

REGULATORY NEWS BY NST LAW OFFICE

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In the focus

With the upcoming changes of tax regulations, this time we dedicate our attention to most important features of the tax reform, the effects it will have and the subjects that will be most affected by it – both in a positive and negative way.

Long expected reforms in the tax treatment of entrepreneurs will stir up the established business environment and lead to important changes in the way employers and employees, including entrepreneurs, organize their mutual engagement. For some, these changes will mean significant benefits. Others will not be affected at all, while certain categories such as members of the Serbian IT community will most certainly face some difficult challenges.

What are some of the key novelties proposed by the amendments to the Personal Income Tax Law?

- Monthly tax-free portion of earnings is going to be increased to 16,300 RSD
- Calculation of self-employment flat-rate income tax (in Serbian: “porez na paušalno utvrđen prihod”) will be automated, therefore simplifying the procedure and making it transparent.
- So called “entrepreneur independency test” will be introduced, with the aim to determine those categories of entrepreneurs that will be allowed to pay flat-rate income tax by applying a set of nine specifically prescribed criteria, showing which entrepreneur is de facto an employee and which entrepreneur is an independent service provider.
- Employers that employ persons who were unemployed in 2019 will be able to use tax incentives during the next three years (2020, 2021 and 2022) such as 70% less income tax in the first year of employment, 65% less income tax in the second year of employment and 60% less income tax in the first year of employment, as well as full exemption from payment of mandatory pension and disability contributions during the first year of employment and 95%, i.e. 85% in the second and third year of employment.
- Newly residing taxpayers, meaning individuals below 40 years of age who spent 12 months abroad for educational purposes and individuals who lived abroad during 24 months, will be

entitled to 70% decrease of tax and contributions base during a five-year period, if they get permanently employed by a Serbian employer, even in case of potential change of employer.

- All non-resident natural persons who stay in Serbia for no more than 90 days during the tax year will not be obliged to calculate, pay and report income acquired from providing services to non-resident employers.

All these measures are expected to lead to employment growth and bust of competition, despite a most certain decrease of state income generated from payroll tax.

Because of the “entrepreneur independency test” companies that hire entrepreneurs as de facto employees will be forced to redesign their employment strategy and employ such entrepreneurs under standard labour contracts.

IT sector is recognized as one of the sectors which will be affected mostly by these changes.

Serbian prime minister, Ana Brnabic, specifically emphasized that digital nomads within the IT sector will benefit from the envisaged tax benefits, and also stressed out that proposed tax reforms are aimed to the development of digital technologies and innovative industry*.

For example, newly founded companies carrying out innovative activity can be exempted from the obligation to pay tax from the earnings of the company’s founders holding at least 5% share in the company, employed at such newly founded company, during a period of 36 months from the company registration.

In parallel with the amendments of the Personal Income Tax Law, Serbian Government has prepared a proposal of the Decree on Norms, Criteria and Elements for Flat-Rate Taxation for Taxpayers of Self-Employment Income Tax, which compliments the tax reform introduced by the amendments of the Personal Income Tax Law.

The analysis published by the Belgrade Bar Association regarding the effects of the decree stated transparency, predictability and fairness as expected benefits that this regulation will bring to lawyers.

Aside to that, the decree introduces a new formula for calculation of tax base, including coefficients that will apply to each separate activity, as well as projection of taxpayers’ obligations until 2023.

Currently, one of many problems related with flat-rate taxation is discretionary power of tax inspectors to determine the amount of tax, based on criteria susceptible to broad interpretation, which in practice leads to significant differences between taxpayers doing business under same or similar conditions.

* Source: „Danas“ webpage, M. Obradovic, 11th October 2019

The new decree is designed to eliminate this and other shortcomings (such as tardiness in issuance and delivery of tax decisions, repositioning of payments for tax and contributions, etc.) by use of a new applicative software for calculation of flat-rate income tax and thus, through automation of the entire process, enabling potential entrepreneurs to get information about their future tax obligations on the Tax Administration's portal.

The decree also introduces significant other changes like:

- Limitation with respect to increase of tax obligations in the next three years to max 10% per year, which secures stability of the amount of the tax obligation.
- All taxpayers within one activity will be subject to coefficients calculated on the state level and which reflect the assessed profitability of the concrete activity.
- Base for tax calculation will be established by multiplication of the average monthly salary with the number of employees and then by division of the result with the number of residents in the Republic, city, or municipality.
- Additional corrective factors are the zone where the taxpayer carries out the activity, his/her age, how long the taxpayer performs the activity and relevant personal conditions such as illness or diminished work capacity.

