the obligation to submit detailed breakdown of the VAT return together with the VAT return

In accordance with the abovementioned amendment, **the obligation to submit the POPDV breakdown with each VAT return is postponed for 1 July 2018**, as opposed to the still applicable regulation envisaging the introduction of this new obligation for VAT payers in Serbia as of January 1, 2018.

1.1.7 Investment gold supplies

The new Article 36a of VAT Law proposes the introduction of a new special taxation regime for the supplies of investment gold.

1.1.8 Refund of the paid VAT to the buyer of the first apartment

The announced changes provide the necessary conditions for exercising the right to a VAT refund based on purchase of the first apartment in case where the apartment is subject of the mortgage, or the subject of enforcement in the enforcement proceedings.

In addition, it is envisaged that the buyer of an apartment who has purchased it prior to entry into force of this law, as a mortgaged real estate or during enforcement proceedings, and paid in full the agreed price including VAT onto the corresponding

accounts in accordance with the law, has the right to submit to the competent tax authority a new VAT refund request in case it has not received VAT refund as per previous request.

2. Proposed amendments to the Law on Corporate Income Tax

The most significant amendments include:

- Calculation of depreciation of intangible assets as well as classification of assets consisted of immovable and movable parts for tax depreciation purposes;
- Further clarifications of the provisions dealing with the deductibility of bad debt provisions;
- Simplification of conditions for deductibility of expenses in a bank's tax balance sheets on the basis of write-off problematic loans;
- Specifying the method of determining the sale and purchase price of an asset for the purposes of calculating capital gains/losses;
- Narrowing the scope of services subject to withholding tax;
- Clarifications related to bankruptcy and liquidation processes;
- Clarifications in the area of transfer pricing.

Most of the amendments to the Law on Corporate Income Tax (hereinafter: CIT Law) should apply from **1 January, 2018**, except for the following:

- Provisions governing the conditions for deductibility of expenses based on debt write-off for banks, as well as provisions related to deductibility of expenses related to bad debt provisions, should apply to the calculation of the tax base for 2017;
- Provisions governing withholding tax should apply as of 1 April 2018;
- Provisions governing tax treatment of bankruptcy proceedings and liquidation should apply as of 1 August 2018.

Below is an overview of the most important proposed amendments:

2.1 Changes and amendments to the CIT Law

2.1.1. Tax depreciation (Article 10 of the CIT Law)

- **Intangible assets**

It is proposed that the calculation of tax depreciation of intangible assets is done by using the straight - line method, whereby the depreciation rate would be determined on the basis of useful life of a particular intangible asset (concessions, patents, licenses), or based on the duration of the contract on the right to use a certain intangible asset.

Until the amendments come into force, intangible assets are classified into the second depreciation group and depreciated using the declining balance method applied to the balance of the depreciation group, which results in intangible asset being often depreciated longer than its useful life.

- **Classification of assets**

The proposal envisages a possibility for the taxpayer to classify, for tax depreciation purposes, fixed assets consisting of movable and immovable parts, based on the applied accounting treatment of such assets, notwithstanding the general rules for classification of fixed assets by groups for tax depreciation purposes.

Consequently, if a fixed asset consisting of movable and immovable parts is recorded in taxpayer's books as immovable property, it is classified in the first depreciation group and depreciated using the method and rate prescribed for that group, as per the applicable legislation.

2.1.2. Deductibility of expenses for bad debt provisions (Article 16 of the CIT Law)

Proposed amendments specify the provision related to deductibility of expenses for bad debt provisions, by stating that the expenses for bad debt provisions will be tax deductible, subject to complying with other prescribed conditions, provided that from its due date at least 60 days have passed **until the end of the tax period.**

2.1.3. The deductibility of expenses from debt write-off performed in accordance with NBS Regulations (Article 16, Article 22a of the CIT Law)

It is proposed that expenses of a bank from debt write-off performed in accordance with the National Bank of Serbia's regulations are tax deductible (for loans granted to natural and legal persons).

All written-off receivables, bad debt provisions and other receivables that were tax deductible, and are later collected or the creditor withdraws his claim, the proposal for enforcement or registering the claim, at the time of collection or withdrawal of the claim, the proposal for enforcement or registering the claim are included in the bank's taxable income. At the same time, all written-off receivables, bad debt provisions and other receivables that were tax non-deductible, which are later collected, are not included in the bank's taxable income at the time of collection.

2.1.4. Sale and purchase price of an asset – capital gain/loss (Article 28, 29 of the CIT Law)

It is proposed that the sale price for the purpose of determining capital gains/losses is the contracted price (or market price in case of sale to a related party) without VAT, in order to align the provision with the provision already in force which provides that the sale price for the purpose of determining capital gains/losses does not include the amount of transfer tax.

