TAX

1.04

No progress on longstanding tax issues, focus on fiscalisation and e-invoicing

Abolishment of epidemiologic measures and restrictions in the first few months of this year and return to ordinary business activities and topics returned to the fore the questions of improvement of the tax system and resolving problems arising in practice which are outstanding for years. However, the focus of the Government was on new model of fiscalization and preparation for introduction of electronic delivery of VAT invoices, i.e. on measures which are intended to strengthen the mechanism of reporting and control of fulfilment of tax obligations with very modest improvements in tax laws and practice. New fiscalization and e-invoices represent a positive development for which we expect that will contribute to greater fiscal discipline, but also bring a host of new uncertainties and problems which should be solved during their implementation. It appears that some of the questions that arise in relation to the implementation, like corrections of the VAT invoice through credit and debit notes, advance VAT invoices and vouchers etc., could have been anticipated and solved in a better way.

With regards to the other changes in tax regulations, we had the amendments of the Personal Income Tax Law which introduce tax incentives and tax relief for individuals directly engaged on research and development activities of the employer which performs its activities in Serbia, and for employment of certain categories of individuals. Corporate Income Tax Law has not been amended, apart from introduction of tax relief for a specific transaction of contribution in kind of intellectual property, in relation to IP tax incentives that were previously introduced in the tax law. VAT Law had a few minor amendments. Changes of the Property Taxes Law were also very limited and mainly aiming at sale of used motor vehicles, without significance for majority of taxpayers. A new Free Trade Agreement with the UK came into force. So, we have had another year without real progress in relation to problem at which FIC is pointing for years.

Unfortunately, there was lack of willingness for dialogue on part of the authorities and the Working Group tasked for implementing the recommendations contained in the FIC White Book was not active in the area of taxation. Notwithstanding that, FIC will continue to fight for continuation of the dialogue and improvement of the tax legislation and practice, along with higher transparency and timely public presenting of planned amendments of the tax laws. We will continue to fight for resolving as soon as possible the most important problems from prior periods, such as changes of the Property Taxes Law, corporate income tax treatment of property measured at fair value etc. Concurrently with that, we advocate further modernization and completion of the reform of the Tax Administration.

*During the final phase of the White Book preparation, set of amendments to the tax laws were proposed. The effects of which will be analyzed in the next edition.

A. CORPORATE INCOME TAX (CIT)

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose 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			√
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.	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			√
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: 1) 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. 2) 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. 3) 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 non-deductible impairment, and so that fair value increases and decreases are treated equitably.	2017			√
Cancel or amend the controversial opinions of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses.	2019			√
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.	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 2021 (RS Official Gazette No 118/2021). As for international treaties, in April 2021 Serbia signed a Double Taxation Agreement with Singapore, which entered into force on January 1, 2022. On January 1 previously singed Double Taxation Agreement with Japan entered into force.

POSITIVE DEVELOPMENTS

With the latest CIT Law amendments, taxpayers are given the right to capital gains realized by entering property rights (i.) copyright or related rights on the deposited author's work, i.e. the subject of related rights, (ii.) rights related to the invention, based on the law regulating patents) are not included in the capital of resident legal entities in the tax base, provided that the rights thus acquired are not alienated by that person within a period of two years from the date of acquisition, as well as that in the same period, he does not assign that right for use in whole or in part at a price that is lower than the price determined in accordance with the "out of reach" principle, if the taxpayer made the assignment to a related legal entity.

Regarding the right of banks to a tax credit based on the Law on Conversion of Housing Loans Indexed in Swiss Francs, Amendments to the Rulebook on the Contents of the Tax Balance Sheet and Other Matters of Importance for the Method of Determining Corporate Income Tax (RS Official Gazette No 97/2021) prescribed a new OPKB 1 Form, which is submitted with the tax return, and in accordance with that, changes were made to the PDP Form. Thus, the tax regulations regulate the presentation of data on the tax credit based on the Law on Conversion.

