

serbia

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Established in 1995, Karanovic & Nikolic is a market leader practicing business law in Serbia, Montenegro and Republika Srpska. Our first rate reputation is based on the experience and skills our lawyers have gained over many years.

Drawing on the international education and experience of its lawyers in both civil and common law, Karanovic & Nikolic provides professional services of the highest possible standard to our clients. Our understanding of the sometimes complex and risky environment in the region together with our international education and approach ensures that clients are securely advised on their investment.

Karanovic & Nikolic activities include all aspects of legal practice from consultation with clients, negotiation, drafting agreements, legal research,

assistance before the authorities, mediation, dispute resolution and litigation. Our lawyers possess excellent language skills ensuring good communication with clients and the ability to draft complex legal documents in English, German, French and Serbian.

Our success has grown out of clients' willingness to entrust us with their most important legal and business affairs in this dynamic market.

serbia | corporate law

Corporate Law in Serbia is regulated principally by the Company Law of the Republic of Serbia that was published on November 22, 2004 in the "Official Gazette of the Republic of Serbia" no. 125/2004 and came into force on November 30, 2004, and by the Law on Registration of Business entities of the Republic of Serbia that was published on May 21, 2004 in the "Official Gazette of the Republic of Serbia" no. 55/2004 and came into force on December 31, 2004. The Company Law regulates incorporation of companies and entrepreneurs, corporate organization and governance, affiliation and changes of corporate status and legal forms of companies, liquidation of companies. By enacting this law the provisions of the old Company Law from 1996 will be no longer applied, except those provisions dealing with socially owned companies and provisions regulating corporate governance of companies that entered into the privatisation procedure. The Law on Registration of Business Entities regulates the conditions, subject, and the procedure of registration at the Agency for Business Registration and the operating procedure of this Agency.

Types of Companies

There are four following types of companies that may be established in Serbia. These include: the partnership, limited partnership, limited liability company and joint stock company. All types of companies existing in Serbia have the status of a legal entity.

There are no requirements with respect to minimum amount of the share capital of partnership and limited partnership, but since their founders are liable with all their assets for company's obligations, these types of companies are rarely seen in practice. Natural persons as well as the legal entities can be founders of these types of companies.

The most commonly used legal form in Serbia is a limited liability company. The liability of the owners is limited to their share in the company, and they cannot

be liable for obligations of the company itself except if they misuse the company for unlawful or deceptive purposes. A shareholder may have only one share in the company, which is expressed as a percentage. The share capital may consist of cash and contributions "in kind" such as equipment, goods, know-how, work and services etc. The value of contributions in kind can be assessed by the shareholders themselves. Limited liability companies can have from 1 to 50 members, and the minimum share capital is EUR 500. At least one half of the share capital must be paid prior to registration of the company, and the remaining half is payable within two years from registration.

There are two types of joint stock companies, closed and open (public) joint stock company that can be listed on the stock exchange market and not listed. Currently there is no developed market for the of shares, and most joint stock companies are banks and insurance companies that according to specialized laws have to be established in this legal form. The minimum amount of the initial share capital for joint stock companies is significantly higher than that prescribed for limited liability companies, and it amounts to EUR 10,000 for closed, and EUR 25,000 for open joint stock companies.

Joint stock companies can issue ordinary (regular) and preferential (priority) shares. Joint stock companies must have at least one ordinary share. Ordinary shares have the same nominal value or have no nominal value at all, in which case their accounting value is used as a ground for determining the amount of dividends or liquidation surplus belonging to their owners. Preferential shares include in particular priority rights in payment of dividends, and priority in payments of liquidation surplus. However, owners of preferential shares do not have voting rights except in a limited number of cases explicitly stated in the Law. The company's Memorandum of Association can prescribe that the company can have approved shares that are not issued. These shares can be issued for the purposes of increasing the share capital of the company by making new contributions.

Corporate Bodies in Limited Liability Companies and in Joint Stock Companies

LIMITED LIABILITY COMPANIES

Limited liability companies have the shareholders Assembly and they can have either a Managing Director or a Managing Board. These types of companies can also have either an Internal Auditor or a Board of Auditors if these bodies are prescribed by the company's Memorandum of Association.

If not otherwise provided by the Company Law or the company's Memorandum of Association, the Shareholders Assembly is authorized to decide on:

- approving the transactions concluded in relation to the incorporation of the company before registration;
- appointment and dismissal of the Managing Director or the members of the Managing Board, and determining their fees or salaries;
- approving financial reports, issuing decisions on distribution of the company's profit and amounts of payments to the shareholders;
- appointment and dismissal of the internal auditor or the auditor of the company and confirming their findings and opinions, determining the fees and other conditions of their agreements with the company;
- appointment of the liquidation manager and confirmation of the liquidation balance;
- increase and decrease of the company's share capital, acquiring treasury shares, withdrawing and annulling the shares, as well as the emission of securities;
- giving procura and business authorization for all the branches of the company;
- payment of additional contributions;
- excluding the Company's shareholder, admitting a new shareholder and transfer of shares to third parties when Company's approval is necessary;
- change to corporate status, legal form and termination of the company;

- grant approval for transactions involving shareholders, Managing Director or the members of the Managing Board and other persons pursuant to the Company Law;
- acquiring, selling, leasing, pledging or otherwise disposing of the assets of significant value according to the Company Law;
- forming branches;
- other issues determined by this Memorandum of Association that are within the domain of the Assembly of a limited liability company;

The annual Assembly of the company has to be held not later than 6 months after the end of the business year for the purposes of adopting the financial reports and deciding on the distribution of profit.

All the decisions of the Shareholders Assembly are enacted by simple majority of the shareholders present, but only if shareholders that have majority of total number of votes in the Assembly are present at the session at which this decisions are enacted. However, the Assembly decides unanimously on certain issues, except if the Memorandum of Association provides that these issues will be decided by another majority which may not be less than the majority of the total number of votes in the Company. The abovementioned provisions relate to the following issues: amendments of the Memorandum of Association of the company; increase and decrease of the share capital except for additional contributions; changes of corporate status, legal form and termination of the company; distribution of profit to the shareholders; acquiring treasury shares and disposing of assets whose value exceeds at least 30% of the accounting value of the entire assets of the company.

Limited liability companies have either a Managing Director or a Managing Board. In any event these bodies are appointed by the Shareholders Assembly. The members of management remain until they are dismissed or until they resign, and there is no mandatory term of their mandates, but the duration of their mandate can be prescribed by the company's Memorandum of Association.

If the company's Memorandum of Association does not provide otherwise, the Managing Director or the Managing Board are authorized to:

- represent the company and run the company's operations;
- determine proposals in the business plan;
- convene the sessions of the company's Assembly and propose the agenda;
- execute decisions of the Founder;
- determine the date on which the list of shareholders with the right to be informed on company's operations is determined, determining the dividend date;
- conclude credit agreements;
- give and revoke procura;
- other issues determined by the Memorandum of Association.

The Managing Director or the Managing Board are responsible for regular keeping of business books and internal supervision of the company's operations. According to the Labor Law the Company can conclude agreements with the Managing Director or members of the Managing Board that will regulate their mutual rights and obligations, including the salary or the fee paid to them. There are no limits regarding these fees.

JOINT STOCK COMPANIES

Closed joint stock companies have an Assembly and they can have either a Managing Director or a Managing Board. These types of companies can also have either an Internal Auditor or a Board of Auditors if these bodies are prescribed by the company's Memorandum of Association. Open joint stock companies have a shareholders Assembly, Managing Board, Executive Board and a Secretary. These types of companies can have either an Internal Auditor or a Board of Auditors or a Supervisory Board if these bodies are prescribed by the company's Memorandum of Association and open joint stock companies that are listed at the stock exchange market must have one of the mentioned bodies.

The authorities of the Shareholders Assembly are very similar to the authorities of this body in limited liability companies. The regular session of the Shareholders Assembly has to be held once a year within three months from the date of submitting to the Management Board the financial reports for each financial year, or within 6 months from the end of the business year. Decisions

of the Assembly are by simple majority of the shareholders present, but only if shareholders that have a majority of the total number of votes in the Assembly are present at the session at which these decisions are enacted. However, some decisions prescribed by law, including amendment of the Memorandum of Association and disposing of assets whose value exceeds at least 30% of the accounting value of the entire assets of the company, can be passed only with 2/3 majority of votes of all the shareholders that have voting rights on this issue. The Memorandum of Association can provide that these decisions are passed with a lower majority which may not be less than the majority of the total number of votes in the Company.

