

New System of Corporate Income Taxation in FBiH – with More Taxable Revenues and Fewer Tax Incentives

The vast majority of provisions of the new Law on Corporate Income Tax in the Federation of Bosnia and Herzegovina will not be applied until the arrival of the period for calculating corporate income tax for 2016. However, the application of provisions on withholding tax already began on 5 March 2016, when the new law entered into force.

By taking steps such as the adoption of the Law on Corporate Income Tax, the Parliament of the Federation of Bosnia and Herzegovina continues to perform the obligations set out in the Reform Agenda and in the Stabilisation and Association Agreement. The new law addresses numerous deficiencies that have surfaced during the implementation of the Law on Corporate Income Tax adopted in 2008. Compared to the old law, according to which tax for 2015 will be calculated, the new law regulates almost every aspect of the mechanism of taxation in far greater detail. The government intends to extend the tax base (which now covers more taxable revenues) and to provide for more categories of taxpayers, aiming to increase public revenues and to combat tax evasion. The new law now expressly prescribes fines ranging from 3,000 to 100,000 BAM for taxpayers for each individual breach of most obligations in the new law.

The new law specifically defines the notion of the taxpayer, which now *expressis verbis* can include any branch of a legal entity incorporated in the Republic of Srpska and the Brcko District as well as the business unit of a non-resident. Adjustments to both expenditures and revenues have been itemized and explained in more detail than before. The same holds true for the procedure that enables the avoidance of double taxation. On the other hand, provisions on tax loss carryforward have remained virtually unchanged. One novelty is the taxation of income acquired during bankruptcy proceedings.

Withholding Tax

The old law contained only one article on withholding tax; its application proved to be a "tax nightmare". In contrast, the new law has a lot more to offer in terms of both quality and quantity. First of all, the list of payment types subject to withholding tax has been expanded to include new items such as *inter alia* rent and fees for consulting services. On the other hand, some items from the list of exemptions were struck, so interest paid on corporate bonds and interest on deposits *inter alia* are no longer exempt from withholding tax. One novelty is the provision regulating withholding tax levied on the sale or transfer of property, equity capital and industrial property rights. Regarding procedure, the deadline for filing tax returns and paying withholding tax has been extended and is no longer limited to ten days from the date of payment of the remuneration; the deadline is now ten days from the end of the month in which the remuneration was made.

Tax Incentives and Exemptions

The area of tax incentives has been significantly altered. That taxpayers who generate more than 30% of revenue from the export of goods and services are no longer exempt from paying corporate income tax has already attracted significant media coverage. The only exemption retained in the new law applies to taxpayers who, in a period of five consecutive years, make investments totaling 20 million BAM. However, those taxpayers are no longer fully exempt. Instead, their tax obligation has been reduced by 50%. As for the new incentives, they are reserved for taxpayers who invest their own resources in production equipment and taxpayers with newly employed personnel.

Transfer Pricing

Transfer pricing is also being regulated with greater scrutiny. This includes defining the principle "at arm's length" as well as a detailed explanation of the terms "affiliated persons" and "comparable transactions". The law, for the first time, prescribes the methods to be applied when assessing whether a transaction has been concluded in accord with this principle. A list of the most appropriate methods includes a CUP method, cost plus method, and resale price method. In addition, the obligation to maintain documentation on transfer pricing, which contains an analysis confirming that the transaction has been concluded in compliance with the arm's length principle, poses a new burden for taxpayers who participate in transactions with affiliated persons.

The Federal Minister of Finance has a period of six months to adopt measures to implement the new law, i.e. the Rulebook on the Application of the Law on Corporate Income Tax and the Rulebook on Transfer Pricing. It is expected that these rulebooks will regulate the matter in more detail than the rulebooks currently in force - and thus leave less room for different interpretations, both on the part of taxpayers and tax collectors.

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