

TAX HIGHLIGHTS

Porez na dodatu vrednost

UREDBA O PROMETU SA APKM

Vlada Republike Srbije donela je 16. septembra 2011. godine Uredbu o izvršavanju Zakona o PDV na teritoriji Autonomne pokrajine Kosovo i Metohija za vreme važenja Rezolucije Saveta bezbednosti OUN broj 1244.

Najvažnije izmene odnose se na:

1. Oporezivanje telekomunikacionih usluga

Kod pružanja telekomunikacionih usluga koje obveznici PDV sa teritorije Republike Srbije van APKM vrše licima sa teritorije APKM, mesto prometa je mesto u kome pružalac usluga obavlja delatnost.

Prema tome, od 16. septembra 2011. godine, obveznici PDV koji vrše promet telekomunikacionih usluga licima sa teritorije APKM, dužni su da obračunavaju i plaćaju PDV.

2. Oporezivanje motornih vozila

Na promet motornih vozila sa teritorije APKM na teritoriju Republike, van APKM, obračunava se i plaća PDV. Prometom motornih vozila smatra se prenos prava raspolaganja na motornim vozilima od strane lica sa sedištem, odnosno prebivalištem na teritoriji APKM licu sa sedištem, odnosno prebivalištem na teritoriji Republike van APKM.

3. Uslove za poreska oslobođenja u vezi sa fizičkim licima

Kod isporuke dobara sa teritorije Republike Srbije, van APKM, fizičkom licu na teritoriji APKM, kao uslov za poresko oslobođenje potreban je i dokaz o uplati novčanih sredstava od strane primaoca dobara - fizičkog lica sa teritorije APKM na poslovni račun obveznika PDV - isporučiooca dobara.

Value Added Tax

DECREE ON TRADING GOODS AND SERVICES WITH THE AUTONOMOUS PROVINCE OF KOSOVO AND METOHIIJA

The Government of the Republic of Serbia adopted on 16 September 2011 the Decree on the implementation of the VAT Law in the territory of the Autonomous Province of Kosovo and Metohija during the term of validity of the UN Security Council Resolution no. 1244.

The most important amendments relate to:

1. The taxation of telecommunications services

When telecommunication services provided by the VAT payers from the territory of the Republic of Serbia outside the Autonomous Province of Kosovo and Metohija are concerned, the place of supply of services is the place where the supplier carries out its business activities.

Consequently, starting from 16 September 2011, the VAT tax payers supplying telecommunication services to entities from the territory of the Autonomous Province of Kosovo and Metohija are obliged to calculate and pay VAT.

2. Taxation of motor vehicles

For the supply of motor vehicles from the territory of the Autonomous Province of Kosovo and Metohija to the territory of the Republic of Serbia, outside the territory of APKM, VAT is calculated and paid. The supply of motor vehicles is considered to be the transfer of the right to disposal of motor vehicles by the legal entity with the seat or residence on the territory of APKM to the entity with the seat or residence on the territory of the Republic outside APKM.

3. Conditions for tax exemptions with respect to individuals

When delivery of goods from the territory of the Republic of Serbia, outside APKM, to the individual on the territory of APKM is concerned, as a prerequisite for tax exemption, it is necessary to provide the proof of payment of funds by the recipient of goods - individual from the territory of APKM, to the commercial account of the VAT payer - the supplier of goods.

4. Uslove za poreska oslobođenja pri prometu nafte i naftnih derivata

Za obveznike PDV koji vrše promet nafte i naftnih derivata sa teritorije Republike, van APKM, na teritoriju APKM, kao dokazi da su ova dobra otpremljena na teritoriju APKM, pored prethodno propisanih potrebnih dokaza, potreban je i dokaz o plaćenom PDV za unos nafte i naftnih derivata na teritoriju APKM da bi se ostvarilo poresko oslobođenje.