The Management Board of joint stock companies consists of 3 to 15 members, which are appointed by the Assembly. In open companies the members of the Management Board are appointed by cumulative voting if not otherwise provided by the company's Memorandum of Association. In the cumulative voting system the number of votes of each shareholder is multiplied by the number of Board members that are being appointed. Each shareholder is entitled to give all of its votes to a particular candidate for the Management Board or to distribute them to several candidates. The mandate of members of the Management Board expires at the first annual Assembly held after their appointment.

The Management Board of joint stock companies listed on the stock exchange must have a majority of members who are not simultaneously members of the Executive Board. The Management Board for these companies must have at least two independent members. Independent members are persons who, according to criteria set out in the Company Law, have not had any significant connection with the company in the two years prior to their appointment as members of the Management Board.

The Management Board in joint stock companies has wider authorities than in limited liability companies. These authorities include:

- amending the Memorandum of Association if these changes do not affect the rights of shareholders;
- increasing the share capital by issuing approved shares if this is provided in the company's Memorandum of Association;

- supervision of accuracy of financial reports and information;
- determining or approving the company's business plan;
- appointing and dismissing members of the Executive Board;
- other authorities prescribed by the Law and Memorandum of Association.

The Managing Board is responsible for regular keeping of business books and internal supervision of the company's operations. According to the Labor Law, the Company can conclude agreements with the members of the Managing Board that will regulate their mutual rights and obligations, including the salary or the fee paid to them. There are no limits regarding these fees.

Incorporation of Limited Liability Companies and Joint Stock Companies

LIMITED LIABILITY COMPANIES

According to the Law on Business Registration the following documents are needed for the incorporation of a limited liability company:

- proof of identity of the founder of company (copy of identification card or passport for natural persons and/or extract from the appropriate registry for the legal entities);
- Memorandum of Association of the company (resolution or agreement), with notarized signatures of the founders;
- bank certificate on payment of the monetary contribution into a temporary bank account, or a notarized statement of the founder that it has ensured the monetary contribution;
- decision on appointing the representative of the company, if it was not designated by the Memorandum of Association;
- notarized signature of the company's representative.

JOINT STOCK COMPANIES

According to the Law on Business Registration, the following documents are needed for the incorporation of a joint stock company:

- proof of identity of the founder of company (copy of identification card or passport for natural persons and/or extract from the appropriate registry for the legal entities);
- Memorandum of Association of the company (resolution or agreement), with notarized signatures of founders;
- bank report of inscribed shares; (not necessary for closed joint stock companies)
- bank report of monetary contributions deposited on a temporary bank account;
- proof on publishing and the content of public invitation for inscription and payment of shares (a prospect), with approval of the prospect issued by an authorized body; (not necessary for closed joint stock companies)
- authorized valuer's assessment of value of contributions "in kind"; (not necessary for closed joint stock companies)
- decision on appointing the representative of the company, if it was not designated by the Memorandum of Association;
- notarized signature of the company's representative.

serbia | tax law

The tax system in the Republic of Serbia is regulated at the republican level. Detailed tax regulations, tax collection and control of tax compliance are all in the competence of the Republic. The effect of this is that the corporate income tax, personal income tax, VAT as well as other taxes are levied at the republican level.

An extensive tax reform was undertaken in June 2001 whereby almost all the laws were revised, and in many areas new rates were introduced. In addition, some new taxes (such as the use tax) were introduced. In November 2002, new amendments were adopted, resulting in lower tax rates and a more favorable tax and business environment.

PERSONAL INCOME TAX

Personal income tax is payable by individuals on different sources of income generated in the calendar year. The taxable income includes salaries, income from agriculture and forestry, income from self-employment, income from royalties and industrial property rights, income from capital, income from real estate and other income.

The applicable rate is 14% for salaries, while other personal incomes are predominantly taxed at the rate of 20%.

Taxpayer

The taxpayer is a natural person, a resident of the Republic of Serbia, for income generated in the Republic and for income generated worldwide. Individuals are regarded as Serbian residents if they:

- Have domicile in Serbia;
- If they have their habitual abode in Serbia (i.e. if they stay in Serbia at least 183 days, whether or not consecutively, within a period of 12 months;

- Have the center of their business and vital interests in Serbia, or
- Are seconded abroad to carry on business there for a Serbian resident legal entity, a Serbian natural person, or an international organization.

Non-residents are taxed with respect to income generated on the territory of the Republic of Serbia.

The income tax on certain types of income is levied at source, by deducting the appropriate amount, i.e. it is collected when the income is earned, while other types of income tax are calculated by tax authorities.

Tax Credit

The taxpayer is entitled to a tax credit in the amount of tax already paid on income earned abroad. The tax credit is limited to the amount of taxes that would be calculated in accordance with the laws of the Republic of Serbia.

Taxation of Salaries

Salaries and fringe benefits are taxed at the rate of 14%. The taxable person is the employee, but the employer is responsible for calculating and paying personal income tax on behalf of his employees. The taxable base is the gross salary, which includes salary tax and social security contributions. Meal allowances, compensation for fieldwork and holiday allowances are all included in the taxable base, as well as other benefits provided by the employer. Besides the social security contributions paid by both employees and employers, at the equal rates of 16.30%. Fringe benefits are considered as part of the gross salary, and are subject to salary tax and social security contributions.

The legislation, in force since July 2001, introduced incentives for foreign nationals employed in Serbia and Montenegro regarding the taxation of fringe benefits. Fringe benefits (such as housing allowances) related to the employment of a foreign national in the Republic of Serbia, are exempt from taxation in the amount of 35% of the salary paid locally. This provision applies to foreign nationals with local employment contracts of up to 3 years.

Annual Income Tax

An annual income tax is levied on income earned by residents. Such income includes income received in the Republic of Serbia and income earned worldwide. The taxable income consists of the net annual salary and other net income received during the calendar year.

According to the legislation, the annual income is taxed if it exceeds certain threshold (current threshold is CSD 867. 225). Any amount exceeding the non-taxable income is taxed at a progressive rate. The taxable income is further reduced by the certain amount for each dependent member of the family. However, the total amount of deductions cannot exceed 50% of the taxable income.

The level of non-taxable income and the amount of personal allowances are adjusted annually in accordance with the growth rate of salaries, based on the data supplied by the Bureau of Statistics.

Annual income is subject to 10% tax. The taxpayer has to submit a tax return to the tax authorities by 15th March for income generated in the previous year. No extension is allowed. There is no joint tax return filling system in Serbia.

Personal Allowances

Taxable income may be reduced by allowances for supporting dependent family members CSD 86.722 per taxpayer and CSD 28.907 per dependent, but not exceeding 50% of taxable income)

Personal Income on Capital Gains

Income realized by the sale or any transfer of bonds issued in conformity with regulations dealing with the settlement of commitments of the Republic based on foreign currency savings or on a loan taken towards the economic rebirth of the Republic of Serbia is also exempt.

Tax Relief

Specified types of income, up to prescribed amount, are exempt. They include public transportation costs for home to office travel and daily allowances for business trips. In certain cases, non-residents working for consular and diplomatic missions or international organizations in Serbia are not taxable on their remuneration.

Tax on Salary Fund

As of July 1st 2004, the salary fund tax payable by the employer at the rate of 3, 5% of gross salaries is abolished.

Social Security Contributions

Social security contributions are calculated and withheld by an employer from the salary paid to an employee up to specified cap. These contributions are payable by employer and employee at equal rates. The amount born by the employer is treated as an operating cost, whole the portion payable by the employee is taken from gross salary. The rates are as follows:

- Pension and disability insurance 11%;
- Health insurance 6,15%;
- Unemployment insurance 0,75%.

A New Law on Mandatory Social Insurance Contributions is in force since September 1st 2004.

The minimum tax base for social security contributions defined in the Law on Mandatory Social Insurance Contributions is fixed at 40% of average monthly salary. The latest up date in this respect is that the maximum base for social security contributions is applied from the first day of the month following the month in which the data is published.

Taxation of Expatriates

BENEFITS

Expatriate residents of Serbia, employed by a resident entity or representative office of foreign entity are entitled to tax exemption of 35% of their Serbian salary. This exemption relates to allowances paid to expatriates.

Advance tax on employment income, investment income, income from royalties, immovable property and leasing equipment is withheld at source by the payer.

ANNUAL INCOME

The income of all categories is aggregated and taxed at the (additional rate of 10% if exceeding threshold). At present the threshold is CSD 4. 047. 048.

