

Review of the most important changes and amendments to the Act on tax procedure and tax administration

Belgrade | 10.12.20.

National Assembly of the Republic of Serbia adopted the Act on changes and amendments to the Act on tax procedure and tax administration (hereinafter: the Act) on November 26th, 2020. Mentioned Act entered into force on December 5th, 2020, but application of certain provisions of the Act is postponed, which will be elaborated further in the text.

The main changes which the new Acts introduces are:

- Changes in the way of electronic communication between taxpayers and Tax Administration;
- Changes in the regime for limiting (prohibiting) assignation of Tax Identification Number (TIN) to taxpayers;
- Providing for the possibility of paying taxes in kind instead in money;
- Introducing open investment funds and alternative investment funds without the status of legal entity in the tax system of the Republic of Serbia;
- Changes in penal provisions.

Hereinafter we will analyze the stated changes of the Act and the way in which they will affect companies.

Review of the most important amendments to the Act

1. Regulating electronic communication between competent Tax authorities and taxpayers

Changes to the Act give more precise regulation on the way in which taxpayers, by electronic means of communication, submit certain requests to the Tax authority.

Starting from January 1st, 2021 the request for refund of more paid or wrongfully paid taxes, request for tax credit as well as request for postponing due date for payment of taxes can be submitted to Tax authorities via recommended mail, but also via electronic portal of Tax authorities. Such change in the Act made it clear that it is no longer possible to submit abovementioned requests via email.

For the purpose of adjusting of taxpayers to such a change, lawmaker predicted postponed applicati-

on of this provision, so its application will start on January 1st, 2021.

Also, changes in regulation prescribed the possibility that tax decision can be delivered in electronic form to an individual that submits requests/tax applications via Tax administration portal, in which case additional consent of the taxpayer for such delivery is not needed. If an individual submits request/tax application in paper form, decision of the Tax administration can be delivered electronically only in the case that the individual agreed with this manner of delivery.

The amendments to the Act relating to the submission of requests through the portal of the Tax administration shall apply from January 1st, 2021.

2. Exceptions to the restriction to grant taxpayers Tax Identification Number (TIN)

Changes and amendments to the Act introduced a more precise definition of exemptions from the

restriction to grant taxpayers TIN. Newly introduced Act prescribes that the Tax Authority shall grant TIN to taxpayers:

- if due and unsettled obligations regarding public income is up to RSD 100.000,00 and if those obligations are settled within 8 days since the day of submitting request for issuing TIN, i.e. if within that deadline is provided irrevocable bank guarantee or promissory note signed by a bank;
- if due and unsettled obligations regarding public income occurred due to activity of companies that ceased to exist due to bankruptcy procedure.

Those changes have been made since in the previous period Tax Authority have wrongly interpreted provisions of the Act and often canceled TIN to companies and entrepreneurs whose founder was the same person as founder of a company over which bankruptcy procedure was completed. By these changes, the lawmaker explicitly prescribed that the TIN shall be granted to companies who have the same founder as companies with unsettled obligations regarding public income that ceased to exist after bankruptcy procedure was completed.

Also, the lawmaker prescribed that after the Act enters into force, the Tax Authority shall, upon request, return TIN to companies from whom it was temporarily taken away in accordance with changes to the Act. Of course, to exercise this right, taxpayers must fulfill conditions prescribed by the new Act.

Changes and amendments to the Act relating to this issue are to be applied starting from December 5th, 2020.

3. Payment of taxes in kind

By changes and amendments to the Act, the lawmaker allowed the possibility and prescribed conditions under which taxpayer can settle its tax obligation in kind, instead by monetary payment.

As an exception from the general rule, it the taxpayer can settle its tax obligation in kind, instead in monetary payment in cases when tax obligation is higher than RSD 50.000.000,00, in a manner and under conditions that the Government shall additionally prescribe, but only in the cases when there is an interest of the Republic to gain certain property.

Changes and amendments to the Act regarding this possibility are to be applied starting from December 5th, 2020.

4. Introduction of open investment funds and alternative investment funds without the status of a legal entity in the tax system of the Republic of Serbia

Changes and amendments to the Act, besides legal entities, and individuals, introduced as a taxpayer investment funds without the status of a legal entity.

For the purpose of identifying funds as a taxpayer, the Tax Authority shall, acting upon registration application submitted by funds, assign every fund with a TIN. Deadline for submitting application is 5 days since the day of inscribing the fund in a competent register, and obligation to submit the application is given to the company that manages the fund.

Tax obligations of the fund shall, in his name and on his behalf, be settled by a company managing the fund from the fund's assets.

In addition to the abovementioned obligations, company managing the fund is also obliged to perform other tasks regarding tax obligations of the fund, such as submitting registration application, submitting tax applications, reception of decisions regarding tax obligations, managing of funds business books and records for the purpose of taxation, payment of tax obligations and so on.

Also, tax obligations arising due to dissolution of fund, i.e., its cessation, are to be fulfilled by the management company.

In summary, changes and amendments to the Act prescribed that the fund, as a taxpayer, has all rights and obligations as any other taxpayer and that all his rights and obligations the fund exercises via company in charge of his management.

Changes and amendments to the Act regarding investment funds start its application on December 5th, 2020.

5. Introduction of a new criminal offense – Tax fraud related to Value Added Tax (VAT)

Changes and amendments to the Act introduced a new criminal offense regarding taxes instead of until now existing criminal offense called Unfounded statement of the amount for tax refund and tax credit.

New criminal offense prescribed new criminal act as submitting tax applications that contain false data or avoidance of VAT payment, as opposed to

earlier prescribed criminal offense of unfounded statement of the amount for VAT refund and tax credit, which basically represents VAT tax evasion.

Also, changes to the Act prescribed new (higher) threshold, i.e., the amount that the taxpayer must gain (or avoid, depending on the type of the criminal act) to be punished for heavier forms of tax evasion regarding VAT.

Thus, starting from the date of application of those changes and amendments to the Act, the taxpayer shall be held responsible for heavier form of tax fraud regarding VAT if the amount of evaded tax is higher than RSD 5.000.000,00, as opposed to until now valid threshold of RSD 3.000.000,00. For this, heavier form of criminal offense, taxpayer can be punished with 2-8 years of prison sentence and with monetary fine. For most severe form of tax fraud relating to VAT, the taxpayer shall be held responsible if by fraud he evaded payment of VAT in the amount higher than RSD 15.000.000,00, as opposed to until now prescribed threshold of RSD 10.000.000,00. For this, most severe form of criminal offense prescribed punishments are 3-10 years of prison sentence and monetary fine.

Stated changes and amendments to the Act harmonized this criminal offense with criminal offense of Tax Evasion prescribed by the Criminal Code of the Republic of Serbia.

In practice, this means that in case of using unfounded return of VAT, based on false report, in the amount of RSD 4.000.000,00 taxpayer can be sentenced to prison sentence in the period of 1-4 years, while according to the earlier regulations for the same offense taxpayer could have been punished to prison sentence in the period of 1-8 years.

Changes and amendments to the Act relating to this new criminal offense are to be applied starting from December 5th, 2020.

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