

Tax and Investment Facts

A Glimpse at Taxation and
Investment in Serbia

2017



ADM Solutions d.o.o.

Serbia

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With a proactive approach the firm offers value-adding services to clients that result in more efficient financial management, the minimisation of tax risks, cost optimisation, increasing cash flow and control of the entire business. The main areas of expertise are:

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- » Transfer pricing
- » Indirect taxes
- » Accounting, IFRS & payroll
- » Finance consulting
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- » Training
- » Recruitment of tax and finance staff
- » Corporate legal consulting

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1 Ways of Doing Business / Legal Forms of Companies

According to the Serbian Law on Business Entities there are four legal forms of companies:

- General Partnership (o.d.)
- Limited Partnership (k.d.)
- Limited Liability Company (d.o.o.)
- Joint-Stock Company (a.d.)

A company can be incorporated for a limited or unlimited duration.

Also, a foreign entity can incorporate a representation office.

General Partnership (o.d.)

A general partnership is a company with two or more partners with unlimited joint and several liability for the company's obligations with their entire assets.

The company name must include the words "ortačko društvo" or the abbreviations "o.d." or "od".

All partners sign the Foundation Agreement. Partners invest the same stake in a company and share profits equally, unless regulated differently by the Foundation Agreement.

Decisions are adopted unanimously ("one partner = one vote" rule), unless regulated differently by the Foundation Agreement.

General partnerships prepare annual financial statements and are subject to corporate income tax. There are no minimum basic capital requirements.

There is a legal requirement for an audit of financial statements if the company generates more than EUR 4.4 million of revenue in a year, or is classified as a large or medium-sized entity, according to the Act on Accounting.

Limited Partnership (k.d.)

A limited partnership is a company with a minimum of two members, at least one of which bears unlimited joint and several liability for the company's obligations (general partner) and at least one other bears limited liability up to the amount of their outstanding contribution (limited partner).

The company name must include the words "komanditno društvo" or the abbreviations "k.d." or "kd".

General partners manage the operations of and represent a company. Limited partners may not manage the operations of a company or represent it.

Partners sign the Foundation Agreement, in which it is defined who the general partner is and who the limited partner is.

Limited partners and general partners participate in sharing profits and covering losses in their company in proportion to their equity interests in the company, unless otherwise provided for by the deed of incorporation.

Limited partnerships prepare annual financial statements and are subject to corporate income tax. There are no minimum capital requirements.

There is a legal requirement for an audit of financial statements if the company generates more than EUR 4.4 million of revenue in a year, or is classified as a large or medium-sized entity, according to the Act on Accounting.

Limited Liability Company (d.o.o.)

A limited liability company is a company in which one or more company members hold equity interests in the company's share capital, except that company members are not liable for the company's obligations, apart from in special circumstances defined by the Act on Business Entities.

The company name must include the words "društvo sa ograničenom odgovornošću" or the abbreviations "d.o.o." or "doo".

It is the most common legal form of company in Serbia because of the limited liability of its founders and low capital requirement (minimum basic capital is RSD 100, i.e. less than EUR 1).

If one person incorporates a company they sign a Foundation Decision. If two or more people incorporate a company, they sign a Foundation Agreement.

The company founders (or members) constitute the Assembly, which makes the statutory decisions. Their voting rights and rights in sharing profits are proportional to their stake in the company's capital, unless otherwise regulated by the Foundation Act. For a decision to be adopted, 50% plus 1 vote is needed, unless otherwise regulated by the Foundation Act.

The company's business activities are managed by a director or directors, who are registered at the Business Register Agency. Directors may or may not be company members.

Limited liability companies prepare annual financial statements and are subject to corporate income tax.

There is a legal requirement for an audit of the financial statements if the company generates more than EUR 4.4 million of revenue in a year, or is classified as a large or medium-sized entity, according to the Act on Accounting.

Joint-Stock Company (a.d.)

A joint-stock company is a company whose share capital is divided into shares held by one or more shareholders who are not liable for the company's obligations, except in special circumstances, as defined by the Act on Business Entities.

