

Pravilnik o primjeni Zakona o porezu na dobit u Federaciji Bosne i Hercegovine/Ordinance on implementation of Law on Corporate Income Tax in the Federation Bosnia and Herzegovina

*November
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Pravilnik o primjeni Zakona o porezu na dobit (u daljem tekstu: Pravilnik), objavljen je u Službenim novinama Federacije BiH broj 88/16 od 9. novembra 2016. godine.

Pravilnik uređuje utvrđivanje porezne osnovice, procedure utvrđivanja i naplate poreza, procedure za ostvarivanje prava na porezne poticaje, oblik, sadržaj, načine i rokove dostavljanja obrasca poreznih prijava i druga pitanja značajna za primjenu Zakona o porezu na dobit.

Pravilnik, između ostalog, reguliše i propisuje sljedeće:

- razlikuje neograničenog poreznog obveznika (obveznik koji u FBiH podliježe neograničenoj poreznoj obavezi, nezavisno od tržišta na kojem je ostvario prihode) i ograničenog poreznog obveznika (obveznik poreza na dobit u FBiH za dobit ostvarenu poslovanjem na teritoriji FBiH);
- proširuje definiciju neograničenog poreznog obveznika na lice bez pravnog subjektiviteta čija dobit nije oporeziva prema propisima koji uređuju dohodak, uključujući udruživanje lica, kao i na svako pravno lice koje obavlja tržišnu djelatnost na teritoriji FBiH s ciljem sticanja dobiti;
- proširuje definiciju stalnog mjesta poslovanja i na pružanje savjetodavnih usluga putem telefona ili elektronske pošte, bez fizičkog prisustva, ukoliko se djelatnost odnosi na isti ili povezani projekt u FBiH u periodu ili periodima koji ukupno traju duže od tri mjeseca u bilo kojem dvanaestomjesečnom periodu;
- propisuje rok za prijavljivanje poslovne jedinice nerezidenta Poreznoj upravi FBiH koji iznosi osam dana od dana početka obavljanja djelatnosti. Obaveza prijave se odnosi i na poslovne jedinice čija se djelatnost ne oporezuje u FBiH na osnovu zaključenog sporazuma o izbjegavanju dvostrukog oporezivanja;

Ordinance on implementation of Law on corporate income tax has been published in the Official Gazette of FBiH 88/16 on 9 November 2016 (hereinafter: The Ordinance)

Ordinance regulates the determination of tax base, procedures for determination and payment of tax, procedures for exercising right to tax incentives, form, content, methods and deadlines for delivering the tax return forms and other issues related to implementation of the Law on Corporate Income Tax (hereinafter „CIT“).

Ordinance regulates and prescribes the following:

- differentiates the unlimited taxpayer (a taxpayer who is subject to unlimited taxation in FBiH regardless of the market where the profit was derived from) and a limited taxpayer (CIT taxpayer who is liable for profit that was derived from doing business in the territory of FBiH);
- extends the definition of the unlimited taxpayer to an entity without legal personality whose income is not taxable under income regulations, including association of entities, as well as any legal entity that performs market activity in FBiH with the aim of making profit;
- extends the definition of permanent establishment on providing advisory services by phone or e-mail, without physical presence, if the activity relates to the same or related project in FBiH for a period of more than three months in any twelve month period;
- prescribes a time frame for registration of business units of a non-resident to the Tax Authority of FBiH, which is eight days from the day of commencement of the business activity. Registration obligation applies to business units whose activity is not taxed in FBiH on the basis of treaties on avoidance of double taxation;

