

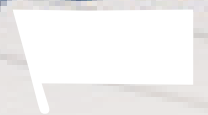


GUIDE TO
TAX LAW



JPM

JANKOVIĆ POPOVIĆ MITIĆ



CONTENTS:

INTRODUCTION	3
TAXPAYERS REGISTRATION	4
CORPORATE INCOME TAX	4
VALUE ADDED TAX (VAT)	7
WITHHOLDING TAX	10
PROPERTY TAX	11
EXCISE	13
TAX ON NON-LIFE INSURANCE PREMIUMS	14
TAX ON TRANSFER OF ABSOLUTE RIGHT	14
TAX OBLIGATIONS OF NATURAL PERSONS	14
<ul style="list-style-type: none">• TAXPAYERS OF CITIZENS' INCOME TAX• OBLIGATIONS RELATING TO CERTAIN KINDS OF INCOME• ANNUAL CITIZENS' INCOME TAX	
LIABILITY FOR FAILURE TO SETTLE TAX COMMITMENTS	16
<ul style="list-style-type: none">• LEGAL OFFENCE LIABILITY FOR FAILURE TO SETTLE TAX COMMITMENTS• CRIMINAL LIABILITY FOR FAILURE TO SETTLE THE TAX COMMITMENTS• TAX COMMITMENTS SETTLEMENT CONTROL	
PROTECTION OF THE TAXPAYERS' RIGHTS	
PROCEDURE SUBJECT TO REGULAR REMEDIES	18
<ul style="list-style-type: none">• PROCEDURE BEFORE THE ADMINISTRATION AUTHORITIES - APPEAL• PROCEDURE BEFORE THE COURT - CLAIM FILED WITH THE ADMINISTRATIVE COURT	
PROCEDURE UNDER THE EXTRAORDINARY LEGAL REMEDIES	20
<ul style="list-style-type: none">• BEFORE THE ADMINISTRATION AUTHORITY -REQUEST FOR REPETITION OF THE PROCEDURE• BEFORE THE COURT- CLAIM FOR REPETITION OF THE PROCEEDINGS• REQUEST FOR REVIEW OF THE COURT AWARD• SPECIAL LEGAL REMEDIES-CONSTITUTIONAL APPEAL• PETITION TO THE EUROPEAN COURT OF HUMAN RIGHTS IN STRASBOURG	
ATTACHMENT 1 - LEGAL REMEDIES	22

Taxes are an unavoidable companion from the inception of a company until its termination. Taxes may represent a significant cost burden, not only in the form of paid taxes, but also with respect to time and effort spent on:

- becoming familiar with laws and regulations;
- maintaining proper records;
- drafting of tax returns;
- ongoing compliance with tax regulations.

Failure to settle tax obligations even if justified by mere lack of knowledge of relevant laws and regulations might result in extremely high fines, incurred by a company, or by its General Manager or by another responsible company officer. On the other hand, insufficient knowledge of regulations may result in a company being deprived of significant tax savings. That is why it is quite important to obtain high quality legal advice on application of tax laws and regulations.

INTRODUCTION

The most significant taxes applicable to companies are:

- corporate income tax;
- value added tax;
- withholding taxes;
- property tax.

These taxes affect the vast majority of companies. The corporate income tax, the value added tax (hereinafter referred to as: "VAT") and the property tax are periodical taxes. The periodical taxes are paid in certain time intervals (monthly, quarterly, annually), from the moment an entity becomes a tax payer, until the moment the entity's legal capacity as a taxpayer is terminated. On the other hand, in case of non-periodical taxes, there are no tax periods, as these taxes are paid in respect of a transaction or revenue and in a single installment (real estate sale, receipt of inheritance, lottery win, etc.). The non-periodical taxes include the withholding taxes, the tax on transfer of absolute rights, and the inheritance and gift tax.

There are also periodical taxes burdening only certain business sectors. These include:

- excise;
- non-life insurance premium tax.

Individuals are subject to the following taxes:

- individual income taxes;
- aggregate annual income tax;
- property tax.

Entrepreneurs pay the tax on income from their activities.

TAXPAYERS REGISTRATION

At the very moment of incorporation, a company has its first obligation towards the Tax Authority – obtaining the Tax ID number (PIB), which is obtained during registration procedure with the Serbian Business Registers Agency.

Immediately after incorporation, a company is faced with number of tax obligations, which trigger registration obligation for payment of various taxes. These obligations are set out as below:

- Within 15 days following the company registration, the tax returns for the corporate income tax have to be submitted. The tax returns shall be submitted to the Tax Authority organizational unit, subject to the location of the company's headquarters. The tax return shall contain the profit assessment for the first tax period, as well as the assessment of the monthly allowance for payment during the first year.
- Should a company estimate that in the first 12 months its turnover is likely to exceed RSD 8,000,000 there will be an obligation to submit the tax return for registration for payment of the value added tax (VAT). The tax returns shall be submitted within 45 days following commencement of business activities i.e. until the 15th day of a month following the month from which you intend to be registered for VAT. Should you believe that you will not exceed the threshold, you may, but do not have to file for VAT registration.
- If you have employees, you shall, within three days as of the execution of employment agreement, file the registration application with the Central registry for mandatory social contributions.
- If you own or lease real estate (buildings and land), you shall be obliged to submit the tax returns for the property tax. The tax returns shall be submitted to the competent body of a municipality subject to the real estate location.
- If you wish to engage in production of tobacco derivatives, crude oil derivatives, bio-fuels, bio-liquids, and alcoholic beverages, you will be obliged before beginning of the production to submit a report to the competent Tax Authority, based on where a production facility is located.

