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DA LI SE PLAĆA POREZ NA PRIHOD OD KAPITALA PO OSNOVU KAMATE NA ŠTEDNJU GRAĐANA?

Važećim Zakonom o porezu na dohodak građana („Sl. glasnik RS“ br. 24/2001, 80/2002 dr. zak. 135/2004, 62/2006, 65/2006 ispr., 31/2009, 44/2009 i 18/2010), regulisano je da se, pored ostalog, plaća porez na prihod od kapitala po osnovu ostvarene kamate na štednju (čl. 61).

Istim zakonom regulisano je da se **na dinarska sredstva po osnovu štednih i drugih depozita ne plaća porez na prihod od kapitala** (čl. 65).

Prema tome, **porez se plaća na prihod od kapitala po osnovu kamate samo na kamatu po deviznoj štednji.**

Donošenjem Zakona utvrđena je stopa na prihod od kapitala po osnovu kamate u visini od 20% od ostvarene kamate.

U drugoj polovini 2008. godine razbuktala se svetska finansijska kriza. U cilju ublažavanja negativnog uticaja svetske ekonomske krize na štednju stanovništva i sprečavanja odliva štednje iz banaka, donet je Zakon o privremenom izuzimanju od oporezivanja porezom na dohodak građana određenih vrsta prihoda (Sl. glasnik RS br. 5/2009 od 22.01.2009. godine), kojim je privremeno, u periodu od 30.01. do 31.12.2009. godine, izuzeta primena poreza na dohodak građana po osnovu prihoda od kapitala za ostvarenu kamatu na deviznu štednju i druge depozite građana.

U toku važenja ovog Zakona (30.01. - 31.12.2009. god.), utvrđen je predlog Zakona o izmenama i dopunama Zakona o porezu na dohodak građana, kojim se smanjuje utvrđena stopa na prihod od kapitala po osnovu ostvarene kamate na štednju građana sa 20% na 10%. Zakon je usvojen 23.03.2010. godine, a objavljen u „Sl.

ARE CITIZENS OBLIGED TO PAY TAX ON INCOME FROM CAPITAL GAINS IN RESPECT OF INTEREST ON RETAIL SAVINGS?



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The existing Law on Individual Income Tax (Official Gazette of the RS, No. 24/2001, 80/2002, relevant laws 135/2004, 62/2006, 65/2006, corrections 31/2009, 44/2009 and 18/2010), prescribes that, among other things, the tax is paid on income from capital gains in respect of accrued interest on retail savings (Article 61).

The same Law prescribes that the tax on income from capital gains **is not paid on dinar funds in respect of savings and other kinds of deposits** (Article 65).

Hence, **the tax is paid on income from capital gains in respect of interest only when it comes to the interest on FX savings.**

The Law defined the tax rate on income from capital gains in respect of interest to be 20% of the accrued interest.

In the second half of 2008, the global financial crisis flared up. With a view to mitigating the adverse impact of the global economic crisis to retail savings, and preventing the outflow of savings from the banks, the Law on Temporary Exemption from Individual Income Tax on Certain Types of Income was adopted (Official Gazette of the RS, No. 5/2009 as of 22.01.2009), whereby, temporarily, in the period from 30.01. to 31.12.2009, tax exemption was introduced for individual income in respect of capital gains from the accrued interest on FX savings and other kinds of retail deposits.

In the period when this Law was in effect (30.01 – 31.12.2009), the Draft of the Law on Amendments to the Law on Individual Income Tax was prepared, whereby the defined tax rate on income

glasniku RS“ 26.03.2010. godine sa primenom od 27.03.2010. godine.

Iako je u prethodnom periodu menjana poreska stopa (0, 10 ili 20%), način obračuna i plaćanja poreza na prihod od kapitala po osnovu kamate nije se menjao. Međutim, način obračuna je često izazivao nedoumice i sumnje kod građana, a takođe i kod nekih banaka. Često su se građani obraćali Udruženju banaka Srbije sa sledećim pitanjem, npr.: „Početkom februara 2009. godine sam oročio devizni depozit na 1 godinu i sredstva sa kamatom podigao početkom februara 2010. godine, a obračunat je i obustavljen porez od 20% na ceo iznos ostvarene kamate, iako je 2009. godine kamata bila oslobođena plaćanja poreza. Zašto mi nije obračunat porez od 20% samo na kamatu za 1 mesec u 2010. godini, a ne za svih 12 meseci, kada nije bilo poreza?“

Međutim, poslovna banka je ispravno postupila pri obračunu poreza, na šta je Udruženje dokumentovano ukazalo građaninu.