If a joint-stock company's shares are listed on the stock exchange, it is called a public joint-stock company. If a joint-stock company's shares are not listed on the stock exchange, it is called a private joint-stock company.

The company name must include the words "akcionarsko društvo" or the abbreviations "a.d." or "ad".

The company's shareholders sign the Foundation Act and the Statutory Act upon the company's incorporation.

The shareholders constitute the Shareholders' Assembly, which makes the statutory decisions. Their voting rights and rights in sharing profits are proportional to their share in the company's capital.

The minimum basic capital is RSD 3,000,000 (around EUR 25,000).

Corporate governance can be one-tier and two-tier.

In the one-tier model of governance, the Shareholders' Assembly elects a Board of Directors, which consists of executive directors who manage the business operations, and non-executive directors (obligatory if a company is a public joint-stock company), who control the executive directors, consult on the company's business strategy and monitor strategy implementation.

In the two-tier model of governance, the Shareholders' Assembly elects a Supervisory Board, which elects and controls the Executive Board, comprising the executive directors who manage the business operations.

Financial statements must be audited.

Foreign representation office

A representation office of a foreign company is a separate organisational unit of a foreign company that can carry out preliminary and preparatory work leading to the conclusion of a transaction by that company.

A representation office may only enter into transactions relating to its current operations.

A foreign company shall be liable for any obligations towards third parties that may arise in the operations of its representation office.

A representation office is not a separate legal entity and is not obliged to prepare annual financial statements and pay annual income taxes.

2.1 Applicable Taxes / Tax Rates

Serbia's tax regime is highly conducive to doing business. The corporate profit tax is among the lowest in Europe. The corporate tax rate is set at 15%. A special rate is applied for sole traders and amounts to 10%.

However, there are some business activities (lawyers, data processing services, manufacturing, etc.) which can be taxed with a lump sum on a monthly basis. That lump sum is about EUR 200 per month (EUR 2,400 per year) and includes all taxes. The maximum yearly revenue allowed for these businesses is EUR 50,000.

2.2 Resident Companies

Corporate income tax is levied on the worldwide income of Serbian legal entities (those having their seat or place of management in Serbia) and on the Serbian income of foreign entities, e.g. those operating through a permanent establishment in Serbia, unless otherwise regulated by a double tax treaty.

2.2.1 Computation of Taxable Income

Corporate tax is calculated on the basis of statutory accounting profit/loss (operating result determined pursuant to the Act on Accounting or IFRS result), adjusted by certain non-deductible and non-taxable items.

Non-deductible items include, for example: costs that cannot be documented, gifts and contributions to political organisations, all penalties and fines, etc.

A non-taxable item is the corporate income tax paid in another country by a non-resident subsidiary of a Serbian tax payer for example.

2.2.2 Taxation of Dividends

The tax rate on dividends is 15%.

2.2.3 Capital Gains and Losses (including Capital Gains and Losses from Sales of Shares)

Capital gains minus capital losses are included in a company's tax base (tax rate is 15%).

2.2.4 Depreciation / Capital Allowances

The costs of long-term tangible and intangible assets with useful lives over one year (fixed assets) are gradually included in the tax base through tax depreciation.

There are five tax depreciation groups:

- 1st group: 2.5% depreciation rate
- 2nd group: 10% depreciation rate
- 3rd group: 15% depreciation rate
- 4th group: 20% depreciation rate
- 5th group: 30% depreciation rate

For the first group (property and real estate), a straight-line method is applicable. For the rest, a declining balance depreciation method is used.

Land cannot be depreciated.

2.2.5 Loss Carry Over (including Potential Loss of Tax Loss Carry Forward in case of Restructuring)

The tax losses of a Serbian company can be carried forward for five years, if it is expected that a company will make profits that can be covered by incurred losses. No carry back is allowed.

If the company is dissolved without liquidation, the tax loss can be deducted by the legal successor or successors.

The right to deduct tax losses is not lost by changing a company's legal form or by any statutory change.