CORPORATE INCOME TAX

A company incorporated or having headquarters in Serbia shall pay the corporate income tax on the profit acquired both in Serbia and abroad (resident legal entity). If your company has not been incorporated and does not have actual headquarters in Serbia (non-resident legal entity) yet operates in Serbia through a permanent business unit (branch, factory, plant, representative office, etc.) it shall be obliged to pay the profit tax on the operations of that business unit.

The legal entities profit tax rate is 15%.

The corporate income tax shall be paid on profits generated by a legal entity during one business year. The corporate income tax is calculated on annual basis and shall be paid in advance in monthly installments. The monthly installment shall be paid until 15th of the month for the previous month.

A newly incorporated company shall effect the advance payment in the amount assessed in the tax returns immediately after incorporation, and after completion of the first business year, the tax returns shall be submitted in which adjustments will be made subject to the actual generated profit. For each following year the advance payments shall be effected subject to the last advance payment from the previous year, and after filing of the tax returns for the previous year subject to the data contained in that tax return. The tax returns shall be submitted by June 30th of the current year for the previous year.

The corporate income tax basis is taxable profit determined in the tax balance sheet by adjusting the taxpayer's profit demonstrated in the profit and loss account, made in compliance with the IAS and IFRS and regulations governing accounting and auditing, in the manner determined by law. The adjustments shall be made both in terms of profit and expenditures presented in the profit and loss account.

Over the years, the major issues in terms of adjustment have been capital gains and losses and transfer pricing:

The capital gain/loss is the revenue generated through sale of:

- Real estate used as a fixed asset for conducting business activity, including real estate in construction;
- Industrial property rights;
- Capital stake in a legal entity, shares and other securities, which pursuant to IAS and IFRS are long-term financial placements (except bonds and other debt finance securities issued by the Republic of Serbia and other governmental and local government entities);
- Investment units purchased from an open investment fund.

The difference between purchase and sale price of goods is included as part of the taxable profit.

Non-residents shall also pay the capital profit tax (for revenue generated through sale of (i) real estate used as the fixed assets for conducting its business activity, including the real estate in construction, as well as real estate not used for conducting business activity), (ii) Capital stake in a legal entity, shares and other securities, which pursuant to IAS and IFRS are long-term financial placements (except bonds and other debt finance securities issued by the Republic of Serbia and other governmental and local government entities) and (iii) investment units purchased from an open investment fund) and shall submit the special tax return for that purpose, within 30 days from generation of the revenue.

The prices in transactions with affiliates shall satisfy the "arm's length" standard, meaning that companies shall present prices in transactions with their affiliates as if the transactions were carried out with non-affiliates. The taxpayer is obliged to attach to the tax balance sheet the documentation containing the data on both, in the manner specified by the Minister of Finance, the transactions with affiliates and the value of the same transactions at the prices which would have been achieved had the transactions not been carried out with the affiliates.

Should the taxpayer's transfer price based on the transaction with an affiliate be different from the price of the transaction carried out by application of the "arm's length" principle, the taxpayer shall be obliged to include the following in the tax basis:

1. the amount of the positive difference between the revenue generated from the transaction by application of the "arm's length" principle and the revenue from the transaction at the transfer price, or
2. the amount of the positive difference between the expenditure on the ground of the transaction at the transfer price and the expenditure on the ground of the transaction at the price defined by application of the "arm's length" principle".

An affiliate of the taxpayer is:

- an individual or legal entity in whose dealings with the taxpayer there is a possibility of control or exertion of considerable influence on business decisions of the taxpayer, whereby the direct or indirect possession of at least 25% shares or 25% of votes in management bodies of the taxpayer is considered as the possibility of control i.e. the possibility of exerting considerable influence on business decisions of the taxpayer;
- a legal entity in which, as in the taxpayer, the same individuals or legal entities participate in control, supervision or capital;
- persons related to the related person of the taxpayer from the above two points: legitimate or illegitimate spouse, descendants, adopted children and descendants of the adoptee, parents, adoptive parents, brothers and sisters and their descendants, grandparents and their descendants, as well as brothers and sisters and parents marital or extramarital partner in the abovementioned way with the abovementioned percentage;
- non-resident legal entity from jurisdictions with preferential tax system.

The taxpayers have the following tax reduction mechanisms:

- **Tax consolidation**
This mechanism makes it possible for a group of resident affiliates to submit the consolidated (aggregate) tax balance sheet at the group level; the loss incurred by a member of the group can be deducted from the profit gained by another member of the group. The members of the group shall also keep their individual balance sheets. The tax calculated based on the consolidated balance sheet shall be paid by the members of the group in proportion with the taxable profit from the individual balance sheets. The condition for the tax consolidation is direct or indirect control among the companies of at least 75% of shares or stakes. The tax consolidation shall be applied over at least five tax periods. This possibility exists only if all members of the group are residents of the Republic of Serbia.
- **Tax credit for the profit tax paid abroad**
This tax relief is available to the residents (which generated profit abroad and has paid tax for such profit abroad) and is limited to the amount of the tax which would have been paid if the profit had been gained in Serbia and not abroad. This tax relief can also be governed in a different manner under an international treaty.

- **Transfer of losses from previous tax periods**
Losses established in the tax balance sheet, except for those from which capital gains and losses arise, may be transferred to the profit account established in the annual tax balance sheet from future calculation periods, for no longer than five years.
- **Tax exemption over the 10 year period**
This relief requires an investment in excess of RSD 1,000,000,000 in fixed assets and employment of more than 100 employees during the investment period. The taxpayer shall be tax exempt in proportion with his investment. For example, if you invest RSD 3,000,000,000 in fixed assets, and the total value of the existing assets is RSD 10,000,000 the tax exemption will refer to 99.67 % of the tax determined in the tax balance sheet.

