TAX AND FINANCE NEWSLETTER 3/2015

Topics covered in this tax and finance newsletter are as follows:

Since there was no intensive legislative activity in the field of finance and taxes in the second quarter of 2015, we decided to share with you not only the details on adopted laws (which is our usual practice), but also on draft of the important Law on Investments and Rulings of the Ministry of Finance which provide answers to some of important questions raised in practice.

1. Law on Conversion of the Right of Use into the Ownership Rights on Construction Land for a Fee

On 28 July 2015 Law on Conversion of the Right of Use into the Ownership Rights on Construction Land for a Fee was adopted. The Law aims to complete the process of ownership transformation on the construction land but also to enable unobstructed construction activity in Serbia. Please find below the highlights of this Law.

- The Law regulates conditions and process itself in respect of conversion of the right of use into the ownership right or long-term lease of construction land with payment of the market value for that land, so that investors no longer have the right of use on the land, but can choose between the right to a long-term lease and ownership rights.
- The fee for conversion of the right of use into the ownership right shall be determined according to the market value of the land at the moment of filing for conversion. Determined market value may be reduced if the land is located in the underdeveloped municipality or a municipality with very low living standards or high unemployment rate. Also, when it comes to conversion of the developed construction land, the market value of the cadastral parcels is reduced by the amount of market value of the land needed for regular use of the facility. Fee for conversion can be paid as one-time payment or in 60 equal, monthly instalments. If the fee is being paid as one-off, the applicant has a right to a fee reduction in the amount of 30% of the determined fee.

- For the land with the right of use, until the ownership right is obtained and registered, a long-term lease of 99 years can be concluded. Exact amount of rent is determined by dividing market value of the property into 99 years, and the result gained in such way represents the amount of annual rent.
- Deciding on all requests for conversion that were submitted until 28 July 2015 shall be suspended, so that all applicants will have to submit a new request for conversion in accordance with the provisions of this law.

2. Draft Law on Investments

After numerous transformations of the text itself, the Ministry of Economy presented to public a Draft Law on Investments. Having in mind the active public debate that took place in the period from 14 April to 5 May 2015, it is expected that after its adoption final text of the Law shall suffer changes in comparison to currently available version of document. We present below the most important regulations expected to be brought by the Law. We will provide you with the information on adoption of this Law in our next newsletter.

- In order to encourage investments, investors are offered tax incentives, customs incentives, incentives within the system of mandatory social insurance and various forms of state aid.
- Establishment of the Council for Economic Development, Serbian Development Agency, Office for Investments at the municipal level or at the level of the autonomous province, as well as formation of project teams, is planned in order to support the investments.
- According to the significance of the investment, the draft Law classifies investments into investment of local importance, of regional importance and investment of special importance for the Republic of Serbia. Whether the specific investment qualifies for incentive or not is determined based on criteria which, depending on the type of investment, are defined by the local authorities or, the Government of the Republic of Serbia.
- For providing a state aid, as a measure of incentives for investments, a public call is to be announced. For investments of special importance for the Republic of Serbia state aid is provided without announcing the public call, but rather the Council for Economic Development decides on the aid.
- The investor is entitled to submit and receive all documents through the Office for Investments.
- The Project team is formed on investor’s request. The Project team can conclude with the investor the Investment Agreement that lists all documents and data that investor must submit in order to receive, within the agreed time frame, all public documents that allow investor to start with his investment. The Investment Agreement itself however does not grant investment incentives.
- The Government can conclude a special Investment Agreement with the investor, providing additional legal guarantees and special incentives for investment of special importance, such as obligating on constructing certain facilities and infrastructure network, arbitration agreement, clauses on fiscal stability, other clauses common for investment contracts in international investment law for a specific industry and other incentives in accordance with the Law.

3. Moment of the tax liability when awarding shares to employees

In accordance with the Law on Personal Income Tax, shares that employee receives from the employer or from the employer's related entity, on the basis of the remuneration rules (i.e. Share options) are considered as salary. Ministry of Finance issued, on 15 July 2015, official ruling on the implementation of the provisions of the Law on Personal Income Tax, that refers to the taxing point when an individual employed by the local employer acquires shares of the related entity from abroad.

In the specific situation analysed in the ruling, the cost of acquiring these shares is borne by the local employer who, in accordance with International Accounting Standards, performs monthly reservation of a certain amount of the cost in its ledgers on account of acquiring right on shares, until the moment of acquiring that right. Since it is possible to post actual value of acquired shares in the ledgers of the local employer only after receipt of the invoice from the related entity (since then all circumstances and elements significant for the precise determination of costs are known), the ruling specifies that the taxable moment arises when an employee acquires the right to dispose the shares and not when reserving of a certain amount was performed in the employer's ledgers.

4. The right to a tax credit for investments made in fixed assets

Regarding the implementation of the Law on Corporate Income Tax, on 24 June 2015, Ministry of Finance issued an official ruling on right to a tax credit on the basis of investments made in fixed assets, performed within 2013, in a situation when the taxpayer's tax period differs from the calendar year. At this point, we remind you that the tax incentive that was previously provided under Article 48 of the Law on Corporate Income Tax was cancelled with the amendments to the law which are being implemented as of 1 January 2014, thus it remained unclear whether the right to the tax incentives is granted to taxpayers whose tax period differs from the calendar year, i.e. it does not end on 31 December 2013.

According to this ruling, taxpayer whose tax period differs from the calendar year shall be entitled to a tax credit for investments made in fixed assets that were performed within 2013, from the starting date of that tax period in 2013 conclusive with investments completed by 31 December 2013, provided that the said investments are stated in the tax return and the tax balance sheet submitted for the tax period that differs from the calendar year. In respect to the said tax incentive, this ruling equalizes the position of taxpayers whose tax period for 2013 was same as the calendar year 2013 and of those taxpayers whose 2013 tax period differed from the calendar year 2013.

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