PERSONAL ALLOWANCES

Taxable income may be reduced by allowances for supporting dependent family members (CSD 86.722 per taxpayer and CSD 28.907 per dependent but not exceeding 50% of taxable income).

LAW ON TAX ADMINISTRATION AND PROCEDURE

The Law on Tax Administration and Procedure came into force on January 1st 2003. The Law abolished almost all provisions of other tax Laws, until the moment, regulated the filed of tax procedure, administration, control and enforcement. This was main objective of this law to unify and centralize all the regulation in the aforementioned field which were previously covered by more than ten Acts (confusing to taxpayers).

The most important changes brought in with the new Law are that it established the Tax Authority as a regular part of Ministry of Finance, replacing Public Revenue Agency of Serbia (RUJP), which was independent Public Revenue Agency outside the Ministry. The new Tax Authority encompasses all

Government bodies, institutions and employees in charge of controlling calculation, payment and debt enforcement of public revenues. It also establishes the Tax Police as a Department within the Tax Authority, with the specialized role of uncovering Tax crimes and pursuing offenders.

It should be emphasized that during the tax procedure, the general Law in the field of administrative procedure (Law on General Administrative Procedure) applies in each situation where nothing else is prescribed by this Law. However, where any other specific tax Law regulates the administrative issue in a way with this new Law, then the specific provision shall prevail.

CORPORATE PROFIT TAX

All legal entities, including partnerships, which generate revenue by selling products and providing services on the market, are obliged to pay the corporate profit tax on the generated profit at the uniform rate of 10%.

Taxpayer

Taxable persons are companies registered as joint stock companies, limited liability companies, socially-owned companies, public enterprises, general partnerships or limited partnerships. A taxable person is also any other legal entity generating profit from selling its products or rendering services on the market. Taxpayers include both residents and non-residents. Residents are taxed based on their worldwide income. Non-residents are taxed only based on their income generated from the sources within Serbia. A legal entity is considered a resident if its head office or effective management are located on the territory of the Republic of Serbia. Residents are subject to indefinite tax liability for both profit generated on the territory of the Republic of Serbia (hereinafter referred to as: the Republic) and worldwide.

A non-resident is a legal entity whose head office and effective management are located outside the territory of the Republic. A non-resident is subject to the corporate income tax on profit generated through its permanent business establishments on the territory of the Republic. Permanent establishment is a

fixed place of business through which company's business is wholly or partly carried on. It includes especially: a place of management, a branch, a factory and a building site lasting longer than six months. The non-resident is obliged to keep records in permanent establishment, in order to obtain data regarding profit generated in that permanent establishment.

Tax Base

The taxable income is established on the basis of accounting profit indicated in the annual income statement in accordance with IFRS and accounting legislation, further adjusted in the tax return for tax purposes.

The adjustments include increasing taxable income by the amount of non-deductible expenses and adjusting taxable income in accordance with transfer pricing rules. Expenses, which are limited for tax purposes include, among other costs, the cost of material and cost of sales in respect of merchandise are recognized for tax purposes only if based on average price or the FIFO method, provisions for severance payments and compensation for employees who are terminating their contracts due to retirement or for any other reasons are not deductible. A new methodology for calculating depreciation is introduced. Under this methodology, fixed assets are divided into five categories (which the Ministry of Finance will define). Expenses reflecting the impairment of assets are not recognized unless due to force major. Additional evidence is required to support doubtful debt provisions. The taxpayer must provide evidence of the failure to collect debtors through court orders. Additionally, provisions will not be accepted if the aging of the debtor is less than 60 days. Long-term provisions except those for restoration of natural resources and for expenses accrued in a warranty period, and also deposits, are not deductible.

The revaluation income, i.e. the surplus of revaluation income over revaluation expenses, is also taxable in accordance with the law.

Interest charged by related parties is deductible for profit tax purposes up to the level of interest charged on the market, as further discussed in the section on Transfer pricing.

Capital Gains and Losses

Capital gains and losses are recognized for the purpose of corporate income tax assessment. Capital gain/loss is a difference between the price at which a right/an asset are sold and its acquisition cost. The sales price is the price agreed upon by the contracting parties, or the market price established by tax authorities if the agreed price is estimated to be lower than the market price. The agreed/market price is exclusive of property transfer tax.

The acquisition cost is the price at which an asset is acquired, reduced by the amount of depreciation and increased by the amount of revaluation, in accordance with accounting rules.

Capital gains are generated by the sale or transferring in other way against compensation of:

- Real estate;
- Rights related to industrial property;
- Shares, stocks, securities and certain bonds.

Surprisingly the sale of equipment and other fixed assets will not be considered as a capital gain for corporate profit tax purposes.

Capital gain is included in the taxable income. Capital loss can be offset against capital gain realized in the same year. The remaining capital loss can be carried forward and offset against capital gains in the future, over an accounting period of up to 10 years.

Tax Loss

The tax loss stated in the tax return can be carried forward and offset against future profits over a period of up to ten years.

Withholding Tax

Withholding tax at the rate of 20% is calculated and paid on certain payments (dividends, share in profit, royalties, interest, capital gains, lease payments for

real estate and other assets) to a nonresident. According to the recent amendments of Enterprise Profit Tax Law from 23 July 2004 withholding tax will not be due on payments of dividends between Serbian entities. The provisions of applicable double tax treaties regarding withholding tax will apply. However, the non-resident must prove, by submitting a valid document issued by the other state, that he is a treaty resident of such state. Withholding tax is calculated and paid according to regulations valid at the moment of payment.

Depreciation

Intangible and fixed assets are divided into five groups, with amortization rates prescribed for each (Group I-2, 5%, II-10%, II-15%, IV-20% and V-30%). Straight line depreciation is prescribed for the first group which includes real estate, while a declining balance method is valid for assets in other groups.

Introduction of IFRS

Income and expenses that represent the correction of a fundamental error or change in accounting policy and are not reflected in the financial statements in the period in which they occurred: these corrections are shown by amending the tax return for the year the event occurred. A fundamental error for this purpose must be as defined for IFRS, and it must change taxable income or loss in the tax balance sheet by more than 2%.

Double Taxation

PROFIT EARNED BY A NON-RESIDENT SUBSIDIARY

If a resident company generates profit and pays tax outside the Republic of Serbia, it will be entitled to a tax credit in the amount of profit tax already paid. Such tax credit is limited to the level of tax that would be calculated on profit earned abroad, in accordance with the law of the Republic of Serbia.

INTER-COMPANY DIVIDENDS

A parent company, a tax resident in the Republic, can have its profit tax reduced by the amount of tax paid by its non-resident entity outside the Republic, on the

profit from which dividends included in the revenue of the parent company are paid and on those dividends. The revenue from dividends of a non-resident subsidiary is included in the revenue of the resident parent company in the amount increased by the amount of paid profit tax and deducted tax.

Tax credit is limited to the amount of tax which would be calculated in accordance with the law of the Republic. Tax credit is granted to entities holding at least 25% of the shares or stake in a non-resident subsidiary.

Group Companies and Transfer Pricing

Companies are considered a group if one company directly or indirectly controls 75% of the share capital of another company. Group companies are entitled to tax consolidation if all companies have been tax residents in Serbia for a minimum period of 5 years.

AVOIDANCE OF DOUBLE TAXATION OF DIVIDENDS BASED ON A SHARE IN THE CAPITAL

The revenue from dividends of a subsidiary-resident of the Republic is included in the revenue of the resident parent company in the amount grossed up by the corporate income tax and the deducted tax on dividends. The income tax and deducted tax on dividends are recognized as tax credit for profit tax purposes. Tax credit can be used for a reduction of the parent company's tax liability up to the level of the corporate income tax that would be paid on profit and dividends, in accordance with the law.

Transfer Pricing

DEFINITION OF RELATED PARTIES FOR TAX PURPOSES

Transfer pricing rules in Serbia and Montenegro are applicable between related companies where there is a possibility of control and influence on decision making between them. A majority shareholding, large mutual turnover, technological dependence or any control of management, are the relevant criteria for establishing a related party status. For tax assessment purposes,

business relations between related companies must be at arm's length, otherwise appropriate adjustments are made to the tax base.

Persons holding more than 50% of total shares and persons holding individually a majority stake are considered to have control over the taxpayer. Influence in the decision-making process exists when a person related to the taxpayer holds over 50% of the shares or has the largest number of voting rights.