VALUE ADDED TAX (VAT)

In Serbia, VAT is paid on delivery of all goods and rendering of all services provided by legal entities or natural persons within scope of their respective activities. The taxpayer is a legal entity or a natural person trading in goods or services within its/his/her scope of activities. Goods include material items, but also water, electric power, gas and heating power. Services include all activities and actions performed within scope of activities, and which cannot be covered by trade in goods. In addition, the VAT is paid on importation of goods.

In the year in which you incorporate a company and begin trading, as well as in the following year, the period for which you are obliged to calculate the VAT (the obligation to calculate VAT exists only if the profit exceeds RSD 8,000,000 in the previous 12 months) and submit the tax returns shall be on a monthly basis. The tax return shall be submitted and the VAT paid within 15 days after the end of the month. Thereafter, if during the previous 12 months you have realised turnover in excess of RSD 50,000,000 or if you estimate that over the next 12 months you will realise turnover in excess of RSD 50,000,000 you will be obliged to continue calculating and paying the VAT on a monthly basis. The submission term for the tax returns and payment of the tax shall remain 15 days. On the other hand, if during the previous 12 months you have realised turnover below the specified one, or if you assess that the turnover to be achieved over the next 12 months will be below the specified one, you should calculate, submit the tax return and make payment of the VAT tax on quarterly basis. In this case, the submission term for the tax return and VAT payment shall also be 15 days.

Please note that a foreign legal entity or a natural person trading in goods and services in Serbia (except if the goods and services are sold/provided to VAT debtors or to state authorities and entities which are not subject to VAT or in case of service of transportation of passengers by buses) shall be obliged to nominate a tax attorney. The tax attorney may be a legal entity or a natural person having headquarters or a place of residence in Serbia and being itself the VAT taxpayer. The tax attorney shall on behalf and for the account of its principal engage in all tasks and assignments in connection with settlement of tax obligations.

When delivering the VAT taxable goods and rendering the VAT taxable services, you will be obliged to issue a receipt with specified amount of the VAT and other required elements. The receipt shall contain all the required elements, since the Tax Authority does not allow deductions for prior VAT on receipts not containing all the elements specified by law. In addition, it will be mandatory to keep records of all data required for VAT calculation: amount of the VAT calculated at the general rate; amount of the VAT calculated at the special rate; the VAT paid on importation; the VAT amount to be deducted for prior VAT, etc.

PRIMARY
VAT

2008

After more than 10 years of introducing the VAT in the tax system of the Republic of Serbia, the major amendments of the rules regarding the supply of services location occurred at the end of 2016. These rules will be applicable as of April 2017.

The new rules make a difference between two situations:

1. In case the supply of services is made to the taxpayer, the location of supply shall be considered as the location where the recipient of the services/taxpayer has its registered seat or a permanent business unit or the location where the taxpayer has permanent or temporary residence;
2. In case the supply of services is made to the individual or a legal entity that is not a taxpayer, the location of supply shall be considered as the location where the provider of the services has its registered seat or a permanent business unit or the location where the recipient service has permanent or temporary residence.

In addition, changes of the exceptions to the location of supply have been made, such as with respect to transport of persons and goods, or rental of vehicles.

The VAT basis is the amount of consideration paid for service rendered or goods received.

There are two VAT rates: the general VAT rate is 20% and the special VAT rate is 10%.

The taxpayers have the following VAT relief mechanisms at their disposal:

- **Prior VAT deduction**

The VAT taxpayer is entitled to reduce tax commitment for the VAT paid by legal entities or natural persons which/who have delivered goods or rendered services (previous tax), and which have been transferred to it over through the price of goods or services. Should the amount of previous tax exceed the tax obligations, the taxpayer shall be entitled to have the difference refunded or have the tax payable in next period reduced. In order to be eligible for a prior VAT deduction, a taxpayer shall attach a receipt issued by another tax payer on previous tax or a document on importation of goods with VAT amount indicated, as well as document proving such VAT amount has been paid. In certain cases a taxpayer shall be eligible for a prior VAT deduction, without having to enclose the mentioned receipt i.e. documents.

- **VAT Reimbursement**

Reimbursement is a tax relief given under deferred conditions. In this case, the tax shall be paid regularly and if a certain condition is satisfied, the taxpayer shall be reimbursed for the paid tax. In the Republic of Serbia, the foreign VAT taxpayers are entitled to the VAT reimbursement, provided the VAT they have paid is presented in the receipt and exceeds EUR 200 in RSD equivalent. Also entitled to reimbursement under appropriate conditions are humanitarian organizations, traditional church and religious communities, diplomatic and consular representative offices as well as the buyers of a first flat.

WITHHOLDING TAX

In case of certain payments to the natural persons and foreign legal entities, you will be obliged to calculate and pay appropriate withholding tax. In these cases you are not the actual taxpayer, but you are nevertheless obliged to calculate and pay the tax on behalf and for the account of party receiving the payment. So, the tax debtor of the withholding tax is the party receiving the payment, with the tax on income collected on the occasion of payment, i.e. "at the source". The withholding taxes include the taxes on the following:

