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Porezne i poslovne vijesti

Tax and Business Newsletter

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Mišljenja Ministarstva financija

Porezni tretman podmirenja kamata obračunskim plaćanjem

Na temelju upita poreznog obveznika, Porezna je uprava izdala pisano mišljenje o poreznom tretmanu podmirenja kamata obračunskim plaćanjem. Naime, porezni je obveznik od društva sa sjedištem u inozemstvu primio zajam. Na ugovoreni iznos zajma obračunavane su kamate, koje su evidentirane kao obveza po kamatama prema inozemnom društvu. Inozemno društvo je zatim donijelo odluku da se njegova potraživanja po kreditu zajedno s pripadajućim kamatama unesu u kapitalne pričuve poreznog obveznika radi poboljšanja njegove strukture kapitala. S tim u vezi, porezni je obveznik postavio pitanje podliježe li ovakav način podmirenja kamata obvezi obračunavanja i plaćanja poreza na dobit po odbitku, budući da nije bilo stvarnog plaćanja kamate.

Porezna uprava ističe da je odredbama propisa o porezu na dobit propisano da se porez po odbitku plaća, između ostalog, na dobit nerezidenata koju po osnovi kamata ostvare u Hrvatskoj. Činjenica da nije bilo stvarnog plaćanja kamate ne utječe na nastanak porezne obveze jer su kamate postale dio kapitalnih pričuva poreznog obveznika, odnosno stekle su status isplaćenih kamata bez financijskog tijeka te zajmodavac s njima raspolaze kao da su isplaćene.

Prema tome, Porezna uprava zaključuje da je porezni obveznik obvezan na takve kamate obračunati i uplatiti porez na dobit po odbitku.

Tretman porezom na promet nekretnina stjecanja nekretnine u slučaju podjele ustanove

Porezna uprava je izdala pisano mišljenje o poreznom tretmanu podjele ustanove s aspekta poreza na promet nekretnina. Naime, porezni obveznik provodi podjelu ustanove uz simultano osnivanje triju novih ustanova na način predviđen Zakonom o ustanovama uz analognu primjenu odredaba Zakona o trgovačkim društvima. S tim u vezi, porezni obveznik je postavio pitanje može li se pri podjeli ustanove primijeniti oslobođenje od plaćanja poreza na promet nekretnina.

Opinions Issued by the Ministry of Finance

Tax treatment of cash-free interest payment

On the basis of a taxpayer's inquiry, the tax authorities issued an opinion in writing on the tax treatment of a cash-free interest payment. Namely, the taxpayer received a loan from a company with the seat abroad. On the agreed loan, interest was calculated and recorded as a liability toward the foreign company. The foreign company then decided to contribute its receivables based on the granted loan together with the related interest to the taxpayer's capital reserves with the purpose of improving its capital structure. Therefore, the taxpayer raised the question of whether such modality of interest payment is subject to withholding tax calculation and payment, since actual interest payment did not take place.

The tax authorities underline that the provisions of the corporate income tax regulations stipulate that withholding tax, among other, should be paid on the profit of non-residents realized on the basis of interest in Croatia. The fact that the interest has not actually been paid does not affect the tax liability because interest became a part of the taxpayer's capital reserve, i.e. it gained the status of interest paid without cash flow and the creditor disposes of it as if it was paid out.

Accordingly, the tax authorities conclude that the taxpayer is liable to calculate and pay withholding tax on such interest.

Real estate transfer tax treatment in the case of a division of an institution

The tax authorities issued an opinion in writing regarding the tax treatment of a division of an institution from the aspect of the real estate transfer tax. Namely, the taxpayer carries out a division of an institution and, at the same time, it establishes three new institutions in accordance with the provisions of the Institutions Act and the Companies Act. The taxpayer, therefore, raised the question of whether in the division of the institution the exemption from the real estate transfer tax payment can be applied.

Zakonom o porezu na promet nekretnina propisano je oslobođenje od plaćanja poreza na promet nekretnina u slučaju unosa nekretnine u trgovačko društvo kao osnivačkog uloga ili prilikom povećanja temeljnog kapitala, kada se nekretnine stječu u postupku pripajanja i spajanja trgovačkih društava kao i prilikom razdvajanja trgovačkog društva u više trgovačkih društava sukladno odredbama Zakona o trgovačkim društvima.

