

## Amendments to the Personal Income Tax Law Adopted



**On 29 May 2013 the Serbian Parliament adopted the Law on Amendments to the Personal Income Tax Law, as published in the Official Gazette of the Republic of Serbia no. 47 dated 29 May 2013.**

The Law on Amendments to the Personal Income Tax Law (hereinafter: the Law) went into force on 30 May 2013, whereby certain provisions of the Law shall come into force at different times.

Below we provide an overview of the adopted amendments.

### **Definition of a resident**

The criteria for establishing residency of a private individual remain the same, but it is further explained that it is sufficient for only one criterion to be fulfilled in order for a private individual to be considered a resident in Serbia:

- a private individual has a permanent home or the centre of business and vital interests on the territory of Serbia OR
- the private individual stays on the territory of Serbia, in continuity or without continuity, for 183 or more days in the period of 12 months starting or ending in the appropriate tax year.

The Law specifies the following:

- a full day of stay in Serbia, for the purpose of establishing whether an individual has stayed 183 or more days in Serbia, is considered to be stay during a part of a day at any time between 00 and 24 hours, except for the time that a private individual spends in transit, passing through Serbia,
- a private individual shall not be deemed a resident of Serbia if during the tax year he/she does not stay on the territory

of Serbia and in that year he/she does not meet criteria for being considered a resident based on criteria of a permanent address or centre of business and vital interests,

- period when a private individual becomes a Serbian resident, or when he/she loses the status of a Serbian resident, in cases when during the year he/she enters Serbian territory for the first time and finally leaves Serbian territory.

Individuals on work assignments abroad shall be designated as Serbian residents only if they are on work assignments abroad as part of a diplomatic or consular office of Serbia, or of an international organization, and not in all cases of assignments abroad as part of employment with an individual or a company who are Serbian residents.

The new rules related to residency status shall apply as of 30 May 2013.

### **Tax exempt income**

Compensation for individuals working as part of election campaigns or population census activities is no longer exempt from taxation.

The Law specifies that personal income tax is not levied on:

- cash assistance to individuals for medical treatment at home and abroad in the amount of actual costs of treatment, supported by receipts from medical institution providing the treatment
- payments of contributions for mandatory social insurance which a company is required to pay for its member in accordance with the law that regulates contributions for mandatory social insurance

- compensation for collection and sale of secondary raw materials and waste, paid to the seller's current account.

Amendments related to tax exempt income shall apply as of 30 May 2013.

### Salary tax

The Law extends the definition of a salary to include:

- compensation that an employee realises related to work for the employer from a related party of the employer, and
- personal income payments to an entrepreneur.

Where an employee receives securities, excluding shares acquired in the privatisation procedure, from an employer or a related party of the employer (including stock options, etc.), such income shall have the same tax treatment as salary:

- at the moment of acquiring rights to dispose with such securities
- when the employer discloses such expense in his books, if costs of such payments are born by the employer.

The tax base is the market value of securities at the moment of acquiring rights to dispose with them, reduced for the amount that the employee paid for the securities (if acquired at preferential price), increased for attributable taxes and contributions.

The tax base for calculation of salary tax for Serbian residents on work assignments abroad is no longer the salary that such individuals would realise in Serbia working on the same or similar jobs, but is the actual amount of salary payment.

The Law introduces a tax exemption for voluntary health insurance premiums which the employer pays on behalf of the employee, or that the employer withholds from employee's salary and pays on his/her behalf. The total amount of tax exemption for voluntary health insurance premiums and pension contributions to a voluntary pension fund cannot exceed 5,214 dinars.

The non-taxable monthly salary amount is increased from 8,776 dinars to 11,000 dinars.

The salary tax rate is decreased from 12% to 10%.

All of the above stated amendments shall apply as of 30 May 2013.

Taxpayers who effected payment of a portion of salary prior to 30 May 2013 shall calculate and pay salary tax on remaining portion of that salary in accordance with the previously effective Law (tax rate of 12%). For instance, if the first portion of salary for May is paid up to 29 May, then at the time of payment of the second portion of salary for May the salary tax of 12% is applied, in spite of the fact that payment of second part of salary occurs on 30 May or later.

### Tax on income from agriculture and forestry

Provisions that relate to taxation of income from agriculture and forestry are deleted and as of 30 May 2013 income from agriculture and forestry activities is classified as income from self-employed activity.



### Tax on income from self-employed activity

Income from self-employed activity is also considered to be income realised from agriculture and forestry activity. Tax on income from agriculture and forestry activity is only paid by individual who is registered as a holder of the agricultural household and who keep accounting records (using the principle of simple or double-entry accounting).

Taxation of agriculture and forestry activity based on cadastral income has been abolished. Also, lump-sum taxation is not applicable to income from agriculture and forestry activity. Accordingly, all persons who are not registered as holders of the agricultural household and/or who do not keep accounting records do not pay personal income tax on income realised from agriculture and forestry.

The above shall apply as of 30 May 2013.

