

CONFIDA
TAX AUDIT CONSULTING

Your reference for Tax News in Croatia

June 2018.

Confida Croatia has created the Confida Monthly Newsletter with the aim of providing both local and international businesses with answers to key questions regarding tax regulations in Croatia.



■ Hrvatska

ELEKTRONIČKI OBAVLJENE USLUGE

Elektronički obavljene usluge, zajedno sa uslugama radijskog i televizijskog emitiranja i telekomunikacijskim uslugama, predstavljaju vrstu usluga za koje je propisan poseban postupak oporezivanja porezom na dodanu vrijednost (PDV-om).

U svrhu olakšanja oporezivanja ove vrste usluga propisan je posebni postupak za elektronički obavljene usluge, kad se one vrše osobama koje nisu porezni obveznici, a imaju sjedište, prebivalište ili uobičajeno boravište u bilo kojoj državi članici EU.



Usluge obavljene elektronički su usluge koje se obavljaju internetom ili elektroničkom mrežom, automatizirane su i mogu se izvršiti isključivo korištenjem informatičke tehnologije, a tu osobito spadaju:

1. Isporuka web sjedišta, udomljavanje web-sjedišta, daljinsko održavanje programa i opreme;
2. Isporuka računalnih programa i njihovo ažuriranje;
3. Isporuka slika, tekstova i informacija te osiguravanje pristupa bazama podataka;
4. Isporuka glazbe, filmova i igara, uključujući igre na sreću i kockarske igre te emitiranje političkih, kulturnih, umjetničkih, sportskih, znanstvenih i zabavnih programa i priredaba i
5. Pružanje usluga učenja na daljinu

Mjesto obavljanja elektroničkih, komunikacijskih i usluga emitiranja poreznom obvezniku je mjesto sjedišta toga poreznog obveznika, a kad se obavljaju onome tko nije porezni obveznik, tada je također mjesto obavljanja usluga mjesto sjedišta, prebivališta i uobičajenog boravišta te osobe, što predstavlja jednu od iznimki općeg pravila oporezivanja.

Kada se spomenute usluge obavljaju osobama koje nisu porezni obveznici, ali im je prebivalište ili sjedište u nekoj drugoj članici EU, pružatelj bi

se trebao registrirati za potrebe PDV-a u državi u kojoj pruža navedene usluge te obračunati stopu PDV-a prema propisima te države.

U svrhu olakšanja oporezivanja ove vrste usluga propisan je posebni postupak za elektronički obavljene usluge, kad se one vrše osobama koje nisu porezni obveznici, a imaju sjedište, prebivalište ili uobičajeno boravište u bilo kojoj državi članici EU. Posebni postupak se u nekim crtama razlikuje ovisno o tome da li pružatelj usluge ima ili nema sjedište u EU.

Posebni postupak oporezivanja za pružatelje usluga bez sjedišta u EU

Pružatelj usluga na samom početku poslovanja mora prijaviti početak (kao i prestanak) svoje djelatnosti Poreznoj upravi, nakon čega mu se dodjeljuje PDV broj i obavezan je podnositi PDV prijave za svako tromjesečje do 20-tog dana slijedećeg mjeseca. Takav porezni obveznik neće imati pravo na odbitak pretporeza iz primljenih računa kroz tromjesečne prijave PDV-a, nego povrat ostvaruje prema postupku povrata obveznicima koji nemaju sjedište na području EU.

O svim svojim transakcijama o kojima je obavezan izvještavati putem tromjesečnih prijava, mora voditi redovnu evidenciju i čuvati je 10 godina od završetka godine u kojoj su se dogodile.

Pružatelj usluge neće imati pravo na korištenje pretporeza iz primljenih računa, već može zatražiti povrat u državi članici potrošnje usluga.



