

## NEW LAW ON ELECTRONIC INVOICING

### A summary of the provisions of the Law, with the obligations it brings, but also the advantages it provides to legal entities

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The Serbian Parliament adopted the Law on Electronic Invoicing (Official Gazette of the Republic of Serbia no. 44/21, hereinafter: The Law). The Law was adopted on April 29th, 2021, and it entered into force on the eighth day of its publication, i.e., on May 7th, 2021.

However, due to the great changes it brings in the current way of operation of legal entities, the application of the provisions of this Law has been postponed, which is explained in detail hereinafter.

#### INTRODUCTION

The Law introduces Electronic Invoice as a digital invoice, a dematerialized, i.e., non-paper version, which is transmitted from the issuer to the recipient via software. The Law also creates the necessary preconditions and defines the parameters so that the electronic invoicing system would be applicable in the Republic of Serbia as well. This includes the following:

- 1. Introduction of a system of electronic invoices** (creation of a digital platform) managed by the central information intermediary and through which electronic invoices are sent, received, recorded, processed, and stored.
- 2. Determining which entities are obliged to perform electronic invoicing:**
  - Public sector entities in mutual transactions,
  - Private sector entities (in terms of this Law only value-added taxpayers) in mutual transactions,
  - Public sector entities in transactions in which the private sector entity is on the other side and
  - Private sector entities in transactions in which the public sector entity is on the other side.
- 3. Determining a single format for electronic invoices** (under the Serbian standard of electronic invoicing which provides for all structural elements of the invoice), and which format will be further exported (directly or through an information intermediary) to the electronic invoicing system and thus made available to the other party in the transaction.
- 4. Prescribing the manner of exchanging invoices** which means that the issuer or recipient of electronic invoices issue, send and store, and/or receive or directly through the electronic invoice system or on their behalf, the information intermediary does the same through the system of electronic invoices, all under the concluded contract.
- 5. However, all the above takes time**, thus the delayed implementation of the Law was expected. The transition to electronic invoicing will take place gradually over a period from January 1, 2022, to January 1, 2023, with the deadlines and designated entities (public/private sector) and the obligations to which the deadlines apply.

## SPECIFICS OF LEGAL PROVISIONS

### Entities that are obliged to harmonize their business operation with the provisions of the Law

The Law regulates issuing, sending, receiving, processing, and storing of electronic invoices between:

- 1) Public sector entities based on mutual transactions,
- 2) Public sector entities based on transactions with private sector entities,
- 3) Private sector entities registered in the VAT system based on transactions with public sector entities,
- 4) Private sector entities registered in the VAT system based on mutual transactions,
- 5) Proxies of foreign legal entities in the Republic of Serbia, in terms of regulations governing value added tax, based on transactions with private and public sector entities.

### Beginning of the implementation of the Law for certain categories of entities

The implementation of the Law has been postponed i.e., time-structured through the following dates:

- The obligation of a public sector entity to receive and keep an electronic invoice issued under this Law, as well as the obligation to issue an electronic invoice to another public sector entity, shall apply from 1 January 2022.
- The obligation of the public sector entity to issue an electronic invoice to the private sector entity shall apply from 1 July 2022.
- The obligation of the public sector entity to electronically record the calculation of value-added tax in terms of Article 4 of this Law shall apply from 1 January 2022.
- The obligation of a private sector entity to issue an electronic invoice to a public sector entity shall apply from 1 January 2022.
- The obligation of a private sector entity to receive and keep an electronic invoice issued by a public sector entity, as well as electronic invoices issued by a private sector entity shall apply from 1 July 2022.
- The provisions of the Law relating to the obligation to issue and keep electronic invoices in transactions between private sector entities shall apply from 1 January 2023.
- The obligation to electronically record the calculation of value-added tax, except for transactions in which one of the parties is a public sector entity shall apply from 1 January 2023.

### Possibility of voluntary use of the system of electronic invoices for certain categories of taxpayers

In the domain of the private sector, the obligation of electronic invoicing is prescribed only for VAT payers, which will largely enable the state to control the calculation and collection of VAT more fully and efficiently. Furthermore, in this way, the possibility of tax evasion is reduced.

