



**3/2017
NEWSLETTER**

ISAILOVIĆ&PARTNERS

The beginning of 2017 brought about many interesting questions and situations, therefore we will reflect on some of them. Should you have additional question or any other type of question, feel free to call or us write to us.

Isailovic&partners
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MANDATORY MEMBERSHIP FOR BUSINESS ENTITIES IN THE SERBIAN CHAMBER OF COMMERCE

In the second half of December 2016 the **Decision on the amount, manner and deadlines for payment of membership fees and financing the Serbian Chamber of Commerce in 2017** came into force and it was adopted on the basis of the **Law on Chambers of Commerce**.

The said regulations set out that, starting from January 2017, the **MEMBERSHIP** for business entities in SCC shall be **MANDATORY**, as stipulated by **Article 10 of the Law on Chambers of Commerce**, which sets out that members of SCC are entities which perform a registered business activity in the territory of the Republic of Serbia, while the earlier Law on Chambers of Commerce included a territory which was significantly smaller.

One becomes a member of the Serbian Chamber of Commerce by operation of law and registration into the Register of business entities of the Republic of Serbia (Business Registers Agency), which further means that the obligation to pay membership fee is not optional, but mandatory. **The Decision** sets out the amount, manner and deadlines for paying the fee. A certain type of **RELIEFS** exists for members of **PKS** - newly established business entities, for whom it was determined that they will not pay the membership one year from establishing of their company, and the exemption from payment is also possible if a final decision on opening of bankruptcy proceedings and a written request from membership fee exemption are submitted to the Chamber, signed by the person authorized for representation.

Membership fee:

Members of the Chamber shall pay the membership fee depending on the group into which they are classified according to the generated annual revenue:

GROUP	ANNUAL BUSINESS INCOME	MONTHLY MEMBERSHIP FEE
I GROUP	RSD 20.000.000 – 300.000.000	RSD 300,00
II GROUP	RSD 300.000.000 – 600.000.000	RSD 600,00
III GROUP	RSD 600.000.000 – 1.000.000.000	RSD 20.000,00
IV GROUP	RSD 1.000.000.000 – 2.500.000.000	RSD 80.000,00
V GROUP	ABOVE RSD 2.500.000.000	RSD 185.000,00

Entrepreneurs, members of branch associations of the Chamber, in accordance with the Chamber's Statute, shall pay a membership fee in the manner and in the amount established in the table, if they generate the said turnover.

Upon more detailed interpretation of the table, it can be concluded that a business entity generating an annual turnover in the amount smaller than RSD 20,000,000 per year would not be obliged to pay the membership fees, unless pertaining to other members consisting of the general associations of entrepreneurs, cooperative associations, and others who pay the membership fee of RSD 1,000 per month.

How does SCC obtain data on the basis of which it establishes the obligation and the amount of fee payment?

The Committee for supervision of billing and collection of membership fees of SCC, establishes the turnover of the members on the basis of financial reports submitted by the members to the Business Registers Agency, for the year preceding the year in which the **Decision was adopted**. Members of the Chamber for which there are no available turnover data, shall be classified into appropriate groups on the basis of last available data, while it is not determined on the basis of which particular data.

Consequences for fail to pay fees:

Regulations governing this matter **DO NOT SET OUT PENALTY PROVISIONS** in the event of failure to pay the membership fee, however court practice from previous years has shown that SCC has **INITIATED JUDICIAL PROCEEDINGS** against members so as to settle outstanding membership fees.

Are the mandatory membership and established fee in accordance with the Constitution?

Establishment of the mandatory membership and fee has caused **STRONG DISSATISFACTION OF RENOWNED BUSINESSMEN**, which resulted in submission of the **PETITION FOR REVIEWING CONSTITUTIONALITY OF MANDATORY MEMBERSHIP IN SCC** to the Constitutional Court, and this Petition was supported by 47 deputies of the National Assembly.

