

TAX

1.29

Same as in other aspects of business life, COVID-19 pandemic significantly marked the previous year in the area of taxation as well. Taxpayers were facing difficult conditions for conducting business while the Government was focused on supporting the economy and alleviating the negative impact of the pandemic. After the initial set of economic and fiscal measures to help the economy and mitigate the negative effects of the pandemic, a set of additional measures followed - albeit of a lesser scale. The Government support was aimed at helping taxpayers to cover some of the employment costs and also deferral of certain tax liabilities. At the beginning of 2021 repayment of the previously postponed tax liabilities, which requires special caution and continued careful management of liquidity in a situation where there pandemic is still on and there is a level of uncertainty regarding its economic impact, despite optimistic prognoses of the economic rebound.

Considering the situation, there was a lower level of activity in the domain of improvement and changes of the tax laws as expected. Key novelties include amendments of the VAT Law and a new comprehensive VAT bylaw which replaced a number of different acts, with the goal to ease understanding and navigating the VAT rules for the taxpayers and the Tax Administration. Amendments of the VAT Law, amongst others, include change of the rules regarding VAT treatment of construction activities, which helped address some of the uncertainties and problems, but also opened some new questions and doubts. Other changes include VAT treatment of the investment funds, digital assets, transfer of entire or a part of a business etc. There were also a few amendments to the Corporate Income Tax and Personal Income Tax at the end of 2020, also in relation to investment funds and digital assets.

New Free Trade Agreement was signed with the United Kingdom after its separation from the EU, as well as the Free Trade Agreement with the countries of Eurasia Economic Union. New PEM Convention rules related to of origin have been adopted for all trade with EU and CEFTA members.

Foreign Investors Council is emphasizing lack of transparency and public debate in the area of tax law changes for years now. There was certain progress in this respect before the pandemic started, through activities of the Working Group for Implementation of the FIC White Book Recommendations and open dialogue with the Ministry of Finance about important tax questions and issues. However, despite our expectations there was no continuation of a constructive dialogue with the Ministry of Finance in the previous year. Some of the above mentioned amendments of the tax laws were adopted without a proper and timely insight of the public and substantial public discussion. Therefore, one of the FIC priorities for the coming period will be focus of improvement of tax laws and practice with greater transparency and timely disclosure of draft tax legislation to the public. We will continue insisting on resolving the most pressing tax issues from the previous periods which were sidelined due to the pandemic, but which are still very acute – like the changes to the property tax law, fair value of property for corporate income tax purposes, electronic invoices, etc.

Difficult business environment caused by the pandemic also imposed to the Tax Administration and taxpayers alike the need to quickly shift to electronic communication and use of new technologies. This puts even greater emphasis on the importance and necessity of quick completion of the reform and modernization of the Tax Administration.

A. CORPORATE INCOME TAX (CIT)

1.38

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Cancel or amend the controversial opinions of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses.	2019			√
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.	2010-2016		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2012-2016			√
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.	2010			√
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.	2014			√
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.	2015/ 2016/ 2017			√
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 nondeductible impairment, and so that fair value increases and decreases are treated equitably.	2017			√
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.	2020	√		

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 2020 (RS Official Gazette No 153/2020). As for international treaties, in August 2020 Serbia signed a Double Taxation Agreement with Hong Kong, which entered into force on January 1, 2021.

By the time this edition is published, the Government has adopted new Draft Law on Amendments to the Corporate Income Tax. The impact is yet to be assessed.

POSITIVE DEVELOPMENTS

With latest CIT amendments introduced, the CIT Law was aligned with the laws and regulations governing open-ended investment funds and alternative investment funds. CIT amendments also introduced the manner in which income derived from a transfer of digital assets should be taxed i.e. as income subject to capital gains tax. This was followed by Ministry of Finance opinion No 401-00-509/2021-16 issued on February the 1st 2021 that contained explanations regarding accounting recognition, valuation and manner of recording digital assets in the business books of taxpayers.