- In case of payments made by legal entities to individuals: Salaries, income from copyright, rights similar to copyright and industrial property rights, loan interest, savings and other deposits (time deposits or deposits at sight), and based on debt or other securities, dividends and share in a legal entity profit, yield from an investment unit of open investment fund, lease revenue for lease of a real estate to legal entity, revenue from movable property lease, revenue from personal insurance, service agreements revenue, trade representation agreements, management income of legal entity management board members, revenue from part-time and seasonal work agreements, executed through a youth or student cooperative with a person of up to 26 years of age, undertaking studies, as well as revenue on the ground of additional engagement;
- Contributions for mandatory social insurance ('the contributions') are also classified as the withholding tax, when the taxable income is paid by a legal entity or an entrepreneur. There are three types of contributions: contributions for pension and invalidity insurance ('the PIO contribution'), contributions for health insurance ('the ZO insurance') and the unemployment insurance. However, in certain situations, payers of income are obliged, apart from the obligation to withhold the contributions from the income of the parties receiving it, to also pay a portion of contributions from their own funds (e.g. when paying salaries);
- Tax on non-resident legal entities profit in certain cases is paid by resident legal entities, on following income: dividends and stakes in profit of a legal entity, considerations on the ground of copyrights and similar rights, and the industrial property rights, interest, considerations on the ground of lease and sub-lease of the real estate and movable property on the territory of Serbia, as well as considerations deriving from certain services provided or used, i.e. which shall be provided or used on the territory of Republic of Serbia (when a non-resident legal entity is legal entity from tax heavens, its considerations deriving from services payable by Serbian resident are subject to withholding tax, irrespective of the fact where these services are provided or used). Aforesaid incomes, excluding dividends and stakes in profit of a legal entity, if realized within enforcement proceeding or any other claim settlement proceeding, will be taxed and tax paid upon tax resolution rendered by the Tax Authority following the submission of the tax return by the proxy of the non-resident legal entity.

Tax reliefs for employing certain categories of citizens

If persons are employed who satisfy the following requirements:

1. have been registered as unemployed with the National Employment Service for at least six months (in case of a trainee – at least three months),
2. during that time have not acquired any kind of income on the ground of work engagement, and
3. by employing them the employer increases the number of employees as compared to number of employees as of March 31st, 2014,

an entity will be entitled to a refund for certain portion of taxes and contributions paid on salaries of such employees until December 31th 2019.

Should an entity employ under the unlimited term agreement a person with invalidity, it will be relieved from payment of taxes and contributions based on salary of that person, during the period of three years from the date of employment of such person.

PROPERTY TAX

If your business premises are owned, the property tax shall be paid. However, a decision is made to lease business premises, business operator/the tenant will be obliged to pay the property tax and not the landlord. The tax payment regime is established subject to whether the business books are kept or not:

Taxpayer keeping the business books	Taxpayer not keeping the business books
The tax basis is established in compliance with the international accounting and auditing standards.	The tax basis is established by assessment of real estate value subject to useful area and average price of a square meter in a zone in which the real estate is located.
For a property acquired by a taxpayer during a year, and his taxpaying obligation created thereby, he shall submit tax returns within thirty days from the date of acquisition of such property. The tax returns shall specify the tax obligation for the part of the year, since the creation of tax obligation. As the property tax is paid on quarterly basis, a proportionate amount shall be paid for the quarter in which the obligation was created, within 45 days from the beginning of the quarter, and, if the obligation was created following expiry of the term, within 15 days following the creation of the tax obligation.	For the property acquired by a taxpayer during the year, and his tax obligation created thereby, he shall submit the tax returns within thirty days from the date of acquisition of such property. The tax shall be established under a resolution and shall be paid on quarterly basis. Within 15 days following submission of the resolution, a proportionate amount of the tax shall be paid for the quarter in which the tax obligation was created .
Thereafter the tax shall be paid within 45 days following beginning of the quarter.	Thereafter the tax shall be paid within 45 days following beginning of the quarter.
The tax shall be established by self-assessment, no later than March 31st of the tax year. Thereafter, within 15 days, the difference between the tax paid in advance and the tax specified in the tax returns, if any, shall be paid.	The tax shall be established under the Public Revenue Department resolution. Thereafter, within 15 days, the difference between the tax paid in advance and the tax specified in the tax returns, if any, shall be paid.
Until the tax has been established for the tax year, the property tax shall be paid in advance in the amount of the obligation for the last quarter of the previous year.	Until the due date of the tax obligation under the resolution on the tax, the tax shall be paid in advance in the amount of the tax obligation for the last quarter of the previous year.

The property tax rates differ subject to whether you keep the business books or not. If the tax payer keeps the business books, the tax rate is 0.4%.

On the other hand, if the taxpayer does not keep the business books, there are various rates subject to the value of real estate. The property tax rate is established by a local council assembly, with the rates being limited as follows:

- If the tax is paid on the land, the tax shall be calculated at the proportionate rate of up to 0.3%.
- Other taxable rights to the real estate are subject to the following tax rates:

Real estate value	Tax rate
Up to RSD 10,000,000	Up to 0.4%
Between RSD 10,000,000 and RSD 25,000,000	Up to the value of RSD 10,000,000 - 0.4% and over the value of RSD 10,000,000 – up to 0.6%
Between RSD 25,000,000 and RSD 50,000,000	Up to the value of RSD 10,000,000 - 0.4% and over the value of RSD 10,000,000 – up to 0.6%, and over the value of RSD 25,000,000 – up to 1%
Over RSD 50,000,000	Up to the value of RSD 10,000,000 - 0.4% and over the value of RSD 10,000,000 – up to 0.6%, over the value of RSD 25,000,000 – up to 1% and over the value of RSD 50,000,000 – up to 2 %

EXCISE

If business intends to engage in importation and trading of oil derivatives, alcoholic beverages, coffee, tobacco products or electric power, it will be obliged to calculate and pay the excise tax on importation and producing of such products. In addition, liquids used for filling of e-cigarettes are also subject to payment of the excise tax. According to the newest amendments of the law the producer of excise products shall also be the person who carries out the processing, roasting, packaging, and other related activities carried out for the purpose of production of coffee. Given that the producer of excise products is at the same time obliged to pay excise tax, that means that the range of persons obliged to pay the excise tax has been extended.

