

POVEĆATI PORESKU SIGURNOST

U svojoj dosadašnjoj praksi sam više puta imao prilike da doživim da se menjaju tumačenja i način primene poreskih propisa

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Jedan od važnijih problema poslovanja kompanija u Republici Srbiji, već duži vremenski period, nisu u toj meri zakonska rešenja, koliko je to primena tih istih rešenja u praksi, odnosno njihovo tumačenje od strane administrativnih organa i sudova, kaže za BIZLife Nikola Đorđević, partner JPM Janković Popović Mitić.

„U tom smislu odgovor u kojim segmentima će se usklađivanje Zakona o porezu na dodatu vrednost s propisima EU najviše odraziti na poslovanje kompanija i celokupnu srpsku privredu, pre svega zavisi od načina na koji će se promene ovog zakona (kao i sve dosadašnje i sve buduće promene kako ovog, tako i drugih poreskih zakona) primenjivati od strane Poreske uprave, Ministarstva finansija kao drugostepenog organa u poreskom postupku i Upravnog suda, kao sudske instance koja bi trebalo da služi kao korektivni sudski faktor tumačenja poreskih propisa od strane organa uprave.“

Đorđević kaže da ako analiziramo najznačajniju izmenu učinjenu poslednjim izmenama i dopunama Zakona o porezu na dodatu vrednost - promene učinjene u članu koji određuje mesto promena usluga, „svakako se mora konstatovati da navedene promene jesu napredak i da otklanjaju određene nedoumice koje su se javljale u prethodnom periodu“.

„Ipak, mora se takođe konstatovati i da

su i dalje ostale neke druge nedoumice, koje ovim izmenama nisu otklonjene. S tim u vezi bi možda trebalo razmišljati da se propiše ovlašćenje Ministru finansija da podzakonskim aktom bliže uredi šta se smatra uslugama navedenim u predmetnom članu i za još neke usluge za koje trenutno Zakon ne daje Ministru takvo ovlašćenje. To bi verovatno doprinelo i poreskoj sigurnosti u odnosu na porez na dodatu vrednost,“ kaže Đorđević i dodaje da je jedna druga ranija promena, kojom je propisano da je i strano lice obveznik, nije dovoljno precizirala šta se tačno smatra samostalnim obavljanjem prometa u okviru obavljanja delatnosti.

U OBLASTI PORESKOG PRAVA POSTOJE VIŠE PITANJA KOJA SE MOGU DETALJNIJE ZAKONSKI UREDITI

„To pitanje je značajno i za domaća lica, ali je još značajnije za strana lica jer je u ovom momentu nejasno koji je to obim prometa (na teritoriji Republike Srbije) potreban, i u kom vremenskom periodu, da bi se strano lice smatralo obveznikom“, kaže Đorđević.

Na pitanje kako ocenjuje poresku sigur-

nost, i da li domaće kao i inostrane kompanije koje posluju na tržištu Srbije imaju mogućnost da dugoročno planiraju svoje poreske rashode, Đorđević odgovara da smatra da da samo delimično postoji ova-kva mogućnost.

„U svojoj dosadašnjoj praksi sam više puta imao prilike da doživim da se menjaju tumačenja i način primene poreskih propisa, tako da nešto što se smatralo redovnom i normalnom praksom i ispravnim načinom primene poreskih propisa od, bilo domaćih bilo inostranih, kompanija, bez prethodne najave i obaveštenja privrednim subjektima, postane od strane Poreske uprave proglašeno pogrešnim načinom primene poreskih propisa. Pa se onda na osnovu toga donose poreska rešenja u postupcima terenske kontrole i naplaćuju dodatni iznosi poreza“, kaže Đorđević.

„U tom smislu se gornja ocena da problem nisu u toj meri zakonska rešenja mora dopuniti i ocenom da u oblasti poreskog prava postoje više pitanja koja se mogu detaljnije zakonski urediti, upravo iz razloga da bi se izbegla dijametralno suprotna tumačenja kako se određena odredba treba primeniti. Čak i ako bi krajnji efekat toga bio da tumačenja budu po privredu nepovoljnija, i to bi ipak sveukupno bilo bolje, jer bi se time povećala poreska sigurnost, kao jednog od najvažnijih ciljeva koji dobra poreska politika mora da ostvari“, zaključuje. ●

INCREASING TAX CERTAINTY

"In my practice so far I have several times witnessed changes to interpretations and applications of tax regulations"

Nikola Đorđević

Partner in JPM Janković Popović Mitić

One of the more important problems for companies doing business in Serbia has for some time now been not so much the regulations themselves but the application of those regulations in practice, that is to say their interpretation by administrative bodies and courts, says for BIZLife Nikola Đorđević, partner in JPM Janković Popović Mitić.

"In that context the answer to the question of which segments will see the greatest impact of harmonization of the Value Added Tax Law with EU regulations on the business operations of companies and on Serbian commerce as a whole primarily depends on the way in which the changes to this law (just like all previous and future changes both of this and of other tax laws) will be applied by the Tax Administration, the Ministry of Finance as the second-instance court in tax proceedings and the Administrative court, as the judicial instance that should serve as the corrective judicial factor in the interpretation of tax regulations by administrative bodies."

Đorđević says that if we analyze the most important change effected by the last amendments and supplements to the Value Added Tax Law - changes made in the article determining the place of supply of services, "we certainly have to note that those changes are indeed an improvement and resolve certain doubts which were seen in the previous period".

"However, we also have to note that doubts still remain which have not been resolved by these changes. In this regard perhaps it is worth considering granting the Minister of Finance the power to enact a bylaw more closely regulating what services are considered to mean in the relevant article, and for some other services as well which the current Law does not grant the Minister powers for. That would probably also be in the interest of tax certainty with regard to value added tax," Đorđević said, adding that a previous change, specifying that foreign entities are obliged to pay value added tax as well, did not clearly specify exactly what independent sale and purchase operations within the conducting of business activities are considered to be.

THERE ARE SEVERAL MATTERS IN TAX LAW WHICH COULD BE REGULATED IN MORE DETAIL

"That question is important for domestic entities as well, but even more so for foreign entities, because it is currently unclear which volume of turnover (in the territory of the Republic of Serbia) is required, and over which period of time, for a foreign entity to be considered a taxpayer", Đorđević explains.

When asked about his view on tax certainty, and whether domestic and foreign companies doing business in Serbia are able to plan their tax expenditures long-term, Đorđević replied that he believes they can do so only to a degree.

"In my practice so far I have several times witnessed changes to interpretations and applications of tax regulations, such that something considered to be regular and normal practice and the proper way to apply tax regulations by domestic and foreign companies suddenly, without prior warning and notification of legal entities, becomes declared by the Tax Administration as the wrong way to apply tax regulations. And then tax decisions based thereon are handed out during inspections, and additional taxes are charged," Đorđević said.

"In that context the above opinion that the problem does not lie so much in the regulations themselves has to be supplemented by the opinion that there are several matters in tax law which could be regulated in more detail, precisely to avoid polar opposite interpretations of how a specific provision should be applied. Even if the end result were interpretations less favorable for the commercial sector, that would still be better, generally speaking, because it would increase tax certainty, which is one of the most important goals that a good tax policy has to achieve," Đorđević concludes.