# NEWSLETTER 02/2018

## Topics covered in this newsletter are the following:



**The text of some of the following opinions by the Ministry of Finance is very extensive so the quoted part of the opinion in certain segments is suited for the full understanding of the meaning.**

## 1. New opinions of the Ministry of Finance in the field of VAT Law

**Below are the most important opinions of the Ministry of Finance in the field of value added tax, which were published in the previous period.**

### 1.1. Impact of the supply of goods acquired after the transfer of the entire property to the tax treatment of the specific transfer

„…if, after the transfer of the entire property, the VAT payer - the transferor of the property, carries out the supply of goods received after the transfer of the entire property were made and if in the specific case such goods represent compensation for the supply VAT payer had carried out before the transfer of entire property, the fact that the VAT payer has carried out such supply has no effect on the tax treatment of the transfer of the entire property."

**(Opinion of the Ministry of Finance, No. 430-00-243/2018-04 dated 21.5.2018.)**

### 1.2. VAT treatment of the supply of construction services carried out between several co-investors

„...in the execution of the contract based on which the construction of the facility and the distribution of economically divisible units of such facility are carried out, in case when several entities - co-investors have the property right on the land on which the facility is being built and when the construction permit is issued on the behalf of all co-investors (where one co-investor is a VAT payer, while other co-investors are not), whereby the construction of the facility is carried out by the suppliers engaged only by the investor who is the VAT payer, tax treatment is as follows:

- VAT payer - the co-investor who has built i.e. financed the construction of the facility, is obliged to calculate and pay VAT in accordance with VAT Law (at the rate of 20%) for the supply referred to in Article 4, Paragraph 3, Item 6) of the VAT Law i.e. for the delivery of parts of the facility to other co-investors proportionate to their ownership shares on the land on which the facility was build. Such co-investor has a right to deduct the input VAT based on such supply in accordance with the VAT Law;
- VAT should not be calculated and paid on the transfer of the ownership rights on the economically divisible units within the newly built facility, which is carried out by the other co-investors who are not VAT payers (the transfer made to the VAT payer who had built i.e. financed the construction of the facility as the compensation for the construction in question). The subject transfer is subject to the Transfer Tax in accordance with Property Tax Law;
- VAT should be calculated (at prescribed VAT rate) and paid on the first transfer of the disposal rights on the economically divisible units within the newly built facility from the Article 4, Paragraph 3, Item 7) of the VAT Law, made by the VAT payer who had built the facility, and which this VAT payer had originally acquired (in proportion to his ownership share on the land on which the facility in question was built). Such VAT payer has a right to deduct the input VAT based on such supply in accordance with the VAT Law;
- The Transfer Tax in accordance with the Property Tax Law or the VAT (if all prescribed conditions for VAT contracting are met) should be paid on the transfer of the ownership rights on the economically divisible units within the newly built facility, which is carried out by the VAT payer who has built i.e. financed construction of the facility, and which were acquired from other co-investors as the compensation for supply from the Article 4, Paragraph 3, Item 6) of the VAT Law."

**(Opinion of the Ministry of Finance, No. 413-00-58/2018-04 dated 15.5.2018.)**

## 2. New opinions of the Ministry of Finance in the field of CIT Law

# NEWSLETTER 02/2018

**Below are the most important opinions of the Ministry of Finance in the field of corporate income tax, which were published in the previous period.**

## 2.1. Tax treatment of assets impairment costs in case of a status change of merger

"… the taxpayer (the company "B") has booked in its business books (for FY 2017) the cost of the software impairment (which it uses for its business operations), which is not recognized as deductible for the CIT purposes in same tax period in which it has occurred. The taxpayer (the company "B") intends to merge with another taxpayer (the company "A") in the status change. By this status change the taxpayer (the company "B") will transfer total assets and liabilities to another taxpayer (the company "A" as the acquirer) and the taxpayer (the company "B") will ceases to exist without implementing the liquidation procedure.
When the taxpayer (the company „A") writes off the assets (the software in specific case) form its business books as it will not use it in its business operations (and which the Company „B" has impaired and transferred through the status change to the Company „A"), such write off of the software is not considered as the alienation of assets in accordance with Article 22v of the CIT Law. Consequently, the cost of impairment of assets which was not recognized as the deductible for the CIT purposes in the tax period when such cost occurred, is also not recognized in the tax period when such assets (software) is written off from the business books of the taxpayer (the Company „A")."

