TAX

The aggravated and altered conditions of doing business that have been caused by the COVID-19 pandemic have resulted in significant changes in the focus and priorities of both the Government of the Republic of Serbia and businesses, in the field of taxation as well as in other spheres of the economy and society. Following some changes to tax regulations in the second half of 2019, the focus in 2020 shifted primarily to measures for helping the economy.

The Government of the Republic of Serbia adopted a set of economic and fiscal measures during the state of emergency in order to mitigate the negative economic consequences of the COVID-19 pandemic. Fiscal measures encompassed the postponing of payments of taxes and contributions to salaries and advance payments of the corporate income tax, the delaying of the deadline for filing tax returns for corporate income tax, as well as deadlines for filing appeals against first-instance decisions of the tax and customs authorities.

The most significant positive change in tax regulations in the previous period is represented by the 1st January 2019 entry into force of tax incentives for investments in research and development activities, as well as for economic exploitation and the sale of intellectual property. Other positive changes include the entry into force of new rules on tax depreciation, the introducing of certain tax breaks for investment funds, as well as the introducing of tax credits and tax deductions for banks related to the conversion of mortgages indexed in Swiss francs.

On the other side, in several other new official opinions, the Ministry of Finance reiterated its position from last year with regard to the obligatory documenting of the costs of transporting employees to and from work, which causes great anxiety among companies due to the debatable basis for such an interpretation in existing regulations, due to confusion, difficulties and administrative costs related to the practical application of such a requirement. Moreover, amendments to the Law on Personal Income Tax prescribe the obligation to document such expenses, but what is considered a documented expense remains unclear and disputable. We maintain the stance that such an opinion should be repealed or amended immediately.

One of the remaining important issues has for years been the lack of transparency and public debate in the area of amending tax regulations. In the period prior to the outbreak of the pandemic, certain progress was achieved in terms of continuing the work of the Working Group for the implementation of recommendations from the FIC White Book and open discussions with the Ministry of Finance on some important tax issues and problems. We expect and hope for the resumption of a constructive dialogue with the Ministry of Finance in the second half of 2020, with a return to the issues of improving tax regulations and practises with greater transparency and the timely public presenting of all draft regulations.

The newly emerged situation and aggravated conditions of doing business have imposed a need for the Tax Administration – as well as businesses – to transition as quickly as possible to electronic communication and the use of new technologies, and have thus further stressed the necessity to quickly conclude the reform and modernisation of the Tax Administration.

A. CORPORATE INCOME TAX (CIT)

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 2019 (RS Official Gazette No 86/2019). As for international treaties, in July 2020 Serbia signed a Double Taxation Agreement with Japan which will enter into force upon ratification of the Agreement by both countries.

A set of bylaws was also adopted in the course of 2019, regulating in more detail the new tax depreciation rules and tax incentives for research and development and intellectual property which were introduced in 2018 and which came into force in 2019. The bylaw regulating transfer pricing documentation requirements was also amended.

COVID-19

As a part of economic and fiscal measures adopted by the Government to relieve the adverse economic impact of COVID-19 pandemic, taxpayers (excluding financial sector and public sector beneficiaries) were entitled to apply for deferral of payment of monthly CIT advance payments for the period March-June 2020 until the final filing of CIT return for 2020 (end of June 2021). Payment of deferred amounts can be made in up to 24 monthly instalments with no interest charged.

POSITIVE DEVELOPMENTS

The latest amendments to the CIT introduced a tax deduction for banks for losses related to decrease of debt in accordance with the newly adopted Law on Conversion of Housing Loans denominated in Swiss Francs (hereinafter: The Law on Conversion). The banks are also entitled to a tax credit equal to 2% of remaining debt determined in accordance with the Law on Conversion. Tax credit can be used in two successive tax periods (50% each) while the unused tax credit can be carried forward for up to 10 years. However, detailed rules are still not prescribed, which creates some uncertainty for the banks.

Tax depreciation of right-of-use assets accounted for in accordance with newly applicable accounting standard IFRS 16 (Leases) was aligned with accounting depreciation of such assets. Also, some improvements were made to classification and definitions of depreciable assets (e.g. returnable packaging).