2.2.6 Group Taxation

Serbian legislation permits tax consolidation for corporate income tax purposes. The parent company must own at least 75% of the shares or stock of the other company. Every individual company in the group calculates taxable income, and after that the group can calculate consolidated taxable income and submit a consolidated tax return (losses and gains of the group members from the same year are offset).

2.2.7 Relief from Double Taxation (Tax Credit / Tax Exemption)

To avoid double taxation, one of the two methods (tax credit or tax exemption) according to the given international tax treaty can be used.

2.2.8 Incentives

The Act on Corporate Income Tax provides for a tax holiday for large investors. Large investors, who invest (currently) at least RSD 1 billion (approximately EUR 8.6 million) and employ at least 100 workers for an indefinite time are entitled to a tax holiday of 10 years.

2.3 Non Resident Companies

Non-resident taxpayers with a limited tax liability in Serbia are only taxed on incomes earned in Serbia.

2.3.1 Concept of Permanent Establishment / Doing Business

A permanent establishment of a foreign company located in Serbia is treated as an independent Serbian resident entity.

A permanent establishment is any permanent place of business through which the non-resident conducts its business, in particular: branch; plant; rep. office; production, factories or workshops; mine, quarry or other place of exploiting natural resources.

Besides, if upon representing a non-resident taxpayer a person has a power of attorney to conclude contracts on behalf of that taxpayer, it shall be deemed that the non-resident taxpayer has a permanent establishment with regard to the operations performed by the representative on behalf of the taxpayer (Article 4, paragraph 2 of CIT Act)

A permanent establishment can either be a branch registered in the Commercial Register or an unregistered unit.

2.3.2 Withholding Taxes

Subjects of withholding taxes:

- interest paid to non-resident companies: 20%
- dividends paid to non-resident companies: 20%
- royalties and certain copyright royalties paid to non-resident companies: 20%
- rentals paid to non-resident companies: 20%
- services provided by non-resident companies that are rendered or used in Serbia: 20%

A withholding tax rate of 25% is applied for payments made to residents of jurisdictions with a preferential tax system in respect of royalties, interest income, leasing/rental fees and service fees. Jurisdictions which are considered to have a preferential tax system are governed by separate rules.

Withholding tax may be reduced/eliminated by a bilateral double taxation treaty between Serbia and the country of residence of the income recipient.

A Serbian resident company is subject to withholding tax (tax rate of 20%) in Serbia, when a non-resident company generates revenue from providing services to a resident company which are used in Serbia.

Such services are market research and marketing services, commission fees, consulting services, advertising services, etc. This also applies to interest and dividends paid to a non-resident company. A resident company is not subject to withholding tax or is subject to a smaller tax rate if it is regulated by a double tax treaty signed by Serbia with the country the non-resident company is from.

2.3.3 Capital Gains

A foreign entity is subject to capital gains tax on capital gains generated in Serbia.

2.4 Tax Compliance

The taxation period for corporate income tax is generally a calendar year. A business year as any period of twelve consecutive calendar months that is not identical with a calendar year can be used, if approved in advance by the Ministry of Finance.

The deadline for filing income tax returns is the last day of the sixth month following the end of the tax period.

The deadline for paying tax liabilities is the same.

Companies are obliged to pay tax advances for the subsequent tax period (on a monthly basis).

3 Double Taxation Agreements

If a taxpayer has already paid tax on profit generated abroad, it is entitled to a Corporate Profit Tax credit in Serbia in the amount already paid. The same right is enjoyed by taxpayers who earn revenue and pay personal income tax in another country, provided there is a double taxation treaty with that country.

Upon the conclusion of double taxation conventions with other countries, primarily with main economic partners, the Republic of Serbia tends to eliminate double taxation issues and intensifies its financial relations across Europe and the rest of the world.

