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1. Amendments to the Value Added Tax (VAT) Law and relevant bylaws

On 28th September 2015, the National Assembly of the Republic of Serbia adopted amendments to the VAT Law that came into force on 15th October 2015. In response to the amendments of the Law, the Ministry of Finance amended several bylaws regulating in detail the implementation of the amended legislation. Please find an overview of the major amendments to the Law and relevant bylaws in the text below.

- The most important amendments to the Law refer to:
 - ✓ The possibility of a foreign entity to register for VAT in Serbia, by appointing a VAT representative;
 - ✓ Amending the VAT rules in relation to distribution of electricity, natural gas, energy for heating and cooling;
 - ✓ Expanding the definition of VAT payers to all recipients of goods and services in the field of construction;
 - ✓ and many others.
- For more detailed information about the adopted amendments to the VAT Law please see our newsletter of September No. 4/2015, at the following link: <http://www.tpa-horwath.rs/sr/rs/publikacije/newsletter>.
- Amendments to the existing bylaws and introduction of the new bylaws are published in the Official Gazette of the Republic of Serbia No. 84/2015 and 85/2015 of 14 October 2015, as follows:
 - ✓ Rulebook on Determining Tax Base for the Assessment of VAT on the Supply of Goods and Services for a Consideration;
 - ✓ Rulebook on the Method of and Procedure for VAT Exemption with the Right to Deduct Input Tax;
 - ✓ Rulebook on the Form and Content of the VAT Registration Form, Registration and Deregistration Procedures and the Form and Content of VAT Return ;
 - ✓ Rulebook on Determining Goods and Services Subject to Taxation at the Reduced VAT Rate;
 - ✓ Rulebook on the Method of and Procedure for Approving VAT Representatives;
 - ✓ Rulebook on the Method of Amending Tax Base for VAT Calculation Purposes;

- ✓ Rulebook on Determining Goods and Services in the Field of Construction for the Purpose of Determining VAT Payers;
- ✓ Rulebook on Determining Certain Goods and Services in Accordance with Article 25 of the VAT Law;
- ✓ Rulebook on Determining Electronically Rendered Services in Terms of the VAT Law;
- ✓ Rulebook on Amending Input Tax Deductions in Case when VAT Base is Amended; and
- ✓ Rulebook on Determining Instances when the Obligation to Issue Receipts does not Exist and on Receipts wherefrom certain Information may be Omitted.

- Some of the most significant changes are covered in this newsletter. The changes primarily relate to the procedure of appointing a VAT representative as well as doing business in the field of construction.

2. VAT representative of a foreign entity in Serbia

As of 1st October 2015, non-resident entities that sell goods and services in Serbia are allowed to register for VAT in Serbia, by appointing a VAT representative. Rulebook that defines the subject in more detail was published in the “Official Gazette of the Republic of Serbia” No. 84/2015.

In order for a non-resident entity to register for VAT in Serbia, and exercise the same rights and obligations as a resident VAT payer, the non-resident should appoint a VAT representative in Serbia. VAT representative of a non-resident entity can be a person that fulfils the following conditions:

- With permanent residence permit / registered seat in Serbia;
- With minimum 12 months period of VAT registration prior to applying for a VAT representative;
- Without any unpaid outstanding tax liabilities on the day of application; and
- With no conviction for criminal tax offence.

A request for approving a VAT representative is to be submitted to the Tax Authority Headquarters. The Headquarters decides on the submitted request within 15 days. Together with the ZPPDV application form, the VAT representative shall also submit the following:

- Proof of residence / registered seat of the VAT representative;
- Certificate of Non-Conviction for criminal tax offence;
- Certificate of VAT registration of the foreign entity in its domicile country; and
- Power of Attorney, notarized by the court or a public notary, confirming that the VAT representative has been authorized to execute all obligations related to the VAT Law on behalf of a foreign entity.

Tax Authority is obliged to publish a register of VAT representatives on its website. In the name and for the account of the foreign entity, a VAT representative submits the VAT registration form, calculates VAT, issues invoices, submits tax returns, pays for VAT, etc. In the event of revocation of the VAT proxy, all legal consequences of deleting a foreign entity from the VAT records shall occur, unless the foreign entity appoints another VAT representative with the Tax Authority Headquarters within 15 days upon the date of such revocation.