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 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. In addition, taxpayers are faced with disproportionately long resolving tax issues procedures, such as making a decision on the (non) existence of the obligation to pay capital gains tax with an element of foreignness. Consequently, this puts taxpayers in a situation where the realized funds, received through a non-resident account, cannot be taken out of the Republic of Serbia due to the slow action of the tax authorities, which again has the consequence of creating an unfavourable business climate.
- 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 rigs etc.) 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 begin-

- ning 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 only be introduced through tax laws. The Law on Conversion introduced a tax credit for banks and prescribed additional evidence that must be submitted with the corporate income tax return. However, detailed rules for the application of the tax credit will be regulated through the CIT Law.

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.
- Supplement the CIT Law with provisions to regulate taxation of company restructuring, 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 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 Rule-book 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.
- Properly regulate the application of the tax credit for banks defined by the Law on the Conversion of Housing Loans Indexed in Swiss Francs. Avoid introducing tax incentives in regulations that do not constitute tax regulations.

B. PERSONAL INCOME TAX

1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2020			√
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.	2008			√
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.	2017			√
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.	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2017			√
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.	2017		√	
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.	2019			√
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.	2020		√	

CURRENT SITUATION

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

The Personal Income Tax (PIT) Law as the key regulatory instrument recognizes several categories of taxable income. Depending on each individual case, personal income tax is paid: (i) as withholding tax, (ii) based on the decision of the relevant tax authority or (iii) by self-assessment.

We would like to highlight in particular the latest amendments to the PIT Law, adopted in late 2020: (i) the PIT Law has been aligned with laws governing open investment funds and alternative investment funds, ii) the tax treatment of income of physical persons from transfer of digital assets, as income subject to capital gain tax, has been specified in detail iii) a new legislative solution has been introduced for the taxation of income of foreign nationals seconded to work in Serbia, based on the income they receive from an employer in or from another state, iv) a

detailed explanation is provided of the tax treatment of the income of physical persons from remunerations for work performed (freelancers), on which tax is paid by applying the self-assessment method, and a new method of taxation is prescribed for the remunerations for work performed earned in the period from 1 January 2015 to 31 December 2022.

In addition, the latest amendments to the PIT Law provide for a 50% tax exemption of the capital gain tax for taxpayers who invest the proceeds from the sale of digital assets in the share capital of a company domiciled in Serbia in accordance with the law governing corporate income tax (CIT), or in the capital of an investment fund established under the laws governing investment funds whose central business and investment activities are located in Serbia, or a tax credit, proportional to the investment made by the taxpayer in the share capital of the company, or in the capital of the investment fund.

By the time this edition is published, the Government has adopted new Draft Law on Amendments to the Personal Income Tax. The impact is yet to be assessed.

POSITIVE DEVELOPMENTS

The latest amendments to the PIT Law and its implementing by-laws have led to some positive developments:

- The PIT Law provides for a tax exemption of income from the transfer of digital assets, when the taxpayer invests the proceeds or part of the proceeds from the sale thereof in the share capital of a company domiciled in Serbia in accordance with the law governing corporate income tax, or in the capital of an investment fund in accordance with the laws governing investment funds, if the fund's business and investment activities are located in Serbia,
- The PIT Law is aligned with laws governing open investment funds and alternative investment funds,
- The method of taxation of income of a physical person from transfer of digital assets is set out in detail,
- The method of calculation and payment of taxes by means of self-assessment is set out in detail, in cases when a domestic legal entity makes payments to an employer domiciled in another state, to cover the costs of the remuneration of an employee seconded to work in the domestic legal entity.
- An explanation is provided of the method of taxation of the income of physical persons from remuneration for work performed on which tax is paid by self-assessment (i.e., the so-called freelancers) and the new amounts of eligible standardized costs are prescribed.
- The PIT Law prescribes a new method of taxation of income of natural persons from remuneration for work performed (i.e., freelancers) in the period from 1 January 2015 to 31 December 2021, on which the tax is paid by self-assessment.
- It is envisaged that a sole proprietor's notification of his/her decision to pay themselves wages is to be made electronically.

REMAINING ISSUES

- While the latest amendments to the PIT Law stipulate that transportation costs for commuting to and from work must be documented in order for the reimbursement thereof to be tax-free up to a certain threshold,

they fail to specify what is considered as a "documented cost". This has contributed to aggravating the problem created by the publication of the controversial opinion of the Ministry of Finance from 2019, which caused negative reactions of the business sector and imposed unnecessarily complicated requirements on taxpayers regarding the documentation of such costs.

