ORIGIN: COMMISSION
WP ENLARGEMENT + COUNTRIES NEGOTIATING ACCESSION TO EU
MD 173/16
13.07.16

Screening report

Serbia

Chapter 16 – Taxation

Date of screening meetings:

Explanatory meeting: 14-15 October 2014
Bilateral meeting: 5-6 march 2015

I. CHAPTER CONTENT

The **indirect taxation** *acquis* consists primarily of harmonised legislation in the field of Value Added Tax (VAT) and excise duties. *Value Added Tax* includes the application of a non-cumulative general tax on consumption which is levied on all stages of production and distribution of goods and services. The VAT *acquis* provides for an equal tax treatment of domestic and non-domestic transactions. VAT is also based on the neutrality principle whereby the tax applied is proportional to the price, whatever the number of intermediate transactions.

In the field of *excise duties*, the *acquis* contains harmonised legislation as regards energy products including electricity and petroleum products, manufactured tobacco products and alcoholic beverages. EU legislation establishes the structure of the excise duty that should be charged, together with a system of minimum rates for each product group. Goods are subject to duty when they are produced within the EU or imported from a third country. However, in principle, the duty is payable only to the Member State in which the goods are released for consumption (with certain limited exceptions), and at the applicable rates in that Member State. The EU legislation lays down provisions on production, holding, movement and monitoring of excisable goods, as well as provisions on travellers' allowances. As regards excise products, their holding and movement for commercial purposes within the Internal Market continues to be closely monitored to establish the chargeability of the duty.

The *acquis* in the area of **direct taxation** concerns certain aspects of profit taxes and the avoidance of double taxation. The focus is on eliminating distortions for cross-border economic activities between enterprises within the Union. The *Code of Conduct* for business taxation represents a political commitment by Member States to tackle harmful tax competition. Member States are required not to introduce new harmful tax measures, and to roll-back existing ones.

The EU legislation in the field of **administrative co-operation and mutual assistance** between Member States' tax and customs authorities provides tools to share information in order to prevent tax evasion and avoidance and help them enforce customs legislation. Certain tax and customs related information is exchanged automatically; other information is exchanged spontaneously or upon request.

The *acquis* in the field of **operational capacity and computerisation** covers different areas of taxation. The *acquis* on the Value Added Tax Information Exchange System (VIES) provides for direct electronic interchange of data between national VAT administrations. This allows national administrations to monitor and control intra-EU trade and detect possible irregularities. In addition, a specific IT system (Mini One Stop Shop - MOSS) is required to establish the inter-connection for exchange of information among Member States related to the special scheme for electronic services, telecommunications and broadcasting provided by traders not established in the Member State of consumption to EU citizens, namely non-taxable persons. VAT Refund is the system that enables registered VAT traders to obtain the refund of input VAT paid in another Member State in which the trader has no establishment or no seat of activity. Administrative cooperation makes use of standardised electronic forms (e-Forms) aimed at communicating and requesting information deemed to ensure the correct taxation of activities in each Member State. These forms are provided by the European Commission and shall be deployed and supported by each Member States' IT services. Regarding excise duties, the *acquis* requires IT systems to allow Member States to exchange information on producers and traders of excisable products. Such systems are the European register of operators (System for Exchange of Excise Data - SEED) and the system for monitoring *Central Services/Management Information System for Excise* (CS/MISE). Movements of excise goods under a suspension regime are monitored within the EU via the electronic Excise Movement and Control System (EMCS). In the area of direct taxation,

Member States are required to put in place a system of automatic exchange of information for five categories of income and capital (income from employment, directors' fees, pensions, life insurance products and ownership of an income from immovable property), for five categories of financial account information (dividends, capital gains, any other income generated with respect to the assets held in a financial account, any amount with respect to which a financial institution is the obligor or debtor, including any redemption payments, account balances) through standard computerised formats. The use of standard forms and computerised formats is foreseen also in the field of information exchanged upon request and spontaneously.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Serbia and the discussion at the screening meeting. Serbia accepted the *acquis* regarding taxation, with all its rights and obligations.

Serbia stated that its tax system is mainly based on the following legal framework:

- Tax administration: *the Law on Tax Procedure and Administration* which contains the main tax procedures, including the process of establishment, registration and control of taxpayers, as well as the organisation of the tax administration authority.
- Direct Tax laws: the *Personal Income Tax Law* which taxes income generated by natural persons; the *Law on Corporate Profit Tax* on the taxation of profit generated by legal entities; *the Property Tax Law* (in the part relating to the Property Tax)*;* the *Law on the Use, Possession and Carrying of Goods.*
- Indirect Tax laws: the *Law on Value Added Tax* on value added tax; the *Excise Duty Law* on excise duties; the *Property Tax Law* (in the part relating to *the Inheritance and Gift Tax* and Absolute Rights Transfer Tax)*;* and the *Law on Non-Life Insurance Premium Tax*.

According to Serbia, the total tax revenues (excludes social security contributions) accounted for over 18% of its Gross Domestic Product (GDP) in 2014. The biggest contributors to the tax revenues are VAT (55% of tax revenues) and excise duties (28%), while corporate (8%) and personal income tax (5%) play a lesser role.

As regards *institutional organisation,* the *Department for Fiscal System* in the Ministry of Finance is in charge of Taxation. It is the regulating authority. Its head is the Assistant Minister of Finance for the Fiscal System, who reports to the Minister through the Secretary of State. The *Tax Administration*, which is the implementing authority, is a body within the Ministry of Finance and it has over 5 500 staff. The Director of the *Tax Administration* is responsible to the Minister of Finance.

Concerning Kosovo*, Serbia explained that the country's fiscal territory is the same as its customs territory and that under the UN Security Council Resolution 1244/1999, supplies of goods and services to and from Kosovo are given a similar tax treatment to that of exports and imports and supplies of services to and from third countries respectively.

II.a. Indirect taxation

Serbia introduced the **Value Added Tax** in 2005 and its VAT law follows the model of the EU VAT legislation. According to 2014 data, revenues from VAT are over 26% of overall State revenues; they are, together with the Social Security contributions (28% of revenues) the

*This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

most important sources of State revenues. In general, Serbian VAT legislation is well aligned with the *acquis*.

