



10 THINGS

YOU NEED TO KNOW

ABOUT

TAXATION

IN

SERBIA

JPM

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10 THINGS YOU NEED TO KNOW ABOUT TAXATION IN SERBIA

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Are you interested in investing and doing business in Serbia?

A couple of taxation related facts good to have in mind.

A **SERBIA HAS VARIOUS INCENTIVES EFFECTIVELY DECREASING 15% CORPORATE INCOME TAX RATE**

1

R&D INCENTIVE

The doubled amount of costs directly connected to R&D activities conducted in Serbia incurred by taxpayer in a tax period can be treated as the expense for the purposes of calculation of taxable income.

In order for an activity to be eligible as research for the purposes of the above incentive, a research has to be planned or original research conducted in order to acquire new scientific or technical knowledge and comprehension.

In order for an activity to be eligible as development for the purposes of the above incentive, such activity needs to consist of application of the research results or results of other scientific findings or production designs of new, significantly upgraded materials, devices, products, processes, systems, or services prior to commencing with commercial production or use.

2

INCENTIVES FOR INVESTMENT INTO INNOVATIVE ACTIVITIES

Investment of an existing taxpayer in capital of a newly founded company that conducts innovative activity, entitles it to apply for tax credit in the amount up to 30% of such investment.

A company that conducts innovative activity is a company that conducts, as prevailing business activity, activities in order to create new products, technologies, processes and services, or to significantly modify the existing ones in accordance with market needs, which are considered as innovative activities in accordance with the law that regulates the matter of innovative activities.

A newly founded company is a company that exists for no longer than 3 years and that fulfills the following conditions:

1. its annual income from last financial statements at the time of investment of tax payer does not exceed 500 million RSD;
2. has not distributed dividends prior to investment and until the moment of realization of tax credit;
3. center of its business activities is located in the Republic of Serbia;
4. is not created through status change; and
5. from the moment of its incorporation until the day of investment has achieved following financial thresholds:
 - R&D costs represented at least 15% of total expenses in each tax period; or
 - Highly qualified employees represent more than 80% of all employees, in each tax period; or
 - Is owner, i.e. user of deposited copyright or patent that is directly connected with its innovative activity.

The investment in a newly founded company that conducts innovative activity has to be made as pecuniary contribution in the capital of such newly founded company and cannot be withdrawn within at least three years period.

The relevant moment for determining the moment of investment is the moment in which the taxpayer has fully paid in its pecuniary contribution in the capital of the newly founded company that conducts innovative activity.

3

IP INCOME INCENTIVE

Up to 80% of income from IP rights in a year may be exempted from the taxpayers' income, provided that certain conditions for diminishing are fulfilled - that the copyright is registered in Serbia in the name of taxpayer or that the taxpayer holds a patent or has filled for registration of an invention as a patent.

Eligible income is calculated by taking the total income from IP in tax year which is first diminished for the amount of „qualified expenses“ and then multiplied by percentage representing the participation of qualified expenses in total expenses incurred in relation to subject IP i.e. $(TI - QE) \times (QE/TE \times 100\%)$.

If the qualified expenses in the given year are greater than the total income, the result is 0 (i.e. $TI - QE$ cannot be a negative number) and unused amount of qualified expenses can be used in the following years.

The taxpayer defines which expenses will be considered as qualified expenses, whereby it can include the salaries of employees, expenses for material and non-material assets, expenses of acquisition or lease of real estate, equipment etc, expenses related to expert opinions, consultancy services and transfer of know-how, all of them related directly to creation of IP, expenses related to protection of IP, expenses related to loans for the purpose of financing the creation of IP.

The taxpayer cannot include the sale expenses, advertising expenses, administrative and other general expenses not directly related to creation of IP, expenses of training of employees, expenses of regular maintenance of equipment used for creation of IP.

The total expenses include qualified expenses increased for expenses towards non-resident legal entities or individuals (or when non-residents are ultimate beneficiary of such expenses), expenses towards residents which are related parties - in part exceeding the arm's length prices, price for acquisition of IP, historic and current tax amortization and historic value of expenses from this paragraph if the IP is acquired by contribution to the capital of the company.

