TAX

1.36

Some progress was made in the previous period in the implementation of the Foreign Investors Council's recommendations in the area of taxation. The removal of restrictions on corporate income tax deductibility of advertising expenses, new tax depreciation rules, the tax exemption for expenses related to employees' recreational activities (team-building) are among the most positive developments in this field. The Law on Charges for the Use of Public Goods was adopted, integrating various local charges and fees, previously regulated by a number of different laws and by-laws, into a single piece of legislation, which will contribute to increasing transparency and ease of application. New tax incentives were introduced under the Corporate Income Tax Law for research and development activities, and for income from use and sale of intellectual property. Further alignment of the Customs Law with EU customs regulations and practice is also commendable.

That said, most of the problems related to tax laws and their application remain unresolved. One of the remaining important issues is the lack of clarity and detailed rules in the tax law to regulate certain situations and transactions, which leads to differing interpretations and, consequently, t problems for taxpayers in practice. Some of the recent opinions issued by the Ministry of Finance provoked strong reactions from the business community, causing uncertainty and difficulties in their practical application, in particular the controversial opinion on tax deductibility of employees' commuting expenses, and the application of the fair value concept for property tax purposes. The proper classification and tax depreciation of specific categories of assets (oil rigs, windmills, reservoirs, hotels, shopping malls etc.) should be specified in detail in the respective by-laws, so that their tax depreciation reflects the actual economic and useful life of the assets. Also, the issue of the tax treatment of property measured at fair value remains unresolved. It The VAT treatment of supplies of goods and services in the area of construction should be improved, as there have been various problems and issues in this area for years. With regard to property tax, the key problems still relate to the uneven application of the fair value concept to the taxation of real estate, the administrative burden, and issues related to completing various tax returns, specifications, and detailed breakdowns for each municipality and each cadastre parcel. Finally, the inability to print or export to Excel the tax returns submitted electronically is a significant obstacle for taxpayers.

A. CORPORATE INCOME TAX (CIT)

1.57

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Supplement the CIT Law with provisions that will regulate the taxation of company reorganisations, investment funds, treatment of liquidation or bankruptcy remainder that is below the threshold of invested capital, as well as recognition of tax credit for capital gains tax paid abroad, and through by-laws provide guidelines regarding taxation of permanent establishments. It is necessary to ensure consistent interpretation and application of the domestic tax law and provisions of the international tax treaties on transactions with a foreign element.	2010 - 2016		√	
Provisions of the CIT Law regulating deductibility of advertising and marketing expenses should be amended in a way to allow a full deductibility of such expenses.	2010	√		
Aligning domestic practices with respect to the definition of royalties for withholding tax purposes with the best international practices, and definitions applied in the relevant tax treaties (especially related to the treatment of proprietary software licensing). Introduce monthly, quarterly or annual filing of the tax returns for withholding tax on services, in accordance with customary international practice, instead of filing a tax return for each taxable transaction separately.	2012 / 2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose a payment of taxes as a condition for their recognition as an expense in the Profit & Loss Account.	2010			√
Introducing a system of new tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate for a certain period, and in proportion to the investment made.	2014			√
Revise the CIT Law and Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes. The current tax depreciation regime per groups of assets should be reformed to adjust the depreciation rates to the types of assets, the manner and intensity of their use, and their useful life; review the grouping of assets in depreciation groups; and supplement the lists of assets in groups, defining rules for specific business activities, such as concessions and public-private partnerships. Tax depreciation rules should not cause permanently non-deductible costs. In addition: - Tax depreciation expense should be recognized for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) and whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest that this change be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes. - Further clarify the method of calculation and recognition of tax depreciation cost for the first group of fixed assets on 31 December 2003, which caused numerous dilemmas and controversial interpretations in practice. - In case of acquiring a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of purchase price allocated to relevant assets.	2015 / 2016 / 2017		√	
The historical cost model should apply to taxation purposes for non-current assets, for which IFRS provides the possibility to choose between historical cost or fair value model, irrespective of the choice made, in order to have uniform and equitable tax treatment of taxpayers. However, if the intention is to allow application of the fair value model for taxation purposes, amend the rules relating to tax deductibility of impairment expenses, so that it is clear that decreases of fair value of assets accounted for under the fair value model do not represent non-deductible impairment, so that increases and decreases of fair value are treated in an equitable way.	2017			√

CURRENT SITUATION

The taxation of companies in Serbia is governed by the Law on Corporate Income Tax (hereinafter: the CIT Law) and ratified international agreements. The implementation of certain provisions of the CIT Law is regulated by several by-laws.

The CIT Law was last amended in late 2018 (RS Official Gazette No 95/2018). As for international treaties, in April 2018, Serbia ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Base Erosion and Profit Shifting (BEPS). In February 2018 Serbia joined the Inclusive Framework for BEPS, and in May 2018 the Global Forum on Transparency and Exchange of Information for Tax Purposes.

POSITIVE DEVELOPMENTS

The latest amendments to the CIT introduced three new tax incentives:

1. double tax deduction on R & D expenditures incurred in Serbia,
2. exemption of 80% of revenues from exploitation of intellectual property rights, as well as capital gains from sale of these rights from the tax base,
3. a tax credit in the amount of 30% of equity investments in innovative start-ups, up to a maximum of RSD 100,000,000.

Other positive developments include the abolition of the limits for tax deductibility of advertising costs, as well as the introduction of a tax credit for resident taxpayers in the amount of the tax on capital gains incurred in a foreign country from the sale of immovable property in that country.

Also, an important change relates to new rules for calculating tax depreciation. The new rules will apply to fixed assets acquired after 1 January 2019. Assets acquired before 2019 will be amortized using old rules until 2028. It is expected that the Ministry of Finance will enact a by-law in 2019to regulate in detail the method of calculating tax depreciation according to the new rules.

