

Adopted Amendments to the Law on Tax Administration and Tax Procedure

Tax Alert

December 2020



On 26 November 2020 the Serbian Parliament adopted the Law on Amendments to the Law on Tax Procedure and Tax Administration (hereinafter: Law on Amendments to LTPTA) as published in the Official Gazette of the Republic of Serbia number 144 dated 27 November 2020.

The Law on Amendments to LTPTA goes into force on 5 December 2020.

The most significant changes are:

Status of open investment fund / alternative investment fund

Besides individuals and legal entities the Law on Amendments to LTPTA determines as a special category of taxpayers an open investment fund / alternative investment fund (the Fund), which has all the rights and obligations from the tax taxation.

The Fund Management Company, in the name and on behalf of the Fund, fulfills all tasks related to tax liabilities (submits registration application, submits tax returns, receives acts, keeps business books and records, pays tax liability, etc.).

The tax obligations of the Fund are paid from the assets of the Fund, and if the Fund ceases to exist, its obligations are fulfilled by the Fund Management Company.

In addition, the Fund is obliged to submit the application for registration of the registered office, through the Fund management company, to the headquarters of the Tax Authorities (TA Headquarters) within 5 days from the day of entry in the prescribed register.

The tax acts are delivered to the Fund at the address of the Fund management company, i.e. to a special address for mail receipt, and is considered delivered when delivered to the responsible person of the Fund Management Company, proxy / tax representative or employee of the Fund Management Company.

These changes essentially recognize Funds that do not have the status of a legal entity as taxpayers and remove tax obstacles to their functioning.

Submitting a request for transfer / refund / deferral of tax in electronic form

It is envisaged that the taxpayer may submit a request for refund of overpaid or incorrectly paid tax, or ancillary taxes, as well as for refund, i.e. settlement of due liabilities by transferring overpayment of one type of tax to offset liabilities for other type of tax taxes in electronic form through the Tax Authorities portal or in writing (directly or by mail).

In addition, the possibility of submitting a request for deferral of tax payment in electronic form through the portal of the Tax Authorities is envisaged.

The above will apply from 1 January 2021, by what date will the Tax Authorities provide technical conditions for electronic request submissions.

Tax identification number (TIN)

The Law on Amendments to the LTPTA stipulates that, exceptionally, TIN is granted to a legal entity whose founder has due but unsettled tax liabilities:

1. In the amount of up to RSD 100,000 if these liabilities are settled within 8 days from the submission of the request for the allocation of TIN, or if within that period an irrevocable bank guarantee or a bill of exchange endorsed by a commercial bank is provided, or
2. Which arose in connection with the performance of business activity, i.e. liabilities of business entities that have been deleted from the prescribed registers by a final decision of the competent authority in the bankruptcy procedure.

Prohibition of registration of changes with the Business Registers Agency (BRA)

BRA may not register the acquisition of shares or stocks in a company, or the establishment of new business entities, when a legal entity or entrepreneur is registered as the founder over whom the measure has been established:

1. Prohibition of registration of changes in the BRA during the tax audit, including the actions of the tax police,
2. temporary confiscation of TIN.

Submission of a tax act

In case of delivery of the tax act by sending via registered mail, the sending of the tax act will be repeated when delivery was not possible, and it is considered delivered on the 15th day from the day of submitting the tax act to the post office, regardless of whether delivery to the taxpayer was possible.

Tax act can be submitted in electronic form to an individual who submits tax returns electronically, through the portal of the Tax Authorities, without her/his additional consent.

Delivery of tax acts to individuals who submit tax returns in paper form, is done electronically, only if the person agrees with this method of delivery.

In addition, electronic submission of an act issued by the competent authority of a local self-government unit is possible if the taxpayer registers for that method of submission in accordance with the law governing electronic administration. In this case, no additional consent of the taxpayer is required.