4. Conditions for tax exemption for the supply of oil and oil derivatives

For VAT payers performing the supply of oil and oil derivatives from the territory of the Republic, outside APKM, to the territory of APKM, as evidence that the goods have been delivered to the territory of APKM, in addition to the previously prescribed necessary evidence, it is necessary to obtain the evidence on the payment of VAT for the intake of oil and oil derivatives to the territory of APKM in order to achieve the right to a tax exemption.

Porez na imovinu

ZAKON O IZMENAMA I DOPUNAMA ZAKONA O POREZIMA NA IMOVINU

Zakonom o izmenama i dopunama Zakona o porezima na imovinu, koji je stupio na snagu 27. oktobra 2011. godine predviđene su sledeće izmene:

Obveznik poreza na imovinu je i primalac finansijskog lizinga ukoliko mu je nepokretnost koja je predmet ugovora o lizingu predata u državinu i na korišćenje.

Utvrđena je dužnost javnog beležnika, da nakon overe potpisa ugovarača na ugovoru i sačinjavanja javnobeležničkog zapisa, u roku od 10 dana dostavi nadležnom poreskom organu primerak ugovora i javnobeležničkog zapisa.

Propisano je, da, obaveza poreza na imovinu za 2012. godinu, za nepokretnost obveznika koji ne vodi poslovne knjige, ne može biti utvrđena u većem iznosu od pripadajuće poreske obaveze za 2011. godinu.

Property tax

THE LAW ON AMENDMENTS AND SUPPLEMENTS TO THE PROPERTY TAX LAW

In accordance with the Law on Amendments and Supplements to the Property Tax Law, which entered into force on 27 October 2011, the following amendments are provided for:

The payer of property tax shall be the recipient of the finance lease if the property which is the subject of the lease agreement was submitted to his possession and use.

The duty of a public notary is determined, to, subsequent to the verification of signatures of the contractual parties on the agreement and preparation of the public notary record, submit to the competent tax administration the copy of the agreement and the copy of the public notary record within a 10 days' notice.

It is prescribed that the tax liability for 2012, for the property of the taxpayer which does not keep the books of account, cannot be determined in an amount exceeding the amount of the attributable tax liability for 2011.

Mišljenja

Opinions

Porez na dodatu vrednost

Value Added Tax

1. EVIDENTIRANJE STALNE POSLOVNE JEDINICE STRANOG PRIVREDNOG DRUŠTVA U SISTEM PDV

Privredno društvo koje na teritoriji Republike Srbije nema sedište ni stalnu poslovnu jedinicu, nema mogućnost evidentiranja za obavezu plaćanja PDV, odnosno podnošenja evidencione prijave poreskom organu. Stalna poslovna jedinica stranog privrednog društva (npr. ogranak) koja ispunjava propisane uslove, mora da se evidentira za obavezu plaćanja PDV i ima sve obaveze i prava kao i svaki drugi obveznik.

Mišljenje Ministarstva finansija, br. 413-00-802/2011-04 od 12.9.2011. godine

1. REGISTRATION OF THE PERMANENT ESTABLISHMENT OF THE FOREIGN COMPANY INTO THE VAT SYSTEM

A company which does not have its seat or a permanent establishment at the territory of the Republic of Serbia, does not have the possibility to be registered as a VAT payer, i.e., to file the VAT registration form to the tax administration. Permanent establishment of a foreign company (e.g., a branch office) which meets all the prescribed requirements, must be registered in the VAT system and shall have all the rights and obligations as other tax payers.

Opinion of the Ministry of Finance, no. 413-00-802/2011-04 from 12 September 2011

2. MESTO PROMETA KONSULTANSTVA USLUGA KOJE STRANO PRIVREDNO DRUŠTVO PRUŽA SVOM OGRANKU U REPUBLICI SRBIJI

Kada privredno društvo sa sedištem u inostranstvu vrši promet konsultantskih usluga obvezniku PDV - ogranak tog privrednog društva u Republici Srbiji, mestom prometa ovih usluga smatra se Republika Srbija. U tom slučaju, obveznik PDV - ogranak stranog privrednog društva u RS, a pod uslovom da strano privredno društvo nije odredilo poreskog punomoćnika, dužan je da kao poreski dužnik (iz člana 10. stav 1. tačka 3) Zakona, na naknadu za promet predmetnih usluga, obračuna PDV i da obračunati PDV plati u skladu sa Zakonom.