The Rulebook, however, remains unclear on the number of important issues for the practical application of the VAT representative concept, such as:

- There is no defined procedure to be applied by the recipients of goods and services when collecting/making payments of the calculated VAT by VAT representative - whether the calculated VAT is to be paid to the VAT representative in dinars, or it should be paid directly to the foreign entity in foreign currency/dinars and how

the procedures of VAT refund and transfer of the refunded VAT to the foreign legal entity will be exercised in practice;

- Judging by the application form for appointing a VAT representative, obtaining a non-resident Tax Identification Number is a prerequisite for a foreign entity to appoint a VAT representative. Given that foreign legal entities may obtain a non-resident's Tax Identification Number in Serbia only upon appointment of a tax proxy in accordance with the Law on Tax Procedure and Tax Administration, a foreign legal entity is practically obliged to appoint two tax proxies - a general tax proxy, and another one for VAT purposes only;
- Whether the foreign company is obliged to have a non-resident's bank account and to use it for payment of its VAT liabilities as well as for VAT refund to be made by the Tax Authorities; and the like.

In view of the above uncertainties, we expect in the following period that the Ministry of Finance/Tax Authorities will be in a position to resolve these practical concerns by issuing more specific guidance and instructions on how tax payers should act in practice.

3. VAT calculation in the construction industry

The amendments to the VAT Law expanded the definition of VAT payers to all recipients of goods and services in the construction industry, resulting in application of reverse-charge VAT calculation in the construction industry. The Ministry of Finance adopted a bylaw ("Official Gazette of the Republic of Serbia" No. 86/2015) which defines in more detail what is considered to be a supply of goods and services in the construction industry.

Rulebook on Determining Goods and Services in the Field of Construction for the Purpose of Determining VAT Payers, envisages that goods and services are all goods and services supplied within the sector F - Construction (according to the Decree on Business Activity Classification), with the exception of supplies made in the following activities:

- 4110 – Development of building projects;
- 4313 – Ground testing by drilling and boring; and
- 4339 – Other finishing works.

This practically means that now, for all supplies of goods and services (or services only) in the construction industry (except for the above mentioned activities) self-taxation principle applies (i.e. reverse-charge mechanism), according to which the recipient of these goods and services/services is obliged to calculate VAT on received supply.

It should be noted that, for the purpose of applying the above amendments, the registered business activity of the supplier in the field of construction with Serbian Business Agency Registers is not relevant.

4. Daily allowances for business travels abroad

The amendment of the Bylaw on Compensation of Expenses and Severance to the State Officials ("Official Gazette of the Republic of Services", No. 84/2015) reduced the amount of daily allowances for business travels within the country and abroad for state officials. However, in the part concerning the allowance for business travels abroad, this Act also affects the daily allowance of employees in the private sector.

The amendments to the Bylaw on Compensation of Expenses and Severance to the State Officials are in effect as of October 14th, 2015, setting forth the amount of daily allowance, the method of calculating the allowances and compensation of expenses to the state officials travelling on business within the country and abroad.

However, this Bylaw is applicable to the employees in private sector as well, in the part referring to business travels abroad, as follows:

- A single amount of daily allowance for all business travels abroad of 15 EUR is given to the employees for every 24 hours spent abroad on a business travel. This amount represents a non-taxable amount of daily allowance for business travels abroad regardless of the traveling country;
- In the General Act, the employer can determine amount of daily allowance that will be lower or higher than the amount set forth in this Bylaw, just as it was the case until now. It should, however, be noted that employer shall be obliged to calculate and pay 10% personal income tax on allowances paid over the 15 EUR amount.

The amendments to the Bylaw determine that daily allowances for business travels in the country is set to the amount of 150 dinars. Given the fact that this Bylaw is not applicable on employees in the private sector in the part relating to business travels in the country, this amendment will have no effect on the current practice. Namely, the employer shall determine the amount of daily allowances for business travels in the country by the General Act, and it should be noted that non-taxable amount of allowances for business travels in the country is determined by the Personal Income Tax Law and currently amounts to 2,168 dinars (while adjustment of this amount is done annually).



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Kind regards

Your TPA Horwath Serbia Team

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