Taxable persons are all persons having an independent business or running a business supplying goods and services, or with a business operation related to the supply of newly constructed buildings or the import of goods. Public institutions are also taxable persons if they carry out certain supplies of goods and services, in the case where not taxing those supplies may lead to distortions in competition.

According to Serbia, the taxable transactions are the supply of goods and services carried out for consideration by taxable persons in Serbia in the course of their economic activity, as well as the import of goods in the country. Supply of goods means the transfer of the right to dispose of tangible goods to a person who may dispose of these goods as an owner, unless the Law provides otherwise. Supply of services is any transaction other than a supply of goods. However, the supply of goods and services do not include the transfer of assets, against or without consideration, if the acquirer is already a taxable person or becomes a taxable person on the basis of the transfer and continues to perform the same business activity. Moreover, the replacement of goods within the guarantee period and the delivery of free business samples, advertising material and gifts of small value are not considered as taxable supplies. The supply of goods is taxed at the place of supply, while services are taxed generally at the place of the service provider.

According to Serbia, the taxable amount, or tax base, is the consideration received by the supplier in return for the supply of good or services. For imports, it is the value of the goods as established in line with the customs legislation. The taxable amount includes excise and other taxes, fees, customs duties and other import duties, except VAT, and includes incidental expenses, such as packing, transport and insurance costs, which the supplier charges the consumer. The tax base does not include the discounts granted at the moment of supply or the amounts which the taxpayer receives from the client for costs paid on the client's behalf.

Serbia stated that the standard VAT rate is 20%. The reduced rate is 10% and covers basic foodstuffs; medicines and orthopaedic items; fertilizers and plant protection products; textbooks and teaching resources; newspapers and periodical publications; firewood, natural gas, thermal energy for heating purposes; accommodation services in hotels, camps and other accommodation facilities; entrance to shows, cinema, exhibitions and cultural and sportive events; certain services covering basic needs (i.a., potable water, wastewater, public hygienic services, public transportation of passengers, funeral services and related products and services); and the transfer of residential property.

VAT registration is mandatory for persons established in Serbia with a turnover higher than RSD 8 000 000 (~EUR 65 000). Consequently, small taxpayers, including farmers, whose yearly turnover is less than RSD 8 000 000, are not obliged to register for VAT and have no right to VAT deduction. For farmers who carry out a supply of goods or services, the buyers have to pay a compensation of 8% of the value of the received goods and services, whereas they receive a tax credit for the purchase of those products.

Serbia applies a VAT exemption with the right to deduct input VAT to exports and assimilated transactions, including inward processing, transportation and other services-related exports, supply of goods and shipments to duty free zones and customs warehouses; the international transportation of passengers by air and river transport; the supply of aircrafts and ships for the international transport of persons and goods; the supply of gold to the National Bank of Serbia; supplies to diplomatic missions and international organisations and their foreign staff;

and the supply of goods and services in order to implement international agreements on grants, loans and credits.

Serbia has VAT exemptions without the right to deduct input VAT for amongst others: supply of money, securities or capital transactions; guaranteeing, mediation and investment funds; insurance and reinsurance services; land and its leasing; supply of building except for the first transfer of new construction; services of renting apartments for residential use; health care; social welfare and care; educational services, and lodging and feeding of students; services in the area of culture, sport or science by non-for-profit organisations; services of religious character provided by registered churches and religious communities; public broadcasting services, except for services of commercial character.

Serbia allows some VAT exemptions for imported goods, such as goods imported under an international donation agreement or humanitarian aid, imports of goods based on international agreements establishing tax exemptions, goods subject to suspension or exemption by customs procedures (free shops, temporary imports, transit, etc.), for certain non-commercial goods such as those included in Serbia's travellers' allowances, for low value consignments received free of charge by natural persons, provided these consignments are not commercial, and household items brought by new permanent residents. Further exemptions relate to agricultural activities of farmers living in the frontier zone and to certain imports of medical and orthopaedic equipment, as well as specially designed tools intended for the use of various categories of handicapped people.

Serbia has special schemes for farmers, travel agencies and for second hand goods, works of art, collector items and antiques.

The country reimburses the VAT paid for the purchases of baby food and baby equipment and for first time home buyers. Serbia also refunds VAT to humanitarian organisations, traditional churches and religious communities. Serbia acknowledged that such reimbursements and refunds are not aligned with the *acquis*.

VAT taxpayers are obliged to keep accounts, to issue receipts of every sale and every pre-payment, to submit VAT returns mentioning output and input VAT and to pay the net amount upon submission of their tax returns. The law prescribes minimum data on the receipt relating to supplier and client and to the specifics of the sale, including the rate and amount of VAT. VAT taxpayers must submit monthly or quarterly returns depending on their annual turnover.

The Serbian authorities declared that the most problematic issues in aligning to the VAT *acquis* will be repealing the 10% reduced tax rate for the transfer of residential property and the VAT refunds to traditional churches and religious communities, as well as for first time home buyers of an apartment, baby food and for baby equipment.

Serbia applies the **excise duties** system since 2001. In 2014, revenues from excise duties were close to 14% of overall State revenues. More than half of excise revenues are stemming from excise duty on energy products, while tobacco is at the second place. Excise revenues from the other two excisable products, alcoholic beverages and coffee, were less than 1% of overall State revenues.

Excise duty liability arises for excisable products produced or imported in Serbia. Exported goods are not taxable. There is an excise tax suspension regime for excise warehouses.

As from January 2017, the excise tax due by domestic producers has to be calculated on a monthly basis and the tax return is submitted to the tax authority within 15 days after the end of each month. Importers pay their excise taxes in the same way as import duties.

Certain energy products used for specific purposes can benefit from a refund of a part of the excise tax paid (e.g.: gas oils used as motor fuel for transportation purposes, mineral oils for industrial purposes or fuels used for heating). The tax administration charges the full excise amount upon the release for consumption of a product. When afterwards, it is consumed for one of the purposes that allows for a reduced rate, the user can claim a refund of the excise paid in excess.

Excise duty on imports or on sales is waived in the following cases: sales outside Serbia, sales to diplomats and international organisations, kerosene for aviation purposes, duty-free shops, non-commercial products brought by travellers coming from abroad within the limits of the personal traveller allowances and fuels in the standard reservoirs of vehicles coming from abroad.

