

## Croatian Parliament enacted amendments to the Corporate Profit Tax Law



The Croatian Parliament has, on its session held on Friday 17 February 2012, enacted amendments to the tax legislation, amongst which are amendments to the Corporate Profit Tax (CPT) Law.

Amendments to the CPT Law, some of which are applicable as of 1 March 2012 will impact your business operations in the following areas.

### Payments of dividends and profit shares

- All payments of dividends and profit shares to foreign legal entities made on or after 1 March 2012 will be subject to 12% withholding tax, except for payments of dividends and profit shares which were earned up to and including 31 December 2000.
- Croatia has concluded Double Tax Treaties (DTTs) with a number of countries based on which, provided certain criteria are met, the withholding tax rate of 12% could be reduced or eliminated, depending on the provisions of each specific DTT.
- From the date of Croatia's EU accession (expected on 1 July 2013), payments of dividends and profit shares to a foreign legal entity resident in one of the EU member states will not be subject to withholding tax if the foreign legal entity has one of the forms to which the common system of taxation of associated companies of different EU member states applies, if it is a taxpayer in its country of residence and if it:
  - holds at least 10% of the capital of the Croatian company that distributes dividends or profit shares; and
  - holds the minimum percentage in capital of the Croatian company that distributes dividends or profit shares for an uninterrupted period of 24 months.

This treatment applies to all foreign legal entities residents in any EU member state which meet the above criteria, irrespective of the fact whether Croatia has concluded a DTT with a particular EU member state or not.

- There is no withholding tax on payments of dividends and profit shares between two Croatian companies.

- Dividend income received by a Croatian company is not subject to CPT.

With respect to the above mentioned change, the following should be noted:

- If your company has retained earnings from previous periods, if possible, the retained earnings (partially or in total) should be paid out before 1 March 2012 in order to avoid payment of withholding tax.
- If your company would, after 1 March 2012, distribute dividends or profit shares to a foreign legal entity resident in a country with which Croatia has concluded a DTT, depending on the provisions of the specific DTT, the Application for tax relief form or a Statement of residency document should be timely obtained in order to be able to reduce or eliminate WHT at the time of payment of the dividends or profit shares.
- If your company would after EU accession (expected on 1 July 2013) distribute dividends or profit shares to a foreign legal entity resident in an EU country, withholding tax would be eliminated if certain conditions are met.
- One of practical questions in relation to advance payments of dividends and profit shares which will be paid until 29 February 2012:

As any such advances would be paid at the time when there is no obligation to pay withholding tax, if a final dividend or profit share is declared after 1 March 2012 the question arises will such advance payments be subsequently subject to withholding tax and what will be the mechanism for collection of withholding tax?

## Impairment of trade receivables

- Impairment of trade receivables will represent a tax deductible expense if more than 60 days have elapsed from the receivables' due date until the end of the tax period (instead of the currently applicable 120 days) and is applicable to trade receivables arising after 1 March 2012.
- However, all other provisions of current CPT Law on tax deductibility of impairment of trade receivables are still applicable.

With respect to the above mentioned change, the following should be noted:

- As this provision is applicable to trade receivables arising after 1 March 2012, it would have an effect on your company's 2012 CPT return.

## Transfer pricing provisions

- The Comparable Uncontrolled Price Method is no longer considered to be the preferred method; rather all methods are considered to be equal in assessing arm's length prices in related party transactions. This approach is in line with the new OECD Transfer Pricing Guidelines which propose a different way of selecting methods for supporting that the prices and other business relations in related party transactions are at arm's length and therefore acceptable for tax purposes.

## Decrease of the taxable base for the amount of reinvested profits (applicable as of 1 January 2013, in the CPT return for 2012)

- The tax base is reduced for the current period profits used to increase the share capital of a company with the purpose of investment and development, provided that within 6 months from the due date for submission of the CPT return the taxpayer submits to the local Tax Authorities' office evidence of the increase of the share capital for the amount of current period profits for which the taxpayer has decreased its tax base.
- The right to decrease the tax base for the amount of reinvested profits shall not apply if it is evident that the increase of the share capital has been made with the purpose of tax evasion or tax avoidance.

With respect to the above mentioned change, the following should be noted:

- It is questionable how the above mentioned provision would apply, specifically, what is an "investment or development" purpose and at this moment it is necessary to wait for the Minister of Finance to provide additional explanations on its application.
- As an increase of the share capital of a company, especially of a joint stock company, requires a specific legal procedure, time needed for execution and associated expenses, it is questionable whether the decrease of the tax base for the amount of reinvested profits will be feasible and cost effective for all taxpayers.

### Contact:

#### Paul Suchar

Partner  
+385 1 5390 032  
psuchar@kpmg.com

#### Tomislav Borošak

Director  
+385 1 5390 171  
tborosak@kpmg.com

#### Ana Vazdar

Assistant Manager  
+385 1 5390 138  
avazdar@kpmg.com

#### KPMG Croatia d.o.o. KPMG savjetovanje d.o.o.

Eurotower  
Ivana Lučića 2a/17  
10000 Zagreb  
Croatia

Tel.: +385 (0)1 5390 006  
Fax.: +385 (0)1 5390 111

kpmg.hr  
tax@kpmg.hr

This publication was prepared as at 22 February 2012 as a quick-reference guide to the subject matter and should not be regarded as a basis for ascertaining the liability to tax or determining an investment strategy. In all cases specialist advice should be taken.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2012 KPMG Croatia d.o.o. and KPMG savjetovanje d.o.o., Croatian limited liability companies and member firms of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity

KPMG and the KPMG logo are registered trademarks of KPMG International, a Swiss cooperative.