Furthermore, the range of persons obliged to pay excise tax has been additionally extended including the following persons:

- those who sell excise products obtained in accordance with law and are kept in his business books;
- those who perform transactions of excise products on the territory of Republic of Serbia contrary to law.-

The excise taxpayer shall calculate the tax when trading in or importing the excise product. The calculated excise tax shall be paid on a monthly basis, no later than the last day of the month for the excise amount calculated for the period 1st – 15th of a month. For the period 16th of a month – the end of a month, the excise shall be paid until 15th of the following month. The excise tax calculation shall be made on a monthly basis and submitted to the Tax Authority within 15 days following expiry of the month for that month. Also, the excise tax is calculated on an annual basis.

The excise taxpayer is also obliged, until the end of the year, to make the inventory of stock, itemized by products on which the excise tax is paid.

There are four kinds of tax reliefs with respect to the excise taxes:

- Excise tax exemption

The excise tax shall not be paid if trading with the excise products is carried out abroad or in the tax free zones, intended for the international traffic and diplomatic representative offices.

- Excise tax refunding

Excise taxpayer i.e. producer of excise product has right on tax refund if the following requirements are cumulatively met:

- excise product is obtained from producer or importer (or the excise taxpayer has itself produced or imported product) and excise has been paid for such product;
- excise tax for such products is deducted pursuant to law; and
- such products are used for production of excise products exempted from excise tax payment pursuant to law.

- Excise reimbursement

A party which has exported an excise product purchased in Serbia directly from an excise product producer or from the importer of an excise product, shall be entitled to reimbursement of the excise tax. The same applies for the importer of an excise product who exported that product. In addition, entitled to the excise reimbursement shall be the buyer – end user of the oil derivatives, bio-fuels and bio-liquids provided that end user uses such goods for transportation or heating activity if certain additional conditions are met.

- Excise reduction

The taxpayer shall be entitled to reduction of calculated excise tax on the goods used as raw materials or semi-finished products.

TAX ON NON-LIFE INSURANCE PREMIUMS

Insurance companies have an additional obligation to pay the tax on non-life insurance premiums received on basis of non-life insurance agreements. This tax is calculated on the occasion of execution of non-life insurance agreements and records are kept on the calculated tax. The taxpayer shall pay the tax on non-life insurance premiums until the 10th of the month for insurance agreements executed in the previous month. The tax basis is the premium received by an insurance company under non-life insurance agreements. The applicable tax rate is 5%.

TAX ON TRANSFER OF ABSOLUTE RIGHTS

In case of real estate sale, an intellectual property right, a motor vehicle or sale of the right to use a construction land, a business operator will be obliged, within 30 days following the sale, to submit the tax returns for the tax on transfer of absolute rights. In case of real estate sale, the tax returns shall be submitted to the Tax Authority unit in charge based on the location of real estate. On the other hand, when a business operator acquires such rights, it will be in the position of a guarantor for payment of this tax.

The tax basis is the contracted price, and the payment obligation is created as of the execution date of an agreement.

The applicable tax rate for the absolute rights assignment is 2.5 %.

The assignment of one of the specified rights on which VAT is paid, as well as the contribution of any of the said rights into the local legal entity capital shall be tax free.

In Serbia, the tax on inheritance and gifts is also paid. Until recently, this tax was applicable to legal entities in cases of debt relief. Now, it is no longer the case, and the amount of debt relief becomes only the profit of debtor for that business year and is only subject to payment of the legal entities profit tax and not the gift tax.

TAX OBLIGATIONS OF INDIVIDUALS

TAXPAYERS OF INCOME TAX

The taxpayers of the individual income tax are residents and non-residents. The residents are persons residing in Serbia or having the business and life interest center within Serbia. Also, the residents shall be deemed persons staying in Serbia continuously or with interruptions 183 or more days during the period of 12 months. The residents shall be taxed on income derived both in Serbia and abroad. On the other hand, non-residents for tax purpose are persons deriving taxable profit in Serbia and not being residents of Serbia. The non-residents are taxed only on income derived in Serbia. The derivation and source rule is applicable to all taxpayers - individuals.

OBLIGATIONS WITH RESPECT TO CERTAIN TYPES OF INCOME

Most frequently, for natural persons the tax is withheld and paid by a legal entity or an entrepreneur which/who pays the income. Exceptionally, if the payer of income is not a legal entity or an entrepreneur, where income is generated from self-employment and certain forms of capital gains, the natural person shall be obliged to calculate and pay the tax on his own.

Following incomes, if not paid by legal entity or entrepreneur shall be taxed by self-assessment and tax return with calculated tax shall be submitted within 30 days from the day such income has been generated:

- copyrights and similar rights as well as rights of industrial property;
- interest;
- incomes from real estate and movable property lease;
- other income.

The annual income tax and capital gain tax is paid upon resolution rendered by Tax Authority. The tax return for the capital gain tax shall be submitted:

Within 30 days as from the day the income from sale or other transfer of property rights on real estate or shares in legal entities has been generated or has started to be generated;

Within 30 days upon expiration of every calendar semester in which the transfer of securities has been performed.

Finally, the natural persons are taxpayers of the property tax, the tax on inheritance and the absolute rights assignment tax. The rates and methods for establishing the property tax and the absolute rights assignment tax are given above, and the tax on inheritance and gifts shall be paid immediately following the resolution on inheritance or execution of a gift agreement. The tax rate is 1.5% for the second ranking inheritance order (first ranking inheritance order is relief from taxation) as related to a descendant or a donor. For those belonging to further ranking inheritance orders, the tax rate is 2.5%.