Travellers are allowed to import without payment of VAT and excise duties the following items as personal luggage, for tobacco products: 200 cigarettes, or 100 cigarillos (cigars weighing up to 3 grams per piece), or 50 cigars, or 250 grams of smoking tobacco, or 250 grams of all these products in total; for alcoholic beverages: one litre of spirit containing more than 22% of alcohol, or one litre of alcoholic beverage of less than 22% alcohol, or one litre of sparkling and liquor wine, or two litres of other wine, or an adequate quantity combining the above beverages; for perfumes: one perfume or one *eau de toilette*. Apart from the personal luggage allowance, travellers are allowed to import articles, if not intended for resale, exempted from VAT up to a total value of EUR 100.

The table below shows the excise duty amounts for *alcoholic beverages* in Serbia as of 31 December 2015. For reference, it also shows the EU excise rates in similar categories. Serbian legislation distinguishes between what is defined as brandies made of fruit (plum brandy) and brandies made of cereals (whiskey) and the excise duty amounts on these products differ substantially.

Alcoholic products	**Serbia excise amount**	**EU minimum excise amount**
Beer (over 0.5% alcohol)	0.19 *EUR*/lit	Beer: 1.87 Euro/hl/°alcohol (≈ *0.09 EUR/lit of 5°)*
	-	**Wine**, and fermented products other than beer and wine (up to 18% abv) 0 Euro/hl product *(≈ 0 EUR/ 1lit)*
Low alcohol beverages[1] (from 5 to 15% alcohol)	0.17 EUR/lit	**Intermediate products** (beverages between 1.2 and 22% abv) 45 Euro/hl product *(≈ 0.45 EUR/lit)*
Brandies made of cereals and other agricultural raw materials (>15º)	Whisky 40º: 2.51 *EUR*/lit	**Ethyl alcohol** (products over 22% abv) 550 Euro/hl *(≈ 2.20 EUR/lit of 40°)*
Brandies made of fruit (>15º)	Plum brandy with 45º: 0.99 *EUR*/lit	*(≈ 2.48 EUR/lit of 45°)*
Hard alcoholic beverages and liqueurs (between 15º and 55º of alcohol)	Vodka 45.4º: 1.61 *EUR*/lit	*(≈ 2.50 EUR/lit of 45.4°)*
Ethyl alcohol	-	(≈ 5.28 *EUR* /lit of 96º)

Amounts calculated with exchange rate 1EUR = 123 RSD.

There is no excise duty for ethyl alcohol in Serbia. Excise stamps are obligatory to control the payment of excise duties on alcoholic beverages, except on beer.

Brandy produced by a natural person for his own consumption is exempted from excise duties. Serbia noted that the quantities that cover the own needs are not defined.

All registered producers of alcoholic beverages benefit from the same tax treatment in terms of excise duties regardless of their volume of production.

Manufactured tobacco products subject to excise duties as of 30 June 2015 are listed in the table below. For reference, it also shows the EU excise rates in similar categories. In the case of cigarettes, the weighted average retail selling price (WAP) per pack is used to establish the minimal excise duty. This WAP is determined twice a year by the authorities. The WAP of a 20 cigarette pack for the first semester of 2015 was 1.65 EUR. The minimum amount of excise tax that cigarettes must have is 100% of the overall amount of excise tax (specific and *ad valorem*) determined for the WAP. Serbia acknowledged that the definition of tobacco products needs to be further aligned with the *acquis*.

[1] Since 1 January 2016, low alcohol beverages category includes beverages containing between 1.2% of alcohol by volume (abv) and under 15% abv.

Tobacco products	**Serbia excise taxation**	**EU excise taxation**
Cigarettes	Specific excise tax[2]: EUR 0.43/per pack of 20 pieces (EUR 21.50 per 1000 pieces) *Ad valorem* excise tax: 33% of retail selling price (0.54/per pack on WAP 1.65€) Minimum overall excise duty (specific+*ad valorem*): 100% of overall excise duty of WAP (0.43+0.54 = EUR 0.97/pack = EUR 48.5/1000 pcs)	Specific excise tax: Its amount should be between 7.5% and 76.5% of the total tax (specific+*ad valorem*+VAT) *Ad valorem* excise tax Minimum overall excise duty (specific+*ad valorem*) requirements: 1. At least 60% of WAP, and 2. At least EUR 90/1000 pcs
Cigars and cigarillos	EUR 0.18/per piece (EUR 180/1000 pcs)	Minimum excise: EUR 12/1000 pcs
Smoking tobacco and other manufactured tobacco (fine cut, pipe, chewing tobacco and snuff)	41% of the retail selling price per kg Minimum excise requirements: The higher of these two amounts: 1. At least 100% of excise amount obtained with a 41% duty on the weighted average retail price of the category smoking tobacco and other manufactured tobacco; 2. At least 65% (in 2015) of the excise duty charged on WAP of 1000 pieces of cigarettes Minimum excise duty on fine cut tobacco is EUR 31.71/kg.	Fine cut smoking tobacco: Minimum excise: 46% of weighted average retail price of fine cut tobacco; or EUR 54/kg (in 2015) Other smoking tobacco: Minimum excise: 20% of weighted average retail price; or EUR 22/kg (in 2015)

Amounts calculated with exchange rate 1EUR = 123 RSD.

In Serbia, cigarettes must be marked with excise control stamps.

Serbia has adopted legislation which further increased the excise rates on tobacco in 2016, in order to narrow the gaps with *acquis* minimum levels.

Some *energy products* as oil products and biofuels are subject to excise duties. The table below lists the products subject to excise duties and the amounts charged to end-users as of 31 December 2015. The amounts included are the final excise amounts, charged after subtracting the reduced amount of the excise tax allowed by the Serbian authorities for specific use of certain fuels. The end-user can claim the refund of the reduced amount of the excise tax subject to presentation of documents proving the approved use of the fuel. For reference, the table also shows the EU minimum excise rates in similar categories. Where excise duties are set in different units in Serbia and the EU, they have been converted to equivalent units to facilitate the comparison. Fuel additives are also considered subject to excise duties at the same rate of the fuel to which they are added.

[2] Specific excise duty valid until 30 June 2015. The duty from 1 July until 31 December 2015 is 0.45 EUR/pack.