S obzirom na to da se u predmetnom slučaju radi o postupku podjele ustanove, a da se ustanove ne smatraju trgovačkim društvom u smislu Zakona o trgovačkim društvima, Porezna uprava navodi da ne postoji osnova za primjenu oslobođenja propisanog Zakonom o porezu na promet nekretnina i da, prema tome, stjecanje nekretnine u okviru takve podjele podliježe oporezivanju porezom na promet nekretnina.

Porezni tretman unosa vlastite (privatne) imovine u obrt

Porezna je uprava izdala pisano mišljenje o poreznom tretmanu unosa vlastite (privatne) nekretnine u obrt. Naime, porezni obveznik namjerava unijeti vlastitu nekretninu (zemljište) u obrt te, s tim u vezi, postavlja pitanje podliježe li takav unos oporezivanju porezom na dobit.

Porezna uprava navodi da je odredbama propisa o oporezivanju dobiti propisano da poreznu osnovicu poreza na dobit čini dobit koja se utvrđuje prema računovodstvenim propisima kao razlika između prihoda i rashoda prije obračuna poreza na dobit. Prihodima se smatraju bruto povećanja gospodarskih koristi za isporučena dobra, obavljene usluge i prema drugim osnovama, u obliku priljeva ili povećanja imovine ili smanjenja obveza, što ima za posljedicu povećanje kapitala do kraja poreznog razdoblja.

Međutim, ulaganje dioničara ili članova društva u neupisani kapital društva ne predstavlja oporezivi prihod. Ulaganjem u neupisani kapital smatra se ulaganje u novcu, stvarima i pravima predanima društvu na raspolaganje u poslovne svrhe, kad ne potječu od obavljanja djelatnosti društva.

Ako se ulaganje ne registrira kao povećanje temeljnoga kapitala, bitno je da ulaganje osigura status imovine društva. Smatra se da je ulaganje steklo status imovine društva ako na temelju takvog ulaganja ne postoji ni sadašnja ni buduća obveza društva te da društvo imovinu posjeduje i njome neograničeno raspolaže, što znači da se na društvo prenosi pravo činjeničnog (faktičnog)

The Real Estate Transfer Tax Act prescribes the exemption from real estate transfer tax payment if real estate is contributed to the company as initial capital or the increase in the subscribed capital, when the real estate is acquired in the merger as well as division processes, in accordance with the provisions of the Companies Act.

Due to the fact that the case relates to the division of the institution and since institutions are not considered companies in the sense of the Companies Act, the tax authorities state that there is no basis to apply the exemption prescribed by the Real Estate Transfer Tax Act and that, therefore, acquisition of a real estate within such a division is subject to real estate transfer tax.

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Tax treatment of the contribution of own (private) assets into a craft

The tax authorities issued an opinion in writing related to the tax treatment of the contribution of own (private) assets into a craft. A taxpayer intends to contribute his own assets (a construction land) into a craft and raises a question of whether such a contribution is subject to corporate income tax.

The tax authorities state that the provisions of the corporate income tax regulations prescribe that the corporate income tax base includes the profit determined on the basis of accounting principles as a difference between revenue and expenses before the calculation of corporate income tax. Income refers to gross increase of economic benefits for delivered goods, supplied services and on other bases, in the form of intake or increase of assets or decrease of liabilities, which result in the capital increase before the end of the tax period.

However, the investment of shareholders to non-subscribed capital is not a taxable income. Investment to a non-subscribed capital includes investment in cash, goods and rights put at the company's disposal for its business purposes, in cases when they are not derived from the company's business activity.

If the investment is not registered as the capital increase, it is important that the investment acquires the status of the company's asset. It is considered that the investment acquired the status of the company's assets if on the basis of such investment there is no current or future liability for the company as well as if the company possesses the assets and they are at its free disposal.

vlasništva, odnosno pravo gospodarske pripadnosti dobra društvu.