REMAINING ISSUES

- In early 2019, the Ministry of Finance issued a controversial opinion on the tax treatment and documentation of reimbursement of employees' commuting expenses that caused a negative backlash from the business community and legal uncertainty among taxpayers. The opinion aims to introduce cumbersome requirements for documenting these expenses, which is contrary to labour and tax laws, to the stance taken by the Supreme Court of Cassation and some previous opinions of the Ministry of Finance. As such, this opinion should be immediately cancelled or amended.
- The lack of regulations or their vagueness with respect to certain situations and issues lead to different interpretations consequently causing problems for taxpayers in practice. Specifically, the provisions governing the taxation of a permanent establishment are still incomplete and insufficiently clear; the CIT Law does not contain provisions regulating the taxation of company restructuring and taxation of investment funds, or provisions governing the treatment of losses arising from the liquidation or bankruptcy estate surplus. Consistent interpretation and application of the domestic tax law to transactions with a foreign element and of double tax treaties is increasingly important considering the ratification of the Multilateral Convention.
- Occasionally, interpretations by the Ministry of Finance pertaining to withholding tax differ from provisions of the relevant double tax treaties and best international practices, especially in cases of proprietary software licensing. This leads to legal uncertainty and increases the tax burden for taxpayers, contrary to the rights provided in the relevant double tax treaties. Also, filing separate tax returns for withholding tax on services for each taxable payment of income subject to withholding tax is an administrative burden for businesses. Finally, the procedure for obtaining confirmation of paid withholding tax should be simplified and streamlined.
- New rules on tax depreciation were introduced for newly acquired non-current assets from 1 January 2019. Detailed rules and classification of assets are yet to be regulated by relevant by-laws. However, tax depreciation rules applicable to non-current assets acquired before 2019 remained largely unchanged since 2004, and their application in the contemporary business environment causes many difficulties and problems. Properly regulating the classification and depreciation of specific assets (e.g. windmills, oil rigs, returnable packaging etc.), and improving definitions of certain asset types (e.g. electronic equipment, office furniture, air conditioning systems etc.) is particularly important.
- Provisions of the law pertaining to the method for calculating tax depreciation continuously create discrepancies and permanently unrecognized expenses in the tax balance sheet in cases where, at the moment of disposal of an asset, the current accounting value is lower than the current tax value of that asset, as well as in cases where a fixed asset is being disposed of, where that asset was not previously depreciated for tax purposes, as its cost value at the moment of purchase was lower than the average salary in Serbia. The Ministry of Finance issued an opinion in 2017 which gave rise to additional dilemmas about the cessation of tax depreciation for written-off assets.
- Tax depreciation is not calculated on fixed assets purchased before changes to the CIT Law from the beginning of 2013, and whose individual value was below the average gross salary at that time.
- During 2015 and the first half of 2016, the Ministry of Fi-

nance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.

- The Ministry of Finance issued an opinion in 2017 regarding the method of calculation of tax depreciation of assets in case of acquiring a bankruptcy debtor as a legal entity, and took the position that tax depreciation should be calculated in the same way as before the filing of a bankruptcy petition. We are of the view that this is a debatable interpretation and that it would be more appropriate to calculate tax depreciation on the basis of a proportionate share of the purchase price allocated to relevant assets.
- Accounting regulations, i.e. International Financial Reporting Standards (IFRS), provide for the possibility to either opt for the cost model or the fair value model for certain types of assets (investment property, biological assets, and financial assets). The CIT Law does not have clear rules regarding assets measured at fair value. Unrealized gains from the increase of fair value of assets are taxed before the asset is disposed of, i.e. before the gain is realized.
- The CIT Law does not clearly distinguish between impairment of assets and decrease of fair value of assets (e.g. investment property), for which the IFRS prescribes different rules and treatment. As a result, the decrease of fair value of assets is interpreted as an impairment expense which is non-deductible until such assets are sold. On the other hand, every increase of fair value of assets is immediately taxable. This results in an unfair increase of taxable income for taxpayers.
- The new accounting standard IFRS 16 Leases introduces a new accounting treatment of leases, which require lessees to recognize right-of-use assets in its balance sheet. The CIT Law lacks rules to provide for the proper and clear treatment of related expenses.

FIC RECOMMENDATIONS

- Cancel or amend the controversial opinion of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses.
- Amend the CIT Law so that expenses related to the right of use of a leased asset, recognized in accordance with IFRS 16, are recognized as tax-deductible over the lease period in accordance with the accounting treatment. Alternatively, prescribe that lease fees are tax-deductible when paid (on cash basis).
- Supplement the CIT Law with provisions to regulate taxation of company restructuring, investment funds, treatment of liquidation or bankruptcy remainder that is below the threshold of invested capital, and through by-laws, provide guidelines on taxation of permanent establishments. Consistent interpretation and application of the domestic tax law and provisions of the international tax treaties on transactions with a foreign element should be ensured.
- Aligning domestic practices with respect to withholding tax with the best international practices and definitions applied in the relevant international treaties, (especially with respect to the treatment of proprietary software licensing). Introduce monthly, quarterly or annual filing of tax returns for withholding tax on services, in accordance with customary international practices, instead of filing a tax return for each taxable transaction separately. Also, confirmation on paid withholding tax should be automatically generated in the Tax Administration's system and obtained upon filing and payment of withholding tax, rather than through a separate procedure.
- Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose the payment of taxes as a condition for their recognition as an expense in the Profit and Loss Account.
- Introduce tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate over a certain period, and in proportion to the amount invested.

- Introduce detailed tax depreciation rules which will allow for the proper classification and depreciation of specific assets such as windmills, oil rigs, returnable packaging etc. in accordance with their economic and useful life. Improve definitions of certain asset types such as electronic equipment, office furniture, air conditioning systems etc.

- Revise the CIT Law and Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes to resolve the following issues:
  - Tax depreciation expenses should be recognized for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest that this change be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.
  - Further clarify the method of calculation and recognition of tax depreciation costs for the first group of fixed assets, as at 31 December 2003 that caused numerous dilemmas and controversial interpretations in practice.
  - In case of acquisition of a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of the purchase price allocated to relevant assets.

- Prescribe that the historical cost model should apply for taxation purposes to assets for which the IFRS provides a free choice between historical cost and fair value accounting, irrespective of the chosen accounting method, to ensure the uniform and equitable tax treatment of taxpayers. However, if the intention is to allow application of the fair value model for taxation purposes, amend the rules relating to tax deductibility of impairment expenses, so that it is clear that decreases in the fair value of assets accounted for under the fair value model are not a non-deductible impairment, and so that fair value increases and decreases are treated equitably.

B. PERSONAL INCOME TAX 1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The application of schedular personal income taxation remains a problem in the Serbian system, to which there is no adequate solution. The Serbian government should consider the introduction of a synthetic system and thus enable the Serbian tax legislation to keep up with the advanced tax systems.	2008			√
It is strongly recommended that the appropriate by-law be passed to regulate in detail the calculation of per diems during business trips and the reimbursement and calculation of costs for the use of a private vehicle for business purposes.	2017			√
We strongly advise that the Ministry of Finance take a clear position regarding the tax treatment of no-interest loans (i.e. loans with lower interest rates lower than market ones) to be expressed through an official opinion. It would increase the level of legal certainty in this respect.	2017			√
We strongly advise revising the stand regarding "team building" and adjusting it to its economic purpose.	2017	√		

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Ministry of Finance and Ministry of Labour, Employment, and Veteran and Social Affairs should coordinate joint activities on the proper interpretation of regulations and the treatment of the compensation for unused annual leave by an employee as defined by the Labour Law; i.e. as damage compensation, not as a salary.	2017			√
The social insurance registration process, primarily the registration software, given that this is done electronically, must be harmonized with regulations and must permit foreign workers posted to Serbia to register for mandatory social insurance, without concluding an employment contract in Serbia, and this should apply to Serbian citizens employed with foreign entities as well. Also, it is necessary for Serbia to expand its network of social security conventions, as this is closely linked to this issue, also to avoid the risk of double payment of contributions, which has negative ramifications for labour force mobility.	2017			√

CURRENT SITUATION

Taxation of personal income in Serbia is based on the schedular income taxation system which has been abandoned by many advanced tax jurisdictions as unclear and unfair.