Excise taxation on energy products	Unit	Serbia excise amounts per unit in EUR	EU minimum excise amount per unit [3] in EUR
Leaded petrol	1,000 litres	447.15	421.00
Unleaded petrol	1,000 litres	406.50	359.00
Kerosene[4] used:			
- as motor fuel	1,000 litres	413.17	330.00
- as motor fuel for industrial and commercial purposes;	1,000 litres	**0.00**	21.00
- for heating	1,000 litres	---	0.00
Gas oils used:		406.50	
- as motor fuel;			330.00
• for transport of persons and objects[5]	1,000 litres	333.82	
• for industrial and commercial purposes;	1,000 litres	**0.00**	21.00
- for heating	1,000 litres	21.06	21.00
Other petroleum products obtained from oil fractions with distilling range up to 380°C[6]	1 kilogram	0.50	?[7]
- for industrial purposes;	1 kilogram	0.00	?[7]
Fuel oil	1,000 kg	---	**15.00**
Liquid petroleum gas (LPG) used:		325.20	
- as motor fuel;	1,000 kg	173.25	125.00
- as motor fuel for industrial and commercial purposes;	1,000 kg	**0.00**	41.00
- for heating	1,000 kg	37.24	0.00
Biofuels and bioliquids[8]	1,000 litres	422.52	?[9]
- as motor fuel for transport;	1,000 litres	333.82	?[9]
- for heating;	1,000 litres	21.06	?[9]
Natural gas		---	
- as motor fuel;	Gigajoule		**2.60**
- as motor fuel for industrial and commercial purposes;	Gigajoule		**0.30**
- for heating: business use	Gigajoule		**0.15**
- for heating: non-business use	Gigajoule		**0.30**
Coal and coke		---	
- for heating: business use	Gigajoule		**0.15**
- for heating: non-business use	Gigajoule		**0.30**
Electricity		**7.5% *ad-valorem***	
- for heating: business use	MegaWatt/h		0.50
- for heating: non-business use	MegaWatt/h		1.00

Amounts calculated with exchange rate 1EUR = 123 RSD.

[3] Directive 2003/96/EC, Annex I, Table A, Table B and Table C.
[4] Kerosene excise duty is 62 RSD/kg; 1kg kerosene = 1.22 l; 1EUR = 123 SRD.
[5] From August 2015 the use of gas oils as motor fuels for cargo ships in inland waterways was deleted as a separate category and is included in this one.
[6] Nomenclature tariff code CN: 2710 12 11 00, 2710 12 15 00, 2710 12 21 00, 2710 12 25 00, 2710 12 90 00, 2710 19 11 00, 2710 19 15 00, 2710 19 29 00, 2710 19 31 00, 2710 19 35 00, 2710 19 99 00, 2710 20 90 19 and 2710 20 90 99
[7] If there is no specific rate in the Energy Taxation Directive, the products should be taxed at the rate of the equivalent energy product.
[8] CN: 3826 00 10 00 and 3826 00 90 00.
[9] Biofuels and bioliquids should be taxed at the rate of the equivalent fuel. Normally biodiesel is taxed with the rate of gas oil, bioethanol with the rate of petrol. According to Article 16 of the Energy Taxation Directive Member States can apply tax exemption or tax reduction for biofuels provided that they respect certain conditions.

No excise duties apply to fuel oil, natural gas or bituminous coal; and mineral oils are not marked for tax purposes. Serbia levies *ad valorem* duties on electricity from August 2015.

Coffee in Serbia is subject to excise duties. The table below shows the products included and the amounts charged.

Coffee product	Excise
Unroasted coffee	EUR 0.68/kg
Roasted coffee	EUR 0.85/kg
Coffee shells and membranes	EUR 0.93/kg
Extracts, essences and concentrates	EUR 1.27/kg
Other coffee based products	EUR 2.54/kg of coffee in net weight of final product

Chocolate and products similar to chocolate, cream products, candy products, bakery products, pudding mixes and creams with coffee addition are not considered to be coffee and are not subject to coffee excise duties.

The excise duty on coffee is collected by the customs office only at the importation.

Serbia charges a specific excise duty on liquids for filling electronic cigarettes equivalent to EUR 32.52/litre.

Serbia stated that it will further align: the concepts of registered consignor and consignee of excisable products and provisions referring to monitoring and movement of excisable products with the Excise Movement and Control System established in Directive 2008/118/EC; the calculation method of excise duties for alcohol and alcoholic beverages with Directive 92/84/EEC and the definitions of excisable products with those contained in the EU legislation; the minimum taxation levels of tobacco prescribed in Directive 2011/64/EU; the definition of energy products subject to excise duties (fuel oil, coal and coke, and natural gas) and the minimum rates applied for the different uses with Council Directive 2003/96/EC.

II.b. Direct Taxation

The Serbian *Personal Income Tax Law* taxes income generated by natural persons and is applied on income from all sources. The object of taxation of a resident natural person is the income generated inside and outside Serbia. The object of taxation of a non-resident natural person is the annual income of any kind with a source in Serbia, e.g. wages, royalties, revenues from capital, capital gains and rental of own properties. Taxable revenues are considered the gross revenue reduced by required expenditures in certain percentages. For natural persons, there is a minimum non-taxable amount of earnings that is adjusted annually. Serbia applies a tax rate of 10% for income from wages or revenues form self-employment; 15% on revenue from yield of capital and capital gains; and 20% from revenue form copyrights, industrial property rights, rental of own real estate and from most other revenues. In general, payers of revenues are subject to withholding taxes which are deducted from the paid revenue. In some cases however, withholding tax is only charged if the payer of the revenue is a legal entity or entrepreneur.

Additionally, Serbia applies the Annual Personal Income Tax that taxes the sum of previous mentioned sources of revenue that exceeds the non-taxable amount (three times the average annual income of an employee in Serbia). The tax rate is 10% for the taxable amount up to six times the average annual earnings and 15% for the remaining part higher than six times the average annual earnings.

Revenues from savings in Serbian dinars and other (time or on demand) deposits are not considered taxable under the tax on the yield of capital and are not considered taxable either under the annual personal income tax. They are taxed and withheld at 15% on the amount of the realised revenues.

