

LEASING

1.10

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Initiation of amendments to the Law on Value Added Tax, in the part related to interest taxation, and in terms of revoking VAT on the part of leasing fee related to interest.	2009			√
Amendment to the Law on Financial Leasing, which would explicitly transfer the obligation to pay for unpaid parking services to the lessee, and that this service legitimizes parking services to collect directly from lessees registered in the register of motor vehicles kept by the RS Ministry of Interior. Operating leasing should be regulated by the Law, i.e. financial leasing providers should be enabled to provide operating leasing services.	2016			√
The Law on Compulsory Insurance in Traffic should be harmonized with the Law on Financial Leasing, in terms of the provisions on the right of recourse of the Guarantee Fund upon payment of damage caused by a vehicle for which a contract on compulsory insurance has not been concluded, by the owner or registered user of the vehicle, so that the insurance company can claim the recourse right from the lessee instead of from the leasing company.	2012			√
Leasing and insurance companies should be in the same position as banks pursuant to Article 85 of the Law on Personal Income Tax, i.e., that in the case of a write-off of receivables they are not obliged to pay additional personal income tax if the conditions prescribed by law are previously met. The change would be to simply add "insurance company or lessor" next to the word "bank client".	2016			√
The capital threshold for performing leasing, the subject of which is real estate, should be reduced in order to make real estate leasing more attractive on the Serbian market. We suggest that for performing financial leasing operations, the monetary part of the lessor's founding capital cannot be below EUR 500,000 in dinars (RSD) for both financial leasing of movable and immovable property.	2015			√
To solve the problem of criminal-legal protection of financed leasing objects. Consistent application of the Law in court proceedings conducted in this legal matter and acting in accordance with the Law and the Constitution of the RS.	2018			√
Since through Business Register Agency (BRA) is possible for leasing companies to submit to the Ministry of the Interior the necessary data for authorization for registration by automated means (e.g., web service), it is necessary to further develop the solution by enabling communication with technical inspections.	2021		√	
Importing data from the Ministry of the Interior and the Parking Service in order to increase legal security in the country.	2020			√
To establish the Operating Leasing Register with BRA, within which the concluded operating lease agreements would be registered.	2021			√

CURRENT SITUATION

The development of leasing in Serbia is linked to the beginning of 2003 when the Law on Financial Leasing was adopted. Today, 16 leasing companies are registered in Serbia, which are mainly affiliates of renowned financial institutions, leaders in the field of banking and financial operations in the markets of Central and Southeast Europe. These groups have implemented their knowledge and high corporate business standards in the Serbian market. As a result of market competition, the number of active leasing companies which operate in Serbia is decreased to 13 and adjusted to market needs and. It is consequence of the banking groups. The market concentration is high and over 70% of total assets of Leasing sector comes from 5 leasing companies. This will only bring the quality of the offer because the standard of leasing services that market leaders have implemented so far will be further confirmed.

POSITIVE DEVELOPMENTS

In the previous period, during 2021, the certain improvements were done. The National Bank of Serbia did not initiate the adoption of amendments to the Law on Financial Leasing, but adopted Decision for risk management of Leasing companies which arise for launch the new product by whom Financial leasing companies is allowed to render Operative Leasing services.

Regarding the recommendation related to the issuance of the Registration Authorization to Leasing Users, it is enabled the delivery via web service will be provided which is a good improvement by applying digitalization in business. However, the communication with technical checks should be enabled and it is was planned until the end year 2021, but it was not happened, project is in delay.

Regarding the recommendation that Financial Leasing is not included as a type of financing in some of the programs of state incentives in the economy, there have been significant changes. Positive examples are the Decrees of the Government of the Republic of Serbia on determining support to small enterprises for the procurement of equipment, which determine the Program of support to small and medium enterprises for the procurement of equipment. In addition to banks, this program also includes leasing companies and has been implemented very successfully.