It is also proposed to further clarify the provisions on determining the purchase price for the purpose of determining the capital gain, so that the purchase price of other assets, and not only assets that are subject to tax depreciation (immovable property), 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.

2.1.5. Bankruptcy and Liquidation (Article 34, Article 64 of the CIT Law)

It is proposed that the period of bankruptcy lasts from the moment of 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.

Under the proposed amendments, the obligation to file tax return would also exist in case of suspension of liquidation procedure, and not only in case of the initiation and completion of the liquidation procedure.

Additionally, pursuant to the proposed amendments, the tax period for the taxpayer for whom the bankruptcy procedure has been concluded due to the sale of the debtor as a legal entity (as well as for the taxpayer for whom the liquidation procedure has been suspended) shall commence on the first day after the day the decision on suspension of the bankruptcy procedure becomes final and enforceable. The taxpayer is obliged to file a tax return in which it will assess its revenues, expenses and profit and will calculate the monthly advance payments for corporate income tax within 15 days from the day the decision on suspension of the bankruptcy procedure becomes final and enforceable.

2.1.6. Services subject to withholding tax (Article 40, Article 71 of the CIT Law)

It is proposed that only fees for market research services, accounting and auditing services and other legal and business consulting services are subject to withholding tax, regardless of where such services are rendered or used. It is further proposed that such services would be more closely regulated (specified) by a special by-law, with the goal of eliminating ambiguities in the application of this provision. The narrowing of the scope of services, as described, does not apply to service fees paid to legal entities from jurisdictions with preferential tax systems.

Until the entry into force of the proposed amendments, fees from services provided or used, or that will be provided or used in the territory of the Republic are subject to withholding tax, therefore the proposed amendments significantly narrows the scope of taxable services.

The deadline for submission of withholding tax returns is extended from 1 to 3 days (as of the date of payment).

2.1.7. Tax holiday (Articles 50a, 50v, 50g of the CIT Law)

Amendments to the Article 50a are proposed, so that the newly employed person within the meaning of Article 50a is a person that the taxpayer has employed in the period of investment, and so that in the moment of fulfilling the conditions for the application of the tax holiday the taxpayer has at least additional 100 employees for an indefinite period of time, as compared to the number of employees for an indefinite period of time that the taxpayer has had at the last day of the period preceding the period in which the taxpayer has started investing (while the currently applicable provision prescribes that the number of new employees is compared to the number of employees the taxpayer has had in the period in which it started to gain the right to the tax holiday). Furthermore, an amendment to the provision regulating which employees are not deemed as new employees is proposed, so that the person which is not directly hired by the taxpayer, cannot be deemed as a new employee.

Additionally, it is proposed that provisions on application of the tax holiday are further clarified in the following manner:

- Taxpayer which decreases the number of employees for an indefinite period of time in the period of application of the tax holiday below the total number of employees for an indefinite period of time which it had in the period it fulfilled the conditions for the application of the tax holiday will lose the right to apply the tax holiday for the whole period of application of the tax holiday, and will have the obligation to calculate and pay the tax which would have been due if the tax holiday was not applicable, in the tax return for the tax period in which it has decreased the number of employees.
- Taxpayer which loses the right to apply the tax holiday on the basis of alienation of fixed assets will have the obligation to calculate and pay the tax which would have been due if the tax holiday was not applicable, in the tax return for the tax period in which it has alienated the fixed assets.

2.1.8. Transfer Pricing (Article 60 of the CIT Law)

In accordance with the proposed amendments, the existing provisions on conditions for filing the abbreviated transfer pricing report contained in the Transfer Pricing Rulebook are introduced into the provisions of the CIT Law. Additionally, the amendments also propose that the value of transaction, i.e. the total value of transactions, within the meaning of the conditions for filing of the abbreviated report, **does not encompass interest on loans and credits, advances paid or advances received, as well as value added tax.**

Finally, pursuant to the proposed amendment, in case of sale of assets to a related part that is subject to capital gains/losses calculation, the taxpayer is not obligated to disclose the price of the transaction with the related party under the arm's length principle, i.e. the taxpayer is not obligated to file transfer pricing documentation. The reason for this amendment is that the provisions on capital gains/losses already prescribe that the sale price is the contracted price, or the market price in case of sale to the related party (if the contracted price is lower than the market price).

2.1.9. Deadline for filing the corporate income tax return (Article 63 of the CIT Law)

Pursuant to the proposed amendments to the CIT Law, the deadline for filing of the corporate income tax return will be 30 June of the following year.

3. Proposed amendments to the Law on Personal Income Tax

The most important changes concern:

- Tax non-resident's income;
- Income from employment received upon employment termination;
- Tax point for the income received through incentive plans by the employee;
- Definition of an assigned person;
- Adjustments of non – taxable amounts;
- Extension of the period for applying current tax reliefs;
- Definition of entrepreneurs;
- Capital gains and capital losses;
- Other income;
- Self-employment income tax return and tax account;
- Tax non-residents registration;
- Self-assessment, reporting and paying the income tax;

- Register of employers.

