REFORMS FOR ECONOMIC GROWTH AND BUSINESS RESILIENCE 2024

TAX & FINANCE COMMITTEE

AMCHAM SERBIA
A LEADER IN CHANGE

TAX AND FINANCE COMMITTEE

OBJECTIVE 1: REDUCE ADMINISTRATIVE BURDEN ON FOREIGN EXCHANGE OPERATIONS

…BY AMENDING THE FOREIGN EXCHANGE OPERATIONS LAW

CHALLENGE: The current Foreign Exchange Operations Law poses a major burden on using emerging technologies, creates large administrative costs, and slows down transactions. Restrictions imposed by the Foreign Exchange Operations Law jeopardise performance and make it more difficult for start-ups and small businesses to access finance. This has had an adverse effect on the expansion of Serbian companies throughout the region, making them less competitive, and has particularly adversely impacted the development of the digital economy, a key requirement for achieving sustained high growth in the future.

The current law was enacted in 2006 and amended on multiple occasions, but none of these changes has addressed businesses' key concerns, such as opaque restrictions and excessive administrative requirements. Its effects have recently become much less predictable as the regulator has tended to interpret its provisions in a widely varying fashion, thereby jeopardising legal certainty in foreign exchange operations. The principal challenges here involve:

a) Interpretation based on an 'exhaustive permissions' approach (meaning that anything not explicitly allowed is deemed to be prohibited) hinders implementation whilst requiring amendments to legislation to introduce new technologies;
b) Not all restrictions are regulated by law, and many are governed by the extensive body of secondary legislation;
c) The NBS requires ex ante inspection of documents for each foreign exchange transaction (credit operations and guarantees), which leads to varying interpretations that are often not properly explained or publicly available;
d) The administrative burden caused by the document inspection requirements for foreign exchange transactions makes these operations unduly slow and expensive as they prohibit straight-through processing by banks.

RECOMMENDATIONS: Overhaul the statutory framework to **replace ex ante inspection of documents for each individual transaction with a risk assessment and management system** dependent on transaction type, size, and the like. Improvements to the regulations ought to include:

- Changing the law drafting method. **All prohibitions should be clearly spelt out in the actual law** whilst secondary legislation ought to be used to clarify how the rules should be implemented but not to introduce additional restrictions;
- **Abolishing ex ante document inspection, and in particular the registration requirement** (which is tantamount to advance approval) **of each foreign credit operation.** Instead, consider replacing this requirement with either actual registration or ex post reporting and **liberalise guarantee operations** (e.g. on the model of the Croatian reform of 2003);
- **Facilitating foreign payment operations by removing the requirement for banks to inspect the relevant documents in advance,** and **shifting to use of payment codes exclusively for statistical purposes** instead of these being mandatory for transaction approval; and
- **Streamlining and facilitating the assignment and set-off of foreign receivables and payables** (on the model of the Croatian reform of 2003).

These efforts would in no way affect the power of the Serbian Government and the National Bank of Serbia (NBS) to **introduce temporary restrictions on some foreign currency and cross-border transactions assessed as posing risks in the event of major threats to the country's macroeconomic and fiscal stability**.

…BY STREAMLINING INSTEAD OF COMPLICATING CROSS-BORDER TRANSACTION REPORTING, IN ACCORDANCE WITH EU PRACTICE

CHALLENGE: Current foreign exchange regulations impose administrative reporting requirements on some cross-border transactions, with the data collected being used for balance of payment statistics. Without wishing to disparage the importance of these statistics, we feel the method of their collection imposes an undue burden on cross-border transactions, slowing them down and making them more difficult and costly. Even though all EU Member States collect such data, none currently uses the Serbian approach (the last EU Member State to have utilised this procedure revoked it in 2011). These already complex regulations were made even more challenging by amendments to the Decision on Terms and Conditions of Performing Foreign Payment Transactions, which were enacted in mid-July 2020 and took effect on 1 January 2021 (with additional amendments introduced subsequently). Paragraph 50 of the new Decision has introduced new data collection rules that require banks to alter all payment or collection order forms in both their back-office software and consumer-facing online services, which in turn creates new costs for the banking sector and businesses. For their part, companies have face increased costs of administration, as they have had to provide vast quantities of information, initially manually, later having to incur additional costs to adjust their software. Firms that use SWIFT for wire transfers have encountered difficulties as the limited number of characters in a transfer order has restricted them to no more than three or four invoices in one order, which has necessitated more transfer orders and so greatly increased costs for clients.

