

Serbian Chamber of Commerce

Subject: Response to the Serbian Chamber of Commerce regarding audit of compliance required for payment of employee costs of transportation to and from work, taking into consideration the MF opinion no. 011-00-12/2019-4 dated 1 February 2019;

Article 104 paragraph 1 of the Labor Law (Off. Gazette of RS, no. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 - Const. Court, 113/17, 95/18) stipulates that an employee is entitled to appropriate salary which is based on the law, general corporate regulation and employment contract;

Article 105 paragraph 1 of the Labor Law stipulates the following:

- (1) Salary as per article 104 paragraph 1 of this law comprises salary for work performed and time spent at work, earnings for employee's contribution to the employer's business success (awards, bonuses, etc.) and other work related earnings, in accordance with the general corporate regulation and employment contract.
- (3) Salary in the sense of paragraph 1 of this article is considered to be all work related earnings, except for earnings as per article 14, article 42 paragraph 3 item 4) and 5), article 118 item 1-4), article 119, article 120 item 1) and article 158 of this Law.

Article 118 paragraph 1 item 1) of the Labor Law specifies that an employee is entitled to compensation of costs of transportation to and from work, based the general corporate regulation and employment contract, which shall be in the amount of the price of a public transportation ticket, unless the employer has organized own transportation.

Therefore, the Labor Law prescribes the employee's entitlement to compensation of costs of transportation to and from work, based the general corporate regulation and employment contract, which shall be in the amount of the price of a public transportation ticket, unless the employer has organized own transportation, which compensation according to the same law shall not be considered salary.

Article 13 paragraph 1 and article 14 paragraph 1 of the Personal Income Tax Law (Off. Gazette of RS, no. 24/01, ... , 95/18) specifies that salary according to this law is considered to be salary earned based on employment, as define by the law that regulates employment and other earnings of the employee, where salary according to this law includes compensation in the form of coupons, securities, except for securities acquires in the process of ownership transformation, cash confirmations, goods, as well as earnings realized by providing or offering benefits, debt forgiveness, including coverage of taxpayer's expenses through cash compensation or through direct payment.

Article 18 paragraph 1 item 1 of the Personal Income Tax Law specifies that salary tax is not paid on employee's earnings from employer for compensation of costs of transportation to and from work - up to the amount of the monthly transportation ticket in public transport, or in the amount of actual transportation costs, and at most up to 3,914.00 dinars per month (non-taxable amount of costs of transportation to and from work which is effective in the period from 1 February 2019 to 31 January 2020)

The Ministry of Finance opinion no. 011-00-12/2019-04 dated 1 February 2019, provides among other things that if the employer does not have valid accounting documents as proof that costs of employee's transportation to and from work have been compensated adequately (for example: invoice for the purchase of a monthly ticket, a daily ticket or a single ticket for the use of public transport, an invoice for fuel, in case of use of own vehicle, etc.), such costs cannot be recognized as an expense.

Therefore, based on the above provisions of the Labor Law and the Personal Income Tax Law, and the Ministry of Finance opinion no. 011-00-12/2019-04 dated 1 February 2019, employers–taxpayers are required to have valid accounting documents as basis for payments made to

employees for compensation of costs of transportation to and from work, as follows: invoice for the purchase of a monthly ticket, a daily ticket or a single ticket for the use of public transport, an invoice for fuel, in case of use of own vehicle, etc. based on which in a tax audit it can be proven that such payments actually represent compensation of employees' costs of transportation to and from work.

Namely, as indicated above, article 118 paragraph 1 item 1) of the Labor Law specifies that an employee is entitled to compensation of costs of transportation to and from work, based the general corporate regulation (collective agreement and employment rulebook) and employment contract, which shall be in the amount of the price of a public transportation ticket, unless the employer has organized own transportation.

Therefore, in a general corporate regulation, a collective agreement or employment rulebook, as well as in an employment contract, an employer regulates in greater detail the employee's entitlement to payment of costs of transportation to and from work, as well as the amount of compensation of costs of transportation to and from work, taking into account the distance from the employee's place of residence to work, and the way in which employees' costs of transportation are to be compensated, as follows: purchase of monthly ticket for public transportation or cash payment in the amount of a monthly ticket for public transportation, etc., where the employer is required to possess evidence that paid transportation expenses of employees actually are compensation of costs of transportation of employees to and from work, such as: receipts for the purchase of monthly tickets, daily tickets or tickets for a single ride in public transportation, fiscal receipts and invoices for fuel in the name of the recipient of compensation, in the event of use of own vehicle, where it is required for the amount of fuel in receipts for fuel consumed for transportation of employee, from place of residence to place of work, corresponds to the actual amount of fuel consumed for that distance. The method for measuring the distance from the employee's place of residence to place of work, as well as fuel consumption norm for such distance, shall be specified by the taxpayer in their internal company documents.

Example: Average consumption in kilometers established based on manufacturer's declaration of consumption for a particular vehicle X distance from employee's place of residence to place of work X 2 (for each work day) X number of days in the month in which the employee came to work = amount of documented costs which can be recognized, and up to the maximum amount specified in article 118 paragraph 1 item 1) of the Labor Law.

Taking into account the Ministry of Finance opinion no. 011-00-12/2019-4 dated 1 February 2019, the Sector for audit is currently engaged in activities on preparation of the Guidelines for Audit of Requirements for Recognizing Payment of Employees' Costs of Transportation To and From Work.

25 April 2019

TAX AUTHORITY