The Law on Personal Income Tax (the PIT Law) as the main regulatory instrument recognizes several categories of taxable income. The personal income tax is, depending on individual case, paid: (i) as withholding tax, (ii) upon decision of competent tax authority or (iii) via self-assessment.

The most recent amendments to the Law came into force on 1 January 2019, introducing the following changes: (i) "team building" is not taxable, (ii) tax exemption for own shares and shares received by the employee from the employer or from the employer-related parties under certain conditions, (iii) the capital gains tax exemption is not applied in cases when the company acquires its own shares, (iv) regulation of tax treatment of income from hospitality services.

The Law on Conversion of Housing Loans indexed in Swiss francs provides tax exemption for the beneficiaries-individuals' income obtained through the conversion. Contrary to Article 1 of the Law on Personal Income Tax, taxation of individuals and tax exemption is regulated by another non-tax law, which gives rise to legal uncertainty for both parties to the conversion. We note that non-tax regulation governs the taxation of individuals based on loans in Swiss francs.

POSITIVE DEVELOPMENTS

Recent amendments to the Law brought certain positive developments.

The tax treatment of "team building" is now regulated. In fact, contrary to the earlier controversial standpoint of the Ministry of Finance, taken in one of its previously issued opinions, the Law now stipulates that no personal income tax should be paid on employer's costs incurred with the aim of creating and maintaining the conditions for the recreation of employees in the workplace, and envisages the reimbursement of costs of collective recreation of employees, i.e. sports events and activities designed to improve the health of employees and/or building better workplace relationships (provided that such activities are regulated by the general act of the employer and are available to all employees). The Ministry is expected to issue a by-law to regulate the matter in detail.

Amendments to the Law prescribe a tax exemption on employee income from own shares, options on own shares or own shares of the employer/employer-related parties. Exceptionally, personal income tax should be paid: (i) in the event of disposal of own shares before the expiration of two years from the date of acquisition of the right to dispose of those shares, at the moment of disposal of the shares, (ii) if the employer or a related party purchase its own shares from the employee – the taxable moment is the moment of purchase and (iii) in case of termination of employment of the employee before the expiration of two years from the date of acquiring the right to dispose of own shares (except in cases when the employ-

ment relationship is terminated independently of the employee's and employer's will) - this would be considered as income paid on the last day of employment.

The provisions on real estate revenues have been clarified - a new paragraph was added, which defines that anyone who earns income from renting rooms and apartments for a period longer than 30 days, and who does not provide hospitality services, in the meaning of the laws regulating hospitality and tourism, is also subject to real estate income tax.

With regard to the above, a distinction was made between taxpayers whose income is recognized as income from immovable property (therefore, in cases where apartments and rooms are rented for a period longer than 30 days) and those who generate income from providing hospitality services (rental of accommodation capacities up to 30 days). The introduction of the aforesaid type of income into the tax system of Serbia contributed to increasing legal security in this area.

REMAINING ISSUES

The Law has yet to define the rules on reimbursement of expenses to employees for business trips abroad as no adequate rulebook has been passed yet to regulate this area, nor were the Law or the Labour Law changed to resolve this problem. Instead, the legislator introduced a provision prescribing that the per-diems are to be determined in the manner specified by and in line with the decision of the relevant authority. This amendment does not clearly define whether this applies to the implementation the Regulation on the reimbursement of costs and severance pays of state officials and employees or some other by-law that has yet to be introduced. Consequently, tax inspectors conducting tax audits often apply this Regulation, despite the fact that it is only mandatory for the public sector. We are of the opinion that such a standing is in collision with the Law.

There were no improvements regarding the clarification of the tax treatment of no-interest loans (i.e. loans with lower interest rates than market ones) granted by the employer to the employee. The Ministry of Finance issued an opinion, but failed to resolve the doubts regarding the tax treatment of such a loan, i.e. it is still unclear whether such a loan should be considered as a benefit or not.

The tax treatment of compensation for unused annual leave paid to an employee who did not use paid leave in the course of employment has not changed - such compensation is still treated as income. Although the Labour Law stipulates that this is a compensation for damages, it is unclear why the Ministry of Finance has opted for such tax treatment. This shows the lack of cooperation and coordination between the two competent bodies.

The problem with the social security registration of Serbian nationals employed with a foreign employer but working in Serbia, has not been solved either. Such a form of employment is recognized by the Labour Law, which specifies that this law applies to employees working in Serbia, with a domestic or foreign legal entity or private individual. The Law on Pension and Disability Insurance and the Health Insurance Law also recognize this type of engagement, given that the definition of insured persons includes Serbian citizens employed in Serbia with foreign or international organizations and institutions, foreign diplomatic and consular offices, or with foreign legal entities or private individuals, unless otherwise specified by an international agreement. Such a practice leads to great legal uncertainty, on the one hand insurance is mandatory, while on the other hand registering for insurance is not possible. Consequently, taxpayers are in a situation that they cannot exercise any rights from social security, or pay contributions. Consequently, the social insurance fund receives less money, while private individuals and legal entities are exposed to legal uncertainty.

Due to the manner in which the law defines taxable net income for the purposes of calculating annual personal income tax, taxpayers who have already paid taxes for income earned in a foreign country, are not able to use this tax as a tax credit in its entirety, and are subject to double taxation. This is due to the fact that the tax paid abroad, for the purposes of determining the annual income tax on individuals, is recognized only as a deductible item, and cannot be used as a tax credit. This is contrary to Article 12 of the Law, as well as the provisions of the double taxation treaty relating to the avoidance of double taxation and the application of a tax credit, thereby violating the rights of taxpayers.

This is extremely disadvantageous and deterring for taxpayers who earn income and pay taxes abroad. These are mostly experts who are sought after abroad and can conclude business arrangements with foreign employers, who bear the burden of double taxation for the same type of income, because of their desire to continue living and working in Serbia.

FIC RECOMMENDATIONS

- The application of schedular personal income taxation remains a problem in the Serbian system, to which there is no adequate solution. The Serbian government should consider the introduction of a synthetic system and thus enable the Serbian tax legislation to keep up with the advanced tax systems.
- It is strongly recommended that a by-law be passed to regulate in detail the calculation of per diems and reimbursement of business travel costs.
- We strongly advise that the Ministry of Finance take a clear position regarding the tax treatment of no-interest loans (i.e. loans with lower interest rates lower than market ones) to be expressed through an official opinion. It would increase the level of legal certainty in this respect.
- Although significant progress has been made in the field of tax treatment of "team building", we believe that the Ministry of Finance should adopt the accompanying by-laws as soon as possible, in order to eliminate any uncertainties regarding the interpretation of the relevant provisions.
- The Ministry of Finance and Ministry of Labour, Employment, and Veteran and Social Affairs should coordinate joint activities on the proper interpretation or regulations and the treatment of the compensation for unused annual leave by an employee as defined by the Labour Law; i.e. as damage compensation, not as a salary.
- Bearing in mind that social security rights are basic social and economic rights of workers, we consider it necessary that regulations be harmonized to allow foreign nationals posted to Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social security. In addition, Serbia needs to expand the network of international agreements that regulate the issue of social security, with the aim of avoiding double payment of contributions.
- The provisions of the Law, related by-laws and tax return forms related to determining the annual personal income tax for citizens should be amended so that they comply with Article 12 of the Law (the right to tax credit) and agreements on the avoidance of double taxation, that is, to enable taxpayers to use the tax credit.