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 cancelled or amended without further delay.
- 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 beginning of 2013, and whose individual value was below the average gross salary at that time.

- During 2015 and the first half of 2016, the Ministry of Finance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.

- The Ministry of Finance issued an opinion in 2017 regarding the method of calculation of tax depreciation of assets in case of acquiring a bankruptcy debtor as a legal entity, and took the position that tax depreciation should be calculated in the same way as before the filing of a bankruptcy petition. We are of the view that this is a debatable interpretation and that it would be more appropriate to calculate tax depreciation on the basis of a proportionate share of the purchase price allocated to relevant assets.

- Accounting regulations, i.e. International Financial Reporting Standards (IFRS), provide for the possibility to either opt for the cost model or the fair value model for certain types of assets (investment property, biological assets, and financial assets). The CIT Law does not have clear rules regarding assets measured at fair value. Unrealized gains from the increase of fair value of assets are taxed before the asset is disposed of, i.e. before the gain is realized.

- The CIT Law does not clearly distinguish between impairment of assets and decrease of fair value of assets (e.g. investment property), for which the IFRS prescribes different rules and treatment. As a result, the decrease of fair value of assets is interpreted as an impairment expense which is non-deductible until such assets are sold. On the other hand, every increase of fair value of assets is immediately taxable. This results in an unfair increase of taxable income for taxpayers.

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 Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.

  - Further clarify the method of calculation and recognition of tax depreciation costs for the first group of fixed assets, as at 31 December 2003 that caused numerous dilemmas and controversial interpretations in practice.

  - In case of acquisition of a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of the purchase price allocated to relevant assets.

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

- 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 are not tax regulations.

- Since the corporate income tax application and accompanying forms are submitted through the eTaxes portal, taxpayers should be allowed to submit transfer pricing reports in the same way. In this way, the cost of printing and storing reports in paper form would be avoided, the quality of data related to the determination of tax liability would be improved, and the reports would be more easily accessible.

B. PERSONAL INCOME TAX 1.00

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 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.	2020			√
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.	2008			√
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.	2017			√
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.	2017			√
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.	2017			√
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.	2017			√
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.	2019			√
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.	2020			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2021			√
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.	2021			√

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 2021: (i) Extension of the application of the Article 21ž i.e. tax incentives for the employment of qualified individuals under certain conditions, ii) introduction of a new tax incentive for the employment of new employees iii)introduction of the tax incentive for the individuals working on research and development, iv) additional non-taxable amount for the tax payers younger than 40 years of age.

In addition, the latest amendments to the PIT Law prescribe a tax exemption from capital gains tax in its entirety in the event that a person enters property rights (copyright, related and industrial property rights) as a whole as a non-monetary contribution to the capital of a company.

POSITIVE DEVELOPMENTS

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

- The law prescribed an exemption in the case of the transfer of property rights as a non-monetary contribution to the capital of a company, on the condition that the company does not alienate that right in its entirety within two years from the date of acquisition, i.e. that it does not transfer that right in part or in full to a related entity for a price which is lower than the price in accordance with the "out of reach" principle,
- The PIT law prescribes new tax benefits and extended the application of existing ones,
- The new tax incentives encourage the employment of individuals who were not previously registered with the National Employment Agency and were not insured as an employee or self-employed person who is the founder or a member of a company in the period from 01.01.2019. until 28.02.2022. The condition for applying this incentive that the salary is greater than RSD 76,500;
- Another tax incentive that is new is the incentive for employees working in research and development, which has unlimited application.
- The application of the existing tax incentive for qualified new employees has been extended under certain conditions, all in order to resolve the status of persons who

remained lump-sum entrepreneurs after April 2020 and did not meet the requirements of the independence test.
- For persons under 40 years of age, an additional non-taxable amount has been introduced for the annual personal income tax, which is applied to three types of income - salaries, income from copyright, related and industrial property rights, and income from self-employment. This tax-free amount is equal to 6 average annual salaries. In the event that the person does not have the obligation to pay the annual tax by applying this tax-free amount, there is still the obligation to submit the annual tax return.