Other positive developments include introduction of certain tax exemptions related to investment funds, and country by country reporting for transfer pricing purposes (CbCR) for multinational groups with ultimate parent entity in Serbia and total revenue of EUR 750m and more.

REMAINING ISSUES

- In 2019, the Ministry of Finance issued a few opinions 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 opinions 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, these opinions 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. 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. Also, properly regulating the classification and depreciation of specific assets (e.g. windmills, oil rigsetc.) is particularly important.

- Provisions of the law pertaining to the method for calculating tax depreciation for assets acquired before 2019 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 Finance 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.

- Tax incentives can be introduced only through the tax laws. The Law on conversion of housing loans denominated in CHF (Official Gazette 31/19) introduced a tax credit for banks and supplementary evidence which should be filed along the CIT return. However, detailed rules for application of the tax credit will be regulated through the Corporate Income Tax. To this moment detailed rules were not introduced either in the CIT Law nor in the related bylaws, which creates uncertainty for the banks which have already filed 2019 CIT return.

FIC RECOMMENDATIONS

- Cancel or amend the controversial opinions of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses. (1)

- 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. (3)

- 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. (2)

- 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. (2)

- 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. (1)

- Introduce detailed tax depreciation rules which will allow for the proper classification and depreciation of specific assets such as windmills, oil rigs etc. in accordance with their economic and useful life. 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. (2)

- 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. (3)

- To regulate in proper way the tax credit for banks in relation to The Law on conversion of housing loans denominated in CHF. To avoid introduction of tax incentives in legislation other than tax laws. (1)

B. PERSONAL INCOME TAX

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 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 2020, and as the most important ones include the following: (i) the "independence test" for self-employed individuals was introduced (ii) certain incentive measures related to the employment of new employees were adopted (iii) the concept of a newly settled taxpayer was introduced and reliefs for this category of individuals were established, (iv) exemption for payment of taxes and salaries of founders employed in newly established company performing innovative activity was introduced, (v) procedures for calculation of flat tax were simplified and possibility for submitting applications in electronic form was enabled, (vi) request that transportation costs for arrival and departure from work must be documented was introduced in order for such compensation to be tax-free up to the prescribed amount.

The provisions of the Law relating to the independence test began to apply on March 1, 2020. The independence test is intended to analyse the relationship between the principal and the self-employed individual and envisage 9 criteria on the basis of which it should be determined whether the self-employed individual is independent or non-independent in relation to the principal (company) who hired him. If the self-employed individual meets 5 of the 9 criteria of the Test, it will be considered that it is not independent in relation to the principal and thus the income it earns will have a different tax treatment, i.e. the principal (company) will have to calculate and pay tax on other income as well as the corresponding social security contributions on the entire income paid to the self-employed person.

However, in order to mitigate the consequences that the application of the described rules may have on the economy, the legislator introduced certain reliefs for employment of qualified new employees, which significantly reduced the tax burden for employers who would employ a certain category of individuals (including self-employed individuals) for a period of three years.

In addition to the above, due to the existence of different interpretations of the Law and ambiguities regarding how the Test will be applied, the Instruction for the application of the independence test with a detailed description of criteria, answers to questions and guidelines to be applied in the tax audit procedure, was published.

COVID-19

As part of economic and fiscal measures adopted by the Government to mitigate the COVID-19 negative economic influence, taxpayers (excluding the financial sector and users of public funds) have been allowed to defer the payment of payroll taxes and compulsory social security contributions during the state of emergency, until January 1, 2021. Settlement of deferred liabilities can be made in 24 monthly instalments without interest.

Also, same category of taxpayers is entitled to receive non-refundable funds that can be used exclusively for the payment of salaries and wage compensations to its employees.

POSITIVE DEVELOPMENTS

Recent amendments to the Law and accompanying bylaws brought certain positive developments:

- The conditions for exercising the right to tax exemption on the basis of organizing recreation, sports events and activities for employees are more clearly defined. In the period before the amendment of the Law, the organization of recreational, sports and team building activities of employees had the character of salary. Given today's business conditions, there is a need to exempt this type of expenditure from the calculation of taxes and social security contributions and to fully recognize it as an operating expense of companies.