Basic postulates of the submitted petition stated, inter alia, that mandatory membership in SCC is contrary to the Constitution of the Republic of Serbia, specifically Article 55 of the Constitution that guarantees the freedom of political, union and any other type of association and the right to remain outside of any association, and the Constitutional Court was also requested to ban execution of certain acts and activities so as to prevent fee collection, before the Constitutional Court establishes the constitutionality of the mandatory membership.

When asked about disputed mandatory membership and fees, the Minister of Economy Goran Knežević said in interview for the N1 portal, and many other media, that the companies in Serbia shall be obliged to pay the membership to the Serbian Chamber of Commerce only during the first year of implementation of the Law on Chambers of Commerce, until the Chamber system has been constituted and reorganized, while the businessmen will later decide whether that fee should be mandatory, and whether they should pay such fee in the following period. (Source: <http://rs.n1info.com/a205509/Biznis/Clanarina-u-Privrednoj-komori-obavezna.html>)

ANNUAL INDIVIDUAL INCOME TAX

For the final outcome, it is necessary to wait for the decision of the Constitutional Court on the submitted Petition for reviewing constitutionality of mandatory membership in SCC.

In accordance with provisions of the **Individual Income Tax Law**, the annual individual income tax shall be paid by **RESIDENTS** for the income generated in the territory of the Republic of Serbia and in other countries, as well as **NON-RESIDENTS** for the income generated in the territory of the Republic of Serbia, and whom generated an income larger than three times the average annual income per employee paid in the Republic of Serbia for the year in which the tax is determined.

The Deadline for submitting tax application for individual income in 2016 shall expire on **15 MAY 2017** and they should be **SUBMITTED IN ELECTRONIC OR WRITTEN FORM**.

Tax return in **WRITTEN FORM** shall be submitted directly to the **REGISTRY OFFICE OF TAX ADMINISTRATION OR BY MAIL**, specifically to the competent Tax Administration in the place of residence of the taxpayer.

ELECTRONIC TAX RETURN shall be submitted on a **PPDG-2R** form through the **E-TAXES PORTAL OF TAX ADMINISTRATION**, and the submitter may be the taxpayer, tax attorney authorized to submit electronic tax returns, legal representative, and the submitter must possess a **VALID DIGITAL CERTIFICATE**. If an individual is in the capacity of the individual income taxpayer **FOR THE FIRST TIME**, such individual shall first register by filling in the necessary information in the section of the **E-TAXES PORTAL - REGISTRATION OF AN INDIVIDUAL AS A TAXPAYER**.

It is necessary to note that there is a possibility to **EXTEND THE DEADLINE FOR SUBMISSION OF TAX RETURN**, in accordance with the Law on Tax Procedure and Tax Administration, with fulfilment of certain requirements. The deadline may be extended by submitting a written and reasoned submission to the Tax Administration, stating the reasons for delay (disease, absence from the country, accident, major disaster, etc.) and it must be submitted prior to expiry of the deadlines for tax return submission.

According to the data of the Statistical Office of the Republic of Serbia published on 25 January 2017, **AVERAGE ANNUAL INCOME** per employee in the Republic, paid in 2016, amounted to **RSD 761.688,00**. When we multiply that amount by three, we obtain the **THREEFOLD AMOUNT OF THE AVERAGE ANNUAL INCOME OF RSD 2.285.064,00**.

TAXABLE INCOME in accordance with provisions of the said Law includes **1) salary; 2) taxable self-employment income; 3) taxable income from copyright and related rights and industrial property rights; 4) taxable income from real estate; 5) taxable income from leasing movables; 6) taxable income of sportsmen and sports experts; 7) other taxable income; 8) income in accordance with the said grounds generated and taxed in another country.**

EMPLOYMENT OF OLD AGE PENSIONERS EMPLOYMENT OF OLD AGE PENSIONERS

Taxable income represents the difference between the annual sum of taxable income deducted by tax and contributions at the expense of the receiver of income and untaxable amount, and the **TAX BASE** for the individual income tax represents the difference between taxable income and personal deductions – (i) **FOR TAXPAYER - 40%** of average annual income per employee, which amounts to **RSD 304.675,00 RSD (40% OF RSD 761.688,00)**, (ii) **FOR DEPENDENT FAMILY MEMBER – 15%** of average annual income per employee, per member, which amounts to **RSD 114.253,00 (15% OF 761.688,00 RSD)**, but it must be taken into account that the total deduction on such basis cannot exceed 50% of the taxable income.