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 and no. 011-00-511/2022-04 of 11 July 2022, 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 19,300 per quarter) and on top of all that they pay the annual personal income tax.

- In the case of tax incentive for qualified newly employed persons, the law does not clearly define how these individuals, once they lose the right to that incentive with their current employer, can regain the same right and if they can at all. Namely, that person is the bearer of tax incentive and in accordance with the Opinion of the Ministry of Finance 011-00-59/2020-04 of 11.2.2020. qualified newly employee, when s/he terminates the employment relationship with one employer and starts with another, can still apply the tax incentive for him, but in a situation where this right is lost with the same employer, it is not possible to acquire it again. The law should be specified in this part so that taxpayers are not misled that it is possible to regain a right once lost.

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 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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			√
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			√
We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, the words: "issuance of invoices ".	2020			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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			√
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			√

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, VAT Law hasn't been amended. Certain by-laws adopted in accordance with the VAT Law have been amended. Accordingly, Rulebook on Value Added Tax (VAT Rulebook) has been amended several times, in order to align with rules on invoice issuance with the fiscalisation and e-invoicing rules.

Among other, VAT Rulebook prescribes that:

- The rules on VAT treatment of returnable packaging apply from January 1, 2022.
- If a VAT invoice is issued in line with electronic invoicing rules, it does not have to contain information on the place of issuance of the invoice.
- Date of the advance payment is a new mandatory element of an advance payment invoice.
- A fiscal invoice issued by a VAT payer that records supply via an electronic fiscal device in accordance with the law governing fiscalisation, is considered to be a VAT invoice within the meaning of the VAT Law. If an advance payment has been made for the supply, for which a fiscal invoice is issued in accordance with the law governing fiscalisation, that the fiscal invoice shall not be considered to be a VAT invoice within the meaning of the Law on VAT, in the part relating to the advance payment.
- Fiscal invoice issued in accordance with the law governing fiscalisation, which contains information on TIN of the recipient of the fiscal invoice, does not have to contain other data prescribed by the VAT Law and VAT Rulebook, which are not mandatory in accordance with the regulations governing fiscalisation.

In particular, the previous period was predominantly marked by the adoption and start of implementation of regulations on fiscalization and electronic invoicing.

Although these are regulations that formally are not VAT regulations (in the sense that they were not adopted in accordance with the VAT Law), they are closely related to the application of VAT regulations. Thus, the regulations on electronic invoicing, in defining the person liable for issuing an electronic invoice start from the concept of the VAT payer, the obligation to issue an electronic invoice is linked to supplies and advances (same as VAT regulations), they define the obligation to issue invoices (same as as the VAT regulations) but also the obligation to electronically record the calculated VAT. And although the Law on Electronic Invoicing explicitly stipulates that it "does not affect" the implementation of the VAT Law and accompanying by-laws, it is already clear that it will systematically affect the implementation of VAT regulations and the way of fulfilling the obligations of VAT payers.

This is especially pronounced in the domain of issuing invoices. It is evident that VAT payers who are simultaneously obliged to issue electronic invoices will, as a rule, issue an electronic invoice which is also an invoice in terms of VAT regulations.

It is important to emphasize here that there is a significant inconsistency between VAT regulations and regulations on fiscalization and electronic invoicing. This is (for now) most pronounced in the domain of the obligation to issue and the content of invoices. Given that these are new regulations whose full implementation is expected from January 2023, it is to be expected that in the coming period, the focus of the discussion on the application and potential changes to the VAT regulations will be on the harmonization of VAT regulations, regulations on electronic invoicing and regulations on fiscalization.

We see signs of this in the regulatory activity during the previous period. In fact, most of the changes of the VAT regulations were in the function of harmonization with regulations on electronic invoicing and regulations on fiscalization.

