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AMENDMENTS TO THE PERSONAL INCOME TAX LAW IN SERBIA IMPACT INDEPENDENT "ENTREPRENEURS"

The Serbian Parliament enacted the Amendments to the Personal Income Tax (PIT) Law in December 2019 (published in the "Official Gazette of the Republic of Serbia" No. 86/2019), which are applicable as of 1 January 2020 (hereinafter: the "**Amended PIT Law**"). The Amended PIT Law introduced, inter alia, new rules in connection with the taxation of independent entrepreneurs engaged in "employment-like" relationships.

INDEPENDENT CONTRACTOR TEST INTRODUCED

Namely, pursuant to the Amended PIT Law, effective as of 1 March 2020, entrepreneurs shall be taxed in line with the genuine type of their employment engagement with their principles (employer), which shall be determined on the basis of the so-called "independent contractor test". According to the Amended PIT Law, an entrepreneur shall not be considered as independent if 5 or more of the following 9 criteria are met (i.e., in such case, it shall be considered that the entrepreneur has failed to pass the "independent contractor test"):

- The principal decides on working hours, vacations, any absence of the entrepreneur, as well as whether the contractual remuneration is reduced proportionally on the basis of any absences or vacations.
- The entrepreneur normally uses premises provided by the principal or performs business in a place determined by the principal.
- The principal carries out or organizes professional training of entrepreneurs.
- The principal has hired an entrepreneur by the use of an advertising job vacancy or an employment agency.
- The principal provides the basic tools, equipment or other basic material or intangible assets needed for the regular work of the entrepreneur or finances their procurement, except for specialized tools, equipment or other specialized assets that may be necessary for the execution of a specific job or order.
- At least 70% of the total revenue generated over a 12-month period is from one principal.

- The entrepreneur performs activities which are part of the principal's business activity and the contract does not contain a clause stating that the entrepreneur bears the usual business risk.
- The contract contains a partial or complete prohibition for the entrepreneur to perform services contractual to other clients, with the exception of a partial prohibition on the provisions of services to a limited number of a direct principal's competitors.
- The entrepreneur carries out activities for which she/he receives a fee from the same principal continuously or intermittently for 130 or more working days for a period of 12 months. Whereby performing activities in one working day is performing activities in any period during the working day between 00 and 24 hours.

"SAFE HARBOUR" PROVISION MAY PROVIDE SOME RELIEF

If an entrepreneur fails to pass the "independent contractor test", his or her gross income will be taxed as so-called "other income" (i.e., at a rate of 20%), without the right to have standardized costs deducted therefrom and with the obligation to pay mandatory social security contributions. The Amended PIT Law, however, provides for the safe harbor provision, according to which the income paid to an independent entrepreneur until 1 March 2020 will be considered as income from self-employment, regardless of the nature of the entrepreneur's relationship with the principal.

It is anticipated that the biggest burden of the aforementioned regulatory changes shall be borne by the IT industry, since its working model in Serbia utilizes independent entrepreneurs as service providers.

INCENTIVES DESIGNED TO PROMOTE NEW HIRES

The Amended PIT Law provides incentives for hiring qualified new employees in the period from 2020 and until the end of 2022. Such incentives include the following tax deductions for qualified new hires (provided that such new hires resulted in an increase of the employee headcount in the company in comparison to 31 December 2019 and were maintained until the end of 2022):

- 70% of salary taxes paid between 1 January and 31 December 2020;
- 65% of salary taxes paid between 1 January and 31 December 2021; and
- 60% of salary taxes paid between 1 January and 31 December 2022,

as well as certain mandatory social security contribution relief in the aforementioned period.

The Amended PIT Law further provides certain payroll and social security contribution relief for the founders of innovative start-ups, tax relief for employers hiring new immigrant taxpayers, as well as certain exemptions from income taxation of non-resident taxpayers.

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