- Various employment incentives were introduced, which to a significant extent had aim to motivate employers that instead of hiring individuals through their entrepreneurial agencies, to employ the same individuals (incen-

tives for new employees) with temporary reduction of taxes and compulsory contributions for such persons. Also, incentives for employment of newly settled persons have been introduced. Finally, the Law also prescribed the exemption from the payment of the founder's salary tax for newly established companies that perform innovative activities.

- The Tax Administration has published the Instruction for the application of Article 85, paragraph 1, item 17 of the Law (Instruction for conducting the independence test). This represent a very detailed instruction based of which tax inspectors will conduct an independence test. Although the instruction itself is not a legally binding document, we believe it is useful to know how the audits in this regard will be carried out.

- The procedure for calculating the flat tax has been simplified and submission of request for flat taxation in electronic form is enabled.

REMAINING ISSUES

- The latest amendments to the Law stipulate that transportation costs for arrival and departure from work must be documented in order for such compensation to be tax-free up to a certain amount, but it is not specified what is considered as documented cost. This deepens the problem created by the issuance of the controversial opinion of the Ministry of Finance from 2019, which caused negative reactions of economy and which imposed unnecessarily complicated requirements on taxpayers regarding the documentation of such costs.

- There has been no progress in the area of reimbursement of expenses to employees for business trips abroad. This area has not yet been properly regulated, nor have there been any amendments to the Law that would help to resolve this problem. The same disputable provisions are in force, which indicate that the amount of per diem is determined in the manner and in line with the decision of the relevant authority, which leaves ambiguities regarding which acts of the authorities it refers to. Therefore, during the tax audits inspectors often lean on the provisions of the Regulation on the reimbursement of costs and severance pays of state officials and employees, despite the fact that it is only mandatory for the public sector.

- Furthermore, this year's amendments to the Law do not mention tax treatment of no-interest loans (i.e. loans with lower interest rates than market ones) granted by the employer to the employee. It remains unclear whether such a loan should be considered as a benefit or not.

- Compensation for unused annual leave paid to an employee who did not use paid leave in the course of employment is still treated as salary. Considering that the Labour Law stipulates that this payment represent compensation for damage and not salary, the reasons why the Ministry of Finance has opted for such tax treatment remain unclear. This further clearly implies that a satisfactory level of cooperation between these two competent ministries has not yet been achieved, at least in terms of the subject in question.

- The problems still exist with the social security registration of Serbian nationals employed with a foreign employer but working in Serbia. Namely, although the possibility of such engagement is provided by the Labour Law, the Law on Pension and Disability Insurance, as well as the Law on Health Insurance, which recognize Serbian citizens employed by foreign or international organizations, institutions or foreign legal entity or individuals as insured, these individuals cannot fully exercise their rights. This practice leads to a significant increase in legal uncertainty because on one hand there is an obligation for compulsory social security contributions, and on the other hand it is not possible to apply for insurance. Consequently, taxpayers cannot exercise any rights from social security, or pay contributions.

- 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 most directly endangers experts whose knowledge is needed abroad, who because of their desire to continue living and working in Serbia bear the burden of double taxation for the same type of income.

FIC RECOMMENDATIONS

- Repeal or amend the disputed opinion of the Ministry of Finance regarding tax treatment and documentation of compensation for transportation costs of employees for arrival and departure from work, and amend the Law so that the documentation requirement is revoked or harmonized with an earlier judgment of the Supreme Court of Cassation. (1)

- The application of schedular personal income taxation is still in force and this remains a problem of the Serbian system of taxation of individuals. Therefore, the Government of Serbia should consider the introduction of a synthetic taxation system, which is present in many advanced tax systems. (3)

- Recommendation refers to the timely adoption of an appropriate bylaw that will regulate in detail the issue of per diems for business trips and reimbursement of expenses. (2)

- Recommendation is that the Ministry of Finance take a clear position regarding the tax treatment of interest-free loans (i.e. loans with lower interest rates lower than market ones) and to publish such position through an official opinion that would lead to greater legal certainty in this respect. (1)

