

January 2021

## Award of the company's own stocks or stock purchase options as of 1 January 2021: the removal of the problematic requirement from Article 68 of the Personal Income Tax Act

The last amendment to the Personal Income Tax Act (National gazette 138/2020), which entered into force on 1 January 2021, has removed from the regulation the *problematic* requirement referred to in Article 68 of the Personal Income Tax Act (hereinafter: the Act). Namely, Article 68 of the Act prescribes the requirements that the receipt realized on the basis of the award of the company's own stocks or a stock purchase options must meet in order to be considered as income from capital, and until new changes of the Act one of the conditions required that the receipt must be "based on the share of the profit".

From 1 January 2021, the provisions of Article 68 of the Act no longer contain the mentioned requirement, which we consider a positive shift in the extension to include receipts that can be taxed on more favourable terms, qualifying them as *income from capital*, and in facilitating interpretation of regulations, by removing problematic conditions which are not clearly regulated.

We warned the legislator on the issue of the mentioned condition from Article 68 of the Act ("based on the share of the profit") at the end of 2018, during the consultation with the interested public in the process of adopting the Ordinance on Amendments to the Ordinance on Personal Income Tax, thereby we commented in more detail on the problem of this condition and the lack of clear guidance on how to prove the fulfilment of this condition in the case when the payer is, for example, a foreign entity. Our submitted comment on the draft regulation (comment on Art. 7) is available at the following link: [e-Savjetovanje](#).

Although our comment was labelled as "acknowledged" by the Ministry of Finance, the Ordinance that was the subject of consultation at the end of 2018 did not further regulate this issue, so due to the lack of clarity in the interpretation of regulations, it might have been missed that some income payers did not award the company's own stocks or

siječanj 2021.

## Dodjela ili opcijaska kupnja vlastitih dionica od 1. siječnja 2021. godine: uklanjanje problematičnog uvjeta iz članka 68. Zakona o porezu na dohodak

Posljednjim izmjenama i dopunama Zakona o porezu na dohodak (Narodne novine 138/2020) koje su stupile na snagu 1. siječnja 2021. godine, iz propisa je uklonjen *problematičan* uvjet naveden u članku 68. Zakona o porezu na dohodak (u nastavku: Zakon). Naime, člankom 68. Zakona propisani su uvjeti koje primitak koji se ostvaruje po osnovi *odjele ili opcijske kupnje vlastitih dionica* mora ispuniti da bi se smatrao dohotkom od kapitala, te se do posljednjih izmjena Zakona kao jedan od uvjeta zahtijevalo da primitak mora biti „po osnovi udjela u dobiti“.

Od 1. siječnja 2021. godine, odredbe članka 68. Zakona više ne sadrže spomenuti uvjet, što smatramo pozitivnim pomakom kako u proširenju obuhvata primitaka koji se mogu oporezivati prema povoljnijim uvjetima, kvalificirajući ih *dohotkom od kapitala*, tako i u olakšavanju tumačenja propisa, uklanjajući problematične uvjete koji nisu dovoljno jasno propisani.

Na problematiku spomenutog uvjeta iz članka 68. Zakona („po osnovi udjela u dobiti“) upozorili smo zakonodavca krajem 2018. godine, tijekom savjetovanja sa zainteresiranom javnošću u postupku donošenja Pravilnika o izmjenama i dopunama Pravilnika o porezu na dohodak, pri čemu smo detaljnije komentirali problematiku ovog uvjeta i neuređenost načina dokazivanja ispunjenosti ovog uvjeta u slučaju kada je isplatiatelj primjerice inozemna osoba. Naš dostavljeni komentar na nacrt propisa (komentar na čl. 7.) dostupan je na sljedećem linku: [e-Savjetovanje](#).

Premda je naš komentar bio primljen na znanje od strane Ministarstva Financija, Pravilnik koji je bio predmet savjetovanja krajem 2018. godine nije dodatno uredio ovo pitanje, pa je radi nejasnoća u tumačenju propisa možda propušteno da tijekom 2019. i 2020. godine određeni broj isplatiatelja omogući primitke po

stock purchase options in 2019 and 2020. Even though it is a pity that it took so long for the Ministry of Finance to react in respect of this issue, the removal of the problematic condition "based on the share of the profit" from 1 January 2021 should certainly be considered as a positive step taken towards implementing the clearer provisions and enabling the extension of the scope of recipients eligible to favourable tax treatment.

Relevant provisions of tax regulations which allow for favourable tax treatment of granting equity instruments under certain conditions explicitly refer only to own stocks and they do not state that this is applicable to shares. However, we do not see a justification for having a tax treatment of granting stocks in a public limited liability company different from a tax treatment of granting of shares in a private limited liability company. This issue has already been, on several occasions and from different sides, brought to the attention of the Ministry of Finance, so it remains to be seen whether the legislator will, in the course of some future changes of tax regulations, eventually react to this problem as well.

osnovi *odjela ili opcijnske kupnje vlastitih dionica*. Iako je šteta što je Ministarstvu financija trebalo toliko dugo da reagira na ovaj problem, uklanjanje problematičnog uvjeta „po osnovi udjela u dobiti“ od 1. siječnja 2021. godine svakako treba smatrati pozitivnim korakom poduzetog u pravcu uklanjanja nejasnih odredbi i omogućavanja širem krugu primatelja da se ostvareni primici oporezuju povoljnije.

Relevantne odredbe poreznih propisa koje omogućavaju povoljniji porezni tretman dodjele vlasničkih instrumenata pod određenim uvjetima izričito se odnose samo na vlastite dionice te ne navode da bi to bilo primjenjivo i za udjele. Međutim, ne vidimo opravdavanja za različit porezni tretman dodjele dionica u dioničkom društvu u odnosu na dodjelu udjela u društvu s ograničenom odgovornošću. I na ovaj problem je Ministarstvu financija više puta i s više strana skrenuta pažnja, pa ostaje za vidjeti hoće li prilikom nekih budućih izmjena poreznih propisa donositelj propisa konačno reagirati i na ovaj problem.

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