Regulations on fiscalization and electronic invoicing are analyzed in a separate document where certain recommendations are also given that are also important for the application of VAT regulations.

POSITIVE DEVELOPMENTS

With the latest amendments to the VAT Rulebook, certain clarifications were made to the existing rules and certain situations were more precisely regulated.

In addition to the amendments to the VAT Rulebook, pro-

visions were made to harmonize the VAT regulations with the regulations on electronic invoicing and fiscalization. This is, for example, the case with the rule that in certain cases a fiscal invoice can be treated as a correct VAT invoice (thereby eliminating the previously widespread practice of issuing a so-called cash invoice). This eliminated part of the mismatch between VAT regulations and regulations on fiscalization and electronic invoicing. Space for other adjustments should primarily be sought in the sphere of changes to regulations on electronic invoicing.

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 authorities alike. Due to diverging interpretations, taxpayers face the risk that tax authorities will hold the supplier accountable for output VAT, although the recipient as the taxpayer accounted for the VAT, or that the recipient who accounted for the output VAT is denied his right to input VAT deduction because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to the detriment of the state budget. The 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.

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. 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. Also, the introduction of an annual VAT return (monthly/quarterly returns would be treated as advance payments) should be considered, which would be submitted by March of the current year for the previous year, and through which taxpayers could make all the necessary changes, including changes related to transactions from abroad for which the recipient of goods or services is obliged to calculate VAT as a tax debtor.

- 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.

- In the first place, it is necessary to harmonize the VAT regulations of Serbia with the regulations in force in the EU regarding the calculation of VAT for transactions in the field of construction. Namely, in EU countries, the recipient is a tax debtor for sales in the field of construction due to the prevention of evasion and fraud in the calculation of VAT, whereby the relevant, special rules are applied when sales are made by a subcontractor to a contractor, but not when sales are made by a contractor to an investor. We emphasize that the greatest number of problems in practice occur precisely in the transaction between the contractor and the investor, since the "investor" in this case can also be a person who procures, for example, ongoing facility maintenance services and the like (ie, the "investor" does not have to be active in the field of construction at all). Bearing in mind this motive for defining the recipient as a tax debtor, there is no reason to prevent the provider from calculating and paying VAT, nor for any of them to be penalized, because the general rule of taxation was applied, and not a special rule according to which the recipient is a tax payer. debtor. This approach would also be more favorable for the state, from the perspective of cash flows (by applying the "reverse charge" mechanism, the state consciously "renounces short-term financing", in order to avoid tax evasion). 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.

- 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, deletes the words: "issuance of invoices".

D. PROPERTY TAX 1.00

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 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.	2018			√
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.	2021			√
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 2021, we consider that the latest amendments to the Law on Property Taxes (hereinafter: "the Law") that are in effect from January 1, 2022 generally did not resolve the important issues (recommendations) that we pointed out in the previous edition of the White Book. On the other hand, amendments to the Law have introduced certain new rules, and we will refer to some of these solutions below.

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

The 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 have introduced detailed rules related to taxation of transfer of ownership over used motor vehicles from the perspective of absolute rights transfer tax. Namely, in accordance with new Article 27a of the Law, it is stipulated that tax base will be determined based on engine displacement, engine power and age of vehicle. It is also defined that taxpayer is a buyer of motor vehicle, as well as that absolute rights transfer tax will be determined by self-assessment in case of transfer of ownership over used motor vehicle between individuals (except for special types of vehicles, such as ambulance, rent-a-car vehicle, taxi vehicle etc.), while in other cases tax liability will be determined based on the ruling of the competent tax authority.

Additionally, the amendments to the Law envisage that municipalities (local tax administrations) will exclusively determine, collect and audit tax on gift and inheritance and absolute rights transfer tax starting from 1 January 2023.