For other legal entities (which are not in the VAT system), as well as for taxpayers of income tax from self-employment, the system of electronic invoices is exclusively an option, not an obligation, so due to the above, the Law introduced the term "voluntary user of electronic invoices" and they can be a taxpayer of income tax from self-employment in terms of the Law governing personal income tax and a taxpayer of corporate income tax in terms of the Law governing corporate income tax, who have applied for the use of the system of electronic invoices under this Law and to which the provisions of this Law shall apply accordingly.

### Non-compliance with the Law on Accounting

The Law defines an electronic invoice as a request for payment based on transactions with a fee, any other document that affects the payment, i.e., the amount of payment, an invoice issued for free of charge, as well as received advances, issued, sent, and received in a structured format which enables fully automated electronic data processing via an electronic invoice system.

There is an obvious inconsistency with the Law on Accounting, which does not treat a proforma invoice (which is also a payment request) as a suitable accounting document based on which a business change (transaction) can be recorded since sending a proforma invoice to a customer does not mean change has indeed taken place.

Another inconsistency with the Law on Accounting is reflected in the differently defined retention periods of the invoice, which is explained in more detail in the subheading "*Differences in the prescribed length of retention*".

### Obligation to electronically record VAT calculations

The Law also stipulates the obligation to electroni-

cally record VAT calculations in the system of electronic invoices. This obligation applies to a tax debtor, a VAT payer under the Law governing value-added tax, as well as a public sector entity, a legal entity, or an entrepreneur who is not a VAT payer, except:

- a VAT payer for the supply of goods and services performed, including the received advance for that supply, for which he issues an electronic invoice under this Law,
- a tax debtor for the import of goods.

## Invoicing standards

The Law also introduces terms related to invoicing standards, i.e., terminologically distinguishes the Serbian standard of electronic invoicing (standard adopted by the national standardization body in the Republic of Serbia) which is primary, and the European standard of electronic invoicing (standard adopted by the European Committee for Standardization (CEN) based on the order of the European Commission). It is possible to directly receive electronic invoices issued under the European standard of electronic invoicing based on a transaction in which a foreign person appears as the issuer of the electronic invoice, and the public sector entity as the recipient of the electronic invoice, and all recipients of electronic invoices are allowed to receive electronic invoices through an information intermediary, under the contract. Compliance of the electronic invoice with the Serbian standard of electronic invoicing implies that the electronic invoice contains the basic elements prescribed by this Law (15 elements), as well as that it is under the format and other elements of the Serbian standard of electronic invoicing.

Furthermore, it is noticeable that the Law made a difference between public and private sector entities when prescribing provisions related to the acceptance or rejection of electronic invoices (regulating the situation when the recipient does not check or verify the electronic invoice within 15 days), as well as provisions that refer to the retention periods of the electronic invoice.

## Differences in the consequences of passive behavior of the invoice recipient (different treatment for the electronic invoice recipient who is a public sector entity from the electronic invoice recipient who is a private sector entity)

If the recipient of an electronic invoice who is a public sector entity does not accept or does not reject the electronic invoice issued by the issuer of the electronic invoice, directly or through an infor-

mation intermediary, the electronic invoice is considered accepted after fifteen days from the date of receipt of the electronic invoice.

If the recipient of an electronic invoice who is a private sector entity does not accept or reject the issued electronic invoice, directly or through an information intermediary, the recipient shall, after the expiration of the aforementioned period of 15 days from the date of receipt of the electronic invoice, be re-notified.

If the private sector entity as the recipient of the electronic invoice does not accept or does not reject the electronic invoice within five days from the day of receiving the re-notification that the electronic invoice has been issued, the electronic invoice, after this deadline, is considered rejected.

An electronic invoice is considered delivered at the time of issuance under this Law.

## The difference in the prescribed length of storage

An electronic invoice issued or received by a public sector entity is kept permanently in the electronic invoice system, while an electronic invoice issued and received by a private sector entity is kept within ten years from the end of the year in which the electronic invoice was issued.

This is another (above-mentioned) inconsistency with the Law on Accounting, in which the deadlines for keeping documents are not determined according to the sector of the recipient/issuer of invoices.