TRANSFER PRICE REPORTING

A taxpayer has to declare in the tax return the value of transactions with related parties, at both arm's-length prices and transaction prices. This obligation also exists in the case of transactions between a permanent business establishment and a non-resident entity. The difference between the market prices and transfer prices is included in the tax return and the tax base is adjusted accordingly. Arm's-length prices are determined on the basis of comparable market prices.

Thin Capitalization Rules

The new Serbian tax legislation has introduced thin capitalization rules in order to prevent a reduction of taxable income through thin capitalization, i.e. payment of interest. The deductible interest charged by related parties is limited for tax purposes. However, the non-deductible amount can be carried forward and included as expense in the tax return for the following year. The debt-capital ratio for banks and companies is different.

Tax Assessment and Collection

The tax year is the calendar year. The tax balance has to be submitted to the Tax authorities by 8 March of the following year. A newly formed entity has to file the tax return at least 15 days after the company's registration, with the projection of revenue and expenses for the first year.

Advance monthly payments and final payment of corporate income tax is determined by a taxpayer in the tax return. Advance monthly payments are based on the tax balance for the previous year and are due on the 15th day of

the following month. If the final amount of tax to be paid is higher than the tax paid in the form of advance payments, the taxpayer has to pay the outstanding amount.

PROPERTY TAX

According to the Law on Property Taxes, the property tax includes the property tax, the tax on inheritance and gifts and the property transfer tax. The property tax is applicable to the following rights related to real estate: ownership, usufruct right, residence, utilization, long-term lease and utilization of city building land with an area of more than 10 acres, rent a flat or a building for a period longer than a year. In this case immovable property is considered to be residential and commercial buildings, office space, garages, buildings, recreational space. The taxpayer is any legal entity or natural person with such rights to real estate located on the territory of Serbia.

Property owned by legal entities is subject to the property tax of 0.40% based on the book value of the property on 31st December of the previous year. In the case of a taxpayer that does not keep books, the property tax rate is progressive and depends on the value of property. Property owned by natural persons is subject to tax at progressive rates.

Property Transfer Tax

The property transfer tax is levied on the transfer of ownership rights on real estate, intellectual property, shares in legal entities and securities, ownership of used aircraft (self-propelled), except for state owned aircraft; rights to use urban, public and other construction land, regardless of its size; total property of a legal entity, provided that such transfer is not subject to VAT.

Transfer of absolute rights is not considered to be taxable if subject to VAT.

The taxpayer is the seller, i.e. the entity/person disposing of ownership rights. Residents are obliged to pay the tax on transfer of property worldwide, while

non-residents are obliged to pay the tax only on transfer of rights taking place on the territory of the Republic.

TAX BASE / TAX RATE

The tax base is the agreed price. If tax authorities estimate that the price is lower than the market value, the tax shall be levied on the market price. A 5% tax rate is applied to transfer of ownership rights to real estate and other taxable property, except for securities and shares in legal entities. A reduced 0.3% tax rate is applied to transfer of shares/interest in a legal entity and to transfer of securities. 2.5% tax rate is applicable on transfer of rights over: agricultural and forest land; used motor vehicles, vessels and aircraft.

Inheritance and Gift Tax

Inheritance and gift tax rates are progressive. They depend on the value of the property and on the relationship with the deceased or the donor. All direct descendants and spouses are not taxed. Tax rate of 3% is applied for amounts not exceeding CSD 300 thousand. For amounts exceeding CSD 300 thousand a tax rate of 5% is applied.

Transfer of rights over immovable property without a charge is not considered a gift if the transfer is subject to VAT.

The 3% tax threshold for inheritance and gift tax levied on persons in the second inheritance order has been increased from CSD 200,000 to CSD 300,000, while tax on amounts over this threshold has been increased from CSD 6,000 plus 5% to CSD 9,000 plus 5%.

Transfer of bonds issued for settlement of liabilities of the RS related to the loan for economic development is tax exempt, as well as transfer of bonds issued by National Bank of Serbia (NBS), the RS, autonomous provinces and municipal authorities.

Assessment and Collection of Property Tax

PROPERTY TAX

The taxpayer is obliged to file the tax form by 31st March of the year for which the tax is assessed. The annual tax is paid on a quarterly basis, in the form of advance payments based on the level of tax assessed for the previous year.

TAX ON TRANSFER OF OWNERSHIP RIGHTS

The tax on transfer of ownership rights is due within 10 days from the taxable event in question and should be paid within 15 days of the day when the tax authorities decide on its level.

INHERITANCE AND GIFT TAX

Inheritance and Gift Tax is due within 10 days from the taxable event in question and should be paid within 15 days of the day when the tax authorities decide on its level.

EXCISE

Excise duties are levied on producers and importers of following goods:

- Oil derivatives
- Tobacco products
- Alcohol beverages
- Coffee
- Imported goods: refreshing non-alcoholic beverages and powders, syrups for non-alcoholic beverages, fruit juices, concentrated fruit juices fruit nectars and for powder for fruit juices

Oil derivatives and coffee imported by international humanitarian organizations are exempted. Exported excisable goods are also considered exempt. Excise duty is levied as a fixed amount (CSD) per unity quantity.

Excise duty Law prescribes special provisions for tobacco. There are two types of excise duty starting from January 1st 2005.

FIXED AMOUNT PER PACK

From January 1st to December 31st 2006, the excise will be payable on cigarettes (per pack of 20 cigarettes) as follows:

- Imported cigarettes 10,00CSD per pack
- Cigarettes produced in the country 1,00 per pack

From January 1st 2007. to December 31st 2009. the excise duty will be payable on cigarettes as follows:

- Imported cigarettes 10,00 CSD per pack
- Cigarettes produced in the country 2,00 CSD per pack

As of January 2010. the excise tax will be payable on imported and cigarettes produced in the country at the rate of 5,00 CSD per pack.

PROPORTIONAL EXCISE DUTY

Proportional excise duty will be introduced along with excise above:

- From January 1st 2005. to December 31st 2006. at the rate of 30% of retail price of cigarettes
- From January 1st 2007 to December 31st 2009. at the rate of 40% of retail price of cigarettes
- From January 1st 2010 onwards 50% of the retail price of cigarettes.

CUSTOMS

The New Customs Law which has been in force since January 1st 2004 modeled on current European standard and practice based on customs legislation of member states of European Union. This applies especially in respect of basic principles of European Union Customs Law which are in accordance with the recommendations and views of the World Trade Organization (WTO) and the

World Customs Organization, as well as with the decision from the General Agreement on Tariffs and Trade (GATT). Generally adopted criteria and standards are especially implemented in respect of customs value, origin of goods, customs procedures, intellectual property rights, etc.

One of the main purposes for which the Law has been adopted is simplification of Customs procedure in order to make it more efficient and faster (for example, providing an option for submitting customs documents electronically).

Customs Authorities have broad authorization, especially in respect of control during or after the customs line is crossed (including office control over the premises of an importer or an exporter).

Companies and other legal persons engaged in foreign trade must be registered at the Serbian Customs Administration.

Customs Rates

Customs rates prescribed in the Customs Tariff apply for countries which trade with Serbia and Montenegro under the most favored nation principle. For goods from other countries a 70% increase on rates applies.

The Customs Authorities are implementing an Action Plan for Harmonization of Economic Systems of Serbia and Montenegro in the area of customs rates. The Harmonization Plan envisages the introduction of equal customs rates in both countries over the next three years.

The New Customs Tariff has not been adopted yet. However, the New Tariff will be changed to reflect the actual customs rates. The rates prescribed in the Action Plan will not change (i.e. will be included in the New Customs Tariff) but possible changes could affect classification of goods (i.e. goods currently classified in one group could be reclassified in another one). And thus a change of customs rate for certain goods is possible.

Additional fees relating to customs procedures exist (such as issuing and processing documents). These fees vary from different procedures.

TAX INCENTIVES IN SERBIA

Summary

The Serbian tax system encompasses various tax incentives aimed at encouraging investment, speeding the development of underdeveloped regions and facilitating employment opportunities.

The available tax incentives are:

- Carrying forward of losses
- Accelerated depreciation of certain fixed assets
- Tax exemptions
- Tax credit
- Tax holidays.

Below is a brief overview of the existing tax incentives in Serbia.

Carrying Forward of Losses

Losses generated from businesses, financial and non-business transactions, excluding capital losses, can be carried forward for up to ten subsequent tax periods to offset future taxable income. This relief does not cease if a company's status changes (e.g. in cases of mergers and acquisitions).