Non-residents and residents of Serbia are taxed in the same way and at the same rates for the revenues realised in the territory of Serbia, unless otherwise regulated by the Agreement on Avoidance of Double Taxation. When the payer of income is not obliged to calculate and pay the withholding tax, but the income type requires withholding, the non-resident taxpayer is obliged to submit a tax return.

The table below sums up the withholding regime of revenues received by natural persons.

Type of rent received	**Resident**	**Non-resident**
Interest	Withholding, rate 15 %	Withholding, rate 15 %
Dividend	Withholding, rate 15 %	Withholding, rate 15 %
Royalty	Withholding, rate 20%	Withholding, rate 20%
Other income	Withholding, rate 20%	Withholding, rate 20%

The *Corporate Profit Tax* Law taxes income generated by legal entities (corporations, cooperatives or non-profit organisations). The tax payer is considered a resident or non-resident entity depending on whether or not its head office or effective management and control are located in Serbia. Resident entities are taxed for all their profits, while non-resident are only taxed for the profits generated through permanent establishment or certain incomes earned in Serbia without a permanent establishment and subject to withholding tax.

The corporate profit tax base is the taxable profit determined in the fiscal balance sheet by adjusting the taxpayer's profit declared in the profit and loss account that is drawn up in conformity with accounting legislation that is based on international standards and on the methods for recognizing, measuring and estimating revenues and expenditures provided by the Ministry of Finance. The Law estimates revenues and expenditures for non-profit organisations and for permanent establishment of a non-resident taxpayer. Certain expenditures are not recognised and others only to a certain percentage. This applies to advertising and publicity materials where expenses are only accounted for up to 10% of the total revenue. Revenues are also adjusted and incomes exempted to avoid double taxation. This is the case for revenues from dividends and profit shares of other resident entities. Such revenues are exempt from the tax base of the recipient if the payer is subject to corporate profit tax under the Tax Law. The withholding tax deducted by the payer is considered as final and clears the tax liability. Capital gains and losses are included in the taxable profit. If a capital loss arises after the offsetting of each year's capital gains and losses, it is allowed that the loss be compensated up to five years with future capital gains. The corporate profit tax rate is 15% for all entities.

The table below lists the withholding regime of revenues received by legal persons:

Rent received	**Resident**	**Non-resident** (unless double taxation agreement rates apply)
Interest	No withholding, Income taxed at 15%	Withholding, rate 20%, legal entity from the jurisdiction of the preferential tax system rate 25%
Dividend	No withholding, Income not included in base	Withholding, rate 20%
Royalty	No withholding, Income taxed at 15%	Withholding, rate 20%, legal entity from the jurisdiction of the preferential tax system rate 25%
Other income	No withholding, Income taxed at 15%	Withholding, rate 20%, legal entity from the jurisdiction of the preferential tax system rate 25%

Tax credits are allowed to avoid international double taxation, but only up to the amount that would be determined when applying the provisions of the Serbian Law on the corporate profit earned abroad or on the income received from abroad. Tax credit may be used by a resident taxpayer which earns other incomes and pays withholding tax in that state, but not exceeding the amount that would be computed by charging 15% tax rate on a base equal to the amount of 40% of revenues on which withholding tax has been paid in that state.

A parent company resident in Serbia must include in its tax base the dividends received from its non-resident subsidiary in another country and is entitled to obtain a tax credit for the amount of tax paid by its non-resident subsidiary in another country on dividends included in the revenue of the parent company, as well as for the withholding tax that the non-resident subsidiary paid in another state for such paid dividends. The tax credit is calculated as the amount that would have been paid under the Serbian tax law for those profits.

A parent company resident in Serbia must include in its tax base income earned in another state as interests and royalties and is entitled to tax credit. The amount of tax credit is the amount of withholding tax paid, but only up to the amount which would be computed by implementation of the tax rate stipulated by the Serbian law (15%) on the base equivalent to the amount of 40% of incomes earned from interests/royalties. There are some exceptions for interests received from debt securities issued by certain Serbian public administration and government entities.

Under Serbian legislation, international conventions on avoidance of double taxation supersede the provisions of domestic law. Serbia informed that the interpretation applied in practice of the agreements on elimination of double taxation follows closely the Organisation for Economic Co-operation and Development (OECD) Model Convention.

Serbia has tax exemptions for non-profit organisations and for some enterprises with significant social utility (vocational training, rehabilitation, employment of disabled persons). There are also tax exemptions for big investments (higher than EUR eight (8) million and increasing employment by more than 100 workers).

Regarding asset transfers, Serbia's legislation[10] provides deferral of taxation for status changes such as mergers, divisions or partial divisions, but only between resident taxpayers. The transfer of assets in case of status changes such as those foreseen in the Merger Directive (Council Directive 2009/133/EC) and the distribution of the share capital is not consider**e**d a

[10] Definitions of transactions that lead to changes in the ownership of a company are included in the Company Law; and the tax treatment of transactions that lead to changes in the ownership of a company is included in the Corporate Profit Tax Law.

sale of property. Thus, the transfer of assets in the event of status changes is not subject to profit tax. The right to defer payment of the profit tax on capital gains is allowed when the owner of the legal entity which transferred the assets receives compensation in the form of shares, even if there is a partial cash settlement which does not exceed 10% of the total nominal value (or in its absence the accounting value) of the acquired shares. The tax liability for capital gains arises at the time when a legal entity, which acquired assets by the status change, sells those assets. The transfer of operating losses is exempt from taxation in the case of status changes. In the case when the assets of a subsidiary are transferred to the parent company, the parent company is not obliged to determine capital gain or loss.

Regarding the consolidating of companies for tax purposes, the Serbian legislation considers that companies are related when the parent company has direct or indirect control of at least 75% of the shares or participation in the subsidiary company. The related companies, if resident in Serbia, have the right to consolidate. Each company presents its tax return and the parent presents as well the consolidated fiscal balance sheet of the group, in which losses of some companies are offset by the profits of the others.

Serbia informed that its legislation on transfer pricing concerning transactions between associated persons follows the OECD model. Thus, the law foresees the definition of association, a legal provision allowing an adjustment, a limitation to adjustments increasing the profit (upwards adjustments), rules on aggregation and separation of transactions; rules on how to deal with ranges and a requirement to interpret the arm's length principle in accordance with the OECD Guidelines. However, an association can already be assumed with a possession of 25% of shares and interest. Moreover, in Serbia a test requires the evaluation of the taxpayer, especially in relation with jurisdictions with a preferential tax regime.