4

EMPLOYMENT INCENTIVES

The Republic of Serbia encourages employment by providing three different types of employment related incentives: (i) applicable to corporate income tax; (ii) applicable to individual income tax; and (iii) applicable in case of direct investment in accordance with the Law on Investments.

1. Corporate income tax related employment incentives

A taxpayer which:

- i. invests into its fixed assets, or in which fixed assets other entity invests, more than RSD 1 billion, and which
- ii. uses such assets to conduct its prevailing activity and other activities indicated in the incorporation act of the taxpayer (or in other act setting out the business activities that the tax payer is conducting) and which
- iii. in the period of investment employs for indefinite period of time at least 100 employees, shall be released from the obligation to pay the corporate income tax for a period of 10 years, in proportion to the investment.

Investment by other entity should be understood as either investment in the initial capital of a tax debtor or increase of the initial capital pursuant to the law.

New employees are the individuals which were employed by the taxpayer in the investment period, so that, at the moment of fulfilment of the conditions for the tax holiday, the taxpayer has at least 100 additional employees employed for indefinite period of time compared to the last day of a period which preceded the investment period. New employees are not the employees that were employed, directly or indirectly, to a related party and the individuals that are not actually engaged to work at the tax debtor.

The 10-year period starts from the first year in which the taxpayer, following the fulfilment of the conditions set out above, realizes the taxable profits.

2. Individual income tax related employment incentives

An employer who engages new employee is granted with the right of tax refund for a portion of income taxes paid for such newly employed person (a person with which the employer executed employment agreement, which is duly registered for social insurance, which was in unemployed status with the National Employment Service for interrupted period of at least 6 months, i.e. 3 months for interns, and which was not employed with a person connected with the employer), for the salary paid at latest until 31 December 2021.

The value of this tax incentive depends on the number of newly employed persons – the tax refund amounts to 65% of paid taxes in case of engagement of one – nine new employees; to 70% of paid taxes in case of engagement of at least ten, and up to 99 new employees; and to 75% of paid taxes in case of engagement of at least 100 new employees.

Entrepreneurs and/or micro/small legal persons are granted with additional incentive in this regard – they are entitled to 75% refund of paid taxes in case of employment of two or more new employees. This advantage cannot be used together with the above described general incentive in regard to the same employee(s). Even though this incentive refers to salaries to be paid until 31 December 2021, this form of incentive is regularly prolonged for a couple of years now for salaries paid until the end of the current year.

Finally, in case of engagement of disabled person as a new employee the incentive in form of tax refund for new employee is granted as 100% refund of paid taxes for the three-year period from the moment of engagement of such employee.

3. Incentives applicable in case of direct investment in accordance with the Law on Investments

Apart from the above described tax incentives, the Law on Investments also provides for different forms of subsidies in case of investments that inter alia involve engagement of new employees.

B

IMPORTANT INFORMATION IN DECIDING WHERE TO INVEST - TOTAL BURDEN ON PROCEEDS REALIZED FROM THE INVESTMENT

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BURDEN ON PROFITS REALIZED FROM CONDUCTING BUSINESS

Total burden includes corporate income tax payable by the company in which the investment is made and dividends tax payable by the investor.

A company's profit is subject to 15 % corporate income tax. Taxable profit is calculated as a difference between income and expenses of the company shown in financial statements prepared in accordance with IFRS and IAS standards, adjusted as set down in the Corporate Income Tax Law.

In case that dividends are acquired by domestic company, the dividends are exempt from taxable profit of such company (in order to avoid domino effect). In case of foreign company, tax rate for dividends is 20%, unless different treatment is provided for under specific double taxation treaty. In case of acquisition of dividends by natural person (foreign or domestic) tax rate for dividends is 15%.

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SALE OF BUSINESS BURDEN

When the investor decides to divest, the income from divestment may be taxed as capital gain provided that capital gain is acquired thereof.

In case of investor – domestic company, capital gain represents a part of company's' profit and is encompassed under income taxable with corporate income tax.

In case of investor – foreign company, tax rate is same as in case of dividends, unless different treatment is provided for under specific double taxation treaty.

In case of natural persons (domestic or foreign) this income is treated as income from capital gain taxed with 15% tax rate.