- No progress has been seen 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, prescribing that the amount of per diem shall be determined in line with and in the way stipulated in the decision of the relevant authority, which leaves ambiguities regarding which acts of the authorities this refers to. Consequently, when performing tax audits, tax inspectors often rely on the provisions of the Regulation on the reimbursement of costs and severance pays of state officials and employees, despite the fact that this Regulation only applies to the public sector.
- Furthermore, not even these latest amendments to the PIT Law mention tax treatment of no-interest loans (i.e., loans with interest rates below the market ones) granted by the employer to its employees. It remains unclear whether approving such loans 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 is a compensation for damage and not salary, the reasons why the Ministry of Finance opted for such tax treatment remain unclear. This further clearly implies that a satisfactory level of cooperation between the two relevant ministries has yet to be achieved, at least in terms of the tax treatment mentioned herein.
- Due to the way in which the method of calculation of taxable net income for the purposes of calculating the annual tax is defined, taxpayers who have already paid tax abroad on income earned from abroad, are unable to use this tax as a tax credit in full and are exposed to double taxation. This arrangement directly affects experts whose expertise is in demand abroad, who, because of their wish to continue living and working in Serbia, suffer the burden of double taxation for the same type of income.

- Due to the introduction of item 18 in Article 85, paragraph 1, stipulating that remuneration for work performed, on which the tax is paid by self-assessment, shall be taxed as “other income”, and the Opinion of the Ministry of Finance No. 011-00-689/2021-04 of 23 July 2021, the impression is that all income from abroad related to work, even if it is earned under an employment contract, will be taxed as “other income”. There are a number of tax residents in Serbia who have employment contracts with foreign companies that are not recognized as employment contracts by the Ministry of Labour. Despite this, these people are, as a matter of fact, employed, their employer determines their working hours, annual leave, provides professional training and similar. Based on the foregoing provision alone, their income, which is in actual fact their salary, will be unfairly treated as “other income” and will be taxed at a higher tax rate and subject to payment of mandatory social insurance contributions without the possibility of applying the maximum monthly base. Also, these persons are discriminated against in relation to natural persons seconded to work in Serbia, whose income from abroad is treated as salary for tax purposes.
- Article 85, paragraph 1, item 18 of the Personal Income Tax Law was amended to remove the eligible standardized costs of 20% when determining the basis for calculating the tax on remuneration for work performed (on which the tax is paid by self-taxation), with the intention of regulating the taxation of the so-called “freelancers”, consequently, the tax burden falls on workers who receive their remuneration for continuous work performed for a foreign payer, irrespective of whether these are salaries, which due to the position of the Ministry of Labour were renamed to “remuneration for work performed” or whether they are, indeed, remunerations. Specifically, these workers have been unjustifiably placed in an unequal position in relation to persons who receive remuneration for work performed from domestic payers (and who are entitled to 20% of standard costs). In total derogation from the Government’s initiative to retain domestic experts in Serbia and reduce the brain drain, specifically, we refer to the initiative for the return of our experts, the so-called “newly domiciled taxpayers” (Article 15c of the Personal Income Tax Law and Article 15a of the Law on Compulsory Social Insurance Contributions), local experts who wish to work for foreign employers while being based in Serbia are additionally burdened with the abolition of the 20% standardized cost rate and the introduction of fixed standardized costs (3 x 18,300 per quarter) and on top of all that they pay the annual personal income tax.

FIC RECOMMENDATIONS

- Repeal or amend the disputed opinion of the Ministry of Finance regarding tax treatment and documentation required for the reimbursement of commuting costs of employees to and from work and amend the Law so that the documentation requirement is revoked or harmonized with the earlier judgment of the Supreme Court of Cassation.
- The application of schedular personal income taxation is still in force and this remains a problem of the Serbian system of taxation of personal income. Therefore, the Government of Serbia should consider the introduction of a synthetic taxation system, which is present in many advanced tax systems.
- The 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.
- The recommendation is that the Ministry of Finance should take a clear position regarding the tax treatment of interest-free loans (i.e., loans with interest rates below market ones) and publish their position in the form of an official opinion that would lead to greater legal certainty in this respect.
- We believe that cooperation should be established between the Ministry of Finance and the Ministry of Labour, Employment, Veterans and Social Affairs to ensure the proper application of relevant regulations, i.e., to treat

compensation for unused leave as compensation (as recognized by the Labour Law) and not as salary.