S obzirom na to da se u konkretnom slučaju radi o unosu privatne nekretnine u obrt, pri čemu nekretnina i dalje pripada istoj osobi (poreznom obvezniku), no dolazi do prenamjene nekretnine za potrebe obrta, Porezna uprava zaključuje da takav unos predstavlja povećanje poduzetničkog kapitala koje nije rezultat obavljanja djelatnosti pa, prema tome, ne podliježe ni obvezi plaćanja poreza na dobit.

In other words, it means that the right of actual ownership, i.e. the right of the economic affiliation of the good to the company, is transferred to the company.

Due to the fact that in this case a private real estate is being contributed to the craft, whereby the real estate still belongs to the same person (the taxpayer) but its function has been changed for the purpose of the craft, the tax authorities conclude that such contribution represents the capital increase which is not a result of the craft's activity, therefore, it is not subject to corporate income tax.

Prva e-knjiga u nakladi Zgombić & Partneri “Zakon o trgovačkim društvima” — besplatni ogledni primjerak —

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Računovodstvo i revizija

U ovoj rubrici iznosimo kratki prikaz glavnih razlika između MSFI 8 (NN 29/09) i MRS 14 (NN 140/06)

Društvo je obvezno primjenjivati MSFI 8 – Poslovni segmenti u svojim godišnjim financijskim izvještajima za razdoblja koja započinju na dan ili nakon 1. siječnja 2009. godine. MSFI 8 zamjenjuje prijašnji standard MRS 14 – Izvještavanje po segmentima.

Sukladno prijašnjem standardu MRS 14, pri utvrđivanju poslovnih segmenata korišten je pristup temeljen na rizicima te su poslovni i zemljopisni segmenti utvrđivani na temelju sličnih profila rizika.

Revidirani MSFI 8 koristi “menadžment pristup” pri utvrđivanju poslovnih segmenata. Sukladno ovom pristupu, poslovni segment je definiran kao komponenta poslovanja:

- koja obavlja poslovne djelatnosti iz kojih može ostvariti prihode i troškove;
- čije rezultate poslovanja redovito pregledava glavni donositelj poslovnih odluka subjekta (GDPO*) kako bi donio odluku o resursima koje treba rasporediti na segment i ocijeniti njegovo poslovanje; i
- za koji postoje zasebne financijske informacije.

*Izraz GDPO označava funkciju, a ne nužno člana uprave.

Accounting and Audit

In this section we provide a brief overview of the main differences between IFRS 8 (Official Gazette 29/09) and IAS 14 (Official Gazette 140/06)

An entity shall apply IFRS 8 – Operating segments in its annual financial statements for periods beginning on or after 1 January 2009. IFRS 8 supersedes IAS 14 – Segment reporting.

Under the previous standard IAS 14, in the identification of operating segments of a business a risk-based approach is used and business and geographical segments are identified on the basis of similar risk profiles.

The revised IFRS 8 uses “managerial approach” to identify operating segments. Under this approach, an operating segment is defined as a component of the business:

- which engages in business activities generating income and expenses;
- which is regularly reviewed by the entity's chief operating decision maker (CODM*) to determine the allocation of resources to the segment, and assess its performance; and
- for which discrete financial information is available

*The notion of CODM relates to the function, not necessarily to a board member.

Novi propisi

Tijekom rujna i listopada 2009. godine (od izdavanja proteklog broja do izdavanja ovog broja naših Poreznih i poslovnih vijesti), objavljeni su, između ostalog, sljedeći propisi vezani uz područje poreza, doprinosa, financija te poslovanja općenito:

