Amendments to the Law on Corporate Income Tax were adopted at the end of 2015, introducing an important new element relating to taxation of non-residents in Serbia. This new rule, which will be applied as from March 1, 2016, specifies that withholding tax at the rate of 20% will be paid on income generated by non-residents from residents, on the basis of fees for services provided or received, or to be provided or received in the territory of the Republic of Serbia.

The most typical cases when non-residents provide services to residents in the territory of the Republic of Serbia are various management services which foreign parent companies provide to their subsidiaries established in the territory of the Republic of Serbia, and cases of providing services in context of public procurements.

While there should be no major issues in these cases, in the sense that it is quite clear that a service is provided/received in the territory of the Republic of Serbia, problems could arise in the case of services provided electronically. Unfortunately, the legislator did not take into account that this important issue would remain unresolved, failing to regulate when services are considered to have been provided or received in the territory of the Republic of Serbia, and that this would cause problems both for non-residents providing these services, and for residents receiving them. Neither of them will be certain whether withholding tax needs to be calculated and paid on a specific service or not. The amendments to the Law had been sent to the Parliament and adopted without a public discussion, which is probably one of the reasons why this issue failed to be regulated in detail, demonstrating how harmful it is to adopt laws in a procedural rush, without sufficiently analyzing the proposed amendments.

Another question that could be raised with regard to this amendment is the relationship between this rule and the rule relating to permanent establishment (PE). Namely, the Law on Corporate Income Tax specifies that a PE is any permanent place of business through which a non-resident taxpayer conducts business. If a non-resident provides services in the territory of the Republic of Serbia during a specific period of time (it should be noted here that the regulations do not further specify the term “permanent” in the formulation “permanent place of business”), can it be considered to have a PE through which it provides such services? The Law contains a rule specifying that withholding tax is not paid if income is paid to a PE of a non-resident. However, up to which point is there only the obligation of paying withholding tax, and from which point is the non-resident to be considered to have a permanent place of business? It remains to be seen whether this issue will be raised in practice, and how it will be resolved.

Author: Nikola Đorđević, partner in law firm JPM Janković Popović Mitić www.jpm.rs