- Considering that social security rights are among the basic social and economic rights of workers, we would like to stress the importance of harmonizing provisions of regulations to allow foreign nationals seconded to work in Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social insurance. Additionally, we note that Serbia needs to expand the network of international agreements regulating the issue of social security, to avoid double payment of contributions.
- It is necessary that annual personal income tax return form be aligned with Article 12 of the PIT Law (the right to tax credit) and agreements on the avoidance of double taxation, i.e., the taxpayer should be allowed the right to use the tax credit.
- While some progress has been made in terms of electronic communication, we believe that there is significant room for improving the functionality of the E-porezi platform, as well as the communication between taxpayers and the Tax Administration via e-mail. The number of tasks that can be carried out through the E-porezi platform should be expanded and digital profiles of taxpayers should be introduced.
- Types of income should be clearly differentiated according to their intrinsic nature and adequate taxation methods should be applied to income of persons working for foreign employers under other types of contracts (as remuneration for work performed along with eligible standardized costs of 20%) as well as of persons who work for foreign employers under employment contracts (as salary). We believe that, in this case, it is necessary to amend not only the tax laws, but also the regulation governing the field of labour and compulsory social insurance, in order to have this issue regulated properly.
- In order to eliminate discrimination against taxpayers on the basis of whether the entity paying their income is a domestic or foreign entity, we propose to either amend the provisions governing the calculation of the tax base for the remuneration for work performed, on which the tax is paid by self-assessment, or define the categories of taxpayers that are considered freelancers because of whom this provision was introduced in the first place, while other taxpayers, specifically, domestic experts paid by a foreign entity for their work, receiving regular and higher payments, should have equal tax treatment as taxpayers whose remuneration is paid by domestic entities.

C. VALUE ADDED TAX

1.38

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 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.	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. 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.	2017		√	
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.	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			√
We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, the words: “issuance of invoices” are deleted.	2020			√

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, 8/2020 and 153/2020; hereinafter: the “VAT Law”).

In the previous period (December 17th, 2020), amendments to the VAT Law were adopted, which apply, with a few exceptions from, January 1st, 2021. The most recent changes comprise, among others, of the following amendments:

- the applicability of a special rule for supply in area of construction whose value is higher than RSD 500,000 without value added tax (VAT) has been narrowed,
- the exemption with the right to deduct the input tax for the sale of goods that are in the process of inward processing for which the taxpayer-acquirer would have the right to deduct input tax if he procured them with calculated VAT has been prescribed,
- exemption without the right to deduct input tax for the transfer of virtual currencies and the exchange of virtual currencies for funds in accordance with the Law on Digital Property has been prescribed,

- invoice can also be issued in electronic form under certain conditions (Amendment made in connection with the Law on Electronic Invoicing),
- the term taxpayer has been expanded to include alternative and open investment funds registered in the relevant register in accordance with the law, which do not have the status of a legal entity (in order to comply with regulations on investment funds and other tax laws recognizing these entities (although they do not have the status of a legal entity) as taxpayers),
- auxiliary supply is regulated more precisely in certain situations,
- occasional supply that are not included in the supply of goods and services for the purposes of calculating the percentage of proportional tax deduction are considered to be a maximum of two transactions of equity, securities, postal securities, taxes and other valid securities in one calendar year,
- the correction of higher calculated tax in the case when the invoice should not have been issued has been regulated in a more detail manner,
- the right to opt for taxpayers engaged in the sale of second-hand goods (second-hand motor vehicles, works of art, collectibles and antiques) to determine the tax base as the difference between the sale and purchase price of these goods, minus the VAT contained in that difference has been introduced.