Accelerated Depreciation

The taxpayer has the right to accelerated depreciation of fixed assets at rates of up to 25% above the prescribed ones. This relief is provided for fixed assets serving for the purposes of air-pollution prevention, water and soil pollution prevention, noise control, energy saving, forestation and collection and utilization of waste as industrial raw materials and fuels; scientific research, education and staff training.

The right to accelerated depreciation is also applicable to computer hardware.

Tax Exemptions

The Law on Corporate Profit determines the cases when enterprises are to be exempt from the profit tax.

Tax Exemptions for Non-Profit Organizations

Non-profit organizations are granted tax exemption under the following conditions:

- that income does not exceed 300,000 Dinars in the year for which the right to tax exemption is granted,
- that the non-profit organization in question does not distribute the income thus generated to its founders, members, executives, employees or persons associated with them;
- that the salaries paid to employees, executives and persons associated with them are not higher than twice the average salary paid in the business area to which the non-profit organization in question belongs;
- That the non-profit organization in question does not distribute its assets in favor of its founders, members, executives, employees or persons associated with them.

This right does not apply to non-profit organizations which enjoy a monopolistic position on the market.

Tax Exemptions for Concessions

Profit arising from concession activities is exempt from taxation for a period of 5 years, starting from the day when investment in a concession is completed. If the company that was granted a concession starts generating profit before the completion of investment, this profit shall not be subject to the corporate income tax.

Tax Exemptions for Employment of Disabled Persons

The tax liability for a company specializing in the rehabilitation of disabled persons is decreased proportionally to the percentage of disabled persons in the total number of employees.

Tax Credit

Company Branch in an Underdeveloped Region

A Serbian company with a newly opened branch in an underdeveloped region of Serbia has the right to decrease its tax liability proportionally to the ratio of the branch's profit to the total profit for a period of two years. The single condition for utilizing this form of tax reduction (i.e. tax credit) is to keep separate books for the newly established operating unit.

Investment in Fixed Assets

The tax due can be reduced by 20% of amount invested in fixed assets for the respective tax period. This reduction cannot exceed 50% of the total tax liability. If not used in its entirety in the course one year, this tax credit can be carried forward for a maximum period of ten years. In each year of this period, the tax credit related to the investment made in that year shall be applied first, and after that the carried forward tax credit, up to the prescribed limit.

Employment of New Employees

A taxpayer who employs new workers is entitled to tax reduction for the amount equal to 100% of the gross salaries, increased by the related contributions paid by the employer. This tax credit is recognized for a period of two years from the day of employment of new workers. Tax credit could be still recognized in case of the contract termination if the firm has more employees signed in the same fiscal period than the number of contracts terminated. The tax credit for employment of new staff cannot be carried forward.

Investing in Fixed Assets of Small Enterprises

If a taxpayer classified as a small enterprise (pursuant to the Law on Accounting) invests in its fixed assets, it is entitled to a tax credit amounting to 40% of the investment, on the condition that the reduction does not exceed 70% of the tax due.

Tax Holidays

A taxpayer who, in accordance with the regulations on incentives for investment in the economy of the Republic of Serbia, invests in his fixed assets, or one in whose fixed assets another person invests over 600 million Dinars, provided those assets are used for the activity for which the taxpayer is registered, and provided the taxpayer employs at least 100 employees, shall be exempt from the profit tax over a period of ten years, proportionally to the investment. The tax exemption is applicable when the above conditions are fulfilled and from the first year in which taxable income is generated.

A Tax Payer investing more than CSD 6million (approximately EYR 76thousand) in an underdeveloped region employing at least five employees is entitled to five-year tax credit calculated in portion to the investment.

The taxpayer is tax exempt proportionally to the investment. The tax exemption is applicable when the above conditions are fulfilled, from the first year in which taxable income is generated.

Double Taxation Treaties

Country	Dividends*	Interest	Royalties
Belgium	15/10	15	10
Belarus	15/5	8	10
Bulgaria	15/5	10	10
China	5	10	10
Croatia**	10/5	10	10
Cyprus	10	10	10
Czech Republic	15/5	0	10
Korea	10	10	10
Denmark	15/5	0	10
Egypt	15/5	15	15
Finland	15/5	0	10
France	15/5	0	0
Germany	15	0	10
Hungary	15/5	10	10
Italy	10	10	10
Kuwait	10/5	10	10
Macedonia	15/5	10	10
Malaysia	20	10	10
Netherlands	15/5	0	10
Norway	15	0	10
Poland	15/5	10	10
Romania	10	10	10
Russia	15/5	10	10
Slovak Republic	15/5	10	10
Slovenia	10/5	10	10/5
Sri Lanka	12.5	10	10
Sweden	15/5	0	0
Ukraine	10/5	10/0	10
United Kingdom	15/5	10	10
Zimbabwe	15/5	10	10

*If the recipient company owns / controls at least 25 percent of the equity of the paying company, the lower of the two rates applies.

** Applicable from 1 January 2005.

VAT LAW

On July 23, 2004 the Serbian Parliament passed a new VAT Law. The new VAT Law took effect from January 1, 2005.

Taxpayers

Taxpayers of VAT are all legal entities and entrepreneurs who in 2004 had turnover of goods and services in excess of CSD 2,000,000 (app. EUR 28,000) or who predict that they will have turnover higher than the above amount.

Taxable Base

The taxable base for VAT purposes is the fee for sold products and services which does not contain any VAT in it. The taxable base should also contain Customs Duties, Excise Tax paid, transportation and insurance costs or any other cost relating to sale of goods and services. The tax liability arises on the first day of any of the following events occurring:

- Sale of goods and services;
- Collection, if the fee or a part of fee has been collected prior to the sale of goods and services;
- On the date of the origin of Customs Duties, in case of the import of goods.

Input and Output VAT

Input VAT is the VAT calculated and paid by a taxpayer to its supplier upon purchase of goods and services. Output VAT is the VAT which a taxpayer calculates and charges on goods and services provided to customers.

Determination of VAT obligation

The most substantial differences between the VAT and the Sales Tax system is that VAT will be payable upon purchases of raw materials and a taxpayer can offset input VAT (VAT paid upon purchase of goods and services) against its output VAT (VAT calculated on goods and services provided to its customers). However, input VAT paid on some products and services (such as cars, motorcycles, representation costs, hotel accommodation, meal costs, home electric appliances, etc.) cannot be deducted against VAT calculated on output.

Tax Rates

The tax rates prescribed by the VAT Law are the following:

- Standard VAT rate- 18%;
- Lower VAT rate- 8%.

The standard rate is applicable for most taxable supplies. However, the lower rate applies on turnover of the following goods and services:

- Basic food stuffs (bread, milk, sugar, vegetable oil, fresh meet, eggs, fruits and vegetables);
- Daily newspapers;
- Communal services.

In addition to the above tax rates, a 0% tax rate is also applicable. A 0% tax rate with the right of deduction of input VAT applies to turnover of the following goods and services:

- Export of goods;
- International air transport;
- A 0% tax rate without the right of deduction of input VAT applies to turnover of the following goods and services:
 - Trading with shares and other securities;
 - Insurance and reinsurance;
 - Turnover of land;
 - Lease of apartments and business premises; etc.

Reporting Period

The new VAT Law has determined two reporting periods:

- Each calendar month for taxpayers whose turnover in the previous 12 months was over CSD 20,000,000 (app. EUR 280,000) or who predict that turnover in the next 12 months will be above the CSD 20,000,000 threshold; or
- For taxpayers whose turnover does not exceed the above CSD 20,000,000 threshold, the reporting period is three months.

Taxpayers who meet the above conditions are obliged to submit a registration VAT return before September 30, 2004.

Inventories

According to the VAT Law, VAT taxpayers are obliged, on 31st of December, to make inventories of goods deemed for further sale, and to determine what the Sales Tax on goods purchased or imported would have been. The Sales Tax so calculated should be paid to the State Budget. The taxpayer may use the Sales Tax paid as recoverable input VAT in accordance with the provisions of the VAT Law if the taxpayer uses these products for sale of goods and services. An inventory obligation is also introduced for construction companies in respect of construction work that is in progress on December 31, 2004 and in respect of newly built constructions (finished but not paid and delivered buildings or apartments).

serbia | foreign investment

The law regulating foreign investment – The Law on Foreign Investment (adopted in 2002) is mainly orientated to the formal protection of foreign investment, providing national treatment to a foreign investor and its investment.

A foreign investment itself may consist of either foreign currency, intellectual property rights, goods, securities and other similar rights that may be expressed in monetary terms.