Most of the amendments to the Law on Personal Income Tax (hereinafter PIT Law) will come into force on **January 1, 2018** except for the provisions related to **applying tax exemption for the employer – newly founded legal entity or a new entrepreneur**, which shall apply as of **October 18, 2018**.

Further below is an overview of the most important changes encompassed by the above stated law.

3.1 Amendments to the Law on Personal Income Tax

3.1.1. Tax non-resident's income

Additional paragraphs within Article 8 of the PIT Law more precisely define the term of **non-resident's income sourced in the Republic of Serbia**. Namely, this income primarily refers to the income from employment, additionally it also encompasses income from the rights sourced in the Republic of Serbia, including property rights on the territory of the Serbia owned by a non-resident.

3.1.2. Income from employment received upon employment termination

By introducing the new paragraph (paragraph 5) in Article 13 of the PIT Law it is specified that income from employment received upon the employment termination is treated as a salary. More precisely, this means that all the employment income received after the employment termination, has a tax treatment of salary.

3.1.3. Tax point for the income received through incentive plans by the employee

Article 14 of the PIT Law defines the tax point for taxing the income received through incentive plan as the moment when the employee acquired the right to dispose of the shares given through incentive plan.

3.1.4. Individual (Serbian tax resident) to be assigned to perform work abroad

By introducing the new paragraph to the Article 15b of the PIT Law, individuals, Serbian tax residents who are assigned abroad for training are also encompassed.

3.1.5. Adjustments of non – taxable amounts

The Amendments introduce the increase in the non-taxable amount related to salary from RSD 11,790 to RSD 15,000 per month.

3.1.6. Extension of the period for applying current tax reliefs

The new Law enables the extension of current tax relief period that refers to employment of new individuals to December 31st, 2019. The Law also introduces the new type of tax relief for youth's employment when starting their own business through tax exemption (as well as mandatory social security exemption) to income during the first years of establishing business.

3.1.7. Taxpayer obliged to pay taxes on income from independent activity

In Articles 32 to 37a the term taxpayer obliged to pay taxes on income from independent activity is more precisely defined, as follows:

An individual registered at the competent authority or organization, and pays taxes on the tax base that is determined as taxable income for entrepreneur, or the lump sum income for entrepreneur taxed on a lump sum income;

A taxpayer for income from agriculture, who records his business activities in accordance with applicable legislation and is liable to pay taxes related to his taxable income (entrepreneur-agriculturist/farmer);

Individual who is liable to pay value added tax in accordance with the applicable law in this matter, as well as any other individual performing activity irrespective of whether the activity is registered and settles tax on income from independent activities where tax base is determined as his taxable income (other entrepreneur).

3.1.8. Capital gains and capital losses

A point 4 is added to the paragraph 1 of the Article 72 which singles out the sale of investment units.

Amended Article 78 of the PIT Law prescribes that the capital loss which still exists after the offsetting referred to in paragraph 1 of this Article, such loss may be offset in the next five years at the expense of future capital gains, including the year in which the original capital loss was incurred, which defines more precisely the previous heading "starting from the year in which the original capital loss was incurred".

3.1.9. Other income

Amendments to Article 85 of the PIT Law specify that other income is income that by its nature represent the income of individuals, unlike the previous heading, which had prescribed that "other income that is not taxable on another basis in accordance with this Law".

Amendments to the Article 85 in its exemption from the Article 85 paragraph 1 point 13 of the PIT Law introduces a new group of individuals i.e. individuals who are members of the board of legal entities in relation to the activity of the legal entity sending them on a business trip.

3.1.10. Self-employment income tax return and tax account

Article 93 of the PIT Law prescribes that the deadline for filing the tax return and tax account for the taxpayers referred to in Article 32 of this Law, except the entrepreneurs who pay taxes on lump sum, to the competent Tax Authorities is 15th of April of the year following the year for which the tax is determined.

Additions to the Article 94 of the PIT Law differentiate the obligations of entrepreneurs who pay taxes on lump sum and start with independent activity during the year and the obligations of entrepreneurs who pay taxes on lump sum and cease independent activity during the year, from the obligations of entrepreneurs in the above mentioned cases.

Article 94 also prescribes that an entrepreneur who has paid the tax on actual income in the year preceding the year for which the tax is levied, if he fulfills the conditions to be lump sum taxable, the entrepreneur can file a tax return for lump sum taxation in that year, no later than 31 January of that year.

3.1.11. Non-resident taxpayer's tax return

According to the provisions of amended Article 96 of the PIT Law, the tax return for the non-resident taxpayer shall be filed to the Tax Authorities on whose territory the taxpayer has earned income, or according to the taxpayer's place of residence, or according to the tax representative's residence.