In relation to amendments to the VAT Law, during 2021, numerous VAT Rulebooks were amended and entered into force on 1 January 2021, as follows:

- Rulebook on determining goods and services in the area of construction for the purpose of determining the tax debtor for value added tax,
- Rulebook on the manner of determining the tax base for the calculation of VAT in the supply of goods or services which is carried out without remuneration,
- Rulebook on the manner and procedure of exercising tax exemptions for VAT with the right to deduct input tax,
- Rulebook on the manner of determining and correcting the proportional tax deduction,
- Rulebook on the form and content of the application for registration of VAT payers, the procedure of registration and deletion from the records and on the form and content of the VAT tax return,
- Rulebook on the form, content and manner of keeping records on VAT and on the form and content of the review of VAT calculation,

- Rulebook on determining goods that are considered second-hand goods, works of art, collectibles and antiques.

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

In addition, during April 2021, after numerous announcements, a new unified Rulebook on Value Added Tax (Rulebook) was adopted, which has been in force since July 1st, 2021.

The Rulebook regulates the previously regulated through 27 separate VAT Rulebooks in one place, which ceased to be valid on the day of application of the new Rulebook, but will continue to apply to supply in goods and services for which the advance payment was exercised up to June 30th, 2021.

However, we point out that taxpayers during 2021 were exposed to significant changes in the area of VAT twice, first through changes in a large number of rulebooks in early 2021, and finally by the adoption of a unified Rulebook, which has a great impact on the analysis of comprehensive practical consequences for the tax system and adjustment of taxpayers' business models to comply with legal regulations.

In addition to merging all VAT Rulebooks into one legal act, the Rulebook also brings certain novelties that can be roughly divided into three groups:

- terminological harmonizations,
- specifying and incorporating the rulings of the Ministry of Finance into the existing regulatory framework,
- amendments of existing rules.

Some of the significant amendments brought by the new Rulebook are:

- Prescribing the list of activities that do not fall under the supply in the area of construction,
- In order to apply a special rule for the transfer of a business unit, it is no longer necessary that the transfer of the business unit must be such as to prevent the transferor from performing the business activity from the moment of transfer,
- Providing catalogs, brochures, flyers and similar goods intended to inform potential customers about the activities of taxpayers free of charge is not considered subject to VAT,
- It is specified that the replacement of goods within the warranty period (in accordance with Article 6 of the Law) is not considered the replacement of spare parts within the repair of a particular good,

- Clarification of rules on real estate services supply according to which the installation or assembly of machinery or other equipment, as well as maintenance, repair, control and supervision of such machinery or other equipment are considered services directly related to real estate if a particular machine or equipment after installation or installation is considered an integral part of real estate,
- The Rulebook prescribes that if the value of packaging is not charged to the VAT base, and the buyer does not return the packaging within the prescribed period, it is considered that there was a special supply of packaging, and it is necessary to issue a new VAT invoice for that supply,
- It is additionally specified in which cases it is considered that there has been a change in the VAT base,
- The conditions for exercising tax exemptions with the right to deduct previous VAT are regulated more precisely,
- The possibility of omitting the supply date when the invoice date is the same as the supply date is prescribed,
- It is stipulated that in case the fee is charged in foreign currency, for individual items the base and VAT can be stated in foreign currency, but the total amount of the base and the total amount of VAT on that account must be stated in dinars.

POSITIVE DEVELOPMENTS

A very significant improvement is the adoption of the new unified Rulebook, which regulates in one place the matter previously regulated through 27 separate VAT rulebooks. This change will significantly facilitate the application of VAT regulations in practice. Additionally, by previously prescribed amendments certain clarifications of the existing rules have been made, which will facilitate the further application of VAT regulations in certain situations.

REMAINING ISSUES

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 Administration alike. Due to diverging interpretations, taxpayers face the risk that Tax Administration 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 latest amendments have made significant changes in terms of supply in area of construction (introduction of a threshold of 500,000 dinars, prescribing a list of supplies that are excluded from application, etc.). However, the basic principles on which the supply in the area of construction is regulated (the rule is still related to the classification of activities) have not been changed. Also, linking the classification of supply to its value does not contribute to solving tax problems. On the contrary, in some borderline cases, such a provision leads to many dilemmas

among taxpayers. In addition, in general, the new rules have opened a number of practical issues and further increased the effort required for economic operators to adequately implement the regulations in question.