The possibility of purchasing real estate by a foreign investor may be questionable as the reciprocity criterion has to be met. This means that, a foreign investor may buy real estate in the case when reciprocity exists, irrespective of the type of reciprocity (legal – as set out in international agreement, or factual – as established in practice).

A foreign investor may be granted with a license to exploit natural resources or goods in general use or to perform activities of public interest, and B.O.T. schemes are also accepted and permissible. This matter however is regulated in more detail by a separate law, the Law on Concessions (adopted in 2003).

A foreign investor may invest by founding a company or similar business entity or by investment in an existing company engaged in any kind of business activity, with the exception of those related to the production of armaments, and the other areas which are legally considered as restricted zones.

Registration of Business Entities

The law regulating the registration of business entities, The Company Law (adopted in 2004 regulates the matter of companies and branches), which registration is in the competence of special agency regulated with The Law on

Registration of Corporate Entities (adopted in 2004). The matter of representative offices is regulated by The Law on Import – Export Activities, and their registration is left to the competent ministry.

Foundation of the company or the dependent entity (branch office or representative office) is free but compliance with the legal provisions which set down the required formalities is to be fulfilled.

COMPANIES (SUBSIDIARIES) AND BRANCH OFFICES

The newly adopted Company Law (November 2004) is moving towards easier and faster registration procedure, decreasing the stages in it. The body competent for the registration is the Agency for Registration of Corporate Entities, a newly founded body, which will be the unified register for the entire territory of Serbia. The procedure of registration should last up to five days as of the moment when all required documents are submitted to the Agency, after which the Agency should adopt the resolution on acceptance or rejection of the application. If such decision is not adopted, the company or the branch office is considered as founded ipso iure. After the registration of the company or the branch, there are some post registration formalities which are to be filed so that the company is to be fully operational. The company and the branch must register at tax authorities, and, finally they may open a bank account.

The important novelty is the possibility to access the data on the corporate entities on the Internet, where the Agency has its site. This is one of the indicator of the attempt to speed up the procedure, to make it more efficient, transparent, rational and to try to catch up with more developed countries.

Companies: Foreign legal persons or individuals are entitled to found a company, their subsidiary, which is to be registered in accordance with the law in force in Serbia. Once the company is founded, it is considered as domestic entity, but still keeps some privileges as to possibility of investment for certain period of time. Nevertheless, in general the company has the same rights as the company founded by a domestic person, and is the subject of the same obligations.

Branch Offices: The other possibility to a foreign entity is to form a branch office which is legally not considered as separate legal entity vis-a-vis its founder. A branch is a type of representative of its founder acting on its behalf. The branch is entitled to enter into the usual business relations, but it still remains a dependent legal entity. The branch is a vehicle for a foreign company to enter into Serbian market but without the obligation to form a subsidiary and to explore the Serbian market situation. Like the representative office, the branch is usually not founded to be a permanent entity but to explore the situation on the Serbian market and, eventually, to decide whether to form a subsidiary or not. The registration before the Agency is the same as the registration of companies, so all said above as to the duration of the procedure and easy access data on them remains the same but the documents that are required for the foundation to be in compliance with the law are slightly different than those required for the company's foundation.

REPRESENTATIVE OFFICES

The law regulating representative offices, The Law on Export – Import Activities, though adopted 13 years ago and amended several times is still in force.

The law provides the possibility to a foreign company to form a representative office which is not considered as a separate legal entity. It will act as kind of middleman of the founder, performing activities mostly related to market research. The aim of such entities is, mainly, to become familiar with the business surrounding in Serbia before making the final decision whether to form a subsidiary or not.

Unfortunately, the foundation of these entities is in competence of Ministry, which is still burdened with the remains of past times, including bureaucratic staff. Although, the Ministry should not have the discretion in this field, it tends to capture certain rights for itself and to act on its own accord. This may bring certain instability and insecurity to the whole foundation procedure.

Within thirty days the Ministry shall adopt or decline the foundation of the representative office. Once the representative office is registered it must fulfill some post registration formalities, the same as the company and branch office

must register at the tax authorities in order to obtain its tax identification number, which will enable the representative office to open a bank account.

BANKS AND INSURANCE COMPANIES

The registration and conditions required for the foundation and operation of banks and insurance companies is regulated by separate legal acts. The Law on Insurance has been recently adopted (in 2004), whereas the Law on Banks and the other Financial Organizations was adopted 12 years ago and amended several times. These laws are not completely in line with the Liberalization existing in the Company Law, which is due to monetary and economic instability inherent to Serbia in this stage of its development.

A foreign legal entity or individual may establish a bank (its branch or representative office) and an insurance company, freely in accordance with the legal requirements laid down for domestic entities, but only if reciprocity is fulfilled. The bank and their branches and representative offices must be formed by at least two persons (legal or individuals), whereby their initial capital may not be less than EUR 10 million. The National Bank of Serbia is the state body competent for granting licenses for their operation. As for insurance companies, they must be founded by at least two legal persons or individuals and their initial capital may not be less than from EUR 1 million to EUR 4.5 million depending on the type of insurance. The body competent for issuing the license for the insurance company's operation is the National Bank of Serbia and it must do so within 30 days from the date of application.

Transfer of Dividends, Interest and Royalties Abroad

The Law on Foreign Investment provides for the free transfer of financial and other assets relating to the foreign investment abroad, mainly, profit, dividends, additional payments, property in the case of dissolution of the company or other type of enterprise, etc. This is possible after all the tax and related obligations are fulfilled, so, this area is more interesting from a taxation point of view.

Foreign Employees

The law regulating the status of foreign employees is still not in line with the general changes in the whole legal area in direction of its Liberalization and transparency. This matter is mostly regulated by quite old legal acts: the Law on Stay and Movement of Foreigners (adopted in 1980 and amended several times), The Law on Conditions for Employment Relation with Foreigners (adopted in 1978 and amended a few times since); whereas once the foreigner enters into employment, her/his status is regulated by the provisions of the Labor Law (adopted in 2001) the Law on Mandatory Social Security Contributions (adopted in 2004) , The Law on Health Insurance (adopted in 1992 and amended several times) and The Law on Pension Insurance (adopted in 2003 and amended) are applicable.

Any foreign national coming to Serbia in order to work (as director, consultant or an employee) is obliged to obtain a Residence Permit. The body competent for issuing these permits is the Ministry for Internal Affairs (the police). The procedure itself takes approximately one month and it is burdened with a high level of discretion and bureaucracy. Firstly, the foreign national is obliged to register herself/himself each time s/he is coming to Serbia within a short term (12 hours from arrival) and de-register when leaving. After registration, the foreign national is obliged to personally apply to obtain a temporary residence permit, supplementing her/his application with a number of documents relating to their presence in Serbia. Within one month the residence permit will be issued or its issuance denied to the applicant.

After the residence permit is obtained, the foreigner must obtain a work permit. The body competent for its issuance is the National Employment Service, and the procedure itself lasts for several days. This procedure is far less complicated and less bureaucratic, but it still includes submitting certain documents to the NES, which will decide whether to grant the work permit to the applicant or not. Nevertheless, it is unlikely that the work permit will be denied.

It should be noted that the work permit is not necessary if the foreigner is coming on the basis a business-technical cooperation, long term production

cooperation and transfer of technology cooperation. In such case only the Residence Permit is relevant.

After a work permit is obtained, the foreign national should be registered as an employee (National Employment Service) and be registered with the social security institutions (Health and Pension Insurance).

In this area it remains unclear whether a foreign national who is to be director is obliged to comply with all the abovementioned formalities. The law is not clear in this area, but the administrative bodies competent for the inspection work often find that all the abovementioned stages have to be followed, all the permits obtained and the registration with the social security institutions.

serbia | labor law

The Labor law was passed in December 2001 and with some minor amendments is still effective. The Law creates conditions for increased employment, for the elimination of illicit work, and for dialog between social partners. The provisions of the Law apply to the employees working on the territory of Republic of Serbia for a domestic or foreign legal or natural person (the employer), as well as to those employees that the employer has sent abroad. The provisions of the Law also apply to the foreigners working for an employer on the territory of the Republic of Serbia, unless otherwise prescribed by the Law.