Posebni postupak oporezivanja za pružatelje usluga sa sjedištem u EU

Razlika u odnosu na postupak koji se primjenjuje za pružatelja usluga bez sjedišta u EU jest da je država članica prijave djelatnosti za potrebe PDV-a ona država u kojoj on ima sjedište ili prebivalište, a ako ga nema u EU, onda ona država u kojoj ima stalnu poslovnu jedinicu.

Pružatelj usluge neće imati pravo na korištenje pretporeza iz primljenih računa, već može zatražiti povrat u državi članici potrošnje usluga, no ako tamo obavlja i isporuke koje nisu obuhvaćene posebnim postupkom oporezivanja, ima pravo i na odbitak pretporeza za isporuke obuhvaćene posebnim postupkom oporezivanja.

Konačno, kako bi se pojednostavilo oporezivanje pružatelja elektroničkih, telekomunikacijskih i usluga emitiranja, omogućen je (ali ne i obavezan) postupak MOSS. Njime se pružateljima usluga koji isporučuju usluge u više zemalja članica EU omogućuje korištenje samo jednog PDV broja i prijavljivanje PDVa putem samo jedne prijave za isporuke u jednu ili više zemalja EU.

Prijave u posebni postupak oporezivanja, kao i prijave za postupak MOSS, porezne obveznike obvezuju za tekuću kalendarsku godinu i dvije slijedeće godine.

STALNA POSLOVNA JEDINICA

Stalna poslovna jedinica ili eng. Permanent Establishment (PE) je pojam iz međunarodnih ugovora o izbjegavanju dvostrukog oporezivanja, a označava svojevrsnu jedinicu poslovanja stranog poduzetnika u RH, koja zbog karakteristika svojih poslovnih aktivnosti postaje obveznik hrvatskog poreza na dobit.

Kako bi se skup poslovnih aktivnosti smatrao poslovnom jednicom, OECD-ov model ugovora o izbjegavanju dvostrukog oporezivanja propisuje tri uvjeta:

1. Mjesto poslovanja – mora postojati fizička prisutnost u određenoj državi;
2. Stalno mjesto – mjesto poslovanja mora imati određenu razinu kontinuiteta. Tek u pojedinim slučajevima mjesto može postojati kraće razdoblje, ako to zahtijeva priroda posla;
3. Poslovanje – uz stalno mjesto poslovanja, poduzeće posluje u cijelosti ili djelomično u mjestu poslovne jedinice. Pri tom se poslovanjem smatra svaka aktivnost poduzeća u državi ugovornici.

Stalnu poslovnu jedinicu svakako čine mjesto upravljanja i podružnica, a najčešće je tvore uredi, tvornički pogoni, radionice, rudnici naftni ili plinski izvori, kamenolomi ili neko drugo mjesto iskorištavanja prirodnih bogatstava.

Pružanje usluga, uključujući konzultantske ili poslovne usluge, tvorit će stalnu poslovnu jedinicu, ako za isti ili povezani projekt obavljanje usluga traje dulje od tri mjeseca zaredom u bilo kojem razdoblju od 12 mjeseci zaredom.



Jednaki tretman imaju i građevinski ili montažni projekti, ako traju dulje od 6 mjeseci. Međutim, stalna poslovna jedinica nastaje i aktivnošću jednog zastupnika sa nesamostalnim statusom, koji djeluje u ime poduzeća te je ovlašten sklapati ugovore u ime poduzeća, a pritom je pod nadzorom poduzeća i ne provodi niti jednu drugu odvojenu aktivnost.

Također, pružanje usluga, uključujući konzultantske ili poslovne usluge, tvorit će stalnu poslovnu jedinicu, ako za isti ili povezani projekt obavljanje usluga traje dulje od tri mjeseca zaredom u bilo kojem razdoblju od 12 mjeseci zaredom.

Gradilište, građevinski ili montažni projekt čine stalnu poslovnu jedinicu ako traju duže od 6 mjeseci.

Propisani rok trajanja poslovnih aktivnosti ili pružanja usluga nekim je ugovorima o izbjegavanju dvostrukog oporezivanja propisan u kraćem ili dužem trajanju od rokova propisanih hrvatskim Zakonom o porezu na dobit.