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

- 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 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.
- 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 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 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.
- We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, the words: “issuance of invoices” are deleted.

D. PROPERTY TAX

1.40

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
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.	2014			√
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.	2018		√	
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.	2018		√	
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.	2018			√

CURRENT SITUATION

Having in mind FIC recommendations in 2020, we consider that the latest amendments to the Law on Property Tax (hereinafter: "the Law") that are in effect from January 1, 2021 generally did not resolve the important issues (recommendations) that we pointed out in the previous edition of the White Book, but certain clarifications have been provided regarding the doubts that have also arisen in practice, and we will refer to some of these solutions below.

In accordance with the current version of the Law, compa-

nies 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 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 and due

to the fact that the legislation did not regulate this issue in a sufficiently precise way. Opinions of the Ministry of Finance that have been issued over the years expressed in the unequivocal stand 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. However, according to our experience from practice, the opinions in question 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 tax liabilities or retroactive.

The latest amendments to the Law stipulate that taxpayer of property tax is considered an open-end investment fund, i.e. an alternative investment fund, which does not have the status of a legal entity, and which is entered in the appropriate register in accordance with the Law, and which has certain rights to real estate on the territory of Republic of Serbia, on which property tax is paid in accordance with Article 2 of the Law.

Dilemma has been resolved that in practice caused certain problems when determining the subject of taxation in the case of land ownership rights, i.e. the right to use construction land with an area of over 10 acres. The latest amendment of the Law defines that in the case when several persons are taxpayers of property tax, each of those persons is a taxpayer in proportion to his share in relation to the total land area, even when the proportional share of an individual taxpayer is less than 10 acres.

In Article 6a of the Law, for the purposes of determining the property tax base, the legislator introduced an additional group of real estate which is defined as “garages and ancillary facilities”, and provided a more detailed explanation of what is considered by this type of real estate. Also, other groups of real estate defined in Article 6a of the Law are explained in more detail.

The latest amendment to the Law defines in more detail “manufacturing plants” and “storage and warehouse facilities”, so we expect that this amendment will lead to significant relief in classifying various facilities, for the purpose of determining the property tax base.

By the time this edition is published, the Government has adopted new Draft Law on Amendments to the Law on Property Tax. The impact is yet to be assessed.

POSITIVE DEVELOPMENTS

Having in mind FIC recommendations in 2020, we would point out that the latest amendment to the Law adopted a recommendation to prescribe the right to tax exemption for land for the area under the building on which property tax is paid in the case of real estate leased for more than 183 days in 12 months period, thus solving the problem double taxation of the area under the building on which the property tax is paid in this particular situation.

Technical changes to the electronic format of the PPI-1 Form enabled the transfer of part of the general data from the previous to the active tax year, which partially improved the efficiency of data entry.

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).

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 legal entities may opt to apply stated standards, and article 7 of the Law does not explicitly state whether it also applies to legal entities that apply IFRS for SMEs. The issued Opinions of the Ministry of Finance are of a rigid stand 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. However, in order to completely remove doubts on this issue it would be advisable to additionally clarify provisions of Article 7.

When determining the property tax base by applying the average prices published by local tax authorities, one of the basic parameters is the zone in which the property is located, determined by local municipalities based on the criteria of how public areas are developed. However, the procedure of assessing a public area’s development level is insufficiently transparent. Also, no criteria for value adjustments are envisaged regarding the quality/age and/or purpose and size of the property, which in practice may lead to that tax base of a newly-built real estate and one that is significantly older, can be the same. Due

to the above, 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, which puts in an unequal position taxpayers who evaluate real estate in their business records at fair value and those who use some other method of evaluation.

Particular administrative difficulties are caused by the Rule-book on property tax return forms for determining property tax, according to which taxpayers are obliged to file data to the LPA Portal every fiscal year, even when there were no changes compared to the previous year. The taxpayer fills a tax return form for each municipality where it has property rights that are subject to tax, annexes for each cadastral parcel and sub-annexes for each building on a cadastral parcel on territory of that municipality, as well as for the land itself. FIC members concluded that although electronic tax returns is technical improved, still one data must be recorded on all related forms which leads to double data entry which often

causes errors, especially for the taxpayers owning properties in different local municipalities, which can lead to filing hundreds of tax returns in electronic form.