## Establishment of the Central Information Intermediary to enable the functioning and management of the electronic invoicing system

As for the way of functioning, the intention is to establish a central information intermediary, which is defined by Law as a competent unit, within the ministry in charge of finance, which keeps a register of information intermediaries, manages the electronic invoice system, and is responsible for its functioning. Issuance, recording, processing, sending, and receiving of electronic invoices and accompanying documentation can be further performed directly by the entity itself (issuer/recipient of invoices) or it can hire an information intermediary who is a legal entity when, after obtaining the consent of the Ministry of Finance, the entity the public sector may, under the contract, engage for the services of issuing, recording, processing, sen-

ding and receiving electronic invoices and supporting documents, and the private sector entity and the voluntary user of the electronic invoice system may engage in the services of issuing, recording, processing, sending, receipt and storage of electronic invoices and accompanying documentation.

It is very important to point out that the legislator, unfortunately, recognized the inevitability of collection of certain receivables through the procedure of enforced collection, therefore it is prescribed that an electronic invoice, under the Law governing the enforcement procedure, represents a credible document, if it was sent by the issuer of the electronic invoice or information intermediary on his behalf to the recipient of the electronic invoice via the electronic invoice system.

## ADVANTAGES

The Law indisputably comes as an adequate response to technological progress, monitors the development of the modern market and business practices, and given the harmonization with EU standards, opens the doors of the European market to domestic companies.

From the point of view of the state and fiscal policy, it is expected to increase the visibility of mutual transactions of public sector entities, private and public sector entities, as well as private sector entities, which will further increase the volume of value-added tax collection. It also eliminates the inconsistency of the Law on Deadlines for Settlement of Monetary Obligations in Commercial Transactions with Directive 2014/55 / EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement, both in terms of electronic invoices and concerning the introduction of an obligation for contracting authorities and contracting entities to receive electronic invoices issued under the requirements provided for in this Directive.

We must not forget the visible effect of the Law itself, which is reflected in space-saving (cabinets, binders), but also an environmental advantage - not using paper.

## Penal provisions

Penal provisions, as far as the amount is concerned, range in some expected and standard range and differ, of course, for entrepreneurs and legal entities (for legal entities, as always, the responsible person is also punished), and they are aimed at violations of the obligation to issue and keep electronic invoices, misuse of data from the electronic invoice system, etc.

It is also envisaged to sanction the information intermediary (and the responsible person in it) if providing the services of issuing, recording, processing, sending, receiving, or storing electronic invoices and accompanying documentation endangers the security and functioning of the electronic invoice system.

## SHORTCOMINGS

The Law is quite vague, which bylaws (many of which need to be adopted in a relatively short period of 60 days) should specify in more detail, for example, the conditions that an entity should meet to obtain an information license intermediary, etc. are not known.

Speaking about the technical-technological aspect, we believe that the development of the software solution (platform/software) will be a great challenge, but also the implementation of its use in both sectors. The system itself means that the invoice in XML format is sent directly (manually or exported via software) or through an intermediary to the electronic invoice system so that the customer, after receiving the notification, verifies the invoice, which will certainly require various types of training and program.

The part related to the processing of personal data, which will inevitably be accessed by the information intermediary, central information intermediary, and entities authorized to access the system of electronic invoices, i.e., they are obliged to process personal data only for the purpose provided by the Law on electronic invoicing and to enable their protection under the Law governing the protection of personal data. Here it is certainly necessary to provide security codes, different security levels of access and only allow authorized persons access to the system.

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## CONCLUSION

In the end, we must conclude that this Law is a necessary and useful consequence of the development of services, the need for digitalization, but also the need for harmonization with legislation and business practice of EU countries, on the one hand, as well as the need to establish an efficient and transparent system for monitoring cash flows and exchange of goods and services, which will facilitate tax monitoring, control, and tax collection, on the other hand.

What its real scope is going to be, i.e., how long it is going to take for this digital system to become fully functional and that all the expected positive effects will largely depend on the quality of bylaws because they are expected to use good solutions to enable the most efficient and painless transition from paper to electronic invoices.

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