Ukoliko strani poduzetnik ima namjeru započeti sa obavljanjem aktivnosti u RH koje prema prethodno navedenom čine stalnu poslovnu jedinicu, dužan je prije početka obavljanja aktivnosti Poreznoj Upravi dostaviti popunjeni Upitnik za utvrđivanje stalne poslovne jedinice.

Aktivnosti koje ne čine stalnu poslovnu jedinicu

Općenito, stalnu poslovnu jedinicu ne čine pripreme i pomoćne poslovne aktivnosti:

1. Korištenje objekata – radi uskladištenja, izlaganja ili isporuke dobara ili robe koja pripadaju poduzeću;
 2. Održavanje zaliha dobara ili robe – radi uskladištenja, izlaganja ili isporuke dobara ili robe koja pripada poduzeću, ili u svrhu prerade koju obavlja drugo poduzeće;
 3. Održavanje stalnog mjesta poslovanja - isključivo u svrhu kupnje dobara ili robe, u svrhu prikupljanja podataka za poduzeće ili u svrhu obavljanja bilo koje druge pripreme ili pomoćne djelatnosti za poduzeće.
- Postojanje samostalnog zastupnika, pravno i ekonomski neovisnog od principala ne predstavlja stalnu poslovnu jedinicu.



Porezna uprava Republike Hrvatske nedavno je izdala službeno mišljenje o poreznom tretmanu dnevne parkirne karte, plaćene za parkiranje službenih vozila za vrijeme službenog putovanja radnika.



POREZNI TRETMAN DNEVNE PARKIRNE KARTE

Porezna uprava Republike Hrvatske nedavno je izdala službeno mišljenje o poreznom tretmanu dnevne parkirne karte, plaćene za parkiranje službenih vozila za vrijeme službenog putovanja radnika.

Kako je karta plaćena za vrijeme obavljanja posla povezanog s radnim mjestom radnika, plaćene parkirne karte ne mogu se smatrati priljevom koristi koje radniku pritiječu po osnovi rada za poduzeće koje plaća dnevnu parkirnu kartu. Zbog toga se po toj osnovi ne može utvrđivati dohodak od nesamostalnog rada, već je trošak plaćene parkirne karte priznat kao rashod poduzeća pri utvrđivanju osnovice poreza na dobit.

POREZNI TRETMAN FINACIJSKIH SREDSTAVA ISPLACENIH U OKVIRU PROGRAMA EU

Poreznoj upravi RH nedavno je postavljen upit vezan za "tretman primitaka isplaćenih u okviru europskih programa, Programa EU koje je usvojila Vlada RH na temelju Zaključka o sudjelovanju RH u Programima EU u financijskom razdoblju 2014. – 2020., a u svrhu promicanja suradnje između država članica u različitim područjima povezanim sa zajedničkim politikama EU. Projekti koji se provode temeljem ugovora o dodjeli bespovratnih sredstava (Grant agreements) u okviru sredstava dodijeljenih

Programu, financiraju se u omjeru 80% iz sredstava proračuna Europske komisije, a 20% iz sredstava proračuna RH."

U slučajevima kad se osobama koje sudjeluju u provedbi programa Europske Unije i twinning savjetnicima isplaćuje naknada za rad na EU projektima, takve naknade smatraju se primitkom od nesamostalnog rada. Primici za dnevnicu isplaćeni u iznosima nižim od maksimalno propisanih su u cijelosti neoporezivi, ako se radi o per diem djevnicama, ili djevnicama isplaćenim iz proračuna EU, radi obavljanja poslova radnika u svezi s djelatnosti poslodavca.

Primici isplaćeni na temelju ugovora o djelu, oporezuju se kao drugi dohodak, a oni isplaćeni po osnovi autorskih naknada, umanjuju se za 30% bruto iznosa i zatim za obvezne doprinose iz bruto iznosa pri čemu se preostali iznos oporezuje stopom od 24% i propisanom stopom prireza.