RECOMMENDATION: Repeal Paragraph 50 of the Implementing Instructions for the Decision on Terms and Conditions of Performing Foreign Payment Transactions and continue to streamline rather than complicate transactions by imposing new data collection requirements. Review models used to collect balance of payments statistics in EU Member States and reform the NBS's data collection arrangements accordingly.

OBJECTIVE 2: INCREASE TRANSPARENCY OF CHANGES TO TAX RULES AND FACILITATE COMPLIANCE

…BY MANDATING CONSULTATIONS BEFORE REGULATIONS ARE ADOPTED AND ENACTING CLEAR TAX RULES

CHALLENGE: On the whole, the Serbian tax system is well designed, and most of the country's tax rates are competitive. In recent years, there have been initiatives for a very gradual reduction in payroll taxes, an approach in principle welcomed by the business community, but no major effects have yet materialised.

In the past several years, the business community has chiefly been concerned over annual amendments to tax rules **with limited or no prior consultation with the business and professional community**, which has made the tax environment less predictable and at times led to inconsistency between tax regulations; a particularly pressing issue is the implementation of new regulations. Additionally, the **secondary legislation** that ought to facilitate the implementation of laws and provide detailed instructions (on, for instance, the Value Added Tax Law) **is restricted** to addressing only isolated matters that the law explicitly singles out for elaboration in these statutory instruments. Formal opinions of the Ministry of Finance (MoF) are the only source of information for taxpayers as to how the tax authorities will interpret tax laws and regulations. The procedure for issuing these opinions is lengthy and they often fail to provide clear answers to taxpayers'

questions. The problem is compounded by the fact that the Tax Administration often ignores the opinions when performing tax audits.

> **RECOMMENDATION:** Ensure that all amendments to tax laws are subjected to **public consultation** in due time before entering parliamentary procedure for enactment.

… BY DEVELOPING COMPREHENSIVE IMPLEMENTING REGULATIONS FOR KEY TAX LAWS

> **RECOMMENDATION:** The MoF ought to issue **binding and detailed rules that govern how tax laws are applied** for all tax types, as has already been done for value added tax (VAT), including corporate income tax (CIT), personal income tax (PIT), and property tax. These rules should provide detailed explanations for how each individual provision of any tax law is to be applied and interpreted. Even though the MoF's opinions are binding on the Tax Administration, in practice the tax authorities often fail to follow the Ministry's positions when ruling on specific issues. **The comprehensive rules would be binding not only on taxpayers and the Tax Administration, but also on the courts.** Lastly, in contrast to the opinions, the rules would prescribe general requirements applicable to various situations. (In legal terms, an opinion is binding only on the specific set of facts in relation to which it is issued.)

OBJECTIVE 3: ENHANCE DECISION-MAKING IN TAX DISPUTES

…THROUGH CONTINUED SPECIALISATION AND TRAINING

CHALLENGE: Decision-making in disputes is the weakest link in Serbia's tax system. Some progress has been made by shifting responsibility for decision-making in second-instance tax disputes from the Tax Administration to the MoF, as had been recommended by AmCham's Tax and Finance Committee. Only the Administrative Court can perform judicial review of the Tax Administration's decisions, but it lacks the capacity to address complex tax-related cases. The Administrative Court has no judges or judicial panels specialising in tax matters, notwithstanding its importance and complexity, so cases are heard by judges who lack appropriate in-depth knowledge of the field.

> **RECOMMENDATION:** Ensure court units or individual judges at the Administrative Court are specialised in tax law and introduce continued and comprehensive training for Administrative Court judges (especially those who specialise in tax cases) at the Judicial Academy.

OBJECTIVE 4: COMPLETE REFORM OF PARA-FISCAL LEVIES

…BY REGULATING THE ENVIRONMENTAL IMPROVEMENT AND PROTECTION FEE

CHALLENGE: The Law on Fees for Use of Public Resources, adopted in 2018, regulates these non-tax levies. Nevertheless, in 2019 the environmental improvement and protection fee was overhauled twice over several months; the current version does not follow the 'polluter pays' principle and so does not disincentivise reductions in emissions subject to measurement.

> **RECOMMENDATION:** Merge this levy with the pollution charge (including broadening its scope to ensure the FEE is paid by all entities subject to emissions measurement) and assess it using the pollution charge assessment formula (to ensure the charge is proportional to the pollution generated). Ensure the funds raised through the pollution charge are divided between the central and local budgets. Leave responsibility for assessment at the national level and make local inspections responsible for tracking compliance.