The Law stipulates that reporting of transfer prices in the tax balances of entrepreneurs who keep accounting records shall be regulated by a special regulation issued by the minister. Also, an expense item in the tax balances of entrepreneurs who keep accounting records shall be:

- personal income paid to entrepreneur, which has the tax treatment of salary
- costs of business trips up to the amount stipulated for employed persons.

Starting as of 30 May 2013, the limit for lump-sum taxation of entrepreneurs has been increased from 3 million dinars to 6 million dinars, while starting on 1 January 2014 entitlement to lump-sum taxation will be discontinued for taxation of entrepreneurs performing activities of accounting, bookkeeping and auditing, tax advisory, advertising and market research.

Starting as of 1 January 2014, self-assessment will be introduced only for taxpayers who keep their accounting records (until the amendments to the Law, tax was paid based on tax assessment by the tax authority). Self-assessment can also be applied starting as of 1 July 2013, if an entrepreneur opts for payment of personal income starting as of that date.

### Taxation of income from real-estate

As of 30 May 2013 provisions that specified taxation of income from real-estate are deleted.



Income from rental of own real-estate property is classified as income on capital (15% effective tax rate instead of the effective 16% applicable until 30 May), while income that a private individual realises from subleasing real-estate property is classified as other income (effective tax rate remains 16%).

#### **Tax on income on capital**

Starting as of 30 May 2013, income from rental of own real-estate property shall be classified as income on capital. The Law further specifies that the property owner's income does not include expenses that are dependent on volume of consumption by tenant (e.g. electricity, telephone expenses, etc.). Taxable income is defined as the gross income amount reduced for lump sum expenses in the amount of 25% or 50%, if income is realised from rental of flats, rooms and beds to travelers and tourists for whom temporary stay charges have been paid.

The Law specifies that a liquidation estate above the value of invested capital, calculated in accordance with regulations that relate to corporate income tax, is also considered as a dividend.

Taking of property and use of a company's services by the company's owner for private purposes is no longer considered income on capital, but other income (effective tax rate on other income amounts to 16%, while income on capital amounts to 15%).

The tax rate on rental of own real-estate property amounts to 20%, while the tax rate on other categories of income on capital remains at 15%.

#### **Capital gains tax**

The Law specifies that a capital gain/loss can be realised through the transfer of:

- ownership rights over real-estate property
- copyrights, rights similar to copyrights and industrial property rights
- equity investments in companies, shares and other securities (except for debt securities issued by the Republic of Serbia, an autonomous province, a local self-government unit or the National Bank of Serbia), including investment units, except for investment units of voluntary pension funds.

Accordingly, a capital gain/loss shall no longer result from the transfer of:

- permanent right of use and right of construction on municipal construction land
- investment units in a voluntary pension fund
- accumulated assets based on scheduled payments from an account of a member of a voluntary pension fund.

It is still stipulated that a capital gain shall not result from the transfer of property that the taxpayer, prior to transfer, owned for a continuous period of at least ten years.

The tax rate on capital gains remains unchanged and amounts to 15%.

The Law stipulates that capital gains tax is paid based on the self-assessment principle, and not based on the assessment issued by the tax authorities.

The deadline for filing a tax return is extended from 15 to 30 days (30 days as of the date of contract on transfer), and when securities are transferred the tax return is filed within 30 days of the expiry of each six month calendar period in which the securities were transferred.

#### **Income from games of chance**

Tax on income from games of chance is not paid on:

- an individual prize up to the amount of 11,000 dinars (prior to the amendments this amount was 26,066 dinars),
- prizes from games that are played in casinos and on slot machines.

The taxable amount which is above 11,000 dinars is reduced for the amount of payment made toward getting the individually realised prize.

The tax exemption for lottery prizes based on public loans has been annulled.

#### **Income from insurance of persons**

A different definition is introduced for income from insurance when withdrawn accumulated funds by a member in a voluntary pension insurance fund are invested in the purchase

of annuities in an insurance company (by order and for the benefit of a fund member). Namely, income from insurance in such case consists of the amount received from insurance reduced for the amount of withdraw accumulated assets invested in the purchase of annuities (and not for the amount of funds paid for the acquisition of investment units, as previously stipulated).

### **Other income**

The Law introduces an extended definition of other income, as follows:

- taking of assets and use of a company's services by the company's owners for their private purposes (prior to the amendments this used to be income on capital which was taxed at a rate of 15%, whereas for other income that effective tax rate is 16%),
- income that a private individual realises from subleasing real-estate property (prior to the amendments this used to be income from real-estate property, the effective tax rate remains 16%),
- all other income which is not subject to any other tax or is not exempt from taxation or from tax payments, except for income from agriculture and forestry earned by a private individual who pays contributions for mandatory social insurance based on assessment, in accordance with the law which regulates contributions for mandatory social insurance.

The rule that tax on other income is not paid for documented compensation of business trip expenses, up to at most the amount of expenses which are exempt from salary tax payments for employees, has been extended to cases when payments are made to an individual or for an individual who is not an employee of the payer if that individual is assigned to the payer by his/her employer related to employer's business.