C. VALUE ADDED TAX 1.14

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.	2007			√
With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.	2013			√
VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or a credit note. This practice also corresponds to the customary business practice. Insisting on exclusively one approach imposes additional costs, whereas from the VAT collection point of view, there is no reason why both approaches cannot be applied. With respect to above, in case of return of goods, it is also necessary to define that irrespective of the expiration date, the supplier can issue a credit note or the buyer can issue an invoice/debit note in accordance with their mutual agreement. This approach can not jeopardize VAT collection since the same VAT rate is applied irrespective of who issues the credit note.	2014			√
The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT; and 2) in the case of a change in status, when the supply of goods and services is subject to VAT.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. In fact, in the EU Member States, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e. the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.	2017			√
With respect to VAT records and the preparation of the summary VAT calculation we believe that it is necessary to reconsider the adopted Rulebook and user manual, especially with respect to content of the POPDV form and manner of presentation of particular transactions such as advance and final invoices.	2017		√	
The processing of requests for refunds reported in VAT returns should be harmonized with the VAT Law and the Law on Tax Procedure and Tax Administration, meaning that the initiation of a tax audit cannot constitute grounds for delaying a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the Law on Tax Procedure and Tax Administration, and the Tax Administration should comply with it.	2017			√

CURRENT SITUATION

Value-added tax (VAT) is governed by the Law on Value-Added Tax (RS Official Gazette 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13, 142/2014, 83/2015, 108/2016, 7/2017, 113/2017, 13/2018, 30/2018, 4/2019 and 72/2019; hereinafter: the "VAT Law").

The latest amendments to the VAT Law were adopted by the National Assembly of the Republic of Serbia at its session held on October 7, 2019 and entered into force on October 15, 2019. These changes relate to:

- The introduction of the concept of a value voucher and distinguishing between the VAT treatment of single-purpose and multi-purpose value vouchers (a taxpayer who transfers a single-purpose value voucher in his own name is obliged to calculate VAT at the moment of transfer and not at the moment of delivery or service to which the value voucher applies),
- It is specified that the obligation of a foreign person to appoint a tax proxy and to register for VAT also exists in the case when the foreign person trades goods / services for which a tax exemption is prescribed, with the right to deduct the previous tax,
- Changes were made to the rules regarding the place of the supply of goods and services on a ship or in an aircraft or train,

- The conditions were created for a more detailed regulation of the place of provision of telecommunication, radio and television broadcasting services and services provided electronically,
- An extension of the application of the special rule that the tax liability arises on the day of invoicing,
- The introduction of a new exemption for supply/import within the framework of highway construction infrastructure projects for which a special law establishes a public interest,
- Conditions for VAT refunds to foreign passengers were liberalized,
- The exemption for import of goods is envisaged on the basis of repair within the warranty period,
- The rules for calculating the proportional tax deduction were changed.

Apart from the above, certain VAT by-laws have been amended since September 2018, specifically:

- the Rulebook on the Manner and Procedure of Obtaining VAT Exemptions with the Right to Input VAT Deduction – in the part that regulates tax exemption for goods that foreign travelers carry in their personal luggage for non-commercial use, the submission of applications/documentation and delivery of confirmations in procedures related to tax exemptions based on donations, loans/credits or other international contracts (submitted in electronic form as of 1 January 2019), and a more accurate definition of when and how VAT is calculated on the export of goods; and
- the Rulebook on the Procedure of Exercising the Right to VAT Recovery and on the VAT Rebate and Refund Procedure – in the part that relates to defining more precisely the right to tax credit for the settlement of liabilities from previous VAT periods, regulating the submission of requests for VAT refund in electronic form, and the harmonization with provisions of the VAT Law with respect to VAT refund to foreign taxpayers.

The respective amendments were made for the purpose of aligning the by-laws with previous changes to the VAT Law.

POSITIVE DEVELOPMENTS

The latest amendments to the VAT Law have made certain refinements to the existing rules and more precisely regulated certain situations.

The VAT by-laws were amended to align them with earlier amendments of the VAT Law and enable its adequate application. In addition, for a number of situations, it is possible to submit applications/documentation and receive tax assessments in electronic form, making it easier for taxpayers to exercise their rights. Moreover, the amendments specify that the tax credit can be used for the settlement of the tax liability for previous VAT periods, thus increasing the efficiency of tax credit usage. In addition, changes of User Instructions for the Presentation of Data in the VAT Calculation Review (the POPDV Form) additionally clarify how to fill out the POPDV Form in certain situations. Furthermore, these changes somewhat limit the presentation of data in the POPDV Form on the basis of purchase value assessments.

REMAINING ISSUES

Instead of being integrated into a single piece of legislation, the relevant rules for applying the VAT Law are still dispersed throughout various by-laws (currently 29 rulebooks and 3 by-laws), frequently insufficiently detailed, and fail to provide adequate explanations for the application of specific provisions of the law. Although there were several announcements related to the adoption of an integrated rulebook in 2016, it is still uncertain when it will be published.

VAT is accounted for by the recipient of goods and services performed by a foreign supplier (applying the so-called reverse charge mechanism) at the moment when the supply takes place or at the moment when an advance payment is made, depending on which occurs earlier. In case there is no advance payment, VAT should be accounted for at the moment the service is rendered, something often unfeasible in practice, especially in the case of services for which the price in the contract was not specified as a fixed amount, but rather depends on a contractually specified calculation. At the moment of supply, or up to the deadline for filing a tax return, the VAT payer frequently does not have the supplier's invoice or information on the amount of the compensation, and so cannot know what the taxable amount is.

VAT legislation provides that in cases where taxable amount has changed after the supply of goods and services has taken place (e.g. subsequently approved discounts), the supplier should issue a document containing certain obligatory items. VAT legislation does not provide the possibility for the recipient of goods/services to issue this document, as is the

business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practices due to Serbian VAT rules.

In practice, there is an issue with VAT treatment of in-kind contribution of goods and services and status changes. Specifically, in such instances the VAT accounted for by the transferor of assets is income for the transferor and an expense for the transferee, and consequently in-kind contribution and status changes are not neutral from the perspective of the income statement, as they should be, essentially. For this reason, in such instances, the transferee should be the one to account for the VAT (applying the so-called reverse charge rule).

The VAT Law defines new rules regarding the assessment of VAT in the case of supplies in the field of construction. The rules relate to the classification of business activities, which results in numerous questions and uncertainties in practice, because, in substance, the classification was not drafted for tax purposes. Consequently, taxpayers have to deal with legal uncertainty due to the different interpretation of regulations by taxpayers and by tax authorities alike. Due to diverging interpretations, taxpayers face the risk that tax authorities will hold the supplier accountable for output VAT, although the recipient as the taxpayer accounted for the VAT, or that the recipient who accounted for the output VAT is denied his right to input VAT deduction because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to the detriment of the state budget.