**(Opinion of the Ministry of Finance, No. 011-00-331/2018-04 dated 31.5.2018.)**

## 2.2. Tax treatment of disposals of previously impaired assets

„...the conditions for the recognitions of the impairment costs of the assets (in accordance with the Article 22v, Paragraph 1 of the CIT Law) for the CIT purposes are not met in the tax period in which the taxpayer disposes and writes off from its business books previously impaired assets which is no longer usable, or which cannot or will not be sold (which has not been destroyed in accordance with the regulations governing the protection of the environment)."

**(Opinion of the Ministry of Finance, No. 011-00-131/2018-04 dated 30.5.2018.)**

## 2.3. Right to reduce CIT for the purpose of determination of advance payments for the following FY, based on the unused tax credit

„...the taxpayer who has an unused tax credit referred to in Article 48, Paragraph 5 of the CIT Law, may reduce the calculated CIT for FY 2017, whereby the data on the amount of unused tax credit should be entered under the No. 5.4. or No. 6.4. of the CIT return (PDP Form in Serbian) if the conditions referred to in Article 48, Paragraph 5 of the CIT Law are met.

However, if the taxpayer, on the basis of an unused tax credit, does not reduce the calculated CIT for FY 2017 (i.e. does not declare the data in the No. 5.4 of the PDP Form), per our opinion, it does not have right to reduce calculated CIT for the purpose of determination of advance payments for FY 2018 i.e. it should not declare data in the No. 6.4 of the PDP Form)."

**(Opinion of the Ministry of Finance, No. 413-00-85/2018-04 dated 30.5.2018.)**

## 3. New opinions of the Ministry of Finance in the field of PIT Law

**Below are the most important opinions of the Ministry of Finance in the field of personal income tax, which were published in the previous period.**

### 3.1. Tax treatment of the income received by non-resident natural persons assigned for work in the Republic of Serbia

"… In the specific case, natural person is assigned to the work in the Republic of Serbia for the purpose of performing activities in the territory of the Republic of Serbia for the needs of the Company - a domestic legal entity (whereby the employee does not contract employment relationship with the domestic Company, nor the Company pays the salary to the assigned employee). The employee remains in employment relationship with a foreign employer (a Swiss company) which pays the salary to that employee, and in accordance with the Agreement (on business and technical cooperation), the Swiss company charges fee for the services provided (the transfer of business knowledge to the Company) in the amount of paid salary increased for a commission of 5%. The employee is obliged to calculate and pay tax on his/her salary received form his/her employer - foreign company (except in cases where, by the Double Tax Treaty the otherwise is prescribed, i.e. if the Republic of Serbia does not have the right of taxation) and to submit tax return for calculated and paid tax to the competent Tax Authority.

Additionally, if the Company pays compensation of costs to the assigned employee – non-resident natural person (in particular, the Company is obliged to provide accommodation - up to a certain amount increased for the costs of electricity, water and heating; unlimited use of the official car and round-trip air tickets from the workplace in Serbia to Switzerland) such income is considered to be other income of the natural person and is subject to personal income tax in accordance to the Articles 85 and 86 of the PIT Law, for which the Company as a payer of income is obliged to calculate and pay withholding tax."

**(Opinion of the Ministry of Finance, No. 011-00-281/2018-04 dated 31.5.2018)**

### 3.2. Tax treatment of reimbursement of costs to doctors for participation in professional seminars

"…In the specific case, The company that deals with the provision of marketing services in the field of pharmaceutical industry, as well as carrying out clinical trials, covers the cost of participating of doctors (at their request) at various scientific congresses and seminars (for the attendance at these meetings, doctors do not receive compensation other than cost of participation covering). Scientific congresses and seminars refer to the products that the Company advertises in the course of their business activity (and thus improves its business) as well as to continuous notification of new trends in the pharmaceutical industry, in which way the company improves the knowledge of the doctor with whom it cooperates. The reimbursement of travel, accommodation and food expenses shall be taxed in accordance with Article 85, Paragraph 5, Item 5) of the PIT Law, in the sense that it is exempt from taxation to the amount of the prescribed non-taxable amount. For the reimbursement of the registration fee for the attendance the event, tax on other income should be calculated and paid in accordance with Article 85 of the PIT Law"

**(Opinion of the Ministry of Finance, No. 430-00-00205/2018-04 dated 10.5.2018)**

## 4. New opinions of the Ministry of Finance in the field of Property Tax Law

**Below are the most important opinions of the Ministry of Finance in the field of property tax, which were published in the previous period.**