ANNUAL INCOME TAX

If in a calendar year you acquire the income in excess of the triple annual salary in Serbia, you will be deemed a payer of the annual citizens' income tax. Therefore, you shall submit the tax return for this tax no later than May 15th of a current year for the previous year. The tax shall be determined by the Tax Authority resolution.

The tax returns shall be submitted for the income including:

- salary;
- taxable income from self-employment;
- taxable income from copyrights and similar rights and the industrial property rights;
- taxable revenue from lease of real estate or movable property;
- income based on service agreements, trade representation agreements, earnings of legal entity management members etc.

A significant relief in case of this tax is that the tax basis does not include income from dividends and share in profit of limited liability companies.

The tax basis is determined in the following manner: First, income is reduced by taxes and contributions paid in connection with the said income. Then, the amount equal to the triple amount of the average annual salary of an employee in Serbia is deducted from the income. The amount obtained in such way is reduced by personal deductions in the amount of 40% of the average annual salary in the Republic of Serbia and in the amount of 15% of the average annual salary for a supported family member. The amount of personal deductions shall not exceed 50 % of the income.

The rates of the annual citizens' income tax are as follows:

BASIS	RATE
Up to the amount of six times average annual salary	10%
Above the amount of six times average annual salary	10 % on the amount of six times average annual salary + 15% on the amount exceeding six times average annual salary

LIABILITY FOR FAILURE TO SETTLE TAX OBLIGATIONS

LEGAL OFFENCE LIABILITY FOR FAILING TO SETTLE TAX OBLIGATIONS

Offences and fines for the failure to settle tax obligations are specified by punitive provisions of the Tax Procedure and Tax Administration Act.

Out of the listed offences one should bear in mind the following: failure to submit or untimely submission of the tax return, failure to calculate, effect payment and untimely payment of the tax, presentation of the lower amounts of the tax and providing of the incorrect data in the tax returns, failure to attach the documents to the tax returns – applications for registration and requests, notifications, documents and other data as well as acting contrary to the rules provided in the tax laws.

In addition, tax payer shall be obliged to appoint tax attorney and to register himself/itself for the tax payment obligation if the tax payer supplies goods or services in accordance with the tax law and has no registered seat or business unit in the Republic of Serbia or carries out supply of goods or services outside of its business unit. Non appointment of the tax attorney and non registration for the tax payment means an exposure to a fine.

For the majority of offences fines are specified which may reach the amount of RSD 2,000,000 for legal entities. In certain cases a fine will be specified as a percentage of the overdue tax. For example, a legal entity which has failed to submit tax returns; failed to calculate; and failed to pay the tax will be fined for the offence in the amount up to 100% of an overdue amount, which shall not be below RSD 500,000.

Generally, any tax offence relates either to a failure to settle tax obligations or tax payment evasion. The legal offence liability also applies to a person in charge within a legal entity, and such person shall be held liable for the same offence along with the legal entity.

CRIMINAL LIABILITY FOR NON-FULFILLMENT OF TAX OBLIGATIONS

Please note that the failure to report revenue and present important facts for establishing tax payment obligations represent tax evasion and might lead to criminal prosecution of person in charge within a legal entity, or a natural person, as well as to the imprisonment sentence of six months to five years. This is with respect to circumstances where the amount of evaded tax exceeds RSD 500.000 but does not exceed RSD 1.500.000. The Criminal law also provides for classification in relation to this criminal act. Namely, should the amount of the evaded tax exceed RSD 1.500.000 but does not exceed RSD 7.500.000, the sentence would be within the range of one to eight years imprisonment, along with a fine. Should the amount of evaded tax exceed RSD 7.500.000, the imprisonment sentence would be in the range of three to ten years.

Failure to pay the withholding tax may also lead to criminal prosecution of person in charge within a legal entity or an entrepreneur which/who fail/s to settle this obligation. The criminal act of failing to pay withholding tax may result in the imprisonment sentence of up to ten years depending on the amount of unpaid withholding tax and in prohibition to engage in the respective business activity, ranging from one to three years for legal entity and one to ten years for responsible natural person.

Also subject to criminal prosecution is illegal trade in excise products, and envisaged criminal sentence in that respect ranges from six months to five years imprisonment.

Jeopardizing tax collection and tax control shall be subject to the one year imprisonment sentence and a fine.

TAX CONTROL

The Tax Authority shall decide on rights and obligations of taxpayers, under a resolution or a conclusion. The tax obligation is established pursuant to a resolution, while a conclusion deals with accompanying issues. Both the resolution and the conclusion might be challenged by lodging an appeal.

The Major Taxpayer Center of the Tax Authority shall be in charge of establishing tax obligations of major taxpayers and subsequent payment. The major taxpayers are taxpayers of good standing with the annual turnover in excess of RSD 1,000,000,000. The Major Taxpayers Center is in charge of all taxes paid by the major taxpayers, except for the contributions which are established and collected in the same manner as in the case of other taxpayers.

The Tax Authority, within the tax control procedure, shall verify and establish whether the tax commitments are settled. The tax control is performed by the tax inspector. There are two types of the tax control: office control and field control.

- The office control begins with an invitation to taxpayer to participate in the further procedure of the office control and to provide the requested explanations and documentation within the term specified by the Tax Authority. The office control is exercised at the premises of the Tax Department by comparing data collected from a taxpayer and data contained in the official records of the Tax Authority.