The Rulebook on the Form, Content, and Method of Keeping VAT Records and the Form and Content of the VAT Calculation Review (RS Official Gazette 90/2017, 119/2017, 48/2018 and 60/2018) prescribes the method of keeping VAT records and the preparation of VAT calculation review (POPDV Form). Since the harmonization of accounting programmes with new requirements is financially- and time-demanding, a significant share of VAT payers is preparing VAT records and POPDV Forms manually. This considerably increases the VAT payers' costs. According to an internal survey conducted within the FIC, the introduction of this method, the VAT liability calculation and reporting take three to five times longer to complete. In addition, due to a significant number of categories, the risk of error in categorizing invoices is high (even if VAT treatment is correctly determined), giving rise to the question of the informative value of this data for the Tax Administration. Having in mind the limited value of data provided in particular fields of the POPDV form and the significant expenses of VAT payers related to preparation of the POPDV form, it is recommendable to reconsider simplifying the POPDV form and its filling procedure (presentation of certain types of transactions). The user manual published on the website of the Tax Administration has succeeded in facilitating the application of the new rules by providing a number of examples and clarifications. On the other side, it introduced some additional requests that are difficult to implement in practice, e.g. displaying the final invoice issued after the advance payment invoice so that the final invoice states the full amount of the VAT base and the difference in VAT stated on the final and advance payment invoice. Generating data from the accounting records in this manner is extremely demanding so that, as a rule, even those VAT payers who have adjusted their accounting programmes to the new method of keeping VAT records, generate/enter these data manually. In addition, the informative value of showing the full amount of the base and the difference of VAT for the Tax Administration is questionable since it is not possible to reconcile the advance payment invoice with the final invoice from the POPDV form.

The Law specifies that a VAT refund shall be made within 45 days of the deadline for filing the tax return, or within 15 days for predominant exporters. It has been noted that in practice the Tax Administration is late in making VAT refunds. Also, it has been noted that VAT is not refunded because a tax audit has been initiated. Neither does the VAT Law, nor the Law on Tax Procedure and Tax Administration specify that VAT shall not be refunded for the duration of the tax control. In addition, a VAT refund audit is not prescribed as a precondition for VAT refund, the Tax Administration has a right to audit VAT regardless of an executed VAT refund until the expiration of the period of limitation. Moreover, the Law on Tax Procedure and Tax Administration specifies that if no refund is made to the VAT payer within the deadline specified by the VAT Law, interest shall be accrued as of the next day after the expiry of such a deadline. We emphasize that a VAT refund is not the result of error or oversight on the part of the taxpayer, but a key mechanism for the functioning of this form of taxation. All delays in VAT refunds directly impact the liquidity of companies that are required to make payments that include VAT to their suppliers by statutory deadlines, and on which depends the ability of their suppliers to regularly settle their tax liabilities.

FIC RECOMMENDATIONS

- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc.

- With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.

- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or credit note. This practice also corresponds to a customary business practice. Insisting on exclusively one approach imposes additional costs, whereas from the VAT collection point of view, there is no reason why both approaches cannot be applied. With respect to the above, in the case of return of goods, it is also necessary to define that irrespective of the expiration date, the supplier can issue a credit note or the buyer can issue an invoice/debit note in accordance with their mutual agreement. This approach can not jeopardize VAT collection since the same VAT rate is applied irrespective of who issues the credit note.

- The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT; and 2) in the case of a change in status, when the supply of goods and services is subject to VAT.

- It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier has calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e. the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.

- With respect to VAT records and the preparation of VAT calculation reviews, we believe it is necessary that the adopted Rulebook and User manual be reconsidered, and especially the requirements with regard to the POPDV form contents and the method for presenting certain transactions, such as the final invoice and invoice for an advance payment.
- The processing of requests for refunds reported in VAT returns should be harmonized with the VAT Law and the Law on Tax Procedure and Tax Administration, meaning that the initiation of a tax audit cannot constitute grounds for delaying a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the Law on Tax Procedure and Tax Administration, and the Tax Administration should comply with it.

D. PROPERTY TAX 1.20

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The provisions of Article 7 of the Law should be harmonized with the provisions of the Law on Accounting.	2015			√
The provisions of the Law prescribing the method of calculation of the property tax base by zone should be reconsidered to avoid the negative consequences of the current rules on the forthcoming fiscal years. It is especially advisable to apply corrective factors in determining the market value of property.	2014			√
It is advisable to simplify the property tax return form and supporting documents. It should be possible to list more than one cadastral parcel in a single municipality in Annex 1, and summarize all facilities of the same type in a single sub-annex.	2018		√	
Rephrase the provision prescribing exemptions from the absolute rights transfer tax, so that it is understood that the exemption applies to the transfer and acquisition of absolute rights that are subject to VAT, not to those for which VAT is paid.	2018			√
Enable interested parties (taxpayers) to access data used by the authorities in determining whether the contractual price of an absolute rights transfer is in line with the market price.	2018			√

CURRENT SITUATION

In accordance with the current version of the Law on Property Taxes (hereinafter: the Law), companies that keep accounting records determine the tax base for property tax based on the real estate's market value (except in special cases prescribed by the Law). The market value of a piece of real estate represents the fair value stated in the accounting records for taxpayers using the fair value method according to the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS), and their accounting policy.

The introduction of the concept of the market value of real estate as a basis for the calculation of property taxes has

been followed by different interpretations over the years, primarily for taxpayers who can apply this valuation concept. The different interpretations were due to the fact that no official opinion of the Ministry of Finance on this topic had been published until a few months ago. The opinions of the Ministry of Finance, published in the last few months, express in a completely unambiguous manner the ministry's position regarding the possibility for small and medium-size enterprises to use the fair value of real estate, stated in accordance with IFRS for small and medium-size legal entities (SMEs), on the last day of the taxpayer's business year. Although the publication of the opinions in question was intended to clarify the issue, to the best of our knowledge, they have raised additional feelings of legal uncertainty and doubt as to whether the opinions will be applied by the competent authorities, and whether their implementation will be binding only on future property tax calculation or their enforcement will be retroactive.

Taxpayers in the manufacturing industries still face significant administrative costs and practical difficulties in categorizing different buildings in the factory compound – production plants, administrative buildings, warehouses, other real estate property for specific purposes – for the purpose of determining the property tax base, especially in splitting and determining the usable area of each unit of a single facility.

POSITIVE DEVELOPMENTS

Improvements can be seen in terms of clearly defining certain provisions that may have an impact on determining the property tax base (for example: defining specific taxable object – paths, parking, etc.). Also, provisions regarding the creation and expiry of property tax liabilities have been more clearly defined, and Law articles regarding the deadlines for registration of newly acquired real estate have been harmonized.

Starting from 1 January 2019, property tax returns are filed electronically, which is an improvement, however, due to certain technical flaws, administrative difficulties and expenses for taxpayers have not decreased.