3.1.12. Self-assessment and payment of taxes

Amendments to the Article 100a of the PIT Law prescribe that a taxpayer who receives salary and other income in a foreign state or from a foreign state, at diplomatic or consular mission of a foreign state or an international organization or with representatives and officials of such a representative office or organization, is obliged to self-assess and pay withholding tax, according to the provisions of this Law, if the tax is not calculated and paid by the payer of the income.

Article 100a is amended by stipulating the obligation to self-assess and pay the tax in accordance with paragraph 2 of this Article, which the taxpayer i.e. the natural person has in case the withholding tax is not calculated and paid by another payer, as well as if the income is received from the individual who is not obliged to calculate and pay withholding tax.

According to the amended Article 100a of the PIT Law, the taxpayer - assignee seconded the Republic of Serbia is obliged to calculate and pay personal income tax, on the basis of the income received from the employer in or from a foreign country.

3.1.13. Calculating, paying and recording the withholding tax

Article 108 of the PIT Law, which had defined that the Minister of Finance shall issue detailed regulations with regard to charging, payment and recording of the withholding tax, is deleted.

3.1.14. Register of the Employers

Article 108b of the PIT Law, which had prescribed that the Tax Authorities shall keep the Registry of the Employers, is deleted.

4. Proposed amendments to the Law on Mandatory Social Security Contributions

The most important changes concern:

- Social security contribution base;
- Determination of the minimum and maximum contribution base, both monthly and annual;

- Extension of the deadline for the use of existing social security reliefs for the employment of new persons from December 31st, 2017 to December 31st, 2019;
- The introduction of social security reliefs for the employment of persons with the newly registered legal entities and entrepreneurs on October 1st, 2018;
- Determination of the obligation for calculating and paying the social security contributions on the income received by the employee from the entities related to the employer;
- Estimated maximum annual social security contribution base.

Most of the amendments to the Law on Mandatory Social Security Contribution (hereinafter: SSC Law) will be applicable from January 1st, 2018. Provisions regarding the establishment and payment of contributions for an entrepreneur who benefits from the childbirth and childcare and special child care, will be applicable from July 1st, 2018 as well as social security reliefs based on the employment of new employees for the newly registered legal entities and entrepreneurs, which will be implemented from October 1st, 2018.

Below is a review of the most significant changes that are prescribed by this law.

4.1 Amendments to the SSC Law

4.1.1. Social security contribution base

With the amendments of Article 13 of the SSC Law, first of all, terminological harmonization was made in relation to the non-taxable amount of the salary. Also, it is emphasized in the new paragraph 5 of this Article that the contribution base for employee and employers does not include the employee's income from the employer, which is not subject to income tax in accordance with the Personal Income Tax Law.

Amendments to Article 35b of the SSC Law stipulate that when determining the contributions base for compulsory health insurance for persons for whom the contribution funds are provided in the budget of the Republic of Serbia, new employees employed by the newly registered legal entities of entrepreneurs are added to this category.

4.1.2. The minimum and maximum social security contribution base both monthly and annual

The amended Articles 37, 38, 42 and 43 of the SSC Law, determine the lowest monthly contribution base, the lowest monthly social security contribution base for the insured persons referred to in Articles 25, 26 and 27, the highest monthly social security contribution base and the highest annual social security contribution base. The contribution base would be an amount that would be applied for the entire calendar year and which would be published once a year, in contrast to the previous decision requiring monthly or quarterly adjustments (other than the basis for the insured from the Articles 25, 26 and 27 of the SSC Law).

4.1.3. Social security reliefs

Amendments to the Articles 45 and 45v of the SSC Law extend the period of use of existing social security reliefs for the recruitment of new persons in the form of the right to repayment of paid contributions in the percentage from 65% to 75% as of December 31, 2017 to December 31, 2019.

The new Article 45g of the SSC Law provides the introduction of benefits based on the employment of persons starting with the conduct of their own business, in the manner that they are exempted from paying contributions based on their own earnings as well as on the basis of earnings of newly employed persons.

4.1.4. Determination of calculation and payment of social security

To the Article 51 of the SSC Law, paragraph 7 is added. It imposes an obligation to the employee to calculate and pay contributions for the income received from the entity related to the employer. S/he is obliged to calculate and pay contributions by herself/himself, in the manner prescribed for payment of personal income tax for such cases, according to the Personal Income Tax Law.

4.1.5. Estimated maximum annual social security contribution base

By amending Article 67 of the SSC Law, the estimated maximum annual social security contribution base is the amount of the highest annual contribution base established for the year preceding the year for which the estimated annual maximum contribution base is applied, increased by estimated wage growth in the current year.