The Local Tax Administrations 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.

As for the provision of the Law which defines exemptions from the absolute rights transfer tax, and in accordance with which the absolute rights transfers on which VAT is paid are exempt from the payment of absolute rights transfer tax, we consider the term “paid” is not appropriate, because VAT is calculated and reported in the VAT return, where certain transactions subject to VAT 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.
- 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 Cadaster 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, then automate the following data entries: a) all facilities of the same type (e.g. all taxpayer’s warehouses in the territory of a particular local municipality); b) calculation of quarterly installments (e.g. based on Sub-Annexes); and c) amended tax returns. In line with the above, make appropriate technical adjustments after which, it would be possible, based on the data saved from the Cadaster, 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 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.
- 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

1.13

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2014		√	
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.	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.	2011			√
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.	2019			√
Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision.	2016			√
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.	2017			√
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.	2014			√
Strengthen the capacity of the Administrative Court in terms of expertise, specialization and speed in resolving tax disputes.	2020			√

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 2020 PTA Law was amended. The most important amendments relate to:

- Introduction of an investment fund in tax legal relations in the capacity of a taxpayer. In accordance with proposed amendments, the investment fund has all the rights and obligations under the tax legal relations, where all the tax obligations of the fund and all activities in relation to the execution of its tax obligations are fulfilled by the company in charge for the management of the fund.
- Introduction of special penalties for tax fraud related to VAT and tightening of penalty provisions for unfounded claims for VAT refunds.
- Tightening of tax audit measures. The right to confiscate goods in the process of tax audit is introduced, if such goods are located in premises for which the taxpayer has not notified the Tax Administration.
- Specifying the manner of submitting requests / delivering acts electronically - through the government portal e-Government. Additionally, amendments introduce option to submit a tax refund/rebooking request via the Tax Administration portal.
- Introduction of a new form of regular collection of tax-

- es - by giving and only in cases when there is an interest of the Government to acquire the property in question.
- Prohibiting Serbian Business Register Agency (SBRA) to register the acquisition of shares in legal entities or establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered.

In addition, the novelties brought by the Draft Law on Amendments to the PTA Law refer to the following:

- Introduction of a tax return on calculated social security contributions for founders, ie members of a company. This Application is submitted ex officio by the Tax Administration instead of the taxpayer / taxpayer payes, when the application is not submitted within the period prescribed by the law governing social security contributions,
- Deferred interest payments when the principal debt for which the deferred payment has been granted is settled. A taxpayer who settles the main tax debt that was the subject of deferred payment, may, within 5 days from the date of payment, submit a request for deferral of payment of the remaining interest related to the settled obligations,
- Replacement of collateral at the request of the taxpayer who has been granted a deferral of payment of the tax debt. The Tax Administration will replace the collateral, if the new collateral is of the same type and higher value and if it meets the general requirements for collateral prescribed by the PTA Law,
- The deadline for compiling the supplementary minutes is 30 days from the day of receiving the comments on the minutes,
- Compliance with the provisions of the new Law on Fiscalization.

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 option of submitting a request for refund and rebooking of taxes through the government portal e-Government. This option is enabled from January 1, 2021.

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 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 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.).
- Prohibiting SBRA to register the acquisition of shares in legal entities or establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered. The restrictiveness of this provision leads to the business limitations of taxpayers, which de facto taxpayer represent a punishment for a taxpayer without any grounds.
- 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.
- 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.
- 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.
- 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.
- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision.
- 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.
- 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.
- Abolishing the provision of the PTA Law which prohibits the SBRA from registering acquisition of shares in legal entities as well as establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered.
- Strengthen the capacity of the Administrative Court in terms of expertise, specialization and speed in resolving tax disputes.

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

1.17

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
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.	2014			√
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.	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 the sole jurisdiction to handle tax disputes.	2016			√
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.	2020		√	

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 worsened 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 pub-

lic 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.

POSITIVE DEVELOPMENTS

During the previous year no significant improvements occurred in respect to FIC recommendations given earlier.

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 improvement 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 pro-

tection 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, i.e. 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.

- 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.)
- 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.
- 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.