- It is necessary to establish cooperation between the Ministry of Finance and the Ministry of Labour, Employment, Veterans and Social Affairs in order to properly ensure the application of relevant regulations, i.e. to treat compensation for unused vacation as damage compensation (as it is recognized by the Labour Law) and not as salary. (2)

- Considering that social security rights are represent one of the basic social and economic rights of workers, we point out the importance of harmonizing certain provisions of regulations which would allow foreign nationals posted to Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social security. Additionally, we note that Republic of 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. (2)

- It is necessary to align annual personal income tax form with Article 12 of the Law (the right to use tax credit) and agreements on the avoidance of double taxation, i.e. the taxpayer should be allowed the right to use the tax credit. (1)

- Although some progress has been made in terms of electronic communication, we believe that there is significant room for increasing the functionality of the E-porezi platform, but also communication between taxpayers and the Tax Administration via e-mail. It is necessary to expand the number of actions that can be carried out through the E-porezi platform and to introduce digital profiles of taxpayers. (2)

C. VALUE ADDED TAX

CURRENT SITUATION

The value added tax is governed by the Law on Value Added Tax (RS Official Gazette No 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, 72/2019 and 8/2020; hereinafter: the "VAT Law").

Apart from the harmonization of RSD amounts, the VAT Law was not subject to amendments in the last year. Certain VAT by-laws were amended in accordance with the VAT Law. Therefore, since October 2019, following were adopted/changed:

- 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 request submitting deadline for VAT refund for 2019 is extended until September 30 2020

- 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, new tax exemption of goods and services supply carried out within the implementation of infrastructure projects for the construction of highways for which a special law determines the public interest;

- new Rulebook on the Manner of Determining and Correcting the Proportional Tax Deduction - in order to harmonize with the previous amendments to the Law on VAT;

- the Rulebook on the Form, Content and Manner of Keeping VAT Records and on the Form and Content of the Review of VAT Calculations - in order to harmonize with previous amendments to the Law on VAT and particularly, regulate tax exemption on goods and services records within the implementation of infrastructure projects for the construction of highways for which a special law determines the public interest;

- the Rulebook on the Form and Content of the Registration Application of VAT Payers, Registration and Deletion Procedure from the Records and on the Form and Content of the VAT Tax Return Submission - in a way that provides applications submission and certificates in electronic form;

- the Rulebook on Determining Cases with No Obligation to Issue Invoices and on Invoices where Certain Data may be Omitted - in order to harmonize with previous amendments to the Law on VAT and especially more detailed regulation of invoicing in case of value vouchers transfer;

- New Rulebook on Determining Telecommunications Services and electronically provided services, in terms of Law on VAT, and on determining criteria and preconditions for determining the seat, permanent business unit, residence or domicile of telecommunications services recipients, radio and television broadcasting and electronically provided services - in order to comply with previous amendments to the Law on VAT

The respective amendments were made for the purpose of aligning the by-laws with previous changes of the VAT Law, except the Rulebook on the Procedure of Exercising the Right to VAT Recovery and on the VAT Rebate and Refund Procedure, for which the deadline extension for submitting requests was caused by COVID-19 pandemic .

COVID-19

In order to eliminate or mitigate the consequences caused by the COVID-19 pandemic, in addition to the previously mentioned deadline extension for submitting requests for VAT refund, the following measures have been introduced by special acts:

- VAT exemption with the right to deduct the previous tax for the sale of goods or services that the taxpayer performs without compensation to the Ministry of Health, the Republic Health Insurance Fund or a public ownership health institution. The exemption in question applied to all deliveries with the day of turnover in the period from the day of introduction (March 15, 2020) to the day of termination of the state of emergency (May 6, 2020).

- VAT exemption with the right to deduct the previous tax for the delivery of protective equipment (masks) that the Republic Health Insurance Fund (RHIF) performs to legal entities engaged in the distribution of protective equipment (masks). The exemption in question was ap-

plied from March 27, 2020 until the day of the termination of the state of emergency (May 6, 2020).