We support the intention of the legislator to introduce improvements and technically simplify the process of calculating taxes, which is a common goal of the business sector and the Ministry of Finance. For the purpose of accelerating positive developments, the most relevant remaining issues that need to be resolved are listed below.

REMAINING ISSUES

We would like to point out the inconsistent implementation of the concept of the market value of a property, as well as certain gaps related to determining the tax base for entities that apply fair value appraisal in accordance with IFRS for SMEs instead of IAS/IFRS fair value for real estate assets for accounting purposes.

The Law on Accounting prescribes that SMEs apply IFRS for SMEs, but that they may opt to apply IFRS for the recognition, valuation, presentation and disclosure for positions in financial statements, and that micro-entities may choose to apply the above standards. Small, medium-size and micro-entities applying or opting to apply IFRS for SMEs are not covered by Article 7 of the Law. Considering the aforementioned opinions of the Ministry of Finance, which take the rigid view that there is no basis for legal entities applying IFRS for SMEs to determine the property tax base using the fair value method, the question of the uneven application of the fair value concept to determine the property tax base leads to legal uncertainty in the application and harmonization of accounting and tax rules, not only for future but also for prior tax periods. Therefore, it would be appropriate to further clarify the provisions of Article 7 of the Law and thus eliminate legal uncertainty for taxpayers, which has increased following the published opinions of the Ministry of Finance regarding the interpretation of Article 7 of the Law.

When determining the property tax base by applying the average prices published by local municipalities, one of the basic parameters is the property's zoning category, determined by local municipalities. The local administrations have discretionary zoning powers, applied predominantly on the basis of how public areas are developed. However, the procedure of assessing a public area's development level is insufficiently transparent and no criteria for value adjustments are envisaged regarding the quality/age and/or purpose and size of the property. In practice, this means that the tax base of a newly-built real estate and one that is significantly older, but of the same surface area within the same zone, can be the same.

As a result, the market values of properties assessed by certified appraisers significantly differ from their market values calculated by using the average prices published by local tax authorities. Therefore, taxpayers who evaluate real estate in their business records at fair value and those who use some other method of evaluation are in an unequal position.

Particular administrative difficulties and related costs are caused by the Rulebook on property tax return forms. In line with the Rulebook, taxpayers are obliged to file data to the Tax Authorities Integrated Information System Portal (hereinafter: the Portal) every year, even when no changes are made in comparison to the previous year. The taxpayer fills a tax return PPI – 1 form for each municipality where it has property subject to tax, and annexes for each cadastral parcel and sub-annexes for each building on a parcel, as well as one sub-annex for the land itself. Additionally, FIC members concluded that the implementation of the electronic filing of tax returns has failed to provide a technical improvement in efficiency, especially for the taxpayers owning properties in different local municipalities, which can lead to filing hundreds of tax returns in electronic form.

Also, we draw the attention to an issue that arises in the case of properties leased for a period exceeding 183 days over a 12-month period. In this case, Article 12 of the Law on Property Tax does not grant the lessor the right to tax exemption and, consequently, the land plot under a leased building may be double taxed.

The tax authorities have been given exclusive rights to determine the property transfer tax base. In practice, the tax base is determined in accordance with internally determined market prices on the territory of a specific unit of local self-government (the so-called parities), unknown to taxpayers, so in most cases it remains unclear whether or not the contractual price is equal to the market price.

We would also like to briefly comment on the provision of the Law which defines exemptions from the absolute rights transfer tax, which states that the absolute rights transfers on which VAT is paid are exempt from the payment of the transfer tax. The term ''paid'' is not appropriate in this case because VAT is calculated and reported in a VAT return. Moreover, certain transactions subject to VAT under the VAT Law may be exempted from VAT for reasons prescribed by this Law.

FIC RECOMMENDATIONS

- The provisions of Article 7 of the Law should specify that the fair value is the property tax base for entities applying the fair value measurement according to the IAS/IFRS for SMEs and accounting policies.
- To ensure the adequate calculation of the market value of immovable property, it is necessary to harmonize the zoning criteria of local municipalities; prescribe corrective factors to differentiate between immovable properties in terms of quality, year of construction, purpose and characteristics; consider the adequacy of the methodology used for calculating the average prices of immovable property.
- It is advisable that the property tax return form and supporting documents be simplified by linking the Portal with the Cadastre and the storing of such data enabled. Also, it should be possible to list more than one cadastral parcel in a single municipality in Annex 1 on the territory of a specific local municipality and to summarize all facilities of the same type in a single sub-annex (e.g. all taxpayer's warehouses in the territory of a particular local municipality). In line with the above, make appropriate improvements within the Portal, and make technical adjustments after which it would be possible, based on the data saved from the Cadastre, to automatically fill in the appropriate forms (PPI-1, Annex 1, sub-annex), for the purpose of filing property tax returns for each year.
- Rephrasing provisions regulating: a) exemptions from the absolute rights transfer tax, so that it is understood that the exemption applies to the transfer and acquisition of absolute rights that are subject to VAT, not to those for which VAT is paid. b) eliminate double taxation of land beneath the leased building.
- Enable public access to data used by the tax authorities to determine whether the contractual price of an absolute rights transfer is in line with the market price.

E. TAX PROCEDURE 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amending Article 80 of the Law on State Administration to eliminate legal uncertainty with regard to whether the opinions of the ministries are legally binding if so prescribed by a separate law. In addition, introducing an internal control mechanism within the Tax Administration for the application of legally binding opinions of the Ministry of Finance. Amending the PTA Law in such a way that the opinions of the Tax Administration sent by email are binding for the Tax Administration. The PTA Law should specify the accountability of the Tax Administration staff members who do not comply with the laws (or higher instance decisions) in their work	2014			√
Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the tax collection	2016			√
Introducing provisions to the PTA Law to govern the liability of authorized officers and adequate penalties for failure to issue a binding opinion within the 30-day deadline prescribed by Article 80 of the Law on State Administration	2017			√
Defining the responsibility of the Tax Administration employees who do not comply with the laws in their work, i.e., fail to act on the orders of second instance authorities and courts	2017			√
Abolishing the provision of the PTA Law which prohibits the Serbian Business Registers Agency from erasing a taxpayer from the register, registering status changes, or amending information for the duration of a tax audit	2014			√
Regulating the provisions of the Criminal Code concerning tax crimes in more detail taking into account the size of the legal entity and the volume of taxable activities	2014			√
The introduction of a statutory deadline for tax audit duration, and a tacit acceptance procedure in the case of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance	2018			√

CURRENT SITUATION

The regulatory framework for the tax procedure in Serbia is shaped by four principal laws:

- The Law on Tax Procedure and Tax Administration (PTA Law)
- The Law on General Administrative Procedure (GAP Law)
- The Law on Administrative Disputes (AD Law)
- The Law on Inspection Oversight (LIO Law).