- The field control is carried out at the taxpayer's premises or at some other place. The field control is performed by the tax inspector under the control order. The order for field control shall be served on the taxpayer immediately before the beginning of control. The taxpayer, or an attorney, or a representative shall be given the opportunity to be present on the occasion of conducted inspection at the premises. After the performed control, the tax inspector shall draft Minutes on the performed tax control, to which an objection may be filed within 5 days following the receipt of Minutes. The field control is primarily performed for the purpose of establishing the legal entities profit tax, VAT and withholding tax, and in case of the excise tax. In addition, the Tax Authority is entitled to verify determination of other taxes as well.

During the tax control procedure, the tax inspector shall be entitled to undertake the following measures:

- confiscation of goods;
- confiscation of the business books and other records;
- prohibition of engaging in business activity for the period of one year.

Following the tax control, should the inspector discover certain irregularities, he shall, under a resolution, order that the irregularities be rectified within a specified term. Should the taxpayer fail to eliminate the irregularities, the Tax Department shall, under a resolution declare one of the following measures:

- prohibition of disposal with respect to bank account funds, except for the purpose of settling tax obligations;
- temporary prohibition of engagement in certain tasks and assignments;
- temporary prohibition of engaging in business activity;
- temporary prohibition of disposal with respect to property.

PROTECTION OF THE TAXPAYERS' RIGHTS

PROCEDURE SUBJECT TO REGULAR REMEDIES

PROCEDURE BEFORE THE ADMINISTRATION AUTHORITIES

APPEAL

Until 1 July 2017 against an administrative act of the Tax Authority (resolution or conclusion), an appeal may be lodged with the authorized person in the Tax Authority (hereinafter referred to as: the second instance authority). The term for lodging of the appeal is 15 days following the date of receipt of the administrative act, and the appeal shall be lodged through the first instance authority. As of the date indicated above the second instance authority shall be Ministry of Finance.

An unauthorized or untimely appeal, as well as the appeal lodged by an unauthorized person will be rejected by the first instance authority under conclusion, against which a party is entitled to submit an appeal. The first instance authority may grant the appeal and amend the resolution or the conclusion. Should the first instance authority not amend the resolution or conclusion and not reject the appeal, it shall be submitted to the second instance authority. The appeal shall not withhold the execution of the resolution. Exceptionally, the second instance authority may postpone execution of the resolution or conclusion against which an appeal has been lodged, if the taxpayer manages to demonstrate that by payment of the tax or related tax obligations before the final determination of the disputed act he would suffer a material economic damage.

On the postponement of the execution request relating to a resolution, a conclusion shall be rendered, against which an appeal is not allowed. However, in this case a party lodging the appeal will be entitled to request from the Administrative Court to postpone the execution (this request will be dealt with in detail in the part covering administrative proceedings).

The second instance authority shall assess the legality and viability of the administrative act (resolution or conclusion). The administrative act may be illegal for both formal and material reasons. The formal reasons for illegality include: incompetence of the authorities rendering the administrative act, material violation of the rules of procedure, incorrect or insufficiently established state of facts, as well as drawing an incorrect conclusion from correctly established state of facts. The material reasons for illegality include: incorrect application of the substantive law and acting outside of granted authority during free assessment. On the other hand, the irregularity is in the free assessment made by the first instance authority. The error in the free assessment is present when, for example, the Tax Authority, upon performed tax control, in a legal manner declares the measure of prohibition of engagement in an activity, but, in the given situation, the more appropriate measure would be prohibition of engagement relating to certain tasks and assignments.

The second instance authority may rule on the appeal as follows:

- Adopt the appeal and annul the administrative act in whole or partially;
- Amend the administrative act ;
- Reject the appeal.

PROCEDURE BEFORE THE COURT

CLAIM FILED WITH THE ADMINISTRATIVE COURT

The administrative proceedings are initiated by filing of the claim with the Administrative Court on account of illegality of the final administrative act. The claim shall be filed within 30 days from the date of delivery of the administrative act to a party, or within a specified shorter term.

The claim may also be filed if the second instance authority has failed to render a resolution upon the party's appeal within 60 days following receipt of the appeal or within a shorter term specified by the law, and also by failing to render a resolution within the further term of seven days following the subsequent request of the party („administration silence“).

In the same way as the second instance authority, the Administrative Court shall also consider whether reasons for annulment of the act exist. Generally, initiation of the administrative proceedings does not postpone implementation of a resolution. However, the plaintiff is entitled to request implementation postponement of the second instance administrative act. Postponement of the execution may be requested if the execution would cause damage to a plaintiff that could hardly be compensated; the postponement is not contrary to the public interest; and the postponement would not cause a major or irreparable damage to an opponent or a party having an interest. The postponement may be requested simultaneously with filing of the claim, later, within the proceedings (with reference to the already filed claim), but also before filing of the claim. The request for postponement may be filed in the following situations:

- In case of emergency;
- When the appeal has been lodged, and subject to the law, does not have deferred effect in situations where the appeal proceedings have not yet been finalized.

Therefore, should the second instance authority reject the implementation postponement request for a resolution in the appeal proceedings, an appealing party shall be entitled to directly request postponement of the execution from the Administrative Court.

As compared with the second instance proceedings, in the administrative procedure there is a significant restriction in terms of reviewing limits of the second instance award by the Administrative Court. Namely, as opposed to the second instance proceedings, the administrative proceedings do not deal with assessment of the appropriateness of the second instance administrative act, but only with its legality. Therefore, in the administrative proceedings the plaintiff may not make reference to an error in the free assessment, but only to the illegality of an administrative act, both material and formal.