The Serbian legislation does not include the procedure of mutual agreement for eliminating double taxation in connection with the adjustment of profits of associated enterprises. Serbia has not signed the EU Arbitration Convention.

Regarding harmful tax competition, Serbia declared that all legal entities are subject to the same 15% tax rate. The tax base for corporate profit tax is determined in the same manner for all taxpayers, except for non-profit organisations and for non-resident taxpayers that generate profit in Serbia through a permanent establishment and who are not obliged to keep accounting records in accordance with accounting regulations.

Tax incentives may only be introduced by law and the Serbian law stipulates three types of tax exemptions: for the investment of fixed assets and increasing employment, for non-profit organisations, and for vocational training, professional rehabilitation and employment of disabled persons.

II.c. Administrative co-operation and mutual assistance

Serbia applies 54 international agreements on avoiding double taxation related to personal income tax, corporate tax and property tax. Out of those, 26 are with EU Member States. There are two agreements with Luxembourg and Portugal that are at an advanced stage of negotiation. Serbia has also concluded diverse agreements on cooperation and mutual assistance with the tax administrations of five other countries in the region, in order to exchange information and provide assistance related to the detection of VAT fraud and avoidance and prevention of money laundering.

Serbia has legislation on prevention of money laundering and on countering the financing of terrorism. A financial intelligence unit collects reports on suspicious transactions, analyses

data collected and issues reports to the prosecutor's offices and the police. This legislation requires legal entities to identify the beneficiary of a transaction and to verify his identity when establishing a business relationship.

In most of the cases, exchange of information takes place upon written request of the competent authority and mainly refers to the control of the business relationship and the delivery of data on the gross taxable income.

Serbia stated that it will have no difficulty in accepting the EU *acquis* in the field of administrative cooperation. It also stated that it will establish a department for the exchange of information that will act as a central liaison office. Moreover, the country intends to enhance the technical capacity of the tax authority to facilitate the efficient exchange of information. This includes the compulsory EU IT systems, such as the Excise Movement Control System (EMCS) and the VAT Information Exchange System (VIES).

II.d. Operational capacity and computerisation

The administrative unit in charge of taxation IT systems in Serbia's Tax Administration is the *Sector for Information and Communication Technology*. It has around 120 employees, which is about 2% of all staff in the Tax Administration. The maintenance of certain IT applications is outsourced.

Serbia stated that the Tax Administration has significantly improved its IT internal architecture and online services. Many taxes have to be filed exclusively in electronic forms and by January 2017 this will apply to all tax forms.

According to Serbia the Tax Administration is aware of the challenges constituted by the EU interconnectivity and interoperability requirements to be addressed upon EU accession. As a consequence, Serbia considered that the IT strategy is to be updated and published.

Since Serbia joined the Common Transit Convention on 1 February 2016, the common communication network/common interface system (CCN/CSI), which is a prerequisite for exchanging information with the European Commission and the EU Member States, is available. Although managed by the Customs Administration and subject to the conclusion of an agreement with the latter, the Tax Administration could make use of the system too.

Serbia stated that it expected no difficulties in developing its tax related information and communication systems in line with the Interoperability and Interconnectivity Strategy of the European Union and in ensuring smooth exchange of information with the EU Member States.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Serbia's general structure of the tax system is similar to that of the EU Member States. The tax legislation is overall at a satisfactory level of alignment with the *acquis* on VAT, excise duties and direct taxation, while the areas of cooperation and mutual assistance and computerisation are at an early stage of alignment as they are not particularly policy relevant until accession.

As regards *institutional and administrative capacity*, Serbia's Tax Administration needs to have the appropriate systems, procedures and personnel in place in order to implement and enforce the *acquis* covered by this chapter, so that a homogeneous and harmonised approach towards the EU is ensured. This requires the development of policies, systems, procedures, technologies and instruments compatible with EU requirements and standards.

Significant efforts are needed for further alignment to close remaining gaps and to ensure the proper implementation and enforcement of the *acquis*.

As indicated in Part II, concerning Kosovo, the country's fiscal territory is the same as its customs territory and supplies of goods and services to and from Kosovo are given a similar tax treatment to that of exports and imports and supplies of services to and from third countries respectively. The Commission will monitor that this continues to be the case.

The assessment below is without prejudice to the assessment of Serbia's fiscal legislation under Chapter 8 – Competition, and in particular with the obligation to align the Law on Personal Income Tax, the Law on Corporate Profit Tax and the Law on Free Zones with the State aid control acquis.

III.a. Indirect Taxation

In the field of indirect tax legislation, Serbia is at a good level of alignment. The **Value Added Tax** follows the main structure laid down in the EU legislation. However, there are still some discrepancies which need to be addressed by the time of accession.

Indeed, the concept of intra-community transactions is not part of the VAT system in Serbia and needs to be introduced into its legislation at the latest upon accession. Also, the VAT scope needs some adaptations. The definitions and rules applicable to taxable persons, taxable transactions, place of taxable transactions for services, chargeable events, and chargeability of VAT need to be aligned with the *acquis*. Certain goods and services, such as e.g. natural gas, thermal energy for heating and the transfer of residential property rights that are now subject to a reduced VAT rate should be changed to the standard rate according to the *acquis*.

VAT exemptions are mostly in line with the *acquis*. However, some compulsory exemptions will have to be implemented and some others abolished, for instance on the import of certain goods for disabled people, the VAT refund to religious communities, baby food and equipment and for first time home buyers, the exemption concerning international transport by river and the import of ships used for this purpose. VAT exemptions granted in the framework of certain international aid assistance projects will need to be brought in line with the acquis upon accession. Other exemptions, relating to goods purchased by disabled persons or their associations will have to be further aligned with the *acquis*.

Tax exemptions given in Serbia to goods entering in a free zone should not apply to goods for final use or consumption within the free zone, such as construction materials, manufacturing equipment and energy supplies. The same goes for services that are not directly related to the exempt supplies of goods, such as security, cleaning, advertising, accounting, etc. The tax exemptions established in the Serbian law on free zones have to be aligned with the VAT Directive.

In order to align with EU definitions and to prevent loopholes, Serbia needs to clearly define new buildings and new means of transport for purpose of applying the VAT.