Deferral of payment of tax liabilities in order to mitigate the economic consequences of the pandemic

Deferral of payment of due tax liabilities, i.e. tax liabilities in order to mitigate the economic consequences caused by a pandemic, force majeure, or other extraordinary event that occurred during the calendar year, is approved in the manner and under the conditions determined by the Government of Serbia.

The mentioned provision is applied starting from the calendar year in which the Law on Amendments to the LTPTA entered into force, i.e. from 2020 (retroactive effect).

Settlement of the tax liability

A new way of settling the tax liability is envisaged, and that settlement by giving in kind instead of payment, i.e. by replacing the fulfillment. This way of settling the tax liability will be possible in the situation when the due tax liability is higher than RSD 50,000,000, under the conditions and in the manner determined by the Government's decision, in cases when there is interest of the Republic of Serbia to acquire the property.

The day of settlement of the tax liability through giving in kind instead of payment is considered the day of verification of the agreement by which the decision of the Government on the conditions and manner of such settlement of the tax liability was realized.

Settlement of the tax liability by giving in kind instead of payment, i.e. by replacing the fulfillment, also applies to tax liabilities due for payment until the day the Law on Amendments to the LTPTA enters into force, as well as to tax obligations covered by agreements and decisions on deferral of payments on that basis.

Confiscation of goods in the audit procedure

The Law on Amendments to the LTPTA stipulates, in addition to the existing measures, the measure of confiscation of goods in the audit procedure, if the goods are stored and placed in business premises and premises on which the Tax Authorities have not been notified.

Off-balance sheet accounting kept by the Tax Authorities

The content of off-balance sheet accounting kept by the Tax Authorities is specified, in such a manner that off-balance sheet records, *inter alia*, contain data on unpaid liabilities:

- taxpayers over whom the bankruptcy proceedings have been terminated through bankruptcy in accordance with the law governing the bankruptcy proceedings.

Off-balance sheet tax accounting also includes overpayments of taxpayers for which the statute of limitations has expired, as well as overpayments of taxpayers who have been deleted from the prescribed register in accordance with other regulations, as well as through the purchase of a taxpayer in bankruptcy proceedings or bankruptcy.

The Tax Authorities will ex officio transfer the overpayments to the off-balance sheet tax accounting, upon learning of the deletion of the taxpayer from the prescribed register.

Such overpayments will be kept according to the taxpayer and the individual payment account of public revenues.

VAT tax fraud

The Law on Amendments to the LTPTA changes the existing tax criminal offense of unfounded disclosure of the amount for tax refund and tax credit into an act of tax fraud related to VAT.

Tax fraud related to VAT is defined through two forms of fraud:

1. Ungrounded declaration of VAT refund or VAT credit

Namely, a taxpayer who submits one or more VAT returns with untrue content, in order for him or another person to exercise the right to ungrounded VAT refund or VAT credit in the previous 12 months and the amount of refund or tax credit exceeds one million dinars, shall be punished by imprisonment from one to five years and a fine.

2. VAT avoidance

A taxpayer who does not file one or more VAT returns, submits one or more VAT returns with false content or who otherwise avoids paying VAT in the same manner, in order for him or another person to avoid VAT in full or in part in the previous 12 months, and the amount of tax

avoided exceeds one million dinars, shall be punished by imprisonment for a term between one and five years and a fine.

If the amount of VAT for payment or VAT repayment / VAT credit exceeds five million dinars, the perpetrator will be punished by imprisonment from two to eight years and a fine.

If the amount of VAT for payment or VAT repayment / VAT credit exceeds fifteen million dinars, the perpetrator will be punished by imprisonment from three to ten years and a fine.

In addition, it is envisaged to impose security measures prohibiting the performance of vocations, activities and duties from one to five years, to an individual, entrepreneur and responsible person in a legal entity for VAT fraud.

Tax offenses

The LTPTA is being harmonized in the part of misdemeanors related to the proposed amendments to this law.

KPMG team is at your disposal for all inquiries regarding the application of new provisions of the LTPTA.

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