

LEASING

1.20

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			√
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			√
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 checks.	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 10 and adjusted to market needs and. It is consequence of the banking groups. The market concentration is high and

over 78,1% 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 2022, there have been no improvements.

Regarding the recommendation related to the issuance of the Registration Authorization to Leasing Users, it is enabled the delivery via Agency for Business registrar Portal that is a certain improvement. However, the existing solution is technologically

outdated and it is necessary to additionally enable communication with technical services. Leasing companies proposed a more modern solution and it is being considered by the Agency for Business Registers and the Ministry of Economy

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 Insurers 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 3,7 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 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.**

On 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.

- 6. Leasing companies, in order to improve their business and improve the level of service to their clients, savings both for clients and for themselves, created a technical solution for the so-called paperless business. Namely, the entire process of signing contractual documents is digitized and clients can sign contracts electronically. However, in practice, a problem arises when registering a vehicle in the Ministry of Interior (MUP). Namely, in order to register a vehicle, the MUP requires documentation in paper form, so a digitally signed document is not acceptable. In this way, the improvement is meaningless because it is necessary that the leasing contract, which has been digitally signed, must be printed out once again and signed and stamped by hand.**

The solution is to use the so-called use the state electronic exchange line, which has already been developed between the Serbian Business Registers Agency (SBRA) and the Ministry of Interior, to submit the documentation required for vehicle registration in electronic form. The technical solution would be for the leasing company to first submit the documentation to the SBRA through the web service, and then to submit the SBRA to the MUP. The solution is supported by the eGovernment.

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 (SBRA) is possible for leasing companies to submit to the Ministry of 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.
- To establish the Operating Leasing Register with SBRA, within which the concluded operating lease agreements would be registered.
- The solution to use the so-called the state electronic exchange line, which has already been developed between the SBRA and the Ministry of Interior, to submit the documentation required for vehicle registration in electronic form.