Serbia has signed double taxation conventions with the following countries: Azerbaijan, Albania, Austria, Belgium, Belarus, Bosnia & Herzegovina, Bulgaria, Canada, Croatia, China, Cyprus, Czech Republic, Denmark, Egypt, Estonia, France, Finland, Georgia, Greece, Germany, Holland, Hungary, India, Iran, Ireland, Italy, Kuwait, Latvia, Lithuania, Libya, Macedonia, Malaysia, Malta, Moldova, Montenegro, Norway, Qatar, Pakistan, Poland, Romania, Russia, Slovakia, Slovenia, Sri Lanka, South Korea, Switzerland, Sweden, Spain, Tunisia, Turkey, UAE, UK, Ukraine and Vietnam.

Serbia has also signed conventions with the following countries, but they are currently being confirmed: Ghana, Guinea, Indonesia, Armenia, Morocco and the Philippines.

In the following cases, the double tax conventions are being finalised: Botswana, Zambia, Jordan, Republic of South Africa, Kazakhstan and Luxemburg.

4 Transfer Pricing

Legal scope for TP

Transfer pricing in Serbia is regulated by the Act on Corporate Income Tax; the Rulebook on Transfer Pricing and "arm's length" methods shall apply in determining the price of transactions between related parties, and the OECD Guidelines (Organization for Economic Cooperation and Development) for the implementation of the rules on transfer pricing for multinational enterprises and tax administrations, which were translated and published by the Serbian Fiscal Society in July 2010.

The Rulebook on Transfer Pricing defines the form, deadline and content of transfer pricing documentation, the selection and manner of applying transfer pricing methods, as well as the manner of assessing the basis for calculating the depreciation of fixed assets acquired in transactions with related parties.

TP local file and methods

A transfer pricing local file must be submitted to the tax authorities together with the annual corporate income tax return. The prescribed structure of the report is:

- Analysis of Group of Companies
- Analysis of Company Business and Factual analysis
- Functional Analysis
- Consideration of transfer pricing methods used for transactions
- Findings and final tax corrections
- Appendix (extract from Amadeus or other database, inter-company agreements, etc.)

According to the Rulebook on Transfer Pricing, the following methods are allowed, including potential combinations of methods:

- Comparable Uncontrolled Price Method (CUP)
- Cost plus method
- Resale minus method
- Transactional net margin method (TNMM)
- Profit Split method (PS)
- All other appropriate methods based on reasonable assumptions

Tax correction requirement

If a taxpayer's transfer price differs from the determined transaction price by applying the "arm's length principle", the taxpayer is obliged to include the following in the tax base:

- the amount of the positive difference between the income from a transaction with a price determined by applying the "arm's length principle", and the revenues from this transaction determined with transfer prices, or
- the amount of the positive difference between the expenditures based on this transaction determined by transfer prices, and the expenses on the transaction with prices determined by applying the "arm's length principle"

Penalties

The penalties in the event of non-disclosure of transfer pricing in income tax balances or not submitting documentation are between 100,000 to 2,000,000 dinars.

The penalties for people responsible at the company amount from 10,000 to 100,000 dinars. Besides, if there is intent to avoid a tax payment, and the tax amounts to more than 150,000 dinars, the person responsible shall be punishable with imprisonment of six months to 5 years according to Article 229 of the Criminal Code.

5 Anti-avoidance Measures

5.1 General Anti-avoidance Rule

According to the Act on Tax Procedures and Tax Administration, tax facts are established in accordance with their economic nature. If a simulated legal operation is used to conceal a different legal operation, the latter shall be used to determine the tax base.

5.2 Thin Capitalisation Rules

A 10:1 debt-to-equity ratio is allowed for banks and financial leasing companies, and a 4:1 debt-to-equity ratio for companies.

5.3 Controlled Foreign Company Provisions

Serbia does not have any CFC legislation.

Serbian tax residents are taxed on their worldwide income.

Serbian tax non-residents are taxed on their income generated in Serbia only.

6.1 Residency Rules

According to the Act on Personal Income Tax, an individual is considered to be a Serbian tax resident in two cases:

- an individual has a residence or centre of living and business interests in Serbia, or
- an individual spends 183 or more days in a period of 12 months, which begins or ends in a related fiscal year.