- uvodi obavezu rezidentnim pravnim licima da pismeno obavijeste Poreznu upravu o uspostavljanju poslovne saradnje sa nerezidentnim pravnim licima koja kreiraju poslovnu jedinicu u FBiH u skladu sa odredbama Zakona o porezu na dobit;
- generalno definiše porezno priznate rashode kao rashode nastale u svrhu ostvarivanja dobiti, u skladu sa načelom pažnje dobrog privrednika;
- Pravilnik sadrži detaljnije odredbe o određivanju porezne osnovice, uključujući i način određivanja porezne osnovice poslovnih jedinica lica čije se sjedište nalazi izvan teritorije FBiH;
- propisuje da porez po odbitku koji je porezni obveznik obračunao i platio na svoj teret, a sa državom primaoca prihoda ne postoji ugovor o izbjegavanju dvostrukog oporezivanja, predstavlja porezno priznat rashod; Porez po odbitku kojeg porezni obveznik - isplatilac nije obustavio od prihoda nerezidenta, a imao je pravo na temelju ugovora o izbjegavanju dvostrukog oporezivanja, te ga je izmirio na svoj teret, predstavlja porezno nepriznat rashod u cjelokupnom iznosu;
- preciznije uređuje način određivanja porezno nepriznatog rashoda po osnovu istanjene kapitalizacije i propisuje da se porezno nepriznatim rashodom smatra rashod na ime kamate ili njenog funkcionalnog ekvivalenta po finansijskim ugovorima i instrumentima uzetim od povezanih lica, a koji se može proporcionalno pripisati iznosu obaveze po osnovu ugovora i instrumenta koji prelazi četverostruki iznos kapitala poreznog obveznika uplaćenog i evidentiranog u sudskom registru;
- propisuje da nerezident, koji ostvari prihod prodajom ili prijenosom dionica ili udjela u kapitalu u pravnom licu koji je rezident FBiH,
 - introduces an obligation for resident legal entities to formally notify the Tax Authority on establishment of business relations with non-resident legal entities that create a permanent establishment in FBiH in accordance with the Law on Corporate Income Tax;
 - generally defines tax deductible expenses as expenditure incurred for the purpose of making profit, in accordance with the principle of due care and diligence;
 - Ordinance contains detailed provisions on determination of the tax base, including the method for determining the tax base of business units of entities with residence outside the territory of FBiH;
 - prescribes that the withholding tax that the taxpayer has calculated and paid is considered as tax-deductible expense in case when there is no treaty on avoidance of double taxation with the state of the recipient of income; Withholding tax which the taxpayer has not suspended from income of a non-resident, and he had the right in accordance provisions a double tax treaty, and has paid it at his own expense, represents a non-deductible expenses in the total amount;
 - precisely regulates the method for determining the non-deductible expenses based on thin capitalization and prescribes that a non-deductible expense is an expense on behalf of interest or its functional equivalent under financial contracts and instruments taken from related parties, which can be attributed in proportion to the amount of obligation under contracts and instruments that exceeds four times the capital of the taxpayer, paid and recorded in the court registry;
 - prescribes that a non-resident who generates income by sale or transfer of shares or equity in capital of a legal entity who is a resident of FBiH, pays tax on the tax base that is consisted of

plaća porez na osnovicu koju čini prodajna cijena umanjena za nabavnu vrijednost;

Kada je prodajna cijena manja od tržišne vrijednosti, a promet je izvršen između povezanih lica, osnovica za obračun poreza je tržišna vrijednost umanjena za nabavnu vrijednost;

- daje mogućnost pravnim licima iz Republike Srpske ili Brčko Distrikta da konsoliduju porezni gubitak i poreznu obavezu više podružnica koje imaju sjedište u jednom kantonu;
- isključuje pravo na prijenos poreznih gubitaka ostvarenih u prethodne dvije godine za porezne obveznike koji su koristili porezni poticaj iz čl. 36 stav 2 Zakona o porezu na dobit (ulaganje iz vlastitih sredstava u proizvodnu opremu - umanjenje obračunatog poreza za 30%) ili porezni poticaj iz člana 36 stav 4 (investiranje 20 miliona KM u stalna sredstava - umanjenje obračunatog poreza na dobit za 50%);
- isključuje mogućnost da porezni obveznik u istom periodu koristi poticaj iz čl. 36 stav 2 Zakona (ulaganje iz vlastitih sredstava u proizvodnu opremu - umanjenje obračunatog poreza za 30%) i porezni poticaj iz člana 36 stav 4 (investiranje 20 miliona KM u stalna sredstava - umanjenje obračunatog poreza na dobit za 50%);
- utvrđuje gubitak prava na porezni poticaj po osnovu investiranja iz vlastitih sredstava za poreznog obveznika koji u godini u kojoj koristi porezni poticaj ili u periodu od dvije naredne godine izvrši isplatu dividende;
- detaljnije propisuje uslove i obrasce za ostvarivanje prava na porezni kredit za porez plaćen u Republici Srpskoj i Brčko Distriktu i van BiH;