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law (lex specialis), which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control, and collection of taxes. The PTA Law comprehensively regulates all tax misdemeanours. The general rules of the GAP Law apply to the tax procedure where a certain issue is not regulated by the PTA Law, while the rules of the LIO Law further specify the activities of the Tax Administration regarding inspections. The AD Law regulates the judicial review of administrative decisions issued by the Tax Administration as an additional taxpayer protection system (e.g. deciding on actions against second-instance decisions of the Ministry of Finance).

The PTA Law was amended twice in 2018. The most important amendments by far relate to the transfer of the competencies to the National Bank of Serbia (NBS) in foreign currency transactions and games of chance; the prohibition of strike-off or registration of other business data changes by the Serbian Business Registers Agency (SBRA) at the time when the Tax Police is taking certain actions, as well as in situations of a temporary withdrawal of the TIN; the obligation to report data on warehouses; the continuation of the tax procedure digitization; the introduction of new measures for securing tax collection and amendments to provisions related to tax offences and new offences envisaged for banks.

The amendments also introduced the ne bis in idem principle (that no legal action can be instituted twice for the same cause of action) prescribing that tax inspectors may not initiate tax misdemeanour proceedings if the Tax Police has already filed criminal charges against the taxpayer for the same offence.

These amendments also envisage the possibility for the Tax Administration to compile an appendix to the minutes, after the submission of the minutes and the supplementary minutes, while no possibility is envisaged of changing the chosen option of VAT refund by filing an amended tax return.

POSITIVE DEVELOPMENTS

In parallel with further digitization, the Tax Administration continued the implementation of the previous year's plan and of strategic goals. The tax procedure was potentially accelerated by enabling the electronic delivery of tax administrative acts to the taxpayer's e-mail. Additionally, property tax returns are filed electronically as well, starting from 1 January 2019.

Amendments that already apply also regulate in slightly more detail the deferral of the payment of tax liabilities and the possibility to submit a request for deferral electronically. Taxpayers may now be granted a 12-month grace period (exceptionally 24 months) before they start repaying the deferred tax liability. However, a detailed regulation of requirements for deferral is still missing.

Additionally, the concept of "tax services" was introduced with the intent to improve the advisory function of the Tax Administration.

REMAINING ISSUES

- The existing regulatory framework governing the tax procedure still does not provide sufficient protection for taxpayers against discretionary decisions of tax authorities.
- Rules on tax-related criminal offences still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to both small businesses and large corporations in Serbia.
- More often than not, tax inspectors do not apply the "substance over form" principle in good faith. This regularly leads to highly unfavourable decisions for taxpayers, which are practically impossible to change.
- Tax authorities routinely fail to comply with the deadlines for the issuance of decisions based on submitted appeals.
- The existing rules regarding delayed execution of tax administrative acts via requests submitted to the second-instance authority do not provide for clear conditions for delaying execution, providing the second-instance authority with a very broad-set discretionary right.
- Rules that relate to the possibility of a tax refund in the event of the existence of matured tax liabilities in another respect are unclear and do not take into account whether such tax liabilities are deferred or disputed (e.g. an appeal against a tax assessment issued by the Tax Administration). As a result of the foregoing, taxpayers are in a situation wherein uncollectible tax liabilities result in a complete discontinuation of the tax refund.
- The statutory 30-day deadline for issuing and publishing binding opinions upon request of taxpayers is not observed, so, in practice, taxpayers wait for opinions for more than a year. Such uncertainties are additionally aggravated by binding opinions that the Tax Administration applies but fails to publicly disclose despite its legal obligation to publish them on its own website and the website of the Ministry of Finance. Therefore, these opinions are unavailable to taxpayers, i.e. to all parties in a public-legal relationship.
- Limiting the filing of amended tax returns to two times is not justified. In fact, in most cases mistakes are made unintentionally, or are technical, especially in the case of large taxpayers who have large-scale and complex internal organization systems. Given that a taxpayer cannot amend a tax return in the event of a tax audit for a specific period, abolishing this restriction would not create an additional burden for the Tax Administration. Quite the contrary, it would help increase the efficiency of tax collection and encourage taxpayers' co-operation, con-

sequently reducing the scope of tax audits.

- During a tax audit, as well as during the period in which a taxpayer's tax identification number (TIN) is temporarily withdrawn, and until it is reinstated, the SBRA cannot erase a taxpayer from the register, register status changes, or change any of the registered data. In addition, tax liabilities become due regardless of whether or not a company is actually doing business (e.g. mandatory social security contributions, municipal taxes). Due to the vagueness of this provision, the initiation of a tax audit may preclude the company from closing down business, which will lead to additional tax liabilities for the company, regardless of the outcome of the audit, thus de facto arbitrarily punishing the taxpayer for no reason. Additionally, taxpayers are unable to register changes that may even enable tax payment (capital increase, registration of a change of legal representative, etc.).
- Digital services of the Tax Administration should be further improved and developed to enable taxpayers to download all tax returns in a user-friendly form, as well as to enable all taxpayers to obtain tax identification numbers and all tax certificates electronically.
- The PTA amendments introduced the possibility for the Tax Administration to secure the collection of a tax liability that is not due, but for which an audit procedure has been initiated, even though criteria or conditions for the implementation of this measure have not been prescribed, which is not in line with the legality principle. As a consequence, tax resolutions that impose the measure do not contain valid reasons why the Tax Administration considers that there is risk in tax collection.
- Amendments to the PTA Law abolished the function of administrative supervision within the Tax Administration. According to the amended text of the PTA Law, the Tax Administration has exclusive competencies to perform the function of internal control. The Ministry of Finance has not established supervision as a separate function, from the moment of the abolition of the function of administrative supervision within the Tax Administration.
- The PTA Law should be further aligned with provisions of the LIO. The LIO provides that inspectors are required to act not only to detect illegal activities and penalize entities violating the law, but also to prevent irregularities and provide advice to controlled entities to minimize risks from illegal acts.
- The Serbian Administrative Court, as the final instance for tax disputes, does not have a sufficient level of specialization and expertise to adjudicate on tax matters. A court decision will typically take more than one year. Considering that the procedure before the court does not postpone a tax liability, i.e. the taxpayer still has to settle the previously disputed tax, even if he eventually does win the case, incurred costs for the taxpayer usually result in taxpayers receiving refunds of lower value in real terms. In addition, courts almost never decide on the merits of a case.

FIC RECOMMENDATIONS

- Eliminate legal uncertainty in the process of issuing of opinions of the Ministry of Finance by amending Article 80 of the Law on State Administration with regard to whether the ministry's opinions are legally binding if so prescribed by a separate law; amending the PTA Law to prescribe that the ministry's opinions are binding only if they are published or available to all parties in a public-legal relationship; defining a 30-day deadline for issuing an opinion defining the consequences in a situation where previously issued opinions are changed or disregarded; amending the PTA Law to prescribe that opinions of the Tax Administration sent by email are binding for the Tax Administration, and introducing provisions to the PTA Law to govern the liability of authorized officers and adequate penalties for failure to issue a binding opinion within the 30-day deadline.
- The PTA Law should specify misdemeanours of Tax Administration staff members who do not comply with the laws (or higher-instance decisions) in their work, and in particular for failing to act within the deadlines prescribed by the PTA, and for failing to implement decisions of the second-instance authority.
- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision.
- Abolishing the provision of the PTA Law which prohibits the Serbian Business Registers Agency from erasing a

taxpayer from the register, registering status changes, or amending information for the duration of a tax audit or procedures undertaken by the Tax Police.