POSITIVE DEVELOPMENTS

Bearing in mind the recommendations from last year, we believe that in the meantime there have been no significant improvements as a result of the implemented recommendations from the past Beyond the recommendations and on the positive note, we do recognize the introduction of new online services on the Portal of the local tax administration, which made it possible to obtain a certificate of debt for property tax without going "to the counter". This service is available only to taxpayers who have obtained a qualified electronic certificate and we support the initiative to promote this type of communication with taxpayers.

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

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, simplify the method of calculating property taxes, if, for example, the storage area, the administrative building and the land represent one unit.
- 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 1.11

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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2021			√
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 Authorities.
- Specifying the manner of submitting requests / delivering acts electronically - through the government portal e-Uprava. Additionally, amendments introduce option to submit a tax refund/rebooking request via the government portal e-Uprava.
- Introduction of a new form of regular collection of taxes - 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.

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-Uprava . This option is enabled from January 1, 2021. The latest amendments to the PTA Law have improved the position of taxpayers who postpone the payment of owed tax (they postpone the payment of other owed interest, that is, they change the means of security in the procedure of deferring the owed tax). In this way, taxpayers are helped to more easily overcome financial problems caused by the COVID-19 pandemic.

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.
- In its actions, the Tax Administration, despite the normative regulation of the termination of tax obligations due to statute of limitations, transfers them to off-balance sheet tax accounting and those obligations are still considered the taxpayer's debt, and in those cases they do not issue certificates to taxpayers that they do not owe tax, which is in conflict with by provision of Art. 23 PTA Law.
- There is no prescribed length of time for the temporary confiscation of PIB by the Tax Administration, which in practice equates to the permanent confiscation of TIN and preventing taxpayers from performing their activities, as they cannot perform any payment transaction except paying taxes.

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. Propose an amendment to the Rulebook on the allocation of TIN, so that it is prescribed that the Tax Administration delivers the confirmation of the TIN allocation to the taxpayer in e-form.

- 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 (or adopt the provision of Article 38 of the Law on Inspection according to which the control procedure is suspended after 8 days have passed from the date of submission of the taxpayer's request for the end of the control in a situation where the inspector does not make a decision after the end of the day of the end of the control after the end of the day of the end of the inspection supervision specified in inspection order), 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.

- Introduction of a time limit duration of the TIN temporary revocation.

- 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.

- Introduction of the obligation in the PTA Law of the second-instance authority of the Ministry of Finance to resolve the administrative matter by itself, instead of the first-instance authority, if the first-instance authority

does not act according to its order and does not issue a decision within the deadline, as stipulated in Art. 173 st. 3 GAP Law. In this way, the multi-year duration of tax proceedings would be resolved, where often the first-instance authority does not act according to the order of the second-instance authority, as well as the first-instance authority does not issue a decision in the re-procedure within the time prescribed by law, which jeopardizes the legal security of taxpayers and violates the principle of legality of the tax procedure.

- 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.
- Adopt Ministry of Finance binding opinion the for the actions of the Tax Administration in the domain of termination of tax liability by statute of limitations, for which termination of tax liability is prescribed that the Tax Administration issues a decision on the termination of tax liability ex officio and that the same one is in accordance with Art. 163 PTA Law transfers to off-balance sheet tax accounting. In the opinion in question, it is necessary for the Ministry of Finance to clearly state that this is a tax-legal relationship as a relationship of public law and that any tax paid in which the statute of limitations has expired does not represent a natural obligation.

F. E-FISCALIZATION

CURRENT SITUATION

E-commerce in the Republic of Serbia implies a comprehensive change in business operations of the public and private sector and its implementation first started in 2017, with the passing of the Law on Electronic Document, and further in 2021, with amendments to the regulations in the domain of fiscalization, regulating the electronic document/invoice, electronic identification and electronic data exchange in the public and private sector. In this way, the Republic of Serbia took a step further in legally regulating and implementing e-commerce and in following the devel-

opments in information technologies based on solutions enshrined in international practice, regulations and standards of the European Union.