the sale value (the price) reduced by the purchase value;

When the price is lower than its market value, and the traffic has been conducted between related parties tax calculation base is the market value deducted by the purchase value;

- enables legal entities from the Republic of Srpska (hereinafter “RS”) or Brcko District (hereinafter “BD”) with an option to consolidate tax losses and tax obligations for more subsidiaries which are based in one canton;
- excludes the right to transfer tax losses incurred in the previous two years for taxpayers who have utilised the tax incentive under article 36 paragraph 2 of the Law on Corporate Income Tax (investment of assets in production equipment - tax reduction of 30%) or tax incentives under article 36 paragraph 4 (investing BAM 20 million in fixed assets – reduction of the assessed income tax by 50%);
- excludes the possibility for taxpayers to utilize the tax incentives under article 36 paragraph 2 of the Law on Corporate Income Tax (investment from assets in production equipment - tax reduction of 30%) and tax incentives under article 36 paragraph 4 (investing BAM 20 million in fixed assets - reduction of the assessed income tax by 50%);
- determines the foreclosure of tax incentive on the basis of investment from own assets for the taxpayer who paid the dividend in the year when the tax incentive was utilized or within the next two years;
- prescribes in more detail the conditions and forms for exercising the right to a tax credit for the tax paid in RS, BD and outside of BiH;

- definiše da porezni obveznik ne može vršiti isplate iz dobiti i davati pozajmice drugim licima ukoliko na datum isplate ima dospjele, a neplaćene obaveze po osnovu javnih prihoda. Nepostojanje navedenih obaveza dokazuje se propisanim evidencijama (uvjerenjem o stanju neizmirenih obaveza po osnovu poreza ili doprinosa, izjavom poreznog obveznika da su dospjele obaveze prema zaposlenim uredno izmirene, i uvjerenjem Uprave za indirektno oporezivanje o stanju neizmirenih obaveza u situacijama kada se daju pozajmice ili vrši prenos imovine);
- propisuje da je porezni obveznik koji primijenjuje odredbe ugovora o izbjegavanju dvostrukog oporezivanja u cilju oslobađanja od obaveze za porez po odbitku, dužan u roku od 10 dana od isteka mjeseca u kojem je izvršena uplata dostaviti Poreznoj upravi popunjen obrazac OP-820, te je dužan posjedovati u svojoj evidenciji izjavu da je primalac prihoda i krajnji korisnik prihoda te potvrdu o rezidentnosti koju je izdao nadležni organ države primaoca prihoda, a koja nije starija od godinu dana;
- Pravilnik propisuje slijedeće obrasce:
 - Porezni bilans (Obrazac PB 800-A);
 - Porezni bilans (Obrazac PB 800-B);
 - Prijava poreza na dobit za privredna društva (Obrazac PP 801);
 - Prijava poreza na dobit za podružnicu RS ili BD za kanton (Obrazac PP-802);
 - Prijava poreza na dobit za poslovnu jedinicu nerezidenta (Obrazac PP-803);
 - Prijava poreza na dobit za djelimično izuzeta lica (Obrazac PP-804);
 - Konsolidovani porezni bilans i prijava poreza na dobit (Obrazac PP-805);
 - Prijava dobiti podružnice u RS ili BD (Obrazac PE-806);
- prescribes that a taxpayer cannot make payments from the profit and give loans to other entities if he has overdue and unpaid liabilities for public revenues on the day of the payment. The absence of these liabilities is proved by the prescribed records (certificate on state of unsettled tax liabilities or social contributions, statement of the taxpayer that the liabilities to employees are regularly settled and a certificate of the Indirect Taxation Authority on the state of unsettled tax liabilities in case the taxpayer is giving a loan or transferring assets);
- prescribes that a taxpayer who applies the provisions of the treaty on avoiding double taxation in order to be exempt from withholding tax, is obliged to submit a completed form OP-820 to the Tax Authority by the 10th day in the month for the previous month, and is also obliged to keep in its records a statement that the recipient of revenue is also the end user of income and a certificate of residence issued by the competent authority of the recipient of the income, not older than one year;
- Ordinance prescribes the following forms:
 - Tax balance (Form PB 800-A);
 - Tax balance (Form PB 800-B);
 - Corporate Income Tax return for companies (Form PP 801);
 - Corporate Income Tax return for subsidiaries of RS or BD for canton (Form PP 802);
 - Corporate Income Tax return for a business unit of a non-resident (Form PP 803);
 - Corporate Income Tax return for partially exempt entities (Form PP 804);
 - Consolidated tax balance and CIT return (Form PP 805);
 - Corporate Income Tax return for a subsidiary in RS or BD (Form PE 806);

