

Srbija: Oporezivanje preduzetnika bi moglo pretrpeti izmene

U Srbiji je trenutno registrovano više od 250.000 preduzetnika. Oko polovina njih je oporezovana primenom paušalnog sistema oporezivanja, kojim se iznos poreza utvrđuje na osnovu unapred definisanih pokazatelja umesto na osnovu stvarno ostvarenog prihoda.

Značajan broj preduzetnika koji porez plaćaju u paušalnom iznosu su zapravo u kvazi-radnom odnosu, gde je njihov jedini klijent *de facto* njihov poslodavac. Poreski tretman takvih preduzetnika bi uskoro mogao biti promenjen – o najavljenim izmenama razgovarali smo sa [Aleksandrom Stojanović](#), saradnikom u advokatskoj kancelariji Doklešić Repić i Gajin.

1. Najavljene su izmene zakona o porezu na dohodak građana i zakona o doprinosima za obavezno socijalno osiguranje. Šta nam to donose?

Najznačajnija najavljena izmena svakako je uvođenje tzv. „*testa samostalnosti*“ preduzetnika čija će svrha biti da utvrdi da li preduzetnik ostvaruje prihod od samostalne delatnosti ili je u stvari zaposlen.

Za one preduzetnike koji ne prođu test samostalnosti značajne su i izmene koje se odnose na oslobođenje od plaćanja dela poreza na zarade i doprinose, predviđene da bi umanjile efekte koje bi uvođenje testa samostalnosti moglo da ima na one preduzetnike koji ne prođu ovaj test.

2. Možete li nam reći šta predstavlja „test samostalnosti“?

Test samostalnosti predstavlja set kriterijuma na osnovu kojih će se proveravati samostalnost preduzetnika u odnosu na nalogodavca, odnosno da li se određeni prihod može kvalifikovati kao prihod preduzetnika od samostalne delatnosti ili kao drugi prihod fizičkog lica koji posluje kao preduzetnik.

Prema za sada dostupnim podacima, ovaj test sadržaće devet kriterijuma uključujući: definisano radno vreme, odmore i odsustva od strane nalogodavca, korišćenje nalogodavčevih prostorija i opreme za rad, postojanje non-compete klauzule u ugovoru, period obavljanja aktivnosti za istog nalogodavca, procenat ostvarenih prihoda od jednog nalogodavca itd.

Serbia: Taxing of Sole Traders to Undergo Changes

In Serbia, there are currently more than 250,000 officially registered sole traders. Around a half of them are taxed on a lump-sum principle, by which the payable income tax is determined based on pre-defined indicators, rather than the actual profit.

A significant number of the sole traders who pay taxes lump-sum are in a quasi-employment relationship, where their only client is their *de facto* employer. The tax position of these individuals may be about to change – we talked to Dokleštic Repić & Gajin associate [Aleksandra Stojanovic](#) what these changes are about.

1. Amendments to the Law on Personal Income Tax and to the Law on Contributions for Compulsory Social Security have been announced. What will they bring?

The most important announced amendment is the implementation of the so-called *independence test*, the purpose of which would be to determine whether the entrepreneur generates income from an independent activity or is in fact employed.

For those entrepreneurs that fail to pass the independence test, significant amendments are also those related to cuts in payroll taxes and contributions, designed to mitigate the effects which the introduction of the independence test may have on sole traders who fail to pass that test.

2. Can you tell us what does the “independence test” represent?

The independence test is a set of criteria based on which the sole trader’s independence in relation to the principal will be checked, i.e. whether a certain income can be qualified as the sole trader’s income from an independent activity or as income of the natural person which acts as the sole trader.

Based on what has been published so far, this test will consist of nine criteria, such as: the defined working hours, vacations and leaves determined by the principal, the use of the principal’s premises and work equipment, a non-compete clause in the engagement agreement, the percentage of income generated from one principal, etc.

3. A šta ukoliko preduzetnik ne prođe „test samostalnosti“?

U slučaju da preduzetnik ispuni najmanje pet od devet kriterijuma testa samostalnosti, smatraće se da nije samostalan, te će naknada koju ostvaruje biti tretirana kao ostali prihod u smislu Zakona o porezu na dohodak građana.

To praktično znači da za taj prihod preduzetnik neće biti oporezovan paušalno, već kao fizičko lice, što mu zapravo nameće i veći porez a samim tim umanjuje neto zaradu.

4. Da li će predložene izmene uticati na sve preduzetnike?

Verovatno ne.

Paušalni sistem oporezivanja je jedan od faktora koji je znatno doprineo razvoju IT industrije u Srbiji, omogućavajući startapovima da se zbog nižih troškova brže razviju. Stoga se čini da će predložene izmene najviše pogoditi preduzetnike u IT sektoru.

S druge strane, na osnovu trenutno dostupnih podataka, test samostalnosti se neće primenjivati na preduzetnike koji prema zakonu koji uređuje delatnost koju obavljaju ne mogu da budu u radnom odnosu kod nadzornika. Ovo bi, primera radi, bio slučaj sa advokatima.

5. Šta vidite kao glavne nedostatke predloženih izmena zakona?

Predložene izmene mogle bi da daju previše slobode poreskim inspektorima koji će prilikom poreske kontrole odlučivati o tome da li je paušalac prošao test samostalnosti. Da li će ovo zaista i biti slučaj ostaje da vidimo – nakon što izmene budu usvojene i primenjene.

Takođe, namera države da zaustavi praksu nekih kompanija da angažuju preduzetnike umesto da zaposle radnike, mogla bi znatno da oteža poslovanje tih kompanija zbog povećanja troškova rada. Konsekventno tome, ovo bi moglo uticati i na same zaposlene jer bi takve kompanije bile primorane da zbog povećanja troškova zaposlenima/preduzetnicima smanje zarade.

3. And what if the sole trader does not pass the “independence test”?

If the sole trader meets at least five of the nine criteria of the independence test, it will not be considered as independent and its compensation in such case would be treated as other income according to the Law on Personal Income Tax.

This means that for such income the sole trader would not be taxed lump-sum but as a natural person, which would lead to a higher tax and less net income for the individual.

4. Would the proposed amendments affect all the sole traders?

Probably not.

Lump-sum taxation system is one of the factors that has significantly contributed to the development of the IT industry in Serbia, allowing start-ups to develop faster due to lower costs. It therefore seems that the proposed amendments will affect sole traders in the IT sector the most.

On the other hand, based on what is available at the moment, the independence test will not apply to sole traders which cannot be employed by the principal due to the regulations governing their profession. This would, for example, be the case with attorneys at law.

5. What would you identify as the main deficiencies of the proposed amendments?

It is possible that the proposed amendments could give too much leeway to tax inspectors who will decide when taxing whether a lump sum has passed the independence test. Whether this will actually be the case remains to be seen – after the amendments have been adopted and applied.

Also, the intention of the state to stop the practice whereby some companies engage sole traders instead of hiring employees could significantly aggravate the business of such companies due to the increase in labour costs. Consequently, this could also affect the employees themselves, as such companies could be forced to reduce the employee's/sole trader's earnings due to increased costs.