Members of the Foreign Investors Council support the introduction and modernization of e-commerce, whose aim is to stimulate more efficient in business entities' operations, contribute to a decrease in grey economy and develop a trusted market, make citizens' access to the services of public authorities easier and safer, while the introduction of electronic archiving is expected to simplify the access to financial documents.

As of April 2022, amendments to the Law on Fiscalization entered into force and a new fiscalization model was introduced, meaning that, at the moment of a retail transaction, every invoice is fiscalized and that the data on the issued fiscal slips is transferred to the Tax Administration via a permanent internet connection in real time, as opposed to the previous method of data transfer at the end of the day. This was enabled by the use of a new electronic fiscal device through which fiscal slips will be issued with a QR code/hyperlink. An electronic fiscal device, in addition to a cash register, can be a computer, tablet, or mobile phone and the QR code on each slip enables customers, i.e., users of services, to check the validity of the bill by a simple code scanning. The change implies the introduction of new fiscal devices, as well as adjustments of the local IT systems, which was not easy for business entities to do while at the same time pursuing their business activities without disruptions. As good practice and precondition for efficient business activities, we can mention the consultations and continuous contacts between businesses and the Ministry of Finance.

In order to regulate the implementation of electronic invoices (hereinafter: e-Invoice), during 2021 and 2022, legal regulations were more precisely specified by the following legal acts:

- Law on Electronic Invoicing ("RS Official Gazette", no. 44/2021 and 129/2021"), hereinafter "EI Law");
- Rulebook on the manner and procedure of registration for access to the e-Invoicing System, the manner of accessing and using the e-Invoicing System and the manner of using data available in the e-Invoicing System („RS Official Gazette", no. 69/2021, 132/2021 and 46/2022"), hereinafter "EI Law Rulebook");
- Rulebook on the electronic invoice elements, the form and manner of delivery of supporting and other documentation via the e-Invoicing System, the manner and procedure of electronic recording of value added tax calculations in e-Invoicing System and the manner of applying e- Invoicing standards;
- Decree on the conditions and manner of using the invoicing management system;
- Rulebook on the manner of proceeding of the Central Information Intermediary;
- Rulebook on the criteria and procedure for granting and withdrawing authorizations for the performance of information intermediary activities;
- Decree on the conditions and manner of storing and making available for inspection the e-Invoices and of ensuring the authenticity and integrity of the content of invoices in paper form;
- Of great importance is the Internal Technical Instruction published by the Ministry of Finance of the Republic of Serbia

Deadlines for the start of implementation of the E-Invoicing Law:

I. 1 May 2022 – obligation of the public sector entity to receive and store the electronic invoice ("e-Invoice"), obligation to issue e-Invoice to another public sector entity, as well as the obligation of the private sector to issue e-Invoice to the public sector entity.

II. 1 July 2022- obligation of the public sector entity to issue the e-Invoice to the private sector entity.

III. 1 January 2023 – obligation of the private sector entity to receive and store e-Invoices issued by the public sector entity, as well as by other private sector entities.

The E-Invoicing Law identifies entities which are obliged to issue e-Invoices; introduces a special obligation of electronic recording of VAT calculation in the e-Invoicing System; regulates the manner of using the e-Invoicing System; provides basic instructions for handling e-Invoices, how an e-Invoice is accepted/rejected and provides other instructions.

The E-Invoicing System ("SEF") has been introduced as an information technology solution for sending, receiving, recording, processing and storing e-Invoices, which is managed by the central information intermediary. In addition, recording of VAT calculation is also done in the SEF for public and private sector entities, as well as of VAT for the legal proxies of foreign entities registered for VAT in the Republic

of Serbia who are required to provide technical capacities and timely implementation in line with the E-Invoicing Law.

The implementation of e-commerce and issuance of invoices in electronic form is the biggest change since the introduction of VAT and, even with the new regulations, implies further harmonization with other relevant laws, mainly with the VAT Law and the Law on Accounting, especially in terms of specifying more precisely the content and manner of issuing invoices.

