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NOVE PORESKE POGODNOSTI ZA KONCESIJE

NEW TAX BENEFITS FOR CONCESSIONS

Nove poreske pogodnosti za koncesije / New tax benefits for concessions

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15. decembra 2018. godine su stupile na snagu izmene nekoliko poreskih zakona kojima su, između ostalog, uvedene pogodnosti koje se odnose na koncesije sa vrednošću od najmanje 50 miliona evra. Pogodnosti se odnose in a davaoce koncesije i na koncesionare/privatne partnere.

Davaoci koncesije neće imati obavezu da uključe u svoj poreski bilans prihod koji ostvare sticanjem nenovčane imovine od strane privatnog partnera bez naknade. Takvo sticanje, koje bi u normalnim okolnostima predstavljalo prihod za potrebe poreza na dobit pravnih lica, neće biti deo oporezivog prihoda davaoca koncesije.

Pogodnosti za privatnog partnera su propisane zakonom koji uređuje porez na dobit pravnih lica i zakonom koji uređuje poreze na imovinu (koji takođe sadrži i pogodnosti za davaoca koncesije).

On 15 December 2018 amendments to several tax laws entered into force which, inter alia, introduced benefits related to concessions with a value of at least EUR 50 million. Benefits apply to both concession grantors and concessionaires/private partners.

The concession grantors shall not be required to include the income realized by acquiring the non-pecuniary assets from the private partner without consideration in its tax balance. Such acquiring, which in ordinary situation would represent the income for the purpose of the corporate income tax, shall not represent the part of the taxable income of the concession grantor.

Benefits for the private partner are stipulated by the corporate income tax law and by the property law (which law also provides for the benefits of the concession grantor).

Zakon o porezu na dobit pravnih lica propisuje izuzeće od oporezivanja porezom na kapitalne dobitke za kapitalni dobitak koji ostvari privatni partner na osnovu prenosa nepokretnosti davaocu koncesije kao deo realizacije ugovora o koncesiji.

S druge strane, kapitalni gubici koje snosi privatni partner po osnovu takvih prenosa ne mogu se prebijati sa kapitalnim dobitcima koji predstavljaju oporeziv prihod privatnog partnera.

Zakon o porezima na imovinu propisuje poreško oslobođenje od poreza na imovinu za privatnog partnera. To oslobođenje se odnosi na nepokretnosti koje su u svojini privatnog partnera – za zemljište koje je stekao nakon zaključenja ugovora o koncesiji i za objekte sagrađene na tom zemljištvu, ukoliko:

1. je privatni partner stekao zemljište u cilju ispunjenja obaveza iz ugovora o koncesiji;
2. je privatni partner stečeno zemljište pribavio uz suglasnost davaoca koncesije;
3. se zemljište i izgrađeni objekti koriste isključivo za svrhu izvršenja obaveza iz ugovora o koncesiji;
4. se privatni partner obavezao u skladu sa ugovorom o koncesiji da prenese bez naknade u svojini Republike Srbije ili drugog lica koje je davalac koncesije zemljište i izgrađene objekte, kao i da taj prijenos izvrši najkasnije do dana prestanka ugovora o koncesiji.

Privatni partner je takođe oslobođen poreza na prenos apsolutnih prava koji bi u suprotnom bio dužan da plati kada prenosi neko od ovih prava davaocu koncesije uz naknadu. Isto se primenjuje i na davaoca koncesije u pogledu poreza na poklon koji bi on bio dužan da plati po osnovu transfera izvršenog od strane privatnog partnera bez naknade.

The corporate income tax law provides the exemption from the capital gain tax for the capital gain realized by the private partner on basis of the transfer of the real estate to the concession grantor, whereby such transfer is part of the fulfilment of the concession agreement.

On the other hand, the capital loss borne by the private partner from such transfers cannot be offset against capital gains which do represent the part of the taxable income of the private partner.

The property tax law provides for a tax holiday from the property tax for the private partner. Such holiday applies to the real estate owned by the private partner – for the land which was acquired by it after execution of the concession agreement and for the buildings constructed on such land, provided that:

1. the private partner has acquired the land for the purpose of fulfilment of its obligations from the concession agreement;
2. the private partner has acquired the land with consent of the concession grantor;
3. the land and the constructed buildings are used exclusively for the purpose of fulfilment of obligations from the concession agreement;
4. the private partner has the obligation, pursuant to the concession agreement, to transfer without consideration to the Republic of Serbia or other entity being concession grantor the land and the constructed buildings and that it effectuates such transfer at latest until the date of termination of the concession agreement.

The private partner is also exempt for the tax on transfer of absolute rights it would otherwise be obliged to pay when it transfers such right to the concession grantor against consideration. The same applies to the concession grantor for the gift tax it would otherwise be obliged to pay for the transfer from the private partner without consideration.



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