Serbia has to align with the *acquis* on certain special schemes. It has to implement the special scheme on investment gold and needs to further detail the rules for VAT refunds to taxable persons not established in Serbia. In particular, Directive 2008/9/EC on refunds of VAT will have to be transposed. The registration threshold of EUR 65 000 is much higher than that provided for in Article 284 of the VAT Directive. The special schemes for farmers and travel agents are similar to those in the *acquis*. Formal obligations would have to be aligned: in

particular regarding the obligation to submit recapitulative statements of intra-community transactions.

In the field of **excise duties**, Serbia follows the main structure of EU legislation. However, it levies excise duties on e.g. coffee and electronic cigarettes that are not taxed at EU level, whereas fuel oil, bituminous coal and coke, natural gas, and motor fuel for industrial purposes are not subject to excises in Serbia. In the EU, excisable products, as defined by the EU legislation, must be taxed at least with the EU minimum excise duties.

The VAT and excise duty exemptions provided for goods imported in the personal luggage of travellers arriving from abroad are in line with the *acquis* for tobacco; but Serbia will need to adapt the quantitative limits for alcohol[11]. Moreover, as Directive 2007/74 establishes no specific limits for perfumes and *eau de toilette*, Serbia will have to review the limits for those two products. Indeed, in the EU they would be comprised in the travellers' allowance monetary limit for imported products other than alcohol and tobacco (maximum EUR 430 for air and sea travellers and EUR 300 for other travellers). Serbia currently applies a threshold of EUR 100 and therefore should amend its legislation. Upon accession Serbia will have to apply these allowances to travellers arriving from non-EU countries only. Similarly, upon accession Serbia will have to align intra EU travellers' allowances with those in Directive 2008/118.

Serbia will have to align with the EU the definitions of registered consignor and registered consignee of excisable products, as well as the provisions referring to monitoring and movement of excisable products. In addition, the EU Excise Movement and Control System (EMCS) will have to be introduced.

Serbia's legislation on *alcoholic products* is not in line with the *acquis* with regard to the structures and scope of the excise duties, the definition of the products, the taxable basis and the minimum levels of the duties. The differences create important discriminations against certain imported brandies (brandies made of cereals) and in favour of locally produced spirits (brandies made of fruits). This discrimination needs to be addressed urgently and the differences corrected as it is in violation of Article 37 on fiscal discrimination of the Stabilisation and Association Agreement between the EU and Serbia. Ethyl alcohol needs to be taxed and exemptions for denatured alcohol introduced. Given the widespread practice of home-brewing Serbia will have to adequately implement legislation in order to ensure that all alcoholic beverages produced, even for self-consumption are taxed according to the *acquis*. Serbia may apply reduced rates of duty to "small producers" of alcoholic beverages by aligning its legislation with the provisions of Directive 92/83/EEC.

On *tobacco products*, Serbia needs to align with Council Directive 2011/64/EU on the definition of manufactured tobacco products. The excise tax on cigarettes contains both a specific and an *ad valorem* component which are defined in compliance with the *acquis*. Regarding the minimum taxation of cigarettes, Serbia's excise taxation is below the level required by the *acquis*. Serbia informed that it has adopted a law to increase the specific excise tax, with the aim to gradually approximate to the level of minimum taxes on cigarettes in the EU. The excise duty on cigars and cigarillos is compliant with the minimum taxation levels in the *acquis*. In other categories of tobacco products (fine cut tobacco and other smoking tobacco) the Serbian excise duties are calculated in the same way as in the EU, but the Serbian rates and minimum excise levels are lower. Serbia needs to align with the *acquis* levels of taxation, including the programmed tax increases in Directive 2011/64/EEC.

[11] Directive 2007/74 allows travellers to bring in either: (a) 1 litre of alcohol exceeding 22% of alcohol by volume (abv) or (b) 2 litres of alcohol not exceeding 22% abv. Travellers may also bring in 4 litres of still wine and 16 litres of beer.

Since January 2016 no guarantee is required to obtain the fiscal stamps used to control the payment of excise duties, and discriminatory requirements on the use of fiscal stamps between local producers and importers has finished.

As regards *energy products*, the range of products subject to excise in Serbia is smaller than those falling within the scope of application of the Energy Taxation Directive[12]. Consequently, the following products would have to be made subject to excise taxes: kerosene used as motor fuel for industrial and commercial purposes, gas oils as motor fuels used for industrial and commercial purposes, fuel oil, liquid petroleum gas used as motor fuel for industrial and commercial purposes, natural gas, coal, and coke. Electricity is taxed as from August 2016, but with *ad valorem* duties instead of the specific duties established in the *acquis*. Changes required have been marked in bold in the comparative table in part II.a; where Serbia applies no tax the EU minima has been marked in bold. The range of exceptions and reductions of excise duties needs to be thoroughly reviewed as some of the uses are not aligned with the *acquis*, i.e. kerosene for aviation purposes when used for private pleasure-flying. Serbia has to align with the fiscal fuel markers in gas oils and kerosene established under the *acquis*[13].

For all three categories of excisable products – alcohol, tobacco and energy - Serbia needs to adopt the EU's system of warehousing and of moving of goods under the suspension regime.

Regarding excise duties on coffee, the taxation measures need to apply to both locally processed and imported products. By only charging the excise duty upon import, the tax acts as an additional customs duty that discriminates against imported products because imported processed coffee is subject to a higher level of taxation than similar locally processed coffee. This fiscal discrimination is in violation of Article 37 of the Stabilisation and Association Agreement and needs to be addressed urgently.

III.b. Direct Taxation

Serbia has a satisfactory level of alignment with the *acquis* in the direct tax legislation, but it will need to implement the intra-community dimension upon accession.

Regarding corporate tax, Serbia's system follows the same general lines as the EU legislation. However, Serbia will need to ensure alignment with the Parent Subsidiary Directive (Council Directive 2011/96/EU) on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States**.** The elimination of double taxation will have to be guaranteed by the adoption of provisions offering tax credits or exemptions to resident companies receiving dividends from other Member States which have already been subject to taxation. Regarding dividends distributed by Serbian resident companies, a system of direct exemption must be adopted.