OBJECTIVE 5: PERMIT THE USE OF DIGITAL SERVICES IN FINANCE AND TAX

…BY DEVELOPING DIGITAL IDENTITY ARRANGEMENTS, EXCHANGE OF INFORMATION, AND OPEN BANKING

CHALLENGE: Any improvements to user experience, procedures, and automation of processes in financial services depend exclusively on enhancements to regulations and exchange of relevant information between the public and the private sector.

RECOMMENDATIONS: These recommendations are designed to promote the development of digital identity arrangements, exchange of information on natural and legal persons between banks and public authorities such as the Tax Administration and the Pension and Disability Insurance (PIO) Fund to facilitate creditworthiness assessments, and use of open banking solutions to improve user experience and automate processes.

- **Digital identity.** Initial progress with remote identification regulations was made recently as video technology and two-factor identification were introduced for contracts not exceeding RSD 600,000 entered into between natural and legal persons and financial institutions supervised by the NBS. One option for allowing remote contracting for firms from other industries would be to establish a national system for storing private individuals' digital identities, which would enable members of the public to sign any contract electronically (with the equivalent of a physical signature) by using a mobile app to access their electronic signature stored in the cloud. The only precondition for making this service generally available would be initial remote identification of clients, which could be done using video, provided that the law is amended accordingly. Digital identity is used in Nordic countries (Sweden, Norway, Finland, and Denmark), where banks have led the development of national 'BankID' schemes that have permitted citizens to receive electronic signatures after providing identification at any of the participating banks. A similar example exists in the UK, where users upload mobile phone self-portraits ('selfies') via an app and back-end automation compares the selfie with the person's ID picture to make a positive identification, with the added security of 'liveness detection' (which ensures the picture is that of the actual real person).
- **Exchange of information on natural (and legal) persons with the Tax Administration and PIO Fund.** This issue is of crucial importance for continued digitalisation of retail transactions, but also has a bearing on corporate banking. Data could be shared either with the tax authority or the PIO Fund; this automatic exchange of information would require client consent and would permit banks to either directly or indirectly determine their clients' incomes. Similar examples of information sharing between public authorities and the private sector can be found in both neighbouring countries and EU Member States more generally (such as Slovakia, Croatia, Romania, and Bulgaria).
- **Open banking (Payment Services Directive 2).** Allowing open banking (by incorporating the EU's Payment Services Directive 2, or PSD2, into Serbian law) would make it possible for emerging non-financial institutions (also known as fintech companies) to offer some services currently provided only by banks, thereby increasing competition. This concept would also permit straightforward exchange of information between banks on clients and their use of banking products, leading to faster procedures and better user experience (such as additional automation of loan approvals, use of simplified account switching to open bank accounts, and the like).

OBJECTIVE 6: ENHANCE TAX REGULATIONS

…PERSONAL INCOME TAX

CHALLENGE: An MoF opinion dating from February 2019 and the subsequent amendment of Article 18 of the Personal Income Tax Law of late 2019 have imposed major **administrative burdens on businesses by requiring them to collect documents to substantiate employee costs incurred in commuting to and from the workplace**. As the monthly ceiling of RSD 4,359 has remained largely unchanged and the public revenues collected are minimal, the supplementary requirements have only increased administrative costs of doing business. Moreover, only costs of public transport, personal car use, and taxis are admissible, which unjustly discriminates against employees who use more environmentally sustainable modes of travel, such as cycling or walking to work. AmCham feels these tax disincentives for environmentally friendly modes of transport are unacceptable, especially given the air pollution issues present in Serbian cities and towns.

> **RECOMMENDATION:** Delete the word 'documented' from Article 18(1)1) of the Personal Income Tax Law and repeal the February 2019 MoF Opinion.

CHALLENGE: The tax incentive policy pursued by the Serbian Government has shifted since 2018 from seeking to attract labour-intensive activities in a bid to boost employment to fostering the creation of skilled jobs and growth of value-adding industries. The tax breaks include incentives for creating new skilled and other jobs and jobs in research and development, as well as hiring new residents (both Serbians returning from abroad and foreign nationals). As these incentives stimulate the retention and attraction of skilled labour and young people and seek to attract knowledge-based investments that create skilled jobs in Serbia, AmCham believes the policy should continue to be pursued consistently. Some of these incentives are set to expire in late 2024 and 2025, including those for new skilled and other jobs, although they have seen much success to date.