Labor issues in Serbia are also regulated by several different laws:

- Law on Pension Insurance
- Law on Health Insurance
- Law on Unemployment Insurance
- Law on Mandatory Social Contributions
- Law on Financial Aid to Families with Children
- Law on Social Protection and Social Security of Citizens
- Law on Health Protection

Employment contracts

Under the Serbian Labor Law there are two types of employment relations, a definite and an indefinite employment relation. These employment relations have the same legal ground (Employment Agreement) and the legal consequences following the conclusion of each of them are the same. More precisely, as for the consequences of these agreements, once an employment agreement is concluded and in force, the obligation for payment of the social contributions and income tax begins, no matter whether the agreement falls under the category of employment for a definite or indefinite time.

The company (employer) may conclude two different agreements, similar to employment relations, but usually concluded for a shorter period of time with slight differences as to the standard employment agreement. These agreements are the service agreement and the agreement on temporary and periodic work. Both should be concluded in writing for excluding any confusion as to whether there is an employment relationship or not. It may be questionable whether the company should conclude a definite employment agreement, and in determining that, the company should take into consideration the length of such work, whether it is on a permanent basis, including work hours, type of work and then decide which basis to adopt.

An agreement on temporary and periodic work is an agreement concluded for a limited period of time (up to 180 days per calendar year) with a person who will perform the activities that fall within the scope of activities of the company engaging such person. The tax paid under this agreement is 14% of the net amount of the fee. The taxpayer is an employee, whereby the employer shall calculate and withhold the tax. The engaged person is entitled to all social security contributions as in the usual employment relation.

A service agreement is an agreement concluded for performing independent intellectual or physical work for the company, whereas such activity falls outside the scope of activities the company performs. There is no time limit as to the length of such agreement. Conclusion of this agreement has certain consequences on the level of tax and social contributions. The tax payable on the remuneration obtained through this agreement amounts to 20% of the net remuneration. The company is obliged to pay only health contributions in the case of professional sickness and professional injury, and such contribution amounts to 2%.

Legal Grounds for Dismissal

The employer and the employee may terminate employment relations in the manner prescribed by the Labor Law. The employer may, if justified, offer the employee a new employment agreement (replacing the original agreement) containing different terms and conditions. If the employee fails to accept the terms and conditions of the new agreement, the employer may terminate the employment.

PROCEDURAL CONSIDERATIONS

In order to effect a valid termination of the employment, the employer must observe a number of procedural issues that differently apply depending on the circumstances of the particular case:

- Prior warning;
- Time-bar for dismissal;
- Redundancy related procedural issues;
- Trade Union opinion (non-binding);
- Termination notice requirements.

SEVERANCE PAYMENTS

The employee is dismissed due to the lack of knowledge and skills or due to the failure to achieve the expected work results is entitled to a severance payment in the amount of:

- 1 salary if the employee worked less than 2 years with the employer;
- 1.5 salaries if the employee worked from 2 to 10 years with the employer;
- 2 salaries if the employee worked from 10 to 20 years with the employer;
- 2.5 salaries if the employee worked more than 20 years with the employer.

The employee may be dismissed due to technological, economical or organizational changes (redundancy) and they are entitled to severance payment in the amount of:

- 2 salaries if the employee's past work experience totals less than 10 years;
- 3 salaries if the employee's past work experience totals from 10 to 20 years;
- 4 salaries if the employee's past work experience totals from 20 to 30 years;
- 5 salaries if the employee's past work experience totals more than 30 years.

As the Serbian Labor Law is still slightly protective with respect to employees, and the Serbian courts tend to be favorable to employees, it is of utmost importance, in order to ensure that no valid employees' claims with regard to dismissal procedure emerge, to strictly abide by the procedural requirements in each particular case. We would therefore advise that assistance of legal counsel is required in every particular dismissal case.

Employees' Representatives and Union Representation

Employees of an employer with more than 50 employees may form an employees' council, in accordance with the collective agreement. Freedom to organize in trade unions and trade union activity shall be guaranteed to employees. Trade unions are established to protect the rights and promote professional and economic interests of their members. A trade union shall be established by making a relevant entry into the trade union register kept by the ministry in charge of labor affairs and shall require no approval. Trade unions shall be entered into the register in accordance with the law and other regulations. Trade union representativeness, for the purpose of this Law, shall be determined by:

- entry into the register, in accordance the law and other regulations;
- in respect to the number of members verified through membership application forms.

A union having a minimum of 15% of employees of an employer shall be deemed a representative trade union for concluding a collective agreement. A representative trade union for concluding a collective agreement at the republic level, and/or unit of territorial autonomy or local self-government, shall be considered a trade union having a minimum of 10% of employees in the branch or line of business for which the collective agreement is made, and/or of the total number of employees for concluding a collective agreement covering all the employees on the territory of a given territorial unit.

For the purpose of this Law an association of employers with membership of minimum 10% of employers in the branch or line of business for which the collective agreement is concluded, and/or of the total number of employers on

the territory of a given territorial unit, shall be considered as a representative association of employers.

If the conditions of representation in the terms of Articles 137 and 138 of this Law are not met by any of the trade unions, and/or by an association of employers specified in Article 139 of this Law, the trade unions and/or employers may conclude an agreement on association in order to participate in concluding a collective agreement.

Collective Bargaining Agreements

Conclusion of collective agreement is voluntary. Collective agreements regulate rights, obligations and responsibilities in the field of labor relations. The Government of the Republic of Serbia and the Chamber of Commerce are no longer participants in the conclusion of a general collective agreement. Collective agreement may be concluded as:

- general- for the territory of the Republic of Serbia
- special- for the territory under local government or a unit with territorial autonomy
- individual- with the employer.

A collective agreement may be concluded between an employer or a representative employers' association and a representative trade union. Parties to the collective agreement are required to bargain. A bargaining board shall be established if several representative trade unions and/or associations of employers, participate in concluding a collective agreement for the territory of the Republic or unit of territorial autonomy or local self-government. Representatives of trade unions and employers' associations participating in bargaining for concluding a collective agreement and who conclude the collective agreement have to be authorized by their respective bodies. Collective agreements shall be directly implemented and shall be binding on all employers who at the time of concluding of the collective agreement were members of the employers' association - party to the collective agreement. A collective agreement shall be binding also on the employers who subsequently became members of the association of employers - party to the collective agreement, as

of the time of joining of the association of employers. The Minister of Labor may, for justified reasons, decide that the collective agreement or some provisions thereof shall also apply to employers who did not participate in concluding of the collective agreement or have not become party thereof subsequently, in order to implement economic and social policy in the Republic. An individual collective agreement shall also be binding on the employees of an employer who are not members of a trade union - signatory to the collective agreement.

Wages and Other Types of Compensation

EARNINGS

An employee shall be entitled to an appropriate salary determined in accordance with the law, general act or contract of employment. An employee shall be entitled to equal earnings for the same work or work of equal value performed with an employer. Those earnings shall include earnings effected for work performed and time spent at work, bonus earnings, compensation of earnings and other incomes. Elements for and manner of determining the earnings shall be defined in a general act or contract of employment.

INCREASED SALARY

An employee shall be entitled to increased earnings pursuant to a general act or contract of employment, for an overtime work, work on public holidays, night work and work in shifts. A general act or contract of employment may determine other cases in which an employee shall be entitled to increased earnings. Those earnings shall be paid out within periods determined by a general act or contract of employment, while at least once a month and shall be paid in money exclusively, unless otherwise prescribed by the Law.

MINIMUM EARNINGS

An employee shall be entitled to minimum earnings for standard performance and full working hours. The minimum earnings are determined by agreement between the Government of the Republic of Serbia and a representative trade

union and a representative association of employers, organized for the territory of the Republic of Serbia, and in accordance with the law. Should the agreement specified above be not reached within 10 days since the commencement of bargaining, the minimum earnings shall be determined by the Government of the Republic of Serbia. In determining the minimum earnings, the following will be especially taken into account: costs of living, subsistence and social needs of an employee and his/her family, rate of unemployment, employment trends in the labor market and general level of economic development in the Republic. The minimum earnings shall be determined per working hour and shall be valid for a period not shorter than six months, and are published in the "Official Herald of the Republic of Serbia". For 2005 the minimum salary was provided to be not less than Eur 0.5 (CSD 39.00) paid per hour, and increased for all contributions and tax paid by the employer.

REFUND OF EXPENSES

An employee shall be entitled to a refund of expenses for traveling to and from work and for a business trip in the country, in the amount determined by a general act or contract of employment. An employee shall be entitled to the refund of expenses incurred for business trip abroad under the conditions, in the manner and in the amount determined by special regulations.