In principle, the COVID-19 pandemic had no significant effects on the VAT system and the measures introduced were of limited duration.

POSITIVE DEVELOPMENTS

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.

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 and even consultations on its development are ongoing, 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 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 No 90/2017, 119/2017, 48/2018, 60/2018 and 75/2019) prescribes the method of keeping VAT records and 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 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 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 state 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 programs 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, VAT refund audit is not prescribed as precondition for VAT refund, the Tax Administration has a right to audit VAT regardless on executed VAT refund until expiration of 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.

Article 10a paragraph 6 of the Law on VAT stipulates that the tax representative of a foreign person in the name and on behalf of a foreign person registered for VAT performs all tasks related to fulfilling obligations and exercising the rights that a foreign person has as a VAT payer . We believe that the relevant wording of Article 10a paragraph 6 of the Law on VAT "invoicing" should be deleted, because the provision in question is not precise, it creates a bang in which customers receive two invoices (one commercial issued by a foreign person) and the other VAT invoice to submit a VAT proxy and create unnecessary additional administration and legal uncertainty. The VAT representative is certainly jointly and severally liable for the obligations of a foreign person who is registered as a VAT payer through him.

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. (2)

- 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. (3)

- 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 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. (1)

- 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. (2)

- 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. 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. (3)

- 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 advance payment. (3)

- 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. (3)

- We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, the words: "issuance of invoices". (3)

D. PROPERTY TAX

CURRENT SITUATION

The amendment to the Law on Property Taxes (hereinafter: the Law) from January 1, 2020 did not resolve the important issues that we pointed out in the previous edition of the White Book.

In accordance with the current version of 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 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 second method for calculation of property value is based on average market prices determined by local tax authorities.

The introduction of the concept of market value as the property tax base caused different interpretations over the years as to which taxpayers can apply this concept. Different interpretations were a consequence of the fact that this matter was not precisely regulated by the legislation but only by opinions of the Ministry of Finance that express the unequivocal stand of the Ministry regarding the possibility for small and medium-sized enterprises ("SMEs") to determine the property tax base using the fair value of immovable property recorded, in accordance with IFRS for SMEs, on the last day of the business year as a tax base. Instead of clarifying this issue, according to our experience from practice, these opinions increased the level of legal uncertainty in terms of whether these would be applied by the Tax Authorities and whether their application would be binding only for future property tax liabilities or retroactive.

The taxpayer that begins or ceases to report the value of real estate in its business books at fair value in accordance with Article 7 paragraph 1 of the Law, is obliged to determine its property tax base for that tax year by applying average market prices of real estate determined by local tax authorities.

The latest amendment to the Law prescribes which facilities are considered facilities for primary agricultural production on which property tax is not paid.

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.

COVID-19

We consider that the COVID-19 epidemic as well as the set of tax measures adopted by the Government of the Republic of Serbia during the state of emergency did not have a special impact on computation of property taxes.

POSITIVE DEVELOPMENTS

Bearing in mind the recommendations from last year, we believe that in the meantime there have been no improvements as a result of the implemented recommendations.

REMAINING ISSUES

We would like to point out the inconsistent implementation of the concept of market value of the property, as well as certain gaps related to the determination of 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 new Law on Accounting prescribes that IFRS for small and medium-sized enterprises (hereinafter: IFRS for SMEs) can be applied by small and medium enterprises, while micro businesses may opt to apply IFRS for SMEs. Article 7 of the Law does not explicitly state whether it also applies to legal entities that apply IFRS for SMEs. Bearing in mind the aforementioned opinions of the Ministry of Finance, where a rigid stand was taken that there are no legal grounds for legal entities applying IFRS for SMEs to determine the property tax base based on the fair value method, the issue of inconsistent application of the concept of fair value in determining the tax base for property tax leads to legal uncertainty for taxpayers, not only for future but also for previous tax periods. Therefore, it would be advisable to additionally clarify provisions of Article 7 to reduce legal uncertainties for taxpayers raised after the Ministry of Finance issued its opinion interpreting Article 7.