> **RECOMMENDATION:** Assess the impact of these incentives on workforce and skilled job attraction and use the findings to inform their extension as required. This will ensure tax policy continues to be deployed in support of efforts to attract value-adding investment into Serbia.

…VALUE ADDED TAX

IZAZOV: Application of Article 10(2)3) of the VAT Law to goods and services in the construction industry.

Companies' tax and finance specialists and external accountants waste much time on attempts to interpret areas in which they have next to no knowledge, including determining whether an activity indicated in an invoice formally belongs to the construction industry. Quite apart from their complex nature, existing rules also promote insecurity for taxpayers, chiefly because they reference non-tax regulations (such as industry classifications) that are inherently unable to offer an unambiguous answer as to whether a particular transaction belongs to the construction sector.

> **RECOMMENDATION:** Prescribe clearer rules for implementing provisions of the VAT Regulation that concern identification of tax debtors for purposes of value-added tax.

CHALLENGE: Unduly complex administrative requirements for VAT registration of foreign companies solely transhipping goods stored in bonded warehouses to third countries.

Amendments to Article 10a of the Value Added Tax Law, which took effect in January 2020, mandated VAT registration of foreign firms trading in goods and providing services in cases where they are tax exempt and able to claim input VAT, meaning also in cases in which VAT is not payable in Serbia.

The registration requirement also extends to cases in which foreign companies take goods into a customs area in Serbia where the goods remain under the supervision of Serbian customs and receive customs documentation from Serbian customs bodies until they are re-exported from the Serbian customs area. These goods are never formally imported into Serbia or marketed in the country.

This business model is employed by large multinational companies that open regional logistics centres in Serbia to maintain stocks of products they can use to meet the needs of local markets in South-Eastern

Europe. Supply chain optimisation, which involves maintaining warehouses close to territories where products are intended to be sold, is a major part of these companies' strategies, and Serbia's position makes it an attractive location for such storage facilities. In this model, products are shipped from one country (say a factory or warehouse in Poland) to another one (for instance, North Macedonia), with only a temporary halt in between in a Serbian bonded warehouse.

Since the export tax exemption (under Article 24 of the VAT Law) means VAT is not paid in Serbia, the foreign VAT payer would in fact have to file blank VAT returns (the returns would not indicate any VAT payable), which would impose an undue administrative burden on non-resident companies operating in Serbia as described in the foregoing paragraph.

This provision of the VAT Law discourages businesses from choosing Serbia as the destination for their regional logistics centres, potentially resulting in the government's coffers losing revenue from warehouse rentals and related logistical services (such as handling, transport, intermediation, etc.) in Serbia.

> **RECOMMENDATION:** Amend Article 10a of the VAT Law to exempt non-resident businesses solely transhipping goods located in bonded warehouses to third countries (without marketing such goods in Serbia) from mandatory VAT registration.

…CORPORATE INCOME TAX

CHALLENGE: Recognising the difference between a decommissioned asset's tax value not written off and book value not written off as depreciation expense.

Taxpayers whose investments into assets exceed 10 percent of these assets' book value must apply new depreciation rules to the entire value of such assets. In these cases, especially for some asset categories (such as intangible investments) where book depreciation far exceeds tax depreciation, the switch to the new rules results in the loss of much of the depreciation base, meaning that taxpayers are liable to face lasting differences in tax. The new Rulebook on Depreciation of Fixed Assets Recognised for Tax Purposes has somewhat mitigated these adverse effects by recognising the difference between tax value not written off and book value not written off as depreciation expense, however this only applies to cases where the fixed asset has been alienated or destroyed. The scope of the Rulebook should be extended to also cover situations where the fixed asset has been decommissioned, as there will be fixed assets that a taxpayer will not destroy or alienate but will nonetheless cease using (such as various accounting and client databases and other records).

> **RECOMMENDATION:** Amend the Rulebook on Depreciation of Fixed Assets Recognised for Tax Purposes to allow recognition of the difference between a decommissioned asset's tax value not written off and book value not written off as depreciation expense.

CHALLENGE: Regulations governing permanent establishments.
Tax rules for permanent establishments are at present rudimentary and make it difficult for foreign companies temporarily operating in Serbia to declare and pay corporate income tax in a streamlined manner. The only option for paying income tax is to have the foreign business incorporate a branch office or company in Serbia, which imposes a major administrative burden for companies intending to operate in the country for limited time only (e.g. for short projects and the like). Many developed countries permit 'tax registration' of foreign companies, allowing them to declare, assess, and pay tax without having to formally set up a permanent establishment by incorporating a branch office or a company. A similar arrangement already exists for VAT, where registration is possible using VAT proxies.

