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Recent Developments in International Taxation

Serbia

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Highlights

The last 12 months have seen little change in the tax laws of Serbia. In the area of international taxation, only two new double taxation treaties (DTTs) entered into force. There have been no developments in the implementation of base erosion profit shifting (BEPS) measures since 2018, when Serbia ratified the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI, which became effective on 1 October 2018), and 2019 when the transfer pricing provisions of the Corporate Income Tax Act (CITA) were amended to introduce, for the first time, a country-by-country (CbC) reporting framework for multinational groups headquartered in Serbia. Following the latter legislative intervention, the Minister of Finance supplemented, with effect from 9 October 2021, the existing regulation on the annual transfer pricing report by adding further details on the content and form of the annual CbC report.

The only area that underwent significant changes was personal income taxation. Numerous amendments to the Personal Income Tax Act (PITA) introduced last year mainly concerned the extension of duration and modification of the existing various payroll tax and social security contributions incentives for employers hiring certain categories of employees. Some new incentives were introduced, focusing on stimulating employment growth in general and research and development (R&D) activities in particular. Most recently, the government adopted measures incentivising employers to hire experts from abroad.

New DTTs with Japan and Singapore

Following the completion of the ratification process, the DTTs with Singapore and Japan became effective on 16 August 2021 and 5 December 2021, respectively. Both DTTs became applicable as of 1 January 2022. This brings the total number of DTTs Serbia has concluded with other countries to 63.

Amendments to corporate income tax

On 25 November 2021, the amendments to the CITA came into force; they became applicable starting from fiscal year 2022. The amendments concern only one issue – full exemption from taxation of capital gains realised through an in-kind contribution to the share capital of another resident entity in the form of certain intellectual property (IP) rights. The IP rights in question (qualifying IP rights) are:

- copyright in literary, artistic or scientific works, including software and ‘neighbouring rights’, provided that they are deposited with the Serbian IP Office; and
- rights in connection to patents registered or patent applications filed with the Serbian IP Office.

Since the 2019 CITA amendments, only 20 per cent of capital gains realised through transfer of the qualifying IP rights were included in the tax basis. In case of capital losses incurred on the sale of the qualifying IP rights, only 20 per cent of such losses could be offset with capital gains from the sale of other property. This was designed as an additional incentive within the framework of the ‘IP Box’ regime introduced by the 2019 CITA amendments (for details of the IP Box regime, please see the national report prepared for the 2019 IBA Annual Conference). The new amendments from 2021 add another incentive to that – the right of the taxpayer to

opt for the full exemption from taxation of capital gains realised through the in-kind contribution of the qualifying IP rights to the share capital of another resident entity. This full exemption is available only provided that the resident entity in which the in-kind contribution is made does not sell the qualifying IP rights within two years from the investment. Another condition to be fulfilled is that the resident entity does not, within two years from acquiring title in the qualifying IP rights, license them, in full or in part, to a related party at the price below the 'arm's length' price. If the resident entity breaches the above obligation not to sell or lease within two years, the investor forfeits its benefit in full and must repay the exempted amount increased by the official retail price growth index.

The amendments make clear that an external qualified expert must make a valuation of the market value of the qualifying IP rights upon making the in-kind contribution, which means that valuation made by the shareholders is not acceptable.

If a taxpayer incurs a capital loss on an in-kind contribution of the qualifying IP rights, such a capital loss could not be offset with capital gains realised by alienation of other property.

Amendments to personal income tax

Amendments to the PITA and the Social Security Contributions Act (SSCA) were passed on 26 November 2021 and, for the most part, became effective on 1 January 2022. Much of the amendments relate to the extension of the duration of existing tax incentives for hiring labour force. However, the amendments also introduced two new incentives, effective from 1 March 2022: one related to the hiring of new employees and the other for R&D activity. Also, an exemption from capital gains tax was introduced with effect from 1 January 2022 for individuals who contribute any IP right that they own to the share capital of a resident entity.

Capital gains exemption for in-kind contribution of IP rights to the share capital of resident companies

An individual who owns any IP right (not just qualifying IP rights, as is the case with companies) and fully transfers such a right as an in-kind contribution to the share capital of a resident entity benefits from full exemption from the taxation of the resulting capital gain. The exemption may be obtained provided that an expert has made a valuation of the market value of the contributed IP right. As in the case of the capital gains exemption for companies under CITA, if the resident company sells or transfers the title to the IP right within two years from the acquisition, or if it leases, within the same period, any part of the IP right to a related entity for less than the 'arm's length' remuneration, the individual investor forfeits the right to the exemption and must repay the unpaid amount of tax increased by inflation. The due date is the date on which the in-kind contribution was made.