When determining the property tax base by applying the average prices published by local municipalities, one of the basic parameters for the determination of the tax base is the property's zoning category, determined by local municipalities. The local administrations have discretionary zoning powers, applied predominantly on the basis how public areas are developed. However, the procedure of assessing a public area's development level is insufficiently transparent. It should also be noted that 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, can be the same.

As a result, 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 were 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. With regard to the method of completing the electronic tax return, FIC concluded that implementation of electronic tax returns has failed to provide technical improvement of efficiency in the filing of tax returns, especially for the taxpayers owning properties in different local municipalities, which can lead to filing hundreds of tax returns in electronic form.

Also, we would draw 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 for the land plot under a building subject to property tax, 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 territories of specific unit of local municipality (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 the 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

- It is recommended that 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. (3)
- 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. (1)
- It is advisable that the property tax return form and supporting documents be simplified by linking the Portal with the Cadastre and 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. (2)

- 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) double taxation of land beneath the leased building. (2)
- 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. (2)
- In the event of an emergency caused by force majeure, we propose that taxpayers are allowed to file an annual return by the end of the fiscal year, and to continue paying the installment based on the previously filed tax return. (1)

E. TAX PROCEDURE

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).

In 2019 PTA Law was amended. The most important amendments relate to:

- the manner of settling the tax receivable and the measures for the realization of the reorganization plan, i.e. pre-pack reorganization plan, cannot be envisaged contrary to the provisions of this Law and other tax regulations,
- mandatory reporting of data on all business premises in which the taxpayer stores goods and performs the activity to the Tax Administration,
- the possibility for the Tax Administration to issue a decision by which it imposes a temporary measure prohibiting the registration of acquisitions of shares or stocks in legal entities and the establishment of new legal entities, for founders with a share of more than 5% in legal entities whose tax identification number (TIN) has been temporarily withdrawn, in which case the decision

is submitted to the Serbian Business Registers Agency (SBRA) and the Central Registry, Depot and Securities Clearing,

- the possibility of delivery tax acts through the Tax Administration portal, i.e. through a single electronic mailbox, the tax offense of reporting inaccurate data is extended to the presentation of inaccurate data in the tax balance.

COVID-19

The Government of the Republic of Serbia has enacted several Decrees introducing tax measures during the state of emergency in order to mitigate the economic consequences caused by the COVID-19 pandemic with the aim to increase the liquidity of taxpayers. Among other, it is envisaged that for taxpayers who previously applied for the regime of deferred payment and who do not timely settle due instalments during the state of emergency, their deferred payment agreements will not be annulled, decisions on deferred payment of tax due will not be revoked and no forced collection procedure in this case will be carried out, whereby no interest would be calculated in the specified period.

Also, it is envisaged that for taxpayers - legal entities, self-employed persons, farmers and individuals during the state of emergency interest calculated and paid on the amount of overpaid or underpaid taxes and secondary duties, would be at a rate equal to the annual reference rate of the National Bank of Serbia (interest rate reduction effect).

In addition, delivery of written acts in administrative proceedings and notification actions which were performed during the state of emergency and from which deadlines, that cannot be extended, begin to run, shall be considered, in terms of application of prescribed deadlines, executed upon 15 days from the day of termination of state of emergency in accordance with the Decree. The deadlines for initiating an administrative dispute have also been postponed, so that the parties would not suffer harmful consequences due to failure to act during the state of emergency within the legally prescribed deadlines.

Numerous problems have arisen in the implementation of the adopted measures, which have not yet been fully resolved, and which indicate that improvements are needed in the functioning of the Tax Administration.

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.

However, no significant progress has been made in the previous year in regard to the recommendations made earlier. There is a need to strengthen the capacity of the Tax Administration in providing tax services and to affirm the client relationship. On the contrary, some of the new amendments impose new requirements and restrictions to taxpayers. Additional efforts are needed to limit discretionary authorization and arbitrariness in the actions of Tax Authorities.

REMAINING ISSUES

- The existing regulatory framework governing the tax procedure still does not provide sufficient protection for taxpayers against discretionary decisions of tax authorities. Additionally, the lack of capacity and competences jeopardizes the protection of legality in the control procedure, as well as in the appellate and court proceedings.