Upon EU accession, alignment will need to be ensured with the Merger Directive (Council Directive 2009/133/EC) on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States as well as to the transfer of the registered office, of a *Societas Europaea* (SE) or European Cooperative Society (SCE), between Member States. For this purpose, Serbia will have to:

- Extend the deferral tax regime to transfer of assets where the shares issued in consideration by the receiving company are acquired by the transferring company;

[12] Council Directive 2003/96/EC.
[13] Directive 95/60/EC provides for a common marking system.

- Cover the case of exchange of shares, since the deferral of taxation is also linked with other rules concerning the valuation of shares exchanged;
- Cover triangular cases, where the merger, division or transfer of assets include a permanent establishment situated in a Member State different from that of the transferring company;
- Establish rules on the transfer of seat of a SE or and SCE if the company leaves Serbia or moves to the country. Even without taxation in these cases, the rules concerning the valuation of the assets are relevant for future taxation.
- Provide for the exemption of capital gains deriving from the cancellation of the holding that the receiving company may have in the transferring company that is dissolved in case of a merger or a division.

The *acquis* does not allow the tax deferral regime when there are partial cash settlements of asset transfers.

Upon accession at the latest, Serbia also needs to align with the Interest and Royalties Directive (Council Directive 2003/49/EC).

In general, the Serbian legislation includes most of the necessary building blocks as foreseen by the OECD transfer pricing provisions. Nevertheless some further alignment efforts are required: Serbia has to sign and implement the EU Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises required in the *acquis*. It also needs to further legislate as regards a provision requiring or allowing the implementation of decisions reached under the Arbitration Convention, even if the relevant tax year(s) would under the general provision already be closed under the statute of limitation. The test required in Serbia for the evaluation of the taxpayer, especially in relation with jurisdictions with a preferential tax regime, is rather an anti-abuse provision not directly connected to transfer pricing. More detailed provisions on specific aspects like intangibles or services and pricing documentation requirements are missing, as well as a procedure which allows the conclusion of advanced price arrangements.

Although not part of the *acquis*, it is recommended that Serbia ensures legal certainty by making its national legal framework consistent with the arm's length principle. Serbia is also recommended to establish proper mechanisms that allow transfer pricing adjustments when other countries introduce adjustments which are justified in principle and as regards the amount, the so called 'corresponding adjustments'. For the smooth management of transfer pricing issues it is also recommended that Serbia establishes detailed provisions on intangibles and services, on the conclusion of Advanced Price Arrangements (APA) and on transfer pricing documentation requirements.

As regards the EU *Code of Conduct for Business Taxation* (OJ C2, 06.01.1998), Serbia's commitment to withdraw and to abstain from introducing potentially harmful tax measures will be monitored. In addition, Serbia's direct tax system and, in particular its tax exemptions and tax breaks, need to be brought in line with the *acquis*.

Serbia does not apply *capital duties* or any similar taxes on the raising of capital as provided for in the Council Directive 2008/7/EC.

III.c. Administrative co-operation and mutual assistance

Serbia's legislation in this area is at an early stage of alignment with the *acquis* as it is not particularly policy relevant until accession. Serbia does not have any specific provisions reflecting the *acquis* on administrative cooperation and mutual assistance, except for what is

established in the individual bilateral agreements on avoiding double taxation and on certain procedures of the Tax Administration regarding the provision of international legal assistance. Unlike the 28 EU Member States, it has not signed the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters.

The tax cooperation in the EU requires effective exchange of information and mutual assistance between the Member States' tax authorities, especially for intra-community transactions in VAT, excise duties and direct taxation. Administrative structures such as the Central Liaison Office and the Excise Liaison Office must be created to process the information, enable the cooperation and channel the assistance requests.

From the date of accession, Serbia needs to fulfil all requirements of the Administrative Cooperation Directives 2011/16, 2014/107 and 2015/2376, the VAT Regulation 904/2010 and the Excise Regulations 389/2012, 612/2013 and 389/2012, in particular concerning exchange of information on request, spontaneous and mandatory automatic exchange of information with all the Member States and other forms of administrative cooperation as foreseen by the legislation. Moreover, Serbia will have to adopt the necessary legislative and administrative measures and establish the appropriate infrastructure to be ready to apply the recovery directive (Council Directive 2010/24/EU).

The Serbian tax authorities stated that they need to reinforce their IT and communications capabilities, in order to establish interconnectivity and interoperability with EU Member States tax administrations and the Commission. They have already prepared a general timetable with the planned activities for the establishment of a central liaison office. In order to advance in this area, they will request financial and technical support from EU under assistance programmes like the Instrument for Pre-Accession Assistance (IPA), Fiscalis and the Technical Assistance and Information Exchange instrument (TAIEX). The Serbian authorities do not foresee any legal problems in aligning and complying with the *acquis*.

III.d. Operational capacity and computerisation

Serbia is at an early stage of alignment with the *acquis* and needs to make substantial efforts to endow its tax administration with the appropriate IT systems, procedures and personnel in order to implement and enforce the EU legislation. Serbia will have to develop a strategy for the improvement of its IT capacity and performance.

As regards *computerisation* in the field of VAT, Serbia will need to adapt its IT systems to allow interoperability and interconnectivity with the EU systems (VAT Information Exchange System and related systems). Serbia also needs to ensure that the exchange of information among EU Member States related to the special scheme for electronic services, telecommunications and broadcasting provided by non-established traders to non-taxable persons is in place and inter-connected with EU systems. The same goes for refund of VAT as envisaged in Council Directive 2008/9/EC.

Regarding excise duties, Serbia will require a national system for surveillance of the movements of excisable products and develop an infrastructure that allows interoperability and interconnectivity with the EU Excise Movement Control System (EMCS) and its supporting systems as the System for Exchange of Excise Data (SEED) register of operators and the system for monitoring CS/MISE (Central Services Management Information System for Excise). For developing the EMCS, the general arrangements for excise duty have to be aligned with the Council Directive 2008/118/EC.

In the area of direct taxation, Serbia needs to adapt its IT system, on the one hand, to enable the exchange of information foreseen under the EU law on the date of accession, including the automatic exchange of information, and, on the other hand, to ensure the correct application of the company tax and administrative cooperation directives.

Serbia will also have to prepare for the exchange of all other data and electronic forms in the taxation area. For example, the Serbian taxation information needs to be integrated in the "Taxes in Europe" database available on the Europa website.