For a taxpayer who generated the taxable income:

- **UP TO RSD 2.285.064,00 (THREEFOLD AMOUNT OF AVERAGE ANNUAL INCOME), ANNUAL TAX RATE SHALL AMOUNT TO 0%, THEREFORE SUCH TAXPAYER SHALL NOT BE TAXED;**
- **BETWEEN RSD 2.285.064,00 AND RSD 4.570.128,00 (SIXFOLD AMOUNT OF AVERAGE ANNUAL INCOME), ANNUAL TAX RATE SHALL AMOUNT TO 10%,**
- **LARGER THAN RSD 4.570.128,00 (AMOUNT ABOVE SIXFOLD AVERAGE ANNUAL INCOME), ANNUAL TAX RATE SHALL AMOUNT TO 15%.**

It is important to note that the following acts came into force in January 2017:

- **Rules on the content of tax balance and other issues of importance for the manner of determining self-employment income tax**, which regulates the content of tax balance for determining the tax base for self-employment income, manner of reducing calculated tax for investment in fixed assets and the manner of determining proportional part of investment into fixed assets, as well as

- **Harmonized dinar untaxable amounts of tax income under Article 9, paragraph 1, items 9), 12) and 13), Article 15a, paragraphs 2, 4, and 5, Article 18, paragraph 1, items 1), 2), 4), 5), 6) and 7), Article 21a, paragraph 2, Article 83, paragraph 4, item 1 and Article 85, paragraph 1, item 10) of the Individual Income Tax Law with the annual index of consumer prices in 2016**, which specify these untaxable amounts in detail.

Lately there have been numerous doubts on whether an old age pensioner could freely be employed with a certain employer on the basis of employment contract, thus earning both a salary and old age pension. There are a number of opinions claiming that the above is possible, but only on the basis of service contracts or contracts on temporary and occasional jobs, as the prescribed basis for employment, in addition to the employment contract.

The user of old age or premature old age pension **MAY AGAIN BE REGISTERED FOR INSURANCE (AS EMPLOYEE OR SELF-EMPLOYED PERSON) AND RECEIVE PENSION**, whereby the insured employee must have an interruption between the old and new insurance, while that is not the case with the self-employed insured person. Namely, Article 24, paragraph 1 of the Labour Law prescribes that employment may be established with a person of at least 15 years of age who meets other requirements for labour on certain jobs, established by law or rules on organization or systematization of jobs. Upon interpretation of the cited Article, it is concluded that the Law does not set the upper age limit for employment, but only the lower limit.

Article 18 of the Law on Labour supports the allegation that employment of old age pensioners is possible, and this Law prohibits any type of discrimination, including the discrimination on the basis of old age.

The employer **SHALL PAY** contributions for compulsory social insurance - pension, disability and health insurance to the user of old age pension who enters employment upon retirement (in addition to the said pension, there are also disability and family pension), but the employer **SHALL NOT PAY** the compulsory unemployment contribution, since the pensioner cannot acquire the status of unemployed person again. The pensioner shall also **NOT BE ENTITLED TO SEVERANCE PAY** upon retiring, since the severance pay is only paid when retiring.

Article 17 of the Law on Health Insurance, sets out that the insured person may have health insurance only on one basis - either on the basis of employment when the contributions for health insurance are paid by the employer, or on the basis of realized right to pension when the employed pensioner is entitled to health insurance on the basis of fulfilled requirements for old age pension, in which case the employer would not have such obligation.

Finally, it is important to note that the pensioner who is employed again or who is self-employed for at least 12 months, shall be entitled to a **NEW PENSION CALCULATION**, while the users of premature old age pension will still hold the deduction established by the decision of the Disability and Pension Fund.



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