- 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 reg-

ularly 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 restrictive 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, consequently reducing the scope of tax audits.

- During a tax audit, as well as during the period in which a taxpayer's 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 and restrictiveness 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.).

- 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 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

- The electronic services of the Tax Administration should be further improved and developed in a way to enable the taxpayer to download all tax returns in a form customized to user, as well as to enable all taxpayers to electronically obtain TIN and all tax certificates. (1)
- Regulating the provisions of the Criminal Code concerning tax crimes in more detail and taking into account the size of the legal entity and the volume of taxable activities. (2)
- 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. (2)
- 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. The PTA Law should envisage offenses of employees in the Tax Administration who do not act in accordance with regulations (or decisions of immediate higher instances) during their work, especially in cases when they do not act within the deadlines prescribed by the PTA Law and in case of non-execution of the second instance body's decision in line with guidelines and understandings set forth therein. 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. (2)
- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision. (1)
- 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. (3)
- Abolishing the provision of the PTA Law which prohibits the SBRA 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. (2)
- Strengthen the capacity of the Administrative Court in terms of expertise, specialization and speed in resolving tax disputes. (3)

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

CURRENT SITUATION

The World Bank's Doing Business 2020 report ranks Serbia 44th out of 190 economies. In the area of tax payment Serbia's position slightly worsend compared to the 2019 report, and the country is now ranked 85th. Tax payment, together with obtaining electricity access and starting business, 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, but also by imposing new parafiscal levies such as a mandatory membership fee for the Serbian Chamber of Commerce in 2018. The reform process is still ongoing, which is especially reflected in the large number of changes that have been made to the regulations governing the manner of determining and reporting compensation for the protection and improvement of the environment.

COVID-19

The by the Government Decrees measures were determined in order to mitigate the economic consequences caused by the COVID-19 pandemic during the state of emergency, which had no impact on parafiscal charges.

POSITIVE DEVELOPMENTS

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, that is Government Decree is the local environmental charge. However, the manner of determining the fee in question was changed during 2019 on two occasions. Hence, the adoption of the Law increased both the transparency and predictability of the non-tax revenue system.

The unique information system of the local tax administration has been significantly improved in the previous period. In addition to the fact that at the beginning of 2019 it was enabled to electronically submit a property tax return by taxpayers who keep business books and applications for the utility tax for highlighting the company, during 2020 it has also been enabled to electronically submit a compensation environment request, which is a significant improvement along with greater efficiency for legal entities and entrepreneurs.

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.

To additionally point out, during 2019, the determining the fee method for the environment protection and improve-

ment was changed on two occasions. The methodology initially established by the Law on Fees for the Use of Public Goods and accompanied by provided bylaws, inter alia, defined the fee to be paid according to the amount of pollutants emitted and the hazardous waste produced and disposed of. However, although the method of determining the fee was intended to be paid by legal entities and entrepreneurs who perform activities that negatively affect the environment, the calculating fee methodology was too complicated, which resulted in a very small number of applications fees for environment protection and improvement by taxpayers.

At the end of December 2019, the manner of determining the compensation for the environment protection and improvement was changed again by the bylaws amendments. The new methodology simplifies the calculating fee method and it envisages that the fee is paid in a fixed annual amount depending on the size of the legal entity in accordance with accounting regulations and the degree of environmental impact of the predominant activity performed in accordance with the prescribed classification. However, in this way, the obligation to pay compensation was imposed on almost all legal entities and entrepreneurs in Serbia, regardless of whether their predominant activities really have a negative impact on the environment. The current methodology for determining the amount of compensation is contrary to the provisions of the Law on Fees for the Use of Public Goods, which, among other things, stipulates that the basis of compensation for environmental protection and improvement is the amount of pollution, ie the degree of negative impact on the environment.

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. (3)
- 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. (2)
- 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. (2)
- 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.) (1)

- 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. (2)

- Change the methodology and manner of determining the fee for the environment protection and improvement so that the fee is paid exclusively by taxpayers whose activities affect environmental pollution, and use the funds to mitigate the negative consequences of these activities. (1)