Tax on other income is not paid on income of private individuals – bank clients, when a bank writes off receivables from a debtor under the following conditions:

- where the legal costs of a court case against such debtor exceed the total amount of the receivable
- where such write-off is recognised as an expense in the bank's tax balance, in accordance with the Corporate Income Tax Law.

Tax on other income is not paid in cases when a debtor, based on a settlement agreement concluded with the bank, sells the real-estate property for which he/she took a loan, and where the price at which the real-estate property is sold is lower than the outstanding amount owed to the bank, and where the bank writes off the difference. This is applicable when real-estate property is sold at a price which is close to the usual market value for the given real-estate property, if the total amount of the sale price is paid to the bank for loan repayment and under conditions that according to National Bank of Serbia's rules such a receivable is classified as a receivable for which a reserve for estimated losses has been formed for 100% of its value.

### **Annual personal income tax**

The Law introduces a provision whereby annual personal income taxpayers include non-residents who earn their income on the territory of Serbia.

The income of annual personal income taxpayers is decreased for the total amount of contributions paid for mandatory social insurance in Serbia, where the amount of contribution paid to the taxpayer as a refund of contributions is included in taxable income in the year when the refund is received.

Provisions of the Personal Income Tax Law prior to the amendments prescribed that income of taxpayers was to be decreased for social insurance contributions, but only up to the maximum amount of contributions, which means that the amount of potential refunds was taxable in the year when the contributions were paid, and not in the year when income from refunds of contributions had been received.

The deadline for filing the annual personal income tax return has been extended from 15 March to 15 May.

Annual personal income tax is still paid based on assessment issued by the tax authority.

The amended Law shall apply to annual personal income tax for 2013.

### **Payment of tax**

Tax payment based on the tax authority's assessment is retained only for income tax on self-employment activity for taxpayers who pay tax on lump-sum income and for annual tax.

Withholding tax is paid for the following types of income, when the income payer is a legal entity or entrepreneur:

- salaries,
- copyrights, rights similar to copyrights and industrial property rights,
- interest income,
- income from movable property rental,
- income from games of chance,
- income from insurance of persons,
- income of sportsmen and sports experts,
- other income.

The Law introduces tax self-assessment for the first time for the following types of income:

- income from self-employment activity of an entrepreneur who keeps accounting records,
- capital gains,
- income paid by payer who is not a legal entity or entrepreneur, as follows:
  - copyrights, rights similar to copyrights and rights of industrial ownership,
  - interest;
  - income from rental of real-estate property and rental of movable property,
  - other income.

If the income payer is not required to calculate withholding tax, the obligation for tax self-assessment extends to taxpayers who earn salary and other income in or from another country, in a diplomatic or consular office of a

foreign country, or an international organisation or from a representative or official of such office or organisation.

When tax is paid based on self-assessment, tax returns are filed and tax is paid within 45 days of payment of income.

## **Fines**

The fine for the responsible person in a legal entity has been increased and ranges between 10,000 to 100,000 dinars (prior to the amendments it ranged between 5,000 and 50,000 dinars).

## **Application**

The amended Law went into effect on 30 May 2013, although certain provisions of the Law shall go into effect at different times:

### ***Calculation of salary tax***

Taxpayers who effected payment of a portion of salary prior to 30 May 2013 shall calculate and pay salary tax on remaining portion of that salary in accordance with the previously effective Law (tax rate of 12%). For instance, if the first portion of salary for May is paid up to 29 May, then at the time of payment of the second portion of salary for May the salary tax of 12% is applied, in spite of the fact that payment of second part of salary occurs on 30 May or later.

### ***Self-assessment***

Provisions of the Law that specify self-assessment of tax liability shall go into effect on 1 January 2014.

As an exception to the aforementioned, starting as of 1 July 2013 self-assessment of tax can be applied by a taxpayer who pays tax on actually realised earnings from self-employed activity (taxpayers who keep accounting records) and who opts, starting as of 1 July 2013, to pay personal income as his/her own monthly earnings and informs the competent authorities of this fact in writing by 1 July 2013.

### ***Income from agriculture and forestry and income from real-estate property***

Provisions of the amended Law that delete provisions that specify special treatment of income from agriculture and forestry and income from real-estate property go into effect starting on 30 May 2013.

### ***Income from self-employment activity based on actual income realised***

Final calculation of income from self-employment activity for 2013 for taxpayers who pay tax based on actual income

earned (taxpayers who keep accounting records) shall be calculated in accordance with the provisions of the Law.

### ***Income from self-employment activity based on lump-sum income assessment***

Provisions of the Law that relate to lump-sum taxation shall apply to tax calculation for 2014, except for provision that relate to limits for lump-sum taxation which shall go into effect as of 30 May 2013.

### ***Annual personal income tax***

Provisions of the Law shall apply on annual tax assessment for 2013.

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