> **RECOMMENDATIONS:** Expand and clarify tax rules for permanent establishments, perhaps by enacting a special regulation that would govern all relevant aspects of taxation in detail. The Tax Administration should develop a user-friendly and efficient system for registration of non-resident companies with permanent establishments in Serbia. Additionally, permit corporate income tax

returns and tax balance sheets for permanent establishments (Form PBPJ) to be filed without requiring registration numbers (since foreign companies' permanent establishments are not formally registered with the Serbian Business Registers Agency) and instead ask only for Taxpayer Identification Numbers (TINs) assigned to permanent establishments on registration as Serbian taxpayers with the Serbian Tax Administration.

…PROPERTY TAX

CHALLENGE: Allowing small and medium-sized businesses to assess property tax at fair value.

The Property Tax Law allows taxpayers to assess tax at fair value if they use fair value valuation in their books of account according to IASs/IFRSs and their adopted accounting policies. As set out in the MoF's opinions on the applicability of this provision to the assessment of tax bases as envisaged by the Property Tax Law, it should be taken to mean that only businesses that fully apply IFRSs and carry real estate on their books at fair value may use fair value valuation to assess property tax. The MoF opinion suggests that taxpayers that use IFRSs for SMEs lack the legal grounds to carry assets at fair value, since Article 7(1) of the Property Tax Law (which sets out situations in which the fair value of real estate is deemed to be the tax base) explicitly references IASs and IFRSs, but not IFRSs for SMEs.

RECOMMENDATION: Essentially, there ought to be no difference in fair value valuation between taxpayers that use IFRSs and those that use IFRSs for SMEs (as corroborated in the recent MoF Opinion 011-00-156/2019-16 of 19 March 2019). AmCham therefore believes it would be beneficial to clarify, through amendments to the Property Tax Law, that this tax assessment option is also available to taxpayers that use IFRSs for SMEs.

…ELECTRONIC FISCALIATION

CHALLENGE: REMOVAL OF ADMINISTRATIVE OBSTACLES AND LEGAL UNCERTAINTY IN THE APPLICATION OF THE LAW ON FISCALIZATION

The new Fiscalisation Law took effect on 1 November 2021, whilst the first electronic fiscal devices entered use on 1 May 2022. Nevertheless, implementation of this piece of legislation has been burdened by issues since it came into force. The MoF has issued many formal opinions clarifying the interpretation of various provisions of the Fiscalisation Law intended to facilitate the use of the new regulatory framework. Some of these positions, however, are at odds with long-standing business practice in trade and service delivery, which may cause substantial costs of compliance with the law. One of these examples dates from 15 July 2022, when the MoF adopted an opinion whereby merchandising services in retail outlets were categorised as 'retail'. This interpretation has required distributors that provide merchandising services to issue fiscal receipts instead of simply invoicing retailers, as had been the practice previously. This view may greatly increase the volume of unnecessary paperwork if retailers are required to issue a fiscal receipt to a distributor/merchandiser every time this service is provided at every retail outlet. The MoF's opinion also raised other issues with how taxpayers can issue fiscal receipts for these services and not find themselves in breach of fiscalisation requirements. For instance, in this case taxpayers cannot be sure how to properly account in a fiscal receipt for remuneration defined as a set percentage of sales volume, since there any merchandising fees will not be known when the service is provided and will become apparent only at the beginning of the following month. Another problem is issuing a fiscal receipt for services contracted in foreign currency with a foreign distributor. The issue has been resolved with excluding this particular transaction from application of the Law. These examples reveal difficulties in implementing the new fiscalisation framework that ought to be removed as quickly as possible to avoid additional administrative costs of doing business and reassert legal certainty with how tax rules are applied.

RECOMMENDATION: Consider amending Article 3 of the Fiscalisation Law, since current definitions of 'retail' (paragraph 2) and 'retail outlet' (paragraph 3) allow excessively broad interpretation as to

which services can be subject to fiscalisation. Clear criteria must be prescribed to dispel any doubts over which commercial transactions are subject to the fiscalisation arrangements stipulated by the law, which is particularly important for services rendered to businesses in connection with retail outlets.