REMAINING PROBLEMS

I. Most issues related to the implementation of the E-Invoicing Law have been clarified through the by-laws and binding opinions. But, given the complexity of the change and its close relations to a number of relevant by-laws and other laws, we suggest that the by-laws should be consolidated into an instruction or a single rulebook regulating implementation.

II. We will point out some doubts regarding the interpretation of the E-Invoicing Law:

- The E-Invoicing Law contains the terms of the European and Serbian e-Invoicing standard that have not been applied in business practice so far. Legal entities have done research of the legislation in order to ensure its better understanding and adequate application, but it was not easy to find complete explanations and even the standard itself is not publicly available. We consider it important for a better understanding of the rights and obligations of private sector entities that standards should be transparent and publicly available.

- Given the complexity of the new way of transaction recording and based on the experience of states that have already introduced e-invoicing, legal entities from the private sector may have unintentional errors in the transitional period, which are subject to the penal provisions of Art. 18-21 of the E-Invoicing Law. We believe that it is not appropriate to apply penalties during the period of adjustment to the new system and that it is necessary to distinguish the between the application of existing and new legislation.

- Pursuant to Article 10 of the E-Invoicing Law, private sector entities are required to accept or reject an invoice within 15 plus 5 days. In light of the volume of transactions of FIC members, we consider the prescribed time frame too short while in practice, much more time is needed to deliver the relevant evidence, e.g., about a service received, to the finance department, and only after the necessary checks it can be accepted or rejected. It would be helpful to consider extending the deadline.

- Certain concepts in the VAT and E-Invoicing Law are still terminologically incoherent, especially when it comes to the implementation of Article 42 of the VAT Law. Some examples include the concepts of "bill" and "e-Invoice", "transaction date", etc.

- In our view, in cases where there is a requirement to record VAT electronically under Art. 4 of the E-Invoicing Law, individual recording of transactions in certain situations is an obligation that leads to significant difficulties in the taxpayer's business operations. This is especially so for foreign entities registered for VAT through a tax proxy, who predominantly provide their services electronically to numerous natural persons and, in this case, it would be appropriate to apply the collective recording solution from Art. 4 of the E-Invoicing Law. We remind that these foreign entities are not liable for fiscalization and that there is no obligation to issue a fiscal invoice for these transactions or an obligation to issue an invoice in accordance with the VAT regulations.

- The issuing of an advance invoices should be specified more precisely, taking into account VAT and E-Invoicing Law regulations. By way of example:

  (i) It is necessary to further specify the issuing of advance invoices or e-Invoices for transactions in construction, taking into account VAT regulations.

  (ii) In reference to the Opinion explaining the issuance of e-Invoices in transactions of private and public sector entities, clarify if it can also be applied to transactions between private sector entities, i.e. that a VAT payer who receives an advance payment and performs the sale of goods and services for which he received the advance payment in the same tax period is not required to issue an invoice for the received advance payment, but only an invoice for the sale of goods and services, regardless of whether the sale of goods or services will be done in the same or different tax period from the tax period in which an advance payment was received.

- It is unclear if, when issuing e-Invoices for services regu-

lated in para. 3, Art. 167 of the Rulebook on Value Added Tax ("VAT Rulebook"), due to the nature of the transactions, the provisions of paragraph 1 of the same article may be applied, i.e., the information on the date of transaction of services should not be stated, which is deemed as mandatory information under the Law on Electronic Invoicing ("E-Invoicing Law").

- In reference to Article 44 of the Law on VAT, a person who made a value correction or canceled an invoice, must have a notification from the invoice recipient in paper form that he did not use the calculated VAT as previous tax, i.e., that he made a correction of deduction of previous tax. It is expected that the digitalization of invoicing also refers to these documents, but the corresponding technical option has not been created in the SEF.

III. The SEF functionality will be fully implemented from 1 January 2023 and FIC has communicated its recommendations for its technical upgrading on several occasions. With the further development of e-commerce, it would be important to introduce automated data checks.