Obveznik PDV - ogranak stranog privrednog društva u Republici Srbiji ima pravo da PDV koji je kao poreski dužnik obračunao za promet konsultantskih usluga koji mu je izvršilo strano privredno društvo odbije kao prethodni porez, u skladu sa odredbom člana 28. stav 5. Zakona.

Mišljenje Ministarstva finansija, br. 413-00-614/2011-04 od 28.7.2011. godine

3. OBAVEZA PRIVREDNOG DRUŠTVA DA OBRAČUNA I PLATI PDV KAO PORESKI DUŽNIK PRILIKOM KUPOVINE PUTNIČKIH AUTOMOBILA KOJI SU U VLASNIŠTVU DOMAĆEG PREDSTAVNIŠTVA STRANOG LICA

Kada strano lice koje u Republici Srbiji ima predstavništvo izvrši domaćem privrednom društvu, na teritoriji RS, promet putničkih automobila koji su u vlasništvu predstavništva, u tom slučaju domaće privredno društvo, kao poreski dužnik, a pod uslovom da strano lice nije odredilo poreskog punomoćnika, ima obavezu da na naknadu za izvršeni promet stranog lica obračuna i plati PDV.

Mišljenje Ministarstva finansija, br. 413-00-287/2011-04 od 11.6.2011. godine

Porez na imovinu

UTVRĐIVANJE PORESKE OSNOVICE U SLUČAJU RAZMENE PRAVA SVOJINE NA JEDNOM STANU ZA PRAVO SVOJINE NA DRUGOM STANU

Kod razmene prava svojine na dvosobnom stanu za pravo svojine na jednosobnom stanu, na koje se ne plaća porez na dodatu vrednost, osnovica poreza na prenos apsolutnih prava ne utvrđuje se kao razlika tržišnih vrednosti navedenih stanova, već se osnovica utvrđuje za svako pravo koje je predmet razmene pojedinačno.

Mišljenje Ministarstva finansija, br. 430-03-00399/2011-04 od 29.8.2011. godine

2. THE PLACE OF SUPPLY OF CONSULTING SERVICES PROVIDED BY A FOREIGN COMPANY TO ITS BRANCH IN THE REPUBLIC OF SERBIA

When a company based abroad performs the supply of consulting services to the VAT payer - branch office of the above mentioned company in the Republic of Serbia, the place of the supply of service is considered to be the Republic of Serbia. In that case, the VAT payer - the branch office of the foreign company in RS, provided that the above mentioned company has not appointed a tax representative, is liable to, as a tax debtor (referred in Article 10 paragraph 1 item 3) of the Law, calculate and pay VAT on the fee for the supply of the above mentioned services, in accordance with the Law.

VAT payer - the branch office of the foreign company in the Republic of Serbia is entitled to deduct as input VAT the VAT it has calculated as a tax debtor for the supply of consulting services provided by the foreign company, in accordance with the provision of Article 28 paragraph 5 of the Law.

Opinion of the Ministry of Finance, no. 413-00-614/2011-04 from 28 July 2011

3. OBLIGATION OF THE COMPANY TO CALCULATE AND PAY VAT AS A TAX DEBTOR WHEN PURCHASING PASSENGER VEHICLES OWNED BY THE DOMESTIC REPRESENTATIVE OFFICE OF A FOREIGN ENTITY

When a foreign entity which has a representative office in the Republic of Serbia, supplies a domestic company on the territory of RS, with passenger vehicles owned by the representative office, in that case the domestic company, as a tax debtor, provided that the foreign entity has not appointed a tax representative, has an obligation to calculate and pay VAT on the fee for the supply performed by the foreign entity.

