




4581.21	4946.23	3651.12	67
3452.20	2284.69	4085.32	51
4574.52	7825.66	45217.28	
7581.21	4546.23		
452.20			

Capital Gains Tax

CAPITAL GAINS TAX AND TAX EXEMPTIONS

JPM | JANKOVIĆ POPOVIĆ MITIĆ



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The latest amendments to the Law on Personal Income Tax, in the part that refers to tax exemptions for tax on capital gains of natural persons, have expanded the scope of exceptions to the taxation of capital gains. However, it does not seem to be done in a coherent and comprehensive way.

Capital gains tax is one of the personal income taxes that existed in the basic version of the Law on Personal Income Tax from 2001. Since then, it has been the most basic form of tax exemption - whoever invests the funds obtained from the sale of real estate in solving his housing issue, that is, the housing issue of his family/household members, had the possibility to be exempt from capital gains tax or to have it reduced.

This exemption still exists today, although recently there have been problematic practices in its application.

In 2004, the first cases were prescribed when the sale of real estate/shares and securities, i.e. intellectual property rights, are exempted from capital gains tax. Those cases in the currently valid version read - if:

1. they were acquired by inheritance in the first line of succession;
2. the transfer is made between spouses and blood relatives in a straight line;
3. the transfer is made between divorced spouses and is directly related to the divorce.

In addition to these cases, in the meantime other cases of exemption from taxation have been prescribed:

4. if debt securities whose issuer is the Republic, an autonomous province, a local self-government unit, or the National Bank of Serbia are transferred;
5. the obligee transferred rights, shares or securities that he had continuously owned for at least ten years prior to the transfer;
6. in the change of status, the shares, that is, the shares that the obligee has in the transferring company, are exchanged exclusively for shares, that is, shares in the acquiring company, in accordance with the law governing companies.

Finally, in 2020 and 2021, the sale of digital assets will also be subject to capital gains tax, and new cases of tax exemptions will be added:

1. investment of funds obtained from the sale of digital assets in the share capital of a company resident in the Republic of Serbia, i.e. in the capital of an investment fund whose center of business and investment activities is in the territory of the Republic of Serbia - exemption amounts to 50% of tax on capital gains;
2. investment of intellectual property rights, as a non-monetary contribution, in the capital of a company resident in the Republic of Serbia.

So, the situation today is such that:

- In the case of holding the right for more than 10 years - the sale is exempt from taxation by this tax;
- In the case of the sale of real estate - there is a tax exemption, that is, a tax credit when investing the proceeds from the sale in solving the housing issue;
- In the case of the sale of digital assets - there is a tax exemption (50%) or a tax credit (50%) in the case of investing the proceeds from the sale in the capital of a company or in an investment fund;
- In the case of intellectual property rights - there is a tax exemption in the case of the entry of intellectual property rights into the capital of a company.
- In contrast to the tax exemption in the case of the sale of immovable property, which is clearly prescribed for social reasons, the tax is not being charged in cases where one immovable property is sold and another (or more, for different members of the family/household) is bought, is not most clearly what is the reason for prescribing the other exemptions in the way they are prescribed.

For example, the question arises as to why the seller of digital assets would be exempted in the case of investing funds in a business company/investment fund but has no right to exemption if he were to invest those same funds in solving his housing issue.

This is especially so when it is taken into account that solving the housing issue of individuals in Serbia is encouraged in many ways - by tax exemptions for buyers of the first apartment, both by the Law on Property Taxes (exemption from the obligation to pay tax on the transfer of absolute rights), and by the Law on VAT (through the refund of part of the paid value added tax).

Similarly, in the case of intellectual property rights, if someone invests intellectual property rights in a company, then he has the right to exemption, but he does not have the right to the exemption in case he sells that right and invests the proceeds from the sale in a company or in solving the housing issue.

It is unclear why the reasons for exemption are not equally prescribed for all types of traffic for which certain grounds for exemption are prescribed, but each reason for exemption has a different basis for exemption. Why, for example, should the exemption not be generally valid in the case of investing the acquired funds in the purchase of the first apartment/solving the housing issue, so that this right is also available to those who obtain the funds by selling digital assets, selling shares and securities, i.e. by selling intellectual property rights.

Finally, in connection with the issue of tax exemption from capital gains tax when selling real estate, it should be noted that the law itself does not prescribe any limitation of the right to tax exemption, but that as early as 2001, a by-law was passed which stipulates that the exemption is granted for a maximum of 45 m² for a single person, plus 20m² for each member of the household.

It is unclear why the by-law narrows the right that the law provides to individuals. In addition, lately, it has been happening that the Tax Administration disputes the right to the exemption in case of the sale of real estate to a taxpayer who sells an apartment in which he lives with a family member and buys another apartment in which he continues to live with the same family member, with the explanation that he already owns a co-ownership share on an apartment inherited from one parent, where the other parent currently lives.

Bearing in mind all these illogicalities, it seems that a fundamental revision of the capital gains tax and its tax exemptions is necessary.

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