In each case, capital gain is calculated as a difference of selling price and acquisition price, with specificities for calculation of these prices depending on the assets transferred through divestment.

7

TREATMENT OF REPAYMENT OF CAPITAL AND INTEREST; TREATMENT OF LIQUIDATION SURPLUS

In case of repayment of capital, either as repayment of additional payments or through decrease of initial capital of the company, such repayment is not subject to taxes.

In case of interest from loan, interest acquired by:

- i. domestic company, interest represents a part of company's' profit and is encompassed under income taxable with corporate income tax;
- ii. foreign company, tax rate is 20%, unless different treatment is provided for under specific double taxation treaty; and (iii) natural person (foreign or domestic), tax rate is 15%.

In case of liquidation of company, liquidation surplus is taxed as dividends.

C

OTHER MATTERS TO CONSIDER

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PROPERTY TAX

Holders of any of the following rights over immovable property situated in the Republic of Serbia, are subject to annual property tax:

- Ownership title over immovable property;
- Usage of immovable property on the basis of financial leasing; and/or
- Usage of publicly owned immovable property in accordance with the Law on Public Property,

The tax base for calculation of this tax depends on whether the taxpayer is an entity that is obliged to prepare financial statements or not. In case of a taxpayer who prepares financial statements, the tax base is the immovable property value stated in the subject financial statements, while in case of taxpayers who are not obliged to prepare financial statements the tax base is calculated on the basis of the act of the local municipality, setting the value of various types of real estate in different parts of the municipalities (zones).

Maximum tax rate applicable to taxpayers who prepare financial statements is 0.4%, and in case of taxpayers who are not obliged to prepare financial statements maximum tax rate is 0.3% for land, while in case of facilities tax rate is defined as progressive and depends on the tax base.

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IP INCOME INCENTIVE

For purposes of determining transfer prices a party that is considered as related party to a company is such individual or legal entity which can control that company (defined as having at least 25% of shares, directly or indirectly) or exercise significant influence on business decisions of that company (defined as having, directly or indirectly, at least 25% of voting rights in corporate bodies of that company).

In addition, related party to a company is also a legal entity in which the same individuals or legal entities, directly or indirectly, participate in management, control or capital (again, having at least 25%) as in that company.

When related party is an individual, there is additional rule which prescribes that related parties are also spouse or partner, heirs, adoptees and its heirs, parents, brothers and sisters and their heirs, grand-parents and their heirs, as well as brothers and sisters and parents of a spouse/partners and their heirs, of an individual related to a company.

Also, any entity from “tax haven” is considered as a related party irrespectively of existence of any connection with the taxpayer. Currently, 49 jurisdictions are considered as “tax havens”.

Each taxpayer which had the transactions with related party is obliged to declare in its tax balance the transactions (including loans/credits) with related parties and the value of such transactions at arm’s length prices. The tax balance must be accompanied with the documents prescribed in a bylaw which support the calculation of the arm’s length prices. The documents are prepared in the form of the report which can be “full report” or “short report”.

The short report is prepared if the transaction with related party is single and the value thereof is not higher than RSD 8,000,000 or if the transactions within a tax year do not exceed the value of RSD 8,000,000.

Transfer pricing methods mentioned expressly in the law are:

- i. CUP,
- ii. Cost-plus,
- iii. Resale price,
- iv. TNMM and
- v. Profit split method. There is also a general rule that any other method may be applied if mentioned methods cannot be applied or such other method is more appropriate taking into account the circumstances. When the prices from the transactions with related parties are different than the arm’s length prices determined by applying the appropriate TP method, the taxpayer must include in the tax base:
 1. the amount of positive difference between income from the transaction based on the arm’s length price and the income from the transaction based on the transfer price, or
 2. the amount of positive difference between expenses from the transaction based on the transfer price and the expense from the transaction based on the arm’s length price.

Maximum amount of interest and expenses related to the credit/loan that can be recognized is equal to four times of the company own capital, being the difference between average value, as on 1 January and 31 December of the relevant year, of the assets of the company used for business operations and of the liabilities related to such assets.