- Pravilnik o izmjenama i dopuni Pravilnika o pravima, uvjetima i načinu ostvarivanja prava iz obveznog zdravstvenog osiguranja (NN 116/09)
- Pravilnik o izmjenama i dopunama Pravilnika o pravima, uvjetima i načinu korištenja zdravstvene zaštite u inozemstvu (NN 118/09)
- Zakon o posebnom porezu na primitke od samostalne djelatnosti i ostale primitke (NN 119/09), stupio na snagu 1. listopada 2009. i ostaje na snazi do 28. veljače 2011.
- Pravilnik o načinu izračuna pokazatelja likvidnosti i najmanjoj vrijednosti pokazatelja likvidnosti društva za osiguranje odnosno društva za reosiguranje (NN 119/09), stupio na snagu 1. listopada 2009. i primjenjuje se od 1. siječnja 2010.
- Pravilnik o detaljnom obliku i najmanjem opsegu te sadržaju revizorskog pregleda i revizorskog izvješća s obzirom na specifičnosti poslova osiguranja i reosiguranja (NN 119/09), stupa na snagu 9. listopada 2009., a prvi se put primjenjuje na financijske izvještaje za 2009. godinu.
- Pravilnik o strukturi i sadržaju financijskih izvještaja društava za osiguranje odnosno društava za reosiguranje (NN 119/09)
- Naredba o izmjeni i dopuni Naredbe o načinu uplaćivanja prihoda proračuna, obveznih doprinosa te prihoda za financiranje drugih javnih potreba u 2009. godini (NN 122/09)
- Indeks potrošačkih cijena u Republici Hrvatskoj u rujnu 2009. godine (NN 126/09)
- Stopa promjene proizvođačkih cijena industrijskih proizvoda u rujnu 2009. godine (NN 126/09)
- Izmjene i dopune Upute o sastavljanju i dostavljanju Izvješća o podacima platnog prometa (NN 127/09)

New Regulations

In September and October 2009 (from previous to this issue of our Tax and Business Newsletter) the following regulations (among other) related to the field of taxation, social security contributions, finance, as well as business in general, were published:

- Rulebook on the Amendments to the Rulebook on the Rights, Conditions and Modalities of Fulfilment of the Rights Arising from the Compulsory Health Insurance (OG 116/09)
- Rulebook on the Amendments to the Rulebook on the Rights, Conditions and Modalities of Use of Health Care Abroad (OG 118/09)
- Act on Special Tax on Receipts from Independent Activity and Other Receipts (OG 119/09), it came into force on 1 October 2009 and will be in force until 28 February 2011
- Rulebook on the Modality of Calculation of Liquidity Indicators and the Lowest Level of Liquidity Indicators for an Insurance Company and a Reinsurance Company (OG 119/09), it came into force on 1 October 2009 and it will be effective as of 1 January 2010
- Rulebook on a Detailed Form and the Lowest Volume as well as on the Content of the Audit Review and the Audit Report Related to the Specific Features of Insurance and Reinsurance Activities (OG 119/09), it came into force on 9 October 2009 and it will be applied for the first time to the financial statements for 2009
- Rulebook on the Structure and the Content of Financial Statements of Insurance Companies and Reinsurance Companies (OG 119/09)
- Order on the Amendments to the Order on the Mode of Depositing Budget Income, Compulsory Contributions and Income for Financing other Public Needs in 2009 (OG 122/09)
- Consumer price index in the Republic of Croatia in September 2009 (OG 126/09)
- Rate of change of industrial products production price in September 2009 (OG 126/09)
- Amendments to the Instruction for the Completion and Submission of the Report on Payment Statistics (OG 127/09)

Međunarodni ugovori

- Objava o stupanju na snagu Ugovora između Vlade Republike Hrvatske i Vlade Talijanske Republike o izbjegavanju dvostrukog oporezivanja porezima na dohodak i sprečavanju izbjegavanja plaćanja poreza (NN MU 08/09), stupio na snagu 15. rujna 2009., a primjenjuje se od 1. siječnja 2010.

Kratke poslovne vijesti

Grčka i Poljska dobile najviše novca iz EU proračuna u 2008. U izvješću Europske komisije navodi se da su u 2008. Grčka i Poljska primile najviše novca iz EU proračuna, dok je Njemačka bila najveći uplatitelj. Grčka je prošle godine od Europske unije dobila 6,3 milijarde eura, ekvivalent 2,7 posto njezina bruto domaćeg proizvoda, više nego što je u njega uplatila, i to na ime pomoći poljoprivrednicima i infrastrukturnim projektima. Poljska se nalazi na drugom mjestu s neto dobivenih 4,4 milijarde eura, ili 1,3 posto svojeg BDP-a. Neto uplata Njemačke prošle je godine iznosila 8,8 milijardi eura. Nakon Njemačke, najviše su sredstava u EU u prošloj godini uplatile Austrija, Britanija, Italija, Francuska, Nizozemska i Švedska. Među zemljama koje su dobile najviše sredstava iz EU proračuna još su i Portugal, Španjolska i još 12 zemalja članica koje su se Uniji pridružile 2004. i 2007.