OTHER INCOMES

An employer may pay to an employee a retirement gratuity, solidarity aid, anniversary reward and aid in the event of death of an employee or a member of his/her immediate family, in the amount determined by a general act or contract of employment (the spouse and children of the employee shall be considered members of immediate family.)

Social Security

The social security system in the Republic of Serbia is based on the mandatory public pension, health and unemployment insurance. The financing of this system is secured through the levy of social contributions owed by the

employers and the employees, whereby the employers withhold and pay the contributions on behalf of the employees. Under the laws of Serbia, the payment of these social contributions is imperative statutory obligation whereby the exemption is not possible, neither substitution of state insurance by the private pension or health plan.

For your convenience we have prepared a sample calculation of the total cost for the employer which includes the amount of salary, income tax and mandatory social contributions. Please note that as of 1 July 2004 the total rate of social contributions amounts to 17.9% (11% for pension insurance, 6.15% for health insurance and 0.75% for unemployment insurance), both for the employee and employer (items 3 and 5 in Table 1 below).

Table 1 – Taxes and Contributions in case of Employment (in EUR)

1. Gross salary	GS	734.21
2. Income tax (due by employee, but withheld by the employer)	14% on GS	102.79
3. Social contributions (due by employee, but withheld by the employer)	17.9% on GS	131.42
4. Net salary	$NS = GS - 2. - 3.$	500.00
5. Social contributions due by the employer	17.9% on GS	131.42
6. Total taxes and contributions	2. + 3. + 5. (acc 73% on NS)	365.63
7. Total cost for the employer	GS + 5.	865.63

Health and Safety

The most important rights arising out of state health insurance are: (i) health protection (this right encompasses almost all medical services: general practice, diagnostics, all kinds of therapy, medication, special practice examinations, surgeries, etc. whereby the insured person has to participate in the expense of the service which amounts are usually rather symbolic) and (ii) salary compensation

during sick leave longer than 30 days. As noted above, during the sick leave the employee is entitled to receive compensation in the amount of 65% of its salary in case of work unrelated sickness or injury, i.e. 100% in case of work related injury or sickness, whereby such compensation is covered by the employer for the first 30 days of the sick leave and thereafter by the State Health Fund.

And in conclusion, there is currently a draft labor law before the Parliament and it may be adopted by the time this publication is published. It provides for the harmonization of employment regulations with the standards of European Union and improvement of the current regulations regarding to balance the rights and obligations of the employers and employees.

- The new Law improves the position of the employees.
- The new Law provides for categories such as prohibition of any discrimination, harassment or sexual harassment of employees, as well as special protection for women, youth and invalids.
- The special protection from being fired during pregnancy, maternity leave, as well as the same protection of the representatives of the unions is provided.
- The novelty in the Law is that the employees shall be protected in case of change of the employer or ownership rights.
- The employer must give a written notice to the employee with the list of circumstances for being fired.

Finally, according to the new Law penalties shall be more severe for violation of provisions in 44 cases, and the penalties for the companies that violate the law shall be up to CSD 1,000,000.00.

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Registries

Generally, real estate ownership rights are transferred based on a written agreement, which is subject to mandatory court notarization and registration of such agreement with relevant public registries. Subject to several exceptions, under Serbian law one becomes the owner of a piece of land or a building at the moment of registration.

There are two public registries in Serbia maintaining data on immovable assets (land and buildings) as well as changes to such data:

- Land Registry; and
- Cadastral Registry.

The Cadastral Registry was originally designated for technical purposes and the Land Registry was designed to be the place for registration of title and encumbrances. Both Registries are frequently neither accurate nor up to date. Having in mind that these registries are kept at the municipality level and that these, for historical reasons, do not exist in all municipalities, in these circumstances the existence of the written notarized agreement and the “de facto” possession of the relevant land or building is the conclusive evidence of the title.

There is an ongoing unification of these two Registries in order to adjust all relevant data related to the immovable properties. Therefore, at this moment the public registries in Serbia are kept in one of the following three manners:

- unified Cadastral Registry - whereby records from Land and Cadastral Registry have been united;
- existence of both Land and Cadastral Registry - in which case special attention should be paid to consistency of records in both Registries;

- sole existence of Cadastral Registry (the land registry has never been established).

Classification of the Land and Related Rights

Land is classified into two categories:

- Construction land; and
- Agriculture land.

Having in mind the potentials for further growth and expansion of the construction sector as well as the increased interest expressed by major foreign investors in the field of real estate development we will focus on the regime imposed over construction land.

Construction Land is determined as land on which structures have been built and the land that serves for the regular use of these structures, as well as the land that, in accordance with the law, is designated by the corresponding plan for the construction of structures and their regular use. Generally, there are two types of construction land existing in the Republic of Serbia which may be used for private investment (apart from public construction land where constructions of public interest are located):

- construction land outside the city boundaries - over which full ownership may be acquired; and
- construction land within the city construction boundaries - over which a long term land lease right may be acquired as maximum title.

The owners of buildings or other constructions located on construction land within city boundaries have the right to use such land as long as buildings and constructions exist on this land. The right to use construction land within city boundaries is indelibly and permanently attached to the building or other constructions located on the land, i.e. the transfer of the ownership over the building implies the transfer of the land lease right of the land on which the building is located, and the land lease right can be transferred only along with the ownership over the building located on the land.

Land Lease Right is the most extensive right which was recently introduced in lieu of the land use right by new legislation, being the only right which public authorities may currently grant through public tendering whereas its duration is limited up to 99 years. In addition, once granted the land lease right it cannot be transferred to a person other than the investor until the construction is completed. After the investor completes the construction it may transfer the title over such construction, whereas, as mentioned above, the land lease right is transferred along with the ownership over the building located on the land.

The long term lease over the construction land within city boundaries is granted through a public procedure conducted by the competent Construction Agency (which is a utility company organized at Municipality level).

In conclusion, there are two methods for acquisition of a site within the city construction boundaries over which certain construction may be taken: (i) either to purchase the existing building which shall be subsequently reconstructed (and indirectly acquire the right to use the land) or (ii) to acquire the land lease right through a public procedure.

Construction land outside city boundaries and buildings (both inside and outside the city boundaries) in the Republic of Serbia are acquired by: (a) entering into a written agreement between the purchaser and the buyer, which must be notarized by a local court, and (b) by registration of the new owner in the relevant registry.

In order to undertake construction works, the investor must obtain the approval for construction (construction permit), which is issued by the Municipality where the construction is to be undertaken. A construction permit is issued on the basis of documents which must be submitted to the Municipality, such as evidence on legal right to use the land over which construction is to be undertaken, urban planning certificate for particular location evidencing type of construction to be built, main and other technical projects, approvals and consents of the relevant utility companies and other relevant documents. According to the law, the approval for construction should be issued within 15 days from the date of submission of all relevant documents.

Once the construction is built, the competent commission must verify whether the building is constructed in accordance with the technical projects and obtained approvals and contents. If there are no objections during the technical examination, the Municipality is supposed to issue a use permit within 7 days from when the commission executes the report on fulfilling the technical characteristics of the building. Upon issuing a use permit, the investor may start using the construction and register his title in the relevant Registry.

Agricultural land on the other hand is classified as cultivable and uncultivable. It is noted that agricultural land can be re-classified, in other words it may be changed into construction land subject to compliance with the prescribed procedure and formal requirement. According to current legislation, the majority of agriculture land is private property. State owned property and socially owned property also exist, and the tendency is to transform socially owned property into private property, while one can obtain a Land Use Right over the state owned property.

Foreign Ownership of Immovable Property

Pursuant to the Property Law, foreign citizens and legal entities that perform commercial activities in Serbia & Montenegro may, subject to "reciprocity", hold ownership rights in business related buildings, business related premises, apartments and housing units as well as on land on which such property rights may exist. As an exception to this principle, it is also provided that foreign citizens and legal entities may not own immovable assets located in certain areas of Serbia & Montenegro, mostly located near the objects of importance for national security.

Mortgages

Mortgage is the most important form of security over immovable property. Other forms of security are of minor importance. Mortgage is constituted upon the written agreement between contracting parties and registration of mortgage in the relevant land registry. Mortgagee is entitled to initiate an execution procedure in the event where other contracting party failed to fulfill its contractual obligations. As a result of the successfully performed execution

procedure, the mortgagee shall become an owner of the real property that is encumbered and is entitled to sell it in order to collect its claims.

On the other hand, in the event where the debtor is bankrupt, the mortgagee shall have the priority in collection of its claims from the bankruptcy estate that is formed by court's sale of encumbered real property or by the sale of debtor as legal entity.