Opinion of the Ministry of Finance, no. 413-00-287/2011-04 from 11 June 2011

Property tax

DETERMINATION OF THE TAX BASE IN THE EVENT OF THE EXCHANGE OF THE TITLE OVER ONE APARTMENT FOR THE TITLE OVER ANOTHER APARTMENT

In the exchange of title over a two-bedroom apartment for a title over a one bedroom apartment, upon which VAT is not paid, the tax base for the tax on transfer of absolute rights is not determined as the difference between the market values of the above mentioned apartments, but the base is determined for each title which is the subject of exchange individually.

Opinion of the Ministry of Finance, no. 430-03-00399/2011-04 from 29 August 2011

Porez na dobit

1. NEMOGUĆNOST OSTVARIVANJA PRAVA NA PORESKI KREDIT ZA ULAGANJA IZVRŠENA U CILJU POSTAVLJANJA REKLAME

U slučaju ulaganja obveznika izvršenih u cilju postavljanja natpisa sa poslovnim imenom obveznika (reklame), ne ostvaruje se pravo na poreski kredit, imajući u vidu da predmetna ulaganja nisu neophodan uslov za obavljanje pretežne delatnosti i delatnosti upisanih u osnivački akt obveznika, odnosno navedenih u drugom aktu obveznika, kojim se određuju delatnosti koje obveznik obavlja.

Mišljenje Ministarstva finansija, br. 413-00-718/2011-04 od 29.9.2011. godine

2. NASTANAK OBAVEZE POREZA PO ODBITKU U SLUČAJU KONVERZIJE POTRAŽIVANJA PO OSNOVU KAMATE NA KREDIT NEREZIDENTA U KAPITAL REZIDENTNOG PRAVNOG LICA

U slučaju kada nerezidentni obveznik povećava svoje učešće u kapitalu rezidentnog pravnog lica po osnovu glavnice i kamate po kreditu, obaveza obračuna poreza po odbitku na kamatu za rezidenta nastaje u trenutku konverzije, jer se prihod nerezidenta po osnovu kamate tada smatra ostvarenim.

To znači da rezidentni obveznik obračunava, obustavlja i uplaćuje porez po odbitku u momentu kada je prihod ostvaren, odnosno u momentu konverzije svoje obaveze po kreditu u kapital, imajući u vidu da je (u tom slučaju) nerezidentni obveznik (povećanjem učešća u kapitalu rezidentnog obveznika) u delu primanja po osnovu kamate ostvario prihod (od kamate), koji se oporezuje u skladu sa članom 40. stav 1. Zakona.

Mišljenje Ministarstva finansija, br. 413-00-01152/2010-04 od 18.6.2010. godine

Porez na dohodak

PORESKI TRETMAN NAKNADE TROŠKOVA "ZDRAVSTVENE REKREACIJE" KOJU POSLODAVAC PLAĆA ZA ZAPOSLENE

U slučaju kada je kolektivnim ugovorom predviđena obaveza poslodavca da obezbedi i "zdravstvenu rekreaciju" zaposlenima u cilju smanjivanja (prevencije) povreda na radu, profesionalnih oboljenja i oboljenja u vezi sa radom, ali nisu predviđeni posebni kriterijumi u pogledu uslova za ostvarivanje prava na "zdravstvenu rekreaciju", nisu ispunjeni uslovi za ostvarivanje poreskog oslobođenja, te primanja zaposlenih po ovakvom osnovu imaju tretman ličnih primanja tih zaposlenih i oporezuju se kao zarada.