Pad kreditiranja privatnog sektora u eurozoni. Europska središnja banka objavila je da je došlo do pada kreditiranja u privatnom sektoru eurozone, i to po prvi puta u povijesti prikupljanja podataka, koje je započelo 1992. Kreditiranje trgovačkih društava i domaćinstava palo je za 0,3% u rujnu, dok je u kolovozu rast iznosio tek 0,1%. Smatra se da to može biti znak neminovnih problema s kreditiranjem kao rezultat prošlogodišnje financijske krize. Financijski stručnjaci zabrinuti su zbog činjenice da ova situacija može ukazivati na neuspjeh različitih instrumenata refinanciranja Europske središnje banke koji su imali za cilj suzbijanje učinaka financijske krize.

Najveća europska trgovačka društva smanjuju kapitalne izdatke. Prema analizi agencije Fitch Ratings, ovogodišnji kapitalni izdaci najvećih europskih trgovačkih društava vjerojatno će se značajno smanjiti, iako je situacija danas mnogo bolja nego u veljači. Kapitalni izdaci glavni su pokretači ekonomske aktivnosti, a očekuje se pad od oko 8% u 2009., što je manje od pada od 30% koji se očekivao početkom godine. Ipak, ograničenje trošenja neće biti jednako u svim sektorima.

International Agreements

- Publication of the Entry into Force of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Italy on the Avoidance of Double Taxation of Income and on the Prevention of Tax Evasion (OG IA 08/09), it came into force on 15 September 2009 and it will become effective as of 1 January 2010

Business News Flash

Greece and Poland the largest beneficiaries of the EU's budget in 2008. A European Commission report shows that Greece and Poland were the largest beneficiaries of the EU's budget in 2008, while Germany was the largest payer to the budget. Last year, Greece received 6.3 billion euro from the European Union, which is the equivalent of 2.7 per cent of its gross national product, more than it paid into the budget. The funds were received as a support to farmers and infrastructure projects. Poland comes in second with 4.4 billion euro, or 1.3 per cent of its GDP. Germany's net payment amounted to 8.8 billion euro. Other large payers from the last year include Austria, Great Britain, Italy, France, the Netherlands and Sweden. The list of countries which received the highest amounts of funds from the EU's budget includes Portugal, Spain, as well as other 12 member countries which joined the EU in 2004 and in 2007.

Eurozone private sector lending falls. The European Central Bank reported that bank lending in the eurozone's private sector fell for the first time since records began in 1992. Lending to companies and private households decreased by 0.3 percent in September, growing by just 0.1 percent in August. It is considered that this might be a sign of impending credit problems as a result of the past year's financial crisis. There is a concern among financial experts that this is an indication of the failure of the ECB's various re-financing instruments to counteract the effects of the financial crisis.

European largest companies cut capital expenditure. Capital expenditure by Europe's biggest companies is likely to fall steeply this year but the situation has improved since February, according to an analysis by Fitch Ratings. The key driver of economic activity, capital expenditure, is likely to drop about 8% in 2009, which is less than the 30% fall companies had expected earlier in the year. However, restrictions on spending are unlikely to be uniform across industrial sectors.