As expected, the decree proposal caused opposition mostly within the IT community. In their opinion solutions introduced by the tax reform, particularly the "entrepreneur independency test" will result in increase of tax obligation for professionals in this area.

We are left to see which of the many new measures will find its place in the final text of the decree that the Serbian Government is yet to adopt.

The Tax Administration published another long-expected regulation, the Guidelines for Tax Benefits of Donors, i.e. the taxpayers of corporate income tax and personal income tax.

Though the Law on Corporate Income Tax recognizes the possibility to accept certain expenditures making up for max 5% of the total income as expenses of the taxpayer, the lack of instruction of how to effect this possibility created issues in practice. Now, with the new guidelines, the expectation is that the taxpayers and the accounting professionals will understand better this tax benefit and use it more often.

Companies or other legal entities gaining profit (institutions, associations, endowments or foundations), including entrepreneurs who keep books, can donate cash, goods or services for purposes that serve general causes (health, education, science, religion, sports, environmental protection, social protection) or as humanitarian aid or as an investment in the cultural area.

Donations will be accepted as the taxpayer's expenses and ultimately result in decrease of the tax base only if given to entities registered, and/or established to carry out activities in the relevant areas and if the donation was used exclusively to carry out such activities.

During the tax control, tax inspectors will review the decision on donation, donation agreement, bank account statement and other supporting documentation (e.g. evidence of dispatch of goods, evidence of the purchase price of goods, etc.).

We strongly recommend visiting the Tax Administration web page and familiarizing with the [Guidelines for Tax Benefits of Donors](#), which contains detailed explanations and examples as well answers to most common practical questions of taxpayers interested in using this tax benefit.

Up & Coming

- Starting from 31 January 2020, according to the Trade Law, goods will have to be marked with a machine-readable label.
- Starting from 01 December 2020, according to the Law on Foreign Citizens, foreign citizens will be able to file a conjoint application for a temporary residence permit and/or a work permit, respectively, in not only person but also electronically (Law on Foreign Citizens).
- The amendments to the Law on Central Records of Beneficial Owners are in procedure before the National Assembly. One of the proposed changes is the extension of the deadline for registration of beneficial owners at the Central Records until 31 January 2020.
- The Law on Alternative Investment Funds came into force on 19 October 2019, but its application begins on 20 April 2020, save for the provisions pertaining to small investors, public offer and cross-border business activity performance, which will apply starting from 01 January 2021 or as of the date of admission of Serbia into the EU. Alternative sources of investments such as private equity and venture capital are now under a specific legislative framework and should create an environment for growth of micro, small and medium companies.

Featured

The new Law on State Aid Control came into force on 19 October 2019 and begins to apply on 20 April 2020, with the exception of the segment regulating the Commission for State Aid Control.

The new Law on State Aid Control brings the new definition of state aid. State aid is any actual or potential public expenditure or reduction in public revenue granted by a state aid provider in any form, that places a particular market participant in a more favorable position than the competitors or favors the production of certain goods and/or services, distorting or threatening to distort competition on the market and affects the trade between the Republic of Serbia and the member states of the European Union.

State aid assessed as disharmonized is considered as illegal state aid. The Commission for State Aid Control monitors and assesses the level of harmonization of the state aid with the rules for allocation of state aid, using the qualifiers: harmonized, partially harmonized and disharmonized.

The provider of state aid or any other party and market participant whose interests may be affected by the state aid award, as well as the beneficiary of the state aid and its competitors can file an initiative for subsequent control of state aid.

The Commission for State Aid will not consider anonymous filings as initiatives for subsequent control of state aid, but it can use them as a source of information for conducting activities upon its own initiative.

In case the Commission for State Aid finds the state aid to be disharmonized, it may impose one of three measures:

- remove the disharmonized state aid, and/or prevent the award of the state aid,
- return of the awarded state aid, with interest,
- periodical penalty in the amount between RSD 5,000 and 200,000, for each day of acting contrary to the commission's order, and/or failure to act upon the commission's order.

Total amount of the periodical penalty is limited to 1% of the subject's annual turnover in the Republic of Serbia, whereas the daily periodical penalty cannot be higher than 5% of the subject's average daily turnover.



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