6.2 Income Liable for Tax

According to the Act on Personal Income Tax, there are the following types of taxable income:

- employment income
- income from business activities, providing professional and other intellectual services and from other activities
- income from intellectual property
- income derived from capital (interest and dividend)
- rental income
- capital gains

6.3 Tax Rates

- Tax rate on employment income: 10%
- Tax rate on income from business activities, providing professional and other intellectual services and from other activities: 10%
- Tax rate on income from intellectual property: 20%
- Tax rate on income derived from capital: 15%
- Tax rate on rental income: 20%
- Tax rate on capital gains: 15%

6.4 Tax Compliance

The taxation period for individuals is the calendar month.

6.5 Social Security Contributions

Social security contributions are paid twice: by the employee and by the employer.

Social security contributions are:

- Pension contribution: 14% of gross salary paid by employee, 12% of gross salary paid by employer
- Health contribution: 5.15% of gross salary paid by both employee and employer
- Unemployment contribution: 0.75% of gross salary paid by both employee and employer

6.6 Annual Income Tax

Taxpayers are liable for annual income tax if their income is more than three times the amount of the average annual salary in Serbia. The tax rate is 10% for annual income below an amount 6 times the average annual salary in Serbia, and 15% for annual income above an amount 6 times the average annual salary in Serbia. Taxable income is further reduced by 40% of the average annual salary for the taxpayer, and by 15% of the average annual salary for each dependent member of the family. The total amount of deductions cannot exceed 50% of the taxable income.

7 Indirect Taxes

In Serbia there are the following indirect taxes:

- Value added tax (VAT)
- Excise duties: on tobacco products, gasoline and spirits
- Motor vehicle tax
- Municipal taxes (including real estate tax)

7.1 Value Added Tax / Goods and Services Tax

Value added tax is charged on the supply of goods and services where the place of supply is in Serbia, and on imported goods and services.

The standard VAT rate is 20%. There is also a reduced rate of 10% which applies for some goods such as bread, milk, daily newspapers, fruit, meat, eggs, etc.

The standard tax period is a calendar month.

VAT returns should be submitted within 15 days of the end of the tax period; the same term applies for the payment of tax due.

Foreign taxpayers may claim for a refund of Serbian VAT (invoiced by Serbian suppliers to them) if certain conditions are fulfilled.

7.2 Transfer Taxes

Transfer taxes are paid in transfer transactions:

- Ownership rights on properties
- Intellectual property rights
- Ownership rights on motor vehicles
- Rights on using development land

The tax rate is 2.5%.

The tax payer is the seller, but in practice the tax burden is regularly shifted to the purchaser. The taxable base is the market value of the subject of transaction. The market value of the subject of transaction can be valued by the tax authorities if they suspect the market value is higher than the transaction value.

7.3 Others

Goods imported into Serbia are subject to customs procedures.

Serbian real estate (buildings and land plots) is subject to property tax. The tax depends on the location of the real estate. For taxpayers who maintain business accounts the tax rate is up to 0.4%, calculated on the market value. The property tax rate and taxable base are set by the municipalities, which have the right to levy it up to 0.4%.

8 Inheritance and Gift Tax

Inheritance and gift tax is paid when the following assets are acquired by inheritance or gift:

- Properties
- Cash and cash equivalents
- Bank deposits
- Monetary receivables
- Intellectual property rights
- Motor vehicles

Inheritance and gift tax are not paid when assets are acquired by an individual in the first degree of succession (donor's or decedent's spouse or parent).

The inheritance and gift tax rate is 1.5% when assets are acquired by an individual in the second degree of succession.

The inheritance and gift tax rate is 2.5% when assets are acquired by an individual in the third or any subsequent degree of succession.

8.1 Taxable Base

According to the Act on Property Tax, the taxable base for inherited assets is the market value of inherited assets minus loans, costs and other payments an individual must pay from the inherited assets, on the day of the tax payment obligation.

The taxable base for assets acquired by gifts is the market value of these assets, valued by the tax authorities.

8.2 Valuation

Valuations are performed by the tax authorities.

There is no wealth tax in Serbia.

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