



## TAX REGIME OF DIGITAL ASSETS

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**As usual, December is a month in which tax laws are subject to amendments.**

**This year, the following laws were amended:**

- **The Individual Income Tax Law;**
- **The Law on Contributions for Mandatory Social Insurance;**
- **The Corporate Income Tax Law;**
- **The Law on Property Taxes, the Law on Value Added Tax;**
- **The Excise Law; and**
- **The Law on Tax Procedure and Tax Administration**

## **TAX REGIME OF DIGITAL ASSETS**

When the proposal of the new Law on Digital Assets was announced in Serbia, the question of tax treatment of digital assets was raised.

Back then, we discussed and analyzed the tax treatment of digital assets that could be expected, having in mind the existing solutions in the Serbian Tax Laws and that of OECD at the time .

As suggested, the very decision of the lawmakers to use the term “digital assets” as the main term implied that digital assets should be considered as a type of asset for taxation purposes, which further implied that the taxation of these assets would, first of all, be regulated under the laws regulating income taxes – individual income tax and corporate income tax (especially in terms of necessity to explicitly regulate the capital gain tax and determination of purchase price of digital assets for the purposes of this tax).

And indeed, the taxation of digital assets is implemented under both the amendments of the Individual Income Tax Law and the amendments of the Corporate Income Tax Law, while merely certain aspects of taxation of digital assets are addressed under the amendments of the Law on Property Taxes and the Law on Value Added Tax.

## THE INDIVIDUAL INCOME TAX LAW

The amendments of the Individual Income Tax Law address digital assets from the aspect of capital gain tax.

From the provisions that regulate the purchase price of digital assets for the purpose of determining the capital gain that is subject to taxation, it may be concluded that digital assets acquired by taxpayer by mining are also subject to taxation with the capital gain tax (when transferred further), i.e. the lawmakers explicitly included this form of acquisition of digital assets for the purposes of taxation.

The interesting point here is that this provision prescribes specifically how is the purchase price of digital assets acquired by mining determined in cases when the same have already been subject to taxation as “other income” that is neither subject to taxation on other grounds, nor is it exempted from taxation or subject to tax payment release.

Accordingly, any income acquired in the form of digital assets, including the digital assets acquired by mining, is subject to taxation as “other income” if not taxed or exempted otherwise.

Finally, when determining the purchase price of digital assets, the law prescribes another specific situation – when digital assets are acquired by the employee from the employer (or its affiliates; related parties) without remuneration or for the preferential (reduced) price, and such income was subject to taxation of salary.

However, the provisions that regulate taxation of salaries are not amended accordingly – these provisions neither enlist digital assets as the form of salary payment, nor they prescribe how is the tax base for salary paid in digital assets determined. As we have previously discussed, it would be necessary to determine the manner of calculation of tax base for the purposes of determining salary tax paid in the form of digital assets in order to actually tax the income acquired by employee from the employer in digital assets under salary tax, so it is yet to be seen how is this provision going to be implemented in practice.

Another important novelty of the latest amendments of the Individual Income Tax Law are the provisions prescribing the right to exemption and the right to tax credit, in cases when the funds acquired by sale of digital assets are further invested in the basic capital of a company or an investment fund, residents of the Republic of Serbia, within the prescribed period of time.

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## **THE CORPORATE INCOME TAX LAW**

In order to tax capital gain of a company acquired through the transfer of digital assets, it was necessary to include such transfer under the provisions regulating the capital gain of a company.

Accordingly, and similarly to the amendments of the Individual Income Tax Law, the amendments of the Corporate Income Tax Law also explicitly prescribe the taxation of capital gain acquired through the transfer of digital assets, as well as the manner of determining the purchase price of digital assets for this purpose.

The lawmaker remained consistent also when prescribing the right to exemption from the capital gain tax – the capital gain acquired by a company through sale of digital assets is not included in the tax base in cases when the funds acquired by sale of digital assets are further invested in the basic capital of a resident taxpayer or investment fund that has the center of business activities located in Serbia, within the same tax period.

## **THE LAW ON PROPERTY TAXES**

The amendments of the Law on Property Taxes addressed digital assets only when it comes to taxation of inheritance and gifts, explicitly including digital assets as the asset that is subject to this tax.

As expected, storing/hold of digital assets does not represent a basis for taxation, and the same is not taxed with the general property tax.

Moreover, the amendments of the Law on Property Taxes do not include digital assets - more precisely, transfer of digital assets, as the transfer subject to tax on transfer of absolute rights.

## **THE LAW ON VALUE ADDED TAX**

In regard to digital assets, the amendments of the Law on Value Added Tax prescribe that the transfer of virtual currency and exchange of virtual currencies for money (standard currency) in accordance with the Law on Digital Assets is exempted from VAT without the right to deduct prior VAT.

This solution goes in favor of the stand that was expected - that virtual currency, as a type of digital asset, is treated as money (standard currency).

However, the amendments of the Law on Value Added Tax do not address other forms of digital assets, suggesting that the transfer of other forms of digital assets and/or their exchange for money is subject to VAT.