

Deloitte Tax Alert

August 2014



Ministry of Finance Rulings

The Ministry of Finance has released several new Rulings that further explain the application of Value Added Tax Law and the Corporate Income Tax Law provisions.

The most recent Ministry of Finance Rulings are:

- **VAT treatment of import and supply of goods performed on the basis of a commission purchase agreement** – When a VAT payer, on the basis of a commission purchase agreement entered into with an entity from Serbia, purchases goods abroad, imports and delivers them within Serbia, from a VAT regulations perspective, two separate supplies of goods are deemed to have been performed. First would be the supply of goods performed by the foreign supplier to the VAT payer (based on which the import of the goods is performed) and the second by the VAT payer to the entity from the agreement. Accordingly, the VAT payer performing the supply to the entity from the agreement is entitled to claim input VAT paid for the import of goods (subject to other prescribed conditions), but also has to compute VAT for the supply to the entity from the commission purchase agreement.

(Ruling of the Ministry of Finance, no. 430-01-261/2013-04 issued on May 13, 2014)

- **Conditions for making a zero-rated supply when a manufacturer delivers goods to a VAT payer that exports the goods on its own behalf, but for the account of the manufacturer** – When a VAT payer – manufacturer delivers goods to a VAT payer – company exporting the goods in question abroad, on its own behalf but for the account of the manufacturer, a zero-rated supply for the export of goods can only be made by the VAT payer – the company exporting the goods on its own behalf.

(Ruling of the Ministry of Finance, no. 430-00-00168/2014-04 issued on April 11, 2014)

- **VAT treatment of the supply of services involving the preparation of a feasibility study and the drafting of an investment proposal to a foreign entity** – When a VAT payer performs a supply of services to a foreign company, specifically of services involving the preparation of a feasibility study for a potential thermal power plant construction project (location analysis for construction in view of the project's economic viability, a presentation of specific coal deposits and capacity analysis, investment and manufacturing plans, potential markets, manufacturing, sales etc.) for which a single fee is paid, the supply is not subject to VAT. Namely, these services are considered to be advisory services, which are taxable at the place of the service recipient.

(Ruling of the Ministry of Finance, no. 011-00-00330/2014-04 issued on April 22, 2014)

- **Issuing invoices for the supply of passenger transportation when an advance payment is received, based on which transportation stamps are issued** – When a VAT payer – supplier of passenger transportation services receives an advance payment based on which transportation stamps are issued, which the passengers

use to pay for the service at the moment of supply, advance invoice has to be issued. On the other hand, there is no obligation to issue a final invoice in this case, due to the fact that the advance invoice is considered as the final invoice at the same time. Based on such an invoice the VAT payer – invoice recipient may claim input VAT, subject to other prescribed conditions.

(Ruling of the Ministry of Finance, no. 413-00-856/2012-04 issued on April 23, 2014)

- **The transfer of a part of the assets without compensation which is not deemed to be a supply** – When a VAT payer transfers a part of the business assets, comprised of equipment for performing a specific business activity, to a company without compensation, it is deemed that no supply took place if (amongst other conditions): the part of the business assets in question represents a business unit the transfer of which enables the acquirer to independently perform the activity; and restricts the transferor, at the moment of transfer, from performing this activity.

(Ruling of the Ministry of Finance, no. 413-00-117/2013-04 issued on May 5, 2014)

- **The investor as a tax debtor for the supply of construction services when multiple contractors have been hired** – For the supply of goods or services in the construction industry performed by the contractor, a VAT payer, to the investor, the investor, being the goods or services recipient, applies reverse charge as the tax debtor where the supplier is a contractor under the Law on Planning and Construction. The application of Article 10 para 2 item 3) of the VAT Law is thus not impacted by the fact that the investor has hired multiple contractors, but only by the fact whether the VAT payer performing the supply to an investor is considered to be a contractor under the Law on Planning and Construction, which is to be determined for every contractor separately.

(Ruling of the Ministry of Finance, no. 413-00-146/2014-04 issued on May 19, 2014)

- **Determining the purchase price for capital gain purposes when the purchase price of real estate is not stated in the taxpayer's business records** – When the real estate's purchase price is not stated in the taxpayer's business records, the purchase price for capital gain purposes is the market price on the date of the purchase, as determined by the competent tax authority.

(Ruling of the Ministry of Finance, no. 011-00-241/2014-04 issued on April 24, 2014)

- **The possibility of changing – reducing the VAT tax base for outstanding compensation** – The VAT payer may reduce the VAT tax base for outstanding compensation solely based on a court decision on concluded bankruptcy proceedings, or based on a certified transcript of court minutes following a court settlement. When the inability to collect the payment, or a part thereof, for the performed supply arose due to other reasons (e.g. due to the statute of limitations, the cessation of enforced collection proceedings etc.) the VAT payer is not entitled to make a reduction of the VAT base.

(Ruling of the Ministry of Finance, no. 401-00-02666/2013-04 issued on April 10, 2014)

- **The possibility to utilize a tax credit based on withholding tax paid in another country** – The right to credit foreign tax on the basis of withholding tax paid on royalty, interest and lease payments, is granted to a resident taxpayer regardless of the relationship with the payer of the income in question, as of December 25, 2012.

(Ruling of the Ministry of Finance, no. 413-00-00109/2014-04 issued on May 15, 2014)

- **The right to claim input VAT from the supply of goods and services procured for landscaping purposes** – The VAT payer is entitled to claim input VAT from the supply of goods and services for landscaping purposes (i.e. greening works, installation of automatic sprinkler systems, etc.) within business premises where the VAT-able activity is performed.

(Ruling of the Ministry of Finance, no. 413-00-00166/2013-04 issued on April 25, 2014)

- **The tax treatment of construction services in case when both construction and reconstruction activities are performed under the same permit** – When under the same permit both construction of a new building and the reconstruction of an existing one is performed, the VAT payer – contractor does not compute VAT for the supply performed as part of the construction activities. On the other hand, the contractor is obliged to compute VAT for the supply performed as part of reconstruction activities on an existing building in line with the VAT Law. Namely, the service recipient for building reconstruction services cannot be considered as an investor, meaning that the conditions for the application of the reverse charge (provided under Article 10 para 2 item 3) have not been fulfilled.

(Ruling of the Ministry of Finance, no. 413-00-657/2013-04 issued on June 26, 2014)

- **The VAT treatment of the supply of goods located on the territory of Serbia made as a contribution in kind to a resident entity** – When a foreign entity makes a contribution in kind to a resident entity by using goods located on the territory of Serbia, the supply in question is subject to VAT. In this case, the obligation to compute VAT lies with the tax representative of the foreign entity. If the foreign entity has not named a tax representative, the tax debtor is considered to be the goods recipient. In this case, the VAT base is the market value of the goods in question on the date of supply, net of VAT.

(Ruling of the Ministry of Finance, no. 430-00-00090/2014-04 issued on July 10, 2014)

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