Prethodni brojevi

Mišljenja Porezne uprave:

08/2009 Porezni tretman isporuka vjerskih zajednica
 ▪ Porezno priznati tehnološki gubitak pri proizvodnji piva
 ▪ Porezni tretman jednokratnih isplata stipendija učenicima srednjih škola

07/2009 Porezni tretman novčanih kazni ▪ Tretman PDV-om dječje slikovnice i crtanog filma na DVD-u ▪ PDV pri „prefakturiranju“ pruženih usluga

06/2009 Oslobođenje od plaćanja poreza na promet nekretnina ▪ Korištenje olakšica prilikom oporezivanja dobiti na području posebne državne skrbi ▪ Plaćanje posebnog poreza na luksuzne proizvode

05/2009 Plaćanje posebnog poreza na alkohol ▪ Porezni tretman primitaka tijekom dobrovoljnog služenja vojnog roka ▪ Porezni učinci pri statusnoj promjeni podjele društva

04/2009 Preoblikovanje zajma u temeljni kapital društva ▪ Porez na dodanu vrijednost – održavanje i nadogradnja informatičkog sustava u inozemstvu ▪ Porez na dodanu vrijednost – sportski tjednik u kladionicama

Računovodstvo i revizija:

06/2009 Kratki prikaz bitnih promjena u odredbama novog Zakona o reviziji

04/2009 Iskazivanje vlastitih dionica ▪ Iskazivanje ostalih/izvanrednih prihoda i rashoda

03/2009 Dugotrajna imovina namijenjena prodaji – promjene na planu prodaje ▪ Metode amortizacije ▪ Prima-nja zaposlenih – Kratkoročne naknade za odsustvovanje

02/2009 Negativne tečajne razlike – nemonetarna imovina ▪ Reklasifikacija između kategorija financijskih instrumenata

01/2009 „Oslobođenje“ od prikazivanja konsolidiranih financijskih izvještaja ▪ „Isključenje“ iz konsolidacije

TaxFlash

10/2009 Neki problemi vezani uz primjenu novog Zakona o posebnom porezu na primitke od samostalne djelatnosti i ostale primitke

09/2009 Neki problemi vezani uz primjenu novog Zakona o posebnom porezu na plaće, mirovine i druge primitke

08/2009 Kriza i porezi

07/2009 Kodeks profesionalne etike službenika Ministarstva financija, Porezne uprave

06/2009 Pravilnik o postupanju u dobroj vjeri za sudionike porezno-pravnog odnosa, gospodarskoj cjelini te obrascima prijave činjenica za koje postoji obveza prijavljivanja i izjave o izvorima stjecanja imovine

Previous issues

Opinions Issued by the Tax Administration:

08/2009 Tax treatment of supplies made by religious communities ▪ The amount of tax deductible technological loss in the production of beer ▪ Tax treatment of a one-time scholarship payment to high school students

07/2009 Tax treatment of penalties ▪ VAT treatment of children's picture book and animated DVD movie
 ▪ VAT in “re-invoicing” of provided services

06/2009 Exemption from the real estate transfer tax payment ▪ Use of corporate income tax relief in the areas of special state concern ▪ Payment of excise duty on luxury products

05/2009 Payment of excise duty on alcohol ▪ Tax treatment of receipts during voluntary military service ▪ Tax treatment of a division of a company

04/2009 Transformation of granted loans to the company's share capital ▪ Value added tax – maintenance and upgrade of an information system abroad ▪ Value added tax – weekly magazine in betting stores

Accounting and Audit:

06/2009 A short overview of important changes to the provisions of the new Audit Act

04/2009 Treasury shares ▪ Classification of other/exceptional revenues and expenses

03/2009 Non-current assets held for sale – changes to a plan of sale ▪ Depreciation methods ▪ Employee benefits – Short-term compensated absences

02/2009 Negative foreign exchange differences – non-monetary assets ▪ Reclassification between categories of financial instruments

01/2009 „Exemption“ from presentation of consolidated financial statements ▪ „Exemption“ from consolidationaxFlash

TaxFlash

10/2009 Certain problems related to the application of the new Act on Special Tax on Receipts from Independent Activity and Other Receipts

09/2009 Certain problems related to the application of the new Act on the Special Tax on Salaries, Pensions and Other Receipts

08/2009 The crisis and taxes

07/2009 The Ministry of Finance, Tax Authorities Officials' Professional Ethical Codex

06/2009 Rulebook on the Principle of Acting in Good Faith for the Participants of a Tax Law Relation, on the Business Unit as well as on the Forms for Reporting the Tax Relevant Facts and the Declaration on the Sources of Acquiring the Assets

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PRAVNI UVJETI

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