Naime, navedeni porez predstavlja porez po odbitku od svakog pojedinačno ostvarenog prihoda, gde je poreski obveznik građanin, a isplatilac prihoda banka, koja je dužna da obračunava, obustavlja i uplaćuje porez na propisane račune u momentu isplate prihoda, u skladu sa propisima koji važe na dan isplate prihoda (članovi 99 do 101 Zakona). Ugovorom o depozitu, odnosno štednom ulogu reguliše se, između ostalog, kada banka vrši obračun i isplatu ili pripis kamate.

Takođe, Zakonom je regulisano da je banka dužna da utvrdi porez na prihod od kapitala po osnovu kamate u momentu isplate, odnosno pripisivanja kamate, a najkasnije kod godišnjeg obračuna (čl. 103 Zakona).

Saglasno svemu navedenom, ukoliko je građanin oročio kratkoročni depozit u devizama, a **kamata je dospela za isplatu:**

- **do 29.01.2009. godine**, banka je bila u obavezi da, kao isplatilac prihoda, obračuna 20% od ostvarenog prihoda i uplati na račun poreza za tog građanina, a njemu stavi na raspolaganje 80% ostvarene kamate;
- **u periodu od 30.01. do 31.12.2009. godine**, banka nije bila u obavezi da obračuna porez po odbitku na ostvarenu kamatu, već je ceo iznos ostvarene kamate stavila na raspolaganje klijentu;
- **u periodu od 01.01. do 26.03.2010. godine**, banka je bila u obavezi da za svog klijenta-građanina obračuna i uplati porez u visini od 20% od ostvarenog prihoda, a njemu stavi na raspolaganje 80% ostvarene kamate;
- **posle 27.03.2010. godine** banka je u obavezi da obračuna i uplati porez u visini od 10% za svog klijenta-građanina, a njemu da stavi na raspolaganje 90% ostvarene kamate;

Postupak obračuna i praćenja poreza po odbitku je istovetan i kod dugoročnih deviznih depozita građana, ali je potrebno svake godine obračunavati ostvarenu kamatu i izvršiti plaćanje poreza po stopama koje su tada važeće.



from capital gains in respect of accrued interest on retail savings was reduced from 20% to 10%. The Law was adopted on 23.03.2010, published in the Official Gazette of the RS on 26.03.2010, and came into effect as of 27.03.2010.

Although the tax rate was altered in the previous period (0%, 10% or 20%), the method of calculation and payment of tax on income from capital gains in respect of interest remained the same. However, the calculation method often caused dilemmas and doubts with the citizens, and also with some banks. The citizens frequently contacted the Association of Serbian Banks asking the following question, for instance: 'At the beginning of February 2009 I made a time FX deposit with one year maturity, and withdrew the funds with accrued interest at the beginning of February 2010, but the 20% tax was calculated for the entire amount of the accrued interest, although in 2009 interest was exempt from taxation. Why haven't they calculated the 20% tax only for the interest in one month in 2010, instead of for the entire 12 months, when there was no tax?'

However, the concerned commercial bank calculated the tax in the correct manner, which the Association presented to the citizen with the appropriate argumentation.

Namely, the mentioned tax is the withholding tax from each individually realized income, with the citizen as a tax payer. The bank, as a payer of income, is bound to calculate, withhold and pay in the tax onto the prescribed accounts in the moment of income payment, pursuant to the regulations effective on the income payment day (Articles 99 to 101 of the Law). The Contract on Deposit, i.e. on Savings Deposit, stipulates, among other things, the day the bank conducts the calculation and disbursement or capitalization of interest.

Also, the Law prescribes that the bank is bound to define the amount of the tax on income from capital gains in respect of interest at the moment of disbursement or capitalization of interest, by the annual report at the latest (Article 103 of the Law).

In accordance with all above-mentioned, if the citizen made a short-term time deposit in foreign currency and **the interest matured for disbursement:**

- **By 29.01.2009**, the bank, as a payer of income, was bound to calculate 20% of the realized income and pay that amount onto the tax account of the concerned citizen, leaving 80% of the accrued interest at the citizen's disposal;
- **In the period from 30.01 – 31.12.2009**, the bank was not bound to calculate the withholding tax on the accrued interest, but would leave the entire amount of the accrued interest at the citizen's disposal;
- **In the period from 01.01 – 26.03.2009**, the bank was bound to calculate 20% of the realized income and pay that amount onto the tax account of the concerned retail client, leaving 80% of the accrued interest at the citizen's disposal;
- **After 27.03.2010**, the bank was bound to calculate 10% of the realized income and pay that amount onto the tax account of the concerned retail client, leaving 90% of the accrued interest at the citizen's disposal.

The method of calculation and monitoring of the withholding tax is exactly the same in case of long-term retail deposits, but the accrued interest needs to be calculated each year, and the tax needs to be paid according to the rates effective at that time.