REMAINING ISSUES

1. Interest in financial leasing is still taxable.

Law on Value Added Tax treats the products and services of financial institutions in different ways when defining the subject of VAT taxation.

Namely, in Article 4, item 2a) the Law clearly states that the supply of goods on the basis of a leasing contract is subject to VAT. According to the said Law, the basis for VAT is the value of the subject of leasing and interest.

On the other hand, the legislator provided in Article 25 of the same Law that credit operations and insurance services are exempt from VAT.

Different tax treatment of products and services of financial institutions has conditioned that financing through leasing in relation to other types of financing is more expensive for clients who are not in the VAT system, since VAT on interest is an additional cost that puts financial leasing companies at a disadvantage. It should not be forgotten that these are entrepreneurs, registered agricultural farms, and companies that are not in the VAT system.

2. The guarantee fund may have a recourse claim from the leasing company for the damage caused using the item by the lessee.

The Law on Compulsory Traffic Insurance stipulates that the Guarantee Fund of the Association of Insurers of Serbia has the right of recourse, upon payment of compensation from the owner of the means of transport, for the amount of damage, interest, and costs paid.

The Law on Compulsory Traffic Insurance is not harmonized with the Law on Financial Leasing, which introduced a legal deal into the legal system of the Republic of Serbia that, by definition and rules on liability for the use of leasing objects, conflicts with the existing rule on the recourse of the Guarantee Fund. The fact that the lessor is not able to influence the behavior of the lessee or other persons using the leased object and prevent the use of the vehicle in traffic without a compulsory insurance contract, as long as the leased object is located in the lessee's country, is completely ignored.

In the current situation, leasing companies face recourse claims from the Guarantee Fund of the Association of Insur-

ers of Serbia, which they reject referring to the Law on Financial Leasing, while on the other hand the Guarantee Fund, despite understanding the essence of the dispute, has no legal possibility to apply for recourse to the paid amount of damage to any person other than the owner of the means of transport and possibly their driver, according to the system of subjective liability of the inflictor for damages.

3. Leasing companies and insurance companies are obliged to pay personal income tax in case of a write-off of receivables from natural persons.

When a leasing company or insurance company makes a decision to write off claims from individuals who were previously sued, after an unsuccessful court procedure (due to poverty, inability to collect, etc.), they are obliged to calculate and pay personal income tax in the amount of 20%. Write-off receivables have the status of other income. This is defined by Article 85 of the Law on Personal Income Tax. Thus, a leasing company or an insurance company, in addition to having suffered a loss due to non-payment of obligations, has an additional obligation to pay personal income tax.

To make the paradox even bigger, this becomes the basis for the annual income tax of that natural person, so that a person who is unable to settle a debt to a leasing company or insurance due to poverty, can become a taxpayer if the value of the write-off together with other income exceeds the amount of 3,2 million dinars. This tax "illogicality" was noticed by the Ministry of Finance, and with the amendments to the Law on Personal Income Tax in 2013, an exception was made for banks as creditors. Other financial institutions that are also under the control of the NBS were then "forgotten".

4. The problem of the non-existence of criminal-legal protection of property of leasing companies.

As a precondition for the functioning of financial leasing as a financing model (in which leasing companies retain the right of ownership over financed objects), there is adequate and complete protection of financed leasing objects as assets of leasing companies. However, in addition to other obstacles facing the leasing industry in Serbia, a new obstacle has recently emerged that threatens to stifle leasing in Serbia. It is about the lack or complete absence of criminal legal protection of the property of the Financial Leasing Providers. Namely, the Supreme Court of Cassation in Judgment CA No. 42/16 dated 26