Mišljenje Ministarstva finansija br. 414-00-38/2011-04 od 12.9.2011. godine

Corporate Income Tax

1. THE FAILURE TO REALISE THE RIGHT TO A TAX CREDIT FOR INVESTMENTS MADE IN ORDER TO SET UP ADVERTISEMENT

In the case of investments made by the taxpayer in order to set up the signboard with the business name of the tax payer (advertisement), the right to the tax credit is not realised, bearing in mind that the above mentioned investments are not a necessary prerequisite to perform the core business activities and activities registered in the articles of association of the tax payer, i.e., referred to in other by-laws of the tax payer, in accordance with which the activities the tax payer performs are determined.

Opinion of the Ministry of Finance, no. 413-00-718/2011-04 from 29 September 2011

2. THE OCCURRENCE OF THE WITHHOLDING TAX LIABILITY IN CASE OF CONVERSION OF RECEIVABLES FROM INTEREST ON THE LOAN OF A NON-RESIDENT ENTITY INTO EQUITY OF A RESIDENT LEGAL ENTITY

In the case when a non-resident tax payer increases its share in the capital of the resident legal entity based on the principal and interest on a loan, the onset of the obligation to calculate the withholding tax on the interest for the resident occurs at the moment of conversion, because the income of the non-resident arising from interest is deemed to be realized.

This means that the resident taxpayer calculates, withholds and pays the withholding tax at the moment the income is realized, i.e., at the moment of conversion of its liability from the loan into equity, bearing in mind (in that case) that the non-resident tax payer, (by increasing the equity investment in the resident taxpayer) in the part of revenue from interest, realized income (from interest), which is taxable in accordance with Article 40 paragraph 1 of the Law.

Opinion of the Ministry of Finance, no. 413-00-01152/2010-04 from 18 June 2010

Personal Income Tax

TAX TREATMENT OF THE REIMBURSEMENT OF THE COSTS OF "HEALTH RECREATION" PAID BY THE EMPLOYER FOR EMPLOYEES

Where the collective agreement provides for the employer's obligation to ensure the "health recreation" to employees in order to reduce (prevent) injuries at work, occupational diseases and work-related illnesses, but does not envisage specific criteria regarding the conditions for exercising the right to "health recreation", the conditions for realizing the tax exemption are not met, and, therefore, the employee benefits arising with respect to these matters have the treatment of personal income of these employees and are taxed as salaries.

Opinion of the Ministry of Finance, no. 414-00-38/2011-04 from 12 September 2011

Zakon o poreskom postupku i poreskoj administraciji

IZDAVANJE OPOMENE OD STRANE PORESKE UPRAVE ZA PLAĆANJE PORESKOG DUGA KAO RADNJA KOJOM SE PREKIDA ZASTARELOST PORESKOG POTRAŽIVANJA

Izdavanje opomene od strane Poreske uprave za plaćanje poreskog duga, predstavlja radnju Poreske uprave preduzetu protiv poreskog dužnika u cilju naplate poreza i sporednih poreskih davanja, kojom se prekida zastarelost, ukoliko je ta radnja preduzeta od 8.7.2007. godine - pravo Poreske uprave na naplatu poreza i sporednih poreskih davanja zastareva za pet godina počev od prvog dana naredne godine od godine u kojoj je došlo do prekida zastarelosti.

Mišljenje Ministarstva Finansija, br. 413-00-00548/2011-04 od 28.6.2011. godine

The Law on Tax Procedure and Tax Administration

ISSUANCE OF THE NOTICE BY THE TAX ADMINISTRATION FOR THE PAYMENT OF TAX DEBT AS AN ACTION WHICH DISCONTINUES THE STATUTE OF LIMITATIONS OF A TAX RECEIVABLE

The issuance of a notice of the Tax Administration to pay the tax debt represents the action of the Tax Administration against the tax debtor in order to collect the taxes and secondary tax levies, which discontinues the statute of limitations, provided that action is taken from 8 July 2007 - the right of the Tax Administration to collect the taxes and secondary tax duties falls under the statute of limitation in five years, starting from the first day of the following year after the year in which the discontinuation of limitation took place.

Opinion of the Ministry of Finance, no. 413-00-00548/2011-04 from 28 June 2011