■ Croatia

ELECTRONICALLY PROVIDED SERVICES

In tax inspection procedures, the Tax Authority may determine additional tax and contribution liabilities as well as default interest on late payment of newly identified obligations. The Tax Authority determines new obligations based on estimates, or on credible documentation.

Electronically provided services, together with radio and television broadcasting services and telecommunication services represent a type of service for which is prescribed a special Value Added Tax (VAT) taxation procedure.



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Electronically provided services are electronic services performed over the Internet or the electronic network, are automated and can be executed solely by using information technology, and in particular they include:

1. Website delivery, hosting of websites, remote maintenance of programs and equipment;
2. Delivery of computer programs and their updating;
3. Provision of pictures, texts and information and access to databases;
4. Provision of music, films and games, including games of chance and gambling, and broadcasting of political, cultural, artistic, sports, scientific and entertainment programs and events; and
5. Providing distance learning services.

The place of performing the electronic, communication and broadcasting services to the taxpayer is the place of the taxpayer's head office or permanent residence, and when performed to a person who is not a taxpayer, then also a place of service provision is a place of head office or residence of that person, which is one of the exceptions to the general service taxation rule.

When these services are provided to persons who are not taxpayers but are resident or have their headquarters in another EU country, the provider should be registered for VAT purposes in the country in which provides the services and apply VAT rate according to the law of that country.

For the purpose of facilitating the taxation process of this type of services, prescribed is a “special taxation procedure” for electronic services, when provided to persons who are not taxpayers and have their registered office, permanent residence or habitual abode in any EU country. The special taxation procedure is different in some ways depending on whether or not the service provider has a head office in the EU.



Taxpayer is obliged to maintain and update prescribed records on all VAT transactions and keep it 10 years from the end of the year in which they occurred.



Special taxation procedure for non-EU service providers

The service provider starting with business activities must report the start (as well as the termination) of its activity to the Tax Authority, after which he is assigned a VAT number and obliged to file a VAT declaration for each quarter until the 20th day in the following month. Such a taxpayer will not be entitled to deduct pretax from invoices received through quarterly VAT declarations, but the refund is to be realised through the return procedure for taxpayers having their head office outside the EU, in third countries.

Taxpayer is obliged to maintain and update prescribed records on all VAT transactions and keep it 10 years from the end of the year in which they occurred.

Special taxation procedure for non-EU service providers

The difference with regard to the procedure applicable to non-EU based service providers is that the EU seated service provider registers for a VAT related activity in the EU country in which it has head office or residence, and if it is not seated in the EU country, then in the EU country in which it has a permanent establishment (PE).

The service provider will not be entitled to use a pretax from incoming invoices, but may request

a refund in the EU-country of the service consumption. However, if it performs deliveries that are not included in a special taxation procedure, it has a right to deduct pretax also from incoming invoices included in the special taxation procedure.

Finally, in order to simplify the VAT process for providers of electronic, telecommunication and broadcasting services, introduced is the MOSS procedure (not mandatory). It allows service providers who deliver services to customers in several EU countries to use only one VAT number and one VAT declaration at the same time for reporting on services provided in one or more EU countries.

Applications for special taxation procedures, as well as applications for the MOSS procedure, oblige the taxpayers to use them for the current calendar year and two subsequent years.

PERMANENT ESTABLISHMENT

Permanent Establishment (PE) is a term from international double tax treaties (DTT) on the avoidance of double taxation, and characterizes a particular business unit of a foreign entrepreneur in the Republic of Croatia, which because of the characteristics of its business activities becomes a taxpayer of the Croatian Corporate Profit Tax.

In order to determine a set of business activities as a business unit, the OECD model of double taxation treaty stipulates three conditions:

Determination of benefit in kind based on 1% of the purchase value or 20% of the lease installment.