- Establishing the function of administrative supervision within the Ministry of Finance that will provide an effective mechanism for controlling legal compliance of the work of the Tax Administration's organizational units.
- Regulating the provisions of the Criminal Code concerning tax crimes in more detail taking into account the size of the legal entity and the volume of taxable activities.
- The introduction of a statutory deadline for tax audit duration, and a tacit acceptance procedure in the case of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance.

F. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM (PARAFISCAL CHARGES)

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continuation of the reform of parafiscal charges, by eliminating all parafiscal charges that do not provide corresponding benefits in return, in terms of specific rights, services, or resources, while at the same time ensuring a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues	2015	√		
Adoption of the Law on Charges for the Use of Public Goods and a new Law on the Financing of Local Governments, preceded by a comprehensive analysis of and alignment with solutions and tendencies of sectoral laws	2014	√		
Any new tax burden, or increase to the existing one, should be pre-announced to taxpayers and introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies, or other ministries	2013		√	
Apply the business signage tax ceiling to the obligation of a single taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities in other municipalities in Serbia (banks, insurance companies, telecom companies, etc.)	2014			√
Judicial protection of taxpayers' rights should be significantly improved through a reform of the Administrative Court, specialization of judges in tax matters, or the establishment of a special department within the Administrative Court with sole jurisdiction to handle tax disputes	2016			√

CURRENT SITUATION

The World Bank's Doing Business 2019 report ranks Serbia 48th out of 190 economies. In the area of tax payment Serbia's position slightly improved compared to the 2018 report, and the country is now ranked 79th. Tax payment, together with obtaining electricity access and protecting interests of minority investors, is still within the three worst-ranked areas.

The FIC is of the view that Serbia's tax system is getting significant negative reviews, inter alia, because of the many parafiscal charges that exist in parallel with taxes, increasing the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal charges actually impose an obligation that does not provide (at all or in an adequate proportion) a specific service, right, or good in return.

The authorities recognize this fact, which is why a parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform continued in 2013, with a first draft of the Law on Fees for the Use of Public Resources and the adoption of the final version of the Law at the end of 2018. The reform process is still ongoing, whereas in 2018 the process was marked by stagnation and the introduction of new parafiscal levies (e.g. the introduction of the mandatory membership fee for the Serbian Chamber of Commerce).

POSITIVE DEVELOPMENTS

In 2016, the Law on Tax Procedure and Tax Administration was amended, designating the Ministry of Finance as the second-instance authority deciding on appeals against decisions of the Tax Administration. The same applies to all parafiscal charges collected by authorities that enforce the Law on Tax Procedure and Tax Administration. This provision became effective as of 1 July 2017.

The process of the Tax Administration's modernization and a shift towards e-governance continued throughout 2017 and 2018, which is of benefit to all taxpayers.

The Law on Fees for the Use of Public Goods was adopted at the end of 2018, and applied as of 1 January 2019, the main improvements being: a) a single law regulates all charges, instead of 18 laws previously and b) the amounts of all but one charge are regulated by the Law, instead of being predominantly regulated by by-laws, as was the case before. The one charge whose level remains regulated by a by-law is the local environmental charge. However, the base for the charge is defined by the Law as the quantity of pollution, transforming it from a parafiscal charge into a fee. Hence, the adoption of the Law increased both the transparency and predictability of the non-tax revenue system.

The practice of introducing new tax burdens or increasing existing ones, with no prior announcement, was slightly curbed in 2018, allowing for increased transparency and taxpayer compliance.

REMAINING ISSUES

The reform of non-tax revenues has not been completed yet. The remaining issue is related to fees that should be paid for a public service proportionally to the costs of its provision. Currently, only a part of the fees are regulated by the Law on State Administrative Fees, while numerous laws and by-laws have introduced levies that are by their fiscal nature fees, but which come under different names (charge, compensation, etc.). In addition, it is questionable whether the Rulebook on Methodology for Determining Costs of Public Service (Methodology) was applied when setting the levels of all these fees.

A particular problem that we deem should be highlighted concerns the local utility tax for displaying business signs (business signage tax). Business signage tax costs for remaining taxpayers has significantly increased since the regime for the payment of the business signage tax was changed. The overall liability of a business entity for business signage has reached significant amounts, inter alia, due to diverse practices amongst local governments.

Furthermore, the FIC has warned of the growing issue of the unequal implementation of tax regulations and inconsistencies between tax laws and by-laws (e.g. the Tax Administration does not recognize documented operating expenses incurred in relation to a business activity not listed in the Articles of Association or other relevant acts of a company, despite the fact that such an obligation is not envisaged under the Company Law and that the respective practice is not in line with tax regulations). Additionally, issues also occur where tax authorities act in accordance with mandatory acts pertaining to the implementation of tax regulations (explanations, opinions, instructions, guidelines, etc.), issued by the minister responsible for

finance or other body authorized by the minister. In relation to the aforementioned, it remains unclear whether the opinions issued by Fiscal System Department pertaining to the implementation of international accounting standards, which have an influence on the interpretation of tax regulations, are indeed mandatory.

The FIC reiterates that the introduction of new taxes and duties, or increasing existing ones, during the fiscal year, without prior notice to taxpayers that would enable them to adapt their business to the new fiscal burden, adversely affects the predictability of the business environment and the operating results of companies.

The judicial protection of taxpayers' rights is ineffective. The proceedings before the Administrative Court are very lengthy and the Court usually simply confirms the decision of the Tax Administration, without providing an adequate statement of reasons for such a ruling. Alternatively, in exceptional cases, the disputed decision is annulled and the case remanded back to the second-instance Tax Authority, without going into the merits of the case, which further protracts the entire process of the protection of taxpayers' rights. The Court almost never schedules any hearing where a taxpayer could explain its arguments before the Court, or present its objections to the findings of the Tax Administration.

FIC RECOMMENDATIONS

- Continuation of the reform of the non-tax revenue system, by eliminating all parafiscal charges that do not provide corresponding benefits in return, in terms of specific rights, services, or resources, while at the same time ensuring a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues.
- Adoption of the Law on Fees that should regulate all fees paid for a public service, while setting their level in line with Methodology and a new Law on the Financing of Local Governments, preceded by a comprehensive analysis of and alignment with solutions and tendencies of sectoral laws.
- Any new tax burden, or increase to an existing one, should be pre-announced to taxpayers and introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies, or other ministries.
- Apply the business signage tax ceiling to the obligation of a single taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities in other municipalities in Serbia (banks, insurance companies, telecom companies, etc.)
- Judicial protection of taxpayers' rights should be significantly improved through a reform of the Administrative Court, specialization of judges in tax matters, or the establishment of a special department within the Administrative Court with the sole jurisdiction to handle tax disputes.