### 4.1. Property tax base for underground tank within the gas station

„...immovable property - underground fuel tanks within the station for supplying motor vehicles with fuel (hereinafter: underground fuel tanks within the "gas station"), intended for and directly serve retail trade of motor and other fuels, are not considered as storage or warehouse place in accordance with the provisions of Article 7, paragraph 4, point 8 of the Property Tax Law, irrespective of the fact that in the stations for supplying motor vehicles with fuel, due to the characteristics of the fuel (e.g. flammability and combustibility), it must be kept in a special (according to the prescribed standards) underground tanks built for it, and not in the same way as other goods in retail stores.

Also, underground fuel tanks within the "gas station" are not facilities referred to in Article 7, paragraph 8 of the Property Tax Law (cableways, roads, railways and other infrastructure facilities, as well as cable sewage and other underground building facilities in which the networks are located intended for the flow of water (for drinking, atmospheric, waste, etc.), water vapor, hot or boiling water for heating purposes and other needs of users, gas, oil and petroleum products, telecommunications, etc.) for which the property tax base, for taxpayers who keep books, is the book value on the last day of the business year in the year preceding the year for which the property tax is levied.

Therefore, the property tax base for underground fuel tanks within the "gas station", which are intended for and directly serve retail trade of motor and other fuels, is the fair value (determined in accordance with International Accounting Standards (IAS) and International Financial Reporting Standards (IFRS)) or the basis of property tax for these facilities, is the value determined by applying the elements of the useful area and the average price of the Office buildings and other construction facilities used for performing the activity.

Only when the local self-government unit by the November 30th of the current year has not published the acts determining the zones (including the most equipped zone) and the average prices of the Office buildings and other buildings used for performing the activity in the zone in which the concrete underground fuel tanks within the "gas station" are located or in the zone that is most equipped (where applicable), the property tax base is the value of underground fuel tanks within the "gas station", which is recorded in the business books of the taxpayer on the last day of the business year in the current year.

Having in mind that, in accordance with Article 6, paragraph 2 of the Property Tax Law, the useful surface of the building is the sum of the floor surfaces between the inside of the outer walls of the building (excluding the surfaces of the balcony, terrace, loggia, unadapted attic spaces and spaces in the common indivisible property of all owners of economically divisible entireties within the same facility), in our opinion, the useful surface of the underground fuel tank within the station for supplying motor vehicles with fuel, whose surface of the lower base is horizontal, makes the surface of this base between the inner sides of the outer walls of the tank. If the object is of a spherical or other shape so there is no so-called floor area, we consider that the useful surface of this object is determined according to the surface of its vertical projection on the ground."

**(Opinion of the Ministry of Finance, No. 430-00-00231/2018-04 dated 15.5.2018.)**

## 4.2. Non-existence of the property tax liability for a part of an object that is not capable of being used

"... if a house is an object that is uniquely usable - economic entirety qualified for normal use only at one of the two construction levels, whereby the second level is not capable of being used because it does not have the usual installations and equipment necessary for that part the facility to be used (for example, there are no electric and plumbing installations, there is no built-in joinery, there is no access staircase...) and the use of this construction level is not actually enabled or started, nor is the use permit for this facility issued, in our opinion, the property tax liability for that part was not incurred.“

**(Opinion of the Ministry of Finance, No. 413-00-00107/2018-04 dated 11.6.2018.)**

# NEWSLETTER 02/2018


**Your contact in Serbia:**

**Bojan Žepinić**

Tax Advisor, Managing Partner
Tel: +381 11 655 88 00
E-Mail: bojan.zepinic@tpa-group.rs

**Thomas Haneder**

Tax Advisor, Partner
Tel: +381 11 655 88 00
E-Mail: thomas.haneder@tpa-group.com

**Ana Perović**

Tax Advisor, Senior Manager
Tel: +381 11 655 88 00
E-Mail: ana.perovic@tpa-group.rs


This Newsletter is a service of TPA Serbia

Kind regards

Your TPA Team


**Contact:**
TPA Tax and Accounting d.o.o.
Makedonska 30, 3rd floor
11000 Belgrade
Tel.: +381 11 655 88 00

**http://www.tpa-group.rs**
**http://www.tpa-group.com**


If you wish to receive regular information, please sign up for our newsletter.