January 2016, took the position that in the case of evasion of the subject of financial leasing, there is no objective element of the criminal offense of evasion under Article 207 of the Criminal Code of RS, considering that the leasing contract by its nature leads to the acquisition of property rights, due to which non-compliance with contractual obligations falls within the domain of civil law and does not contain the essential elements of the said criminal offense. The Supreme Court of Cassation did not take into account that the civil law relationship has already been resolved by a court decision and that a contract that has been terminated can never lead to the acquisition of property rights. In the stated manner, the lessors of financial leasing in Serbia were deprived of the right to criminal-legal protection of their property contrary to the principles defined by the Constitution. If such a wrong position of the Supreme Court of Cassation continued to be applied by the competent public prosecutor's offices, rejecting criminal charges for the criminal offense of evasion of leasing objects, the result would certainly be a very rapid withdrawal of all leasing companies from the market of the Republic of Serbia. Also, the reaction to the mentioned Decision of the Supreme Court of Cassation can be a huge increase in the number of mentioned criminal acts, appropriation or alienation of other people's property in order to obtain illegal property gain, considering the absence of criminal sanction according to the practice taken by the Supreme Court of Cassation with the Judgment CA No. 42/16 dated 26 January 2016.

5. The current practice shows that vehicles that are on the warrant of the Ministry of the Interior, or whose registration has expired, are driven unhindered without authorization, until the moment when the police would stop them and do a detailed check. Only then, they would react to the search and seize the vehicle from the debtor, which is not a common case. Solving this problem would contribute to the protection of property, increase safety and legal security in the country, which, in addition to the general social significance, is also important for the business of leasing companies and insurance companies.

We believe that the import of the Parking Service system and the Ministry of the Interior would significantly help legal security, because parking service workers while performing their activities (issuing an additional ticket or parking ticket), could see that the vehicle is on-demand or registration has expired, and the vehicle is being driven, after

which they could call the representatives of the Ministry of the Interior and leave the towed vehicle in the police station until the dispute is resolved.

At the same time, the communal police, with a new method of recording traffic violations and illegal parking, can significantly contribute to a faster and more efficient finding of disputable leasing objects. Vehicle records through toll ways could help solve this problem.

6. The Decision for risk management of Leasing companies which arise for launch the new product adopted by the National Bank of Serbia, gave the opportunity to companies registered to perform financial leasing activities

to, in addition, perform operational leasing activities. In order to protect the rights of the lessor, it was necessary to adjust the regulation of the existing register of financial leasing to the said Decision, in such a way as to form the Register of operating leases, within which the concluded operating lease agreements would be registered.

In that way, among other things, the excerpt from the register of operating leases kept by the Business Registers Agency would be an executive document, which would enable an urgent and efficient procedure for repossession of the subject of operating lease in case of termination of the operating lease agreement legal certainty for operating leasing entities.

FIC RECOMMENDATIONS

- Initiation of amendments to the Law on Value Added Tax, in the part related to interest taxation, and in terms of revoking VAT on the part of leasing fee related to interest.
- The Law on Compulsory Insurance in Traffic should be harmonized with the Law on Financial Leasing, in terms of the provisions on the right of recourse of the Guarantee Fund upon payment of damage caused by a vehicle for which a contract on compulsory insurance has not been concluded, by the owner or registered user of the vehicle, so that the insurance company can claim the recourse right from the lessee instead of from the leasing company.
- Leasing and insurance companies should be in the same position as banks pursuant to Article 85 of the Law on Personal Income Tax, i.e., that in the case of a write-off of receivables they are not obliged to pay additional personal income tax if the conditions prescribed by law are previously met. The change would be to simply add "insurance company or lessor" next to the word "bank client".
- To solve the problem of criminal-legal protection of financed leasing objects. Consistent application of the Law in court proceedings conducted in this legal matter and acting in accordance with the Law and the Constitution of the RS.
- Since through Business Register Agency (BRA) is possible for leasing companies to submit to the Ministry of the Interior the necessary data for authorization for registration by automated means (e.g., web service), it is necessary to further develop the solution by enabling communication with technical checks.
- Importing data from the Ministry of the Interior and the Parking Service in order to increase legal security in the country.
- To establish the Operating Leasing Register with BRA, within which the concluded operating lease agreements would be registered.