1. Business location - there must be physical presence in a country;
2. The permanent place - the place of business must reflect a certain level of continuity. Only in some cases period of business performance may be shorter, due to the specific nature of a business;
3. Business - along with a permanent place of business, the enterprise operates in whole or in part in the place of business unit. Business activity is considered to be any activity of a company in a contracting country.

Permanent establishment is certainly the place of management and an affiliate, and most often it occurs in form of offices, factories, workshops, mines, petroleum or gas springs, quarries or some other places for the exploitation of natural resources. Equal treatment also has construction or assembly projects, if they last longer than 6 months. However, a permanent establishment also arises from the activity of a representative with a dependent status, acting on behalf of the company, and who is authorised to enter into contracts on behalf of the company, while being under the supervision of the company and carrying out no other separate activity.

As well, provision of services, including advisory or business services, will constitute a permanent establishment if, for the same or related project, the provision of services lasts longer than three consecutive months in any period of 12 months in a row.

A construction site, construction or assembly project makes a permanent establishment if they last longer than 6 months.

The prescribed duration of business activities or the provision of services is in some double tax treaty agreements stipulated for a shorter or longer time period than the time limits prescribed by the Croatian Corporate Profit Tax.

Prior to starting a business activity in Croatia which, according to the described rules, would constitute a permanent establishment, a foreign entrepreneur is obliged to deliver to the Croatian Tax Authority a completed Questionnaire for determination of a permanent establishment.

Activities that do not constitute a permanent establishment

Generally, a permanent establishment does not constitute preparatory and auxiliary business activities:

1. Use of facilities - for the purpose of storing, displaying or delivering goods or merchandise belonging to the enterprise;
2. Stock or inventory maintenance - for the purpose of storing, displaying or delivering goods or merchandise belonging to the enterprise; or for the purpose of processing carried out by another company;

One of the most recent opinions of the Tax Authority refers to the right to use a personal allowance for the support of a child of unemployed spouse when the taxpayer is not the biological parent of that child.



3. Maintenance of a permanent place of business - solely for the purpose of purchasing goods or merchandise, for the purpose of collecting data for the enterprise or for the purpose of carrying out any other preparatory or auxiliary activities for the enterprise.

The existence of an independent representative, legally and economically independent of the principal, does not constitute a permanent establishment.

TAX TREATMENT OF A DAILY PARKING TICKET

The Tax Authority of the Republic of Croatia recently issued an official opinion on the tax treatment of the daily parking ticket paid for the parking of official vehicles during the official business trips of employees.

As the ticket is an expense directly related to the performance of the employee's duties, the paid parking ticket cannot be considered as a benefit to the employee provided on the basis of employment with the company paying the daily parking ticket. Therefore, on this basis, it is not possible to define it as income from the employment, but the cost of the paid parking ticket is recognised as an expense of the company when determining the profit tax base.

TAXATION OF FINANCIAL ASSETS PAID OUT WITHIN EUROPEAN UNION PROGRAMS

Tax Authority of the Republic of Croatia has recently been requested to answer a query related to the "tax treatment of receipts within the European programs, EU Programs adopted by the Croatian Government, based on the Conclusion on participation in EU Programs in the financial periods from 2014 to 2020 year, in order to promote cooperation between EU member countries in various fields related to the common EU politics. Projects being implemented on basis of Grant agreements are financed 80% by grants from the EU budget and 20% of the amount is from the Croatian state budget".

In cases when persons participating in the implementation of the European Union programs and twinning consultants are paid compensation for work on EU projects, such compensation is considered to be the receipt from an employment contract. Daily allowances on business trips paid in amounts lower than the maximum prescribed as tax free are entirely non-taxable, in the case of daily allowances or allowances paid out of the EU budget, in order to carry out employment duties related to the employer's business activity.

Receipts paid under the labor contract are taxed as other income, and those paid on the basis of the royalty are reduced by 30% gross amount and mandatory contributions from the gross amount. Remaining amount is taxed at a rate of 24% and the prescribed city surtax rate.



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