- Prijava dobiti poslovne jedinice van Bosne i Hercegovine (Obrazac PE-807);
 - Plan investiranja (Obrazac PI-808);
 - Pregled nastalih, neiskorištenih i iskorištenih poreznih gubitaka (Obrazac PG-809);
 - Prijava porezne olakšice po osnovu investiranja u proizvodnu opremu (Obrazac PP-810);
 - Prijava porezne olakšice po osnovu investiranja u stalna sredstva (Obrazac PP-811);
 - Prijava porezne olakšice po osnovu novog zapošljavanja (Obrazac PP-812);
 - Izjava o obračunatom porezu na isplaćene dividende/udjele (Obrazac ID-813)
 - Prijava poreznog kredita van Bosne i Hercegovine po osnovu prihoda (Obrazac PK-814);
 - Prijava poreza po odbitku po osnovu dividende (Obrazac POD-815);
 - Prijava poreza po odbitku po osnovu kamate (Obrazac POD-816);
 - Prijava poreza po odbitku po osnovu autorske naknade (Obrazac POD-817);
 - Prijava poreza po odbitku po osnovu ostalih prihoda (Obrazac POD-818);
 - Prijava poreza po odbitku po osnovu imovine i prava (Obrazac POD-819) i
 - Izjava pravnog lica u svrhu oslobađanja plaćanja poreza po odbitku na izvoru (Obrazac OP-820).
- Corporate Income Tax return for a subsidiary outside of Bosnia and Herzegovina (Form PE 807);
 - Investment plan (Form PI 808);
 - Overview of generated, unutilized and utilized tax losses (Form PG-809);
 - Tax Incentive return based on investment in production equipment (Form PP 810);
 - Tax incentive return based on investment in fixed assets (Form PP 811);
 - Tax incentive return based on new employment (Form PP 812);
 - Statement of calculated tax for paid dividend/equity (Form ID 8013);
 - Return for tax credit derived from income outside of BiH (Form PK 814);
 - Withholding tax return on dividend (Form POD 815);
 - Withholding tax return on interest (Form POD 816);
 - Withholding tax return on royalties (Form POD 817);
 - Withholding tax return on other income (Form POD 818);
 - Withholding tax return on property and rights (Form POD 819) and
 - Statement of a legal entity for withholding tax exemption at the source (Form OP 820)

The Ordinance shall come into force on 17 November 2016.

If you have any further questions regarding this publication, please feel free to contact us.

Pravilnik će stupiti na snagu 17. novembra 2016. godine.

Ukoliko imate dodatnih pitanja vezanih za ovu publikaciju, slobodno nas kontaktirajte.

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