

Track Changes

Service vs. Employment

New distinguishing criteria under tax law amendments

Amendments to the General Tax Act and Income Tax Act introduce new specific criteria for distinguishing between the work of the employees and service providers.

Until now, the difference between independent and non-independent work was examined by courts and authorities under case law created in accordance with general provisions of the Employment Act and Obligations Act.

Amendments entered into force on **1 January 2020**.

Here we answer why this change was introduced and discuss if such new regulation will bring more clarity or create further confusion

Use of certain tax benefits may be contrary to the law

Background

- The number of registered IT crafts in Croatia has more than doubled in the past two years. There is also a significant increase of the use of IT specialists as service providers instead of employees, due to a more favorable tax treatment.
- The scope of the new provisions is broad, but it is clear that the amendments are primarily aimed to respond to such trends.

Criteria

Use of tax benefits will be considered to be contrary to the law if less-taxed organizational forms (which are nominally performing independent work), are used to perform non-independent work for which an employment agreement should be concluded.

Following criteria will be used for identifying the type of work performed:

- behavior control – can the ordering party control what and in which way the service provider is performing (through instructions, trainings or by other means);
- financial control – can the ordering party direct or control financial and business aspects of the service provider's work;
- type of relationship between the parties.

The set criteria is very broad and offers a lot of ground for different interpretations. It is expected that the bylaw to be enacted by the Ministry of Finance will implement further, more specific guidelines.

Until then, it seems that the recently introduced amendments will significantly change the trends (especially in the IT sector) and make the employer reconsider their work models.

- In case a misuse of tax benefits is identified, the tax obligations will be recalculated as if there had been no tax benefits.
- The person identified as the employee in the relationship is liable for settling the tax obligation, while the person identified as the employer shall act as his / her guarantor.



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