New incentives for employers hiring new employees

With effect from 1 March 2022, employers (resident entities, sole entrepreneurs, branches and representative offices of foreign companies) that hire certain categories of staff are granted an allowance of 70 per cent of the payroll tax and 100 per cent of the pension and disability insurance contributions due on salaries paid to such employees. This benefit applies only with respect to salaries paid until 31 December 2024 to employees that meet all the following eligibility criteria (newly hired employees):

- they have not had the status of an employed person, registered self-employed entrepreneur or person employed by companies in which they are shareholders between 1 January 2019 and 28 February 2022;
- they have acquired the status of employed persons between 1 March 2022 and 31 December 2022, including being employed with companies in which they are shareholders; and
- their gross monthly salaries (inclusive of the payroll tax and social security contributions due from the employee) are higher than RSD76,500 (€648).

Employers may not cumulate this benefit with any of the other available tax benefits for the same newly hired employee. The incentive works as follows:

- the employer calculates payroll tax and social security contributions due from the salary;
- pays the net salary to the newly hired employee; and
- instead of paying the full amount of payroll tax and social security contributions to the state budget, it keeps 70 per cent of the payroll tax amount and 100 per cent of the pension and disability insurance contributions for itself.

The employer that benefits from this incentive with respect to newly hired employees is not required to reimburse the allowance in case it lays off any such newly hired employee.

New incentives for employers who carry out R&D activities in Serbia

With effect as of 1 March 2022, employers (resident entities only) that carry out their own R&D activities in Serbia may benefit from an allowance of 70 per cent of the payroll tax and 100 per cent of pension and disability insurance contributions with respect to salaries paid to employees who are directly involved in R&D work (activities of supervision of and support to the implementation of R&D projects are excluded). The allowance is granted on a pro-rata basis, proportionate to the hours spent by employees directly working on R&D projects compared to their full working hours. R&D activities may be related to any field of science or commerce, but must be carried out for the employer's own account and not on a contract basis for some other entity.

Subsidies for employers hiring non-resident experts

The government of Serbia has adopted (with effect from 18 June 2022) a decree providing for subsidies (in the form of a refund of 70 per cent of payroll tax and 100 per cent social security contributions paid on employee salaries) for employers (foreign company branches and representative offices included) paying relatively high salaries to experts who have been non-residents of Serbia prior to relocating to the country for work. Although the eligible non-resident experts (eligible experts) are defined as people with 'expertise that is scarce on the local labour market', there is no requirement on the employer to actually demonstrate that the expertise that the eligible experts have is indeed scarce on the Serbian labour market. The following conditions must be met:

- An eligible expert has not spent more than 180 days in Serbia in the period of 24 months prior to commencing work in Serbia; and
- Their gross¹ monthly salary is no less than RSD300,000 or €2,542.

The subsidy is in the form of a refund of 70 per cent of the payroll tax and 100 per cent of the social security contributions paid by the employer on the eligible experts' salaries. The subsidy will be available starting from 1 July 2022 until 31 December 2028 for eligible experts hired no later than 31 December 2023.

A refund is available upon application by the employer. Applications must be submitted to the Ministry of Economy between 15 and 30 September, covering payroll tax and social security contributions paid during the maximum period of 12 months prior to the application date. The application must be accompanied by a report prepared by a licensed auditor confirming the accuracy of the amount of the refund claimed.

An employer qualifies for the refund if the total number of its full-time, indefinite-term employees as of the date of the application is equal to or higher than the total number of its full-time, indefinite-term employees as of 18 June 2022, increased by the total number of eligible experts hired since 18 June 2022. After 31 December 2023 (the final deadline for hiring eligible employees), an employer that reduces the total number of its full-time, indefinite-term employees, when compared to 31 December 2023, forfeits the right to subsidy for the future and must repay, with statutory default interest, any subsidy received for the year in which its relevant reduction of its workforce occurred.

Payment of dividends by the employer at any time between the first application for the subsidy and the end of the calendar year in which it received any amount of subsidy disqualifies the employer and triggers its obligation to repay the received subsidy with the penalty interest. The only exception is if a dividend is paid from a portion of a distributable profit exceeding the amount received as the subsidy.

Employers who have received another form of state aid and have an outstanding corresponding obligation to hire personnel as of 1 July 2022 are not eligible for the subsidy. The same is true for employers that have used another available form of state aid for the same eligible expert.

¹ Net salary with payroll tax and social contributions withheld from the employee.