IV. The Law on Fiscalization and the Law on Electronic Invoicing: In accordance with the EI Law, the Ministry recently published an official opinion in which it took the view that transactions of positioning services provided by a retailer to suppliers are deemed to have been performed in a retail store, i.e., that they are considered as retail and that there is an obligation of recording these services through an electronic fiscal device (hereinafter: EFU). This interpretation, aside from deviating from the long-standing practice and its application, inevitably imposes significant administrative costs, leads to legal uncertainty in terms of application of the opinion due to numerous open issues regarding the way of recording this transaction in line with the Law on Fiscalization. The positioning service provided to another legal entity or entrepreneur cannot be considered a retail transaction since such a transaction does not take place in the presence of a natural person in a retailer's retail space. This fact is important because it indicates that the provision of positioning services in a retail space has no impact on the qualification of these services as retail sales, but represents a regular business transaction between two legal entities. Foreign Investors Council supports the real-time recording of transactions made possible through the EFU and e-Invoicing and we believe that recording this transaction through e-invoice achieves the same objective as through the EFU, but its implementation is much simpler for private sector entities.

FIC RECOMMENDATIONS

- We recommend the introduction of a consolidated instruction for the implementation and recording of e-invoices, modeled on the User Instructions on Reporting Data in the POPDV form.

- We recommend the following amendments or clarifications of the Law on Electronic Invoicing;
  - Enable a simple and transparent access to the "European and Serbian electronic invoicing standard";
  - Postpone the application of Art. 18 – 21 of the EI Law for six months, i.e., until the establishment of the regular business process by most business entities;
  - We recommend to postpone the application of Art. 10 of the EI Law for at least six months, i.e., until the relevant facts are established in practice and thus the deadline for accepting or rejecting e-invoices is adequately regulated. Additionally, it is necessary to specify the consequences in case an invoice is rejected (in the case of active or passive rejection) and the payment has been performed;
  - Further harmonize the terminology of VAT and EI laws, especially with Article 42 of the VAT Law;
  - Make it possible for foreign entities registered for VAT through a tax proxy to electronically record the value added tax calculation from Art. 4 of the EI Law collectively in the case of transactions with natural persons.
  - We suggest to exempt transactions in the construction industry from the EIL regulations, as well as other transactions for which exemptions are stipulated under Art.164-169 of the VAT Rulebook.
  - Align E-Invoicing Law with VAT regulations, further specify the concept of transaction date stated on the e-Invoice for transactions involving services of copyright and related rights regulated by Art. 167 of the VAT Law Rulebook.

  - We propose to develop in the SEF and specify by the E-Invoicing Law the digital signing of cancelled documents as proof of correction of the previous VAT.

- The implementation of digitalization is expected to bring the streamlining of processes and time-savings in this respect and we are asking for further development of the SEF in terms of digital verification of the formal correctness of e-Invoice elements such as e.g., logical and mathematical checks of e-Invoice correctness as well as error reporting.

- We recommend that the recording of transactions of positioning of advertising articles should be exempted from the Law on Fiscalization and that these transactions should be recorded on the e-Invoice.

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

1.00

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			√
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			√
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			√

CURRENT SITUATION

There are numerous parafiscal charges in Serbia that exist in parallel with taxes, increasing the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal charges actually impose an obligation that does not provide (at all or in an adequate proportion) a specific service, right, or good in return.

The authorities recognize this fact, which is why a parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform continued in 2013, with a first draft of the Law on Fees for the Use of Public Resources and the adoption of the final version of the Law at the end of 2018, but also by imposing new parafiscal levies such as a mandatory membership fee for the Serbian Chamber of Commerce in 2018. The reform process is still ongoing, which is especially reflected in the large number of changes that have been made to the regulations governing the manner of determining and reporting compensation for the protection and improvement of the environment.

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 protection and improvement by taxpayers.

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