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TAX TREATMENT OF DIGITAL ASSETS

Digital assets are recognized for the purposes of taxation with following taxes:

- i. corporate income tax; and
- ii. individual income tax, as capital gain.

Digital assets are also recognized for the purposes of taxation of inheritance and/or gift.

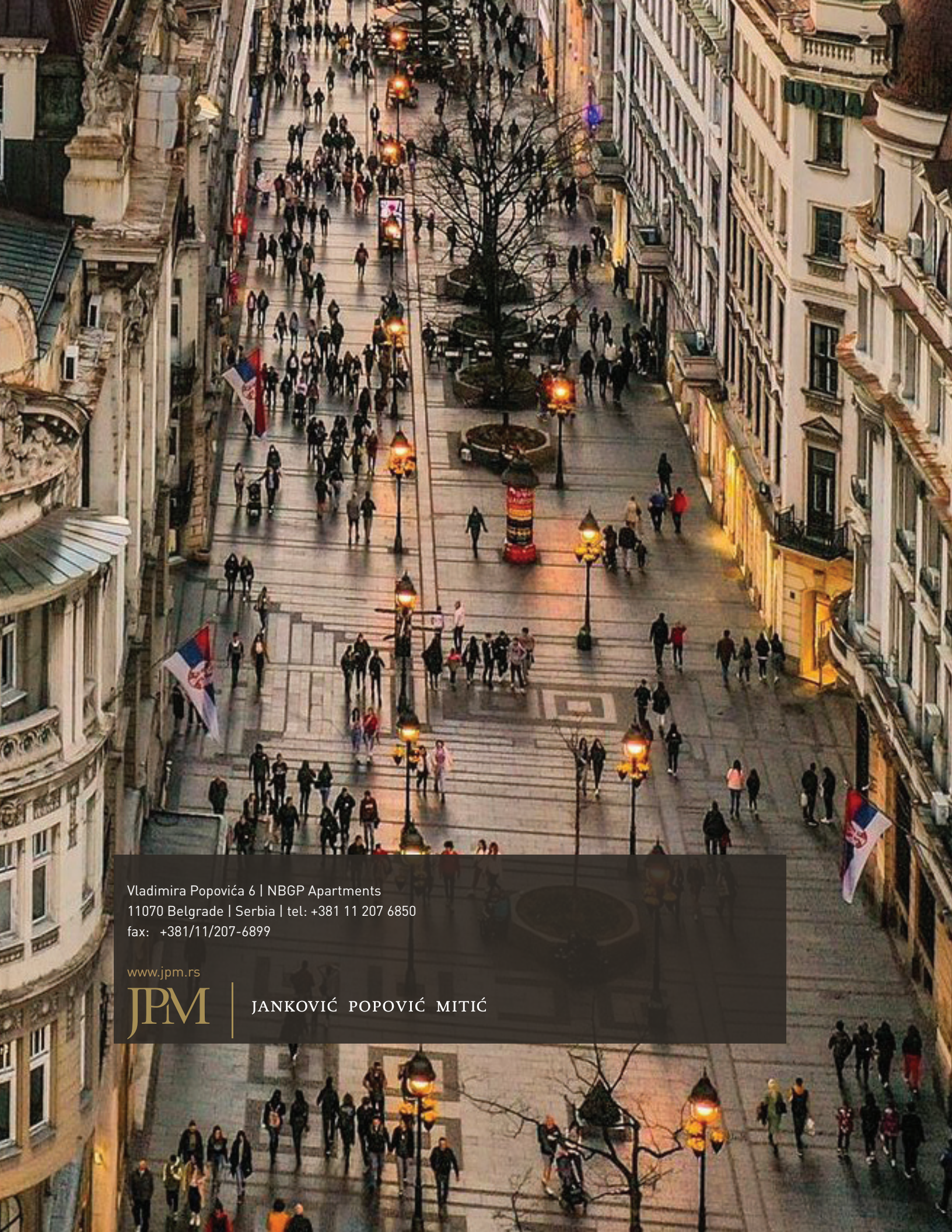
i. The Corporate Income Tax

Income acquired through transfer of digital assets is considered as capital gain for the purpose of corporate income 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.

ii. The Individual Income Tax Law

It should be noted that the individuals are also entitled 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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