The Court settles the dispute by a verdict. Under a verdict, the Court either accepts the claim or rejects it as unjustified. If the claim is rejected, the administrative proceedings are validly completed. The verdicts under are classified as either the verdicts rendered under limited jurisdiction and the verdicts rendered under full jurisdiction. In case of the former, the Court annuls the administrative act in whole or partially and returns the case to the authority in charge for repeated ruling. In case of the second type of verdicts, the Court annuls the act in whole or partially and makes a ruling itself. In the second case, the administrative proceedings are validly finalized by a verdict. Please note that ruling under full jurisdiction is quite rare in the Administrative Court practice.

PROCEDURE UNDER THE EXTRAORDINARY LEGAL REMEDIES

BEFORE THE ADMINISTRATION AUTHORITY

In certain cases a request may be filed challenging an administrative act of the second instance authority, seeking repetition of the procedure. The request shall be filed with the second instance authority. That is the case when one becomes aware of new material facts or circumstances, as well as in case of severe procedural errors of the first instance authority. The term within which the procedural repetition request may be filed procedure is one month from the day of becoming aware that new facts or circumstances exist. However, the request may not be filed after expiry of five years following service of the second instance decision to a party. If an appeal has been rejected, and there are no grounds for repetition of the procedure, the second instance administrative act is still subject to the Administrative Court jurisdiction where it might be further challenged.

BEFORE THE COURT

CLAIM FOR REPETITION OF THE PROCEEDINGS

A claim may be filed against a verdict rendered in the administrative proceedings for repetition of the proceedings when one becomes aware of the new material facts and circumstances, as well as in case of certain severe procedural errors in the administrative procedure. The claim shall be filed with the Administrative Court. The term in which a claim may be filed for repetition of the proceedings is one month from the date of becoming aware of new facts or circumstances. However, this claim cannot in any way be filed after expiry of five years following service of the second instance decision to a party. The Court shall rule by making an award on the for repetition proceedings claim, and in the repeated proceedings it shall deliver the verdict. The practice of the Administrative Court, also reiterated by the Supreme Court of Cassation demonstrates that repeat of the proceedings may only be requested if the state of facts has been established in the administrative proceedings. If that has not been the case, the administrative proceedings cannot be repeated. The request may be filed against the verdict of the Administrative Court and the award ruling on the proceedings repetition request for review of the Court award.

REQUEST FOR REVIEW OF THE COURT AWARD

The party may file the request for review of the valid Court award in the following cases:

- When specified by the law;
- In cases where the Court ruled in full jurisdiction;
- In the matters where in the administrative proceedings the appeal has been excluded.

The reason for which the review of the Court award request may be filed is violation of an act or a subordinate act. The term for filing of the request is 30 days from the date the party has been served the award against which the request is filed. The request shall be filed with the Supreme Cassation Court. The Supreme Cassation Court shall, under its verdict, accept the request or reject it as unfounded.

SPECIAL LEGAL REMEDIES

CONSTITUTIONAL APPEAL

In case of certain procedural violations, the natural persons may lodge the constitutional appeal with the Constitutional Court, within 30 days after they have been served with the award on the last legal remedy. Should the Court accept the appeal, it shall annul the act against which the appeal had been lodged.

PETITION TO THE EUROPEAN COURT OF HUMAN RIGHTS IN STRASBOURG

If all legal remedies in the local legal order have been exhausted, a petition may be filed with the European Court of Human Rights (ECHR) in Strasbourg. This legal remedy is available only to the natural persons in case of certain procedural violations (violation of the right to trial within a reasonable term, violation of the right to access the Court, etc.).

ATTACHMENT 1 - LEGAL REMEDIES

1. REGULAR LEGAL REMEDIES			
Legal remedy	Reasons on account of which it can be sought	Term in which the request may be filed	Authority with which the request for the legal remedy is filed
Appeal	Material violation of the rules of the procedure; Incorrectly or incompletely established state of facts; Incorrect application of legal regulations; Error in free assessment;	15 days following service of the administrative act	second instance authority
Request for postponement of execution	Risk from material economical damage	During the proceedings under the appeal	second instance authority
Claim with Administrative Court	Illegality of the second instance administrative act	One month following service of the second instance administrative act	Administrative Court
Request for postponement of administrative act implementation	Risk of suffering the material damage	Simultaneously with filing of the claim, later, during the proceedings (with reference to the already filed claim) but also before filing the claim	Administrative Court

2. EXTRAORDINARY LEGAL REMEDIES			
Legal remedy	Reasons on account of which it can be sought	Term in which the request may be filed	Authority with which the request for the legal remedy is filed
Request for repetition of the proceedings	Awareness of the new material facts or circumstances, and certain severe procedural errors of the first instance authority	One month from becoming aware of the new facts or circumstances. The request may not be filed following expiry of five years after the party has been served the second instance resolution	second instance authority
Request for review of the Court award	Violation of the law or a subordinate act under the Administrative Court award	30 days after the party has been served the Court award against which the request is filed	Supreme Cassation Court

3. EXTRAORDINARY LEGAL REMEDIES			
Legal remedy	Reasons on account of which it can be sought	Term in which the request may be filed	Authority with which the request for the legal remedy is filed
Constitutional appeal	Violation of certain rules of the procedure	30 days following service of the award on the last used legal remedy	Constitutional Court
Petition to the European Court of Human Rights	Violation of certain rules of the procedure	6 months following service of the award on the last used legal remedy	European Court of Human Rights in Strasbourg



Vladimira Popovića 6 | NBGP Apartments
11070 Belgrade | Serbia | tel: +381 11 207 6850
fax: +381/11/207-6899

www.jpm.rs

JPM

JANKOVIĆ POPOVIĆ MITIĆ

