

One of the characteristics of the Serbian tax system is that it deals very little with the issue of tax treatment of payments resulting from family relationships. Except for the rule specifying that transfer of property directly related to divorce does not count as capital gain, and for tax exemption in the case of gifts between persons first in line to inherit, no other issues that could arise from family relationships are regulated at all.

Firstly, regulations do not determine the tax treatment of support payments, perhaps the most significant payments arising from family relationships. Support is regulated by Family Law and as a rule constitutes a sum which the payer of support is obliged to pay to the supported person. For conditions of the support obligation to even exist, depends on the relationship between the payer and the support recipient. Thus, a minor child is entitled to support with no conditions attached, while a child of age is entitled to support if he/she is either (i) incapable of working and has insufficient means to support himself/herself; or (ii) a regular student, in which case the entitlement ends when a child turns 26. A spouse or common-law partner is entitled to support if he/she has insufficient means to support himself/herself, and is incapable of working or is currently unemployed. A child's mother is entitled to support from the child's father if she has insufficient means to support herself. However this entitlement is restricted to the period from three months before birth to one year after birth of a child. Under certain conditions parents, siblings, adoptive relatives and some in-laws are also entitled to support.

Because the tax treatment of support payments is not regulated, such payments are practically classified as other income, based on the general provision of Article 85 paragraph 1, point 16 of the Law on Citizen Income Tax, which specifies that other income is taken to mean "all other income not taxed on other grounds and not exempt from taxation or exempt from payment of tax hereunder." Since support payments are not exempt from taxation or exempt from payment of tax, it then follows that support payments are taxed as other income, at the effective rate of 16% (nominal rate of 20% of the basis comprising the received payment decreased by 20% for standardized expenses).

However, considering how general this provision is, few people are even aware of the fact that support payments could be covered by it as well. There are also no known cases of the tax administration attempting to collect tax on support payment. Still, it is not a favourable fact that Serbian tax regulations have omitted to expressly specify that support payments are exempt from taxation. This is particularly justified in cases where payer and recipient of support live together, primarily because it is difficult to determine the amount given for support. This amount is less challenging to determine in cases of divorce and support to which a child is entitled from a parent not having custody of a child. This is due to the fact that in such cases the amount is determined by a court decision. However, there are cases of problems in exercising this right in practice. Mothers, who usually get custody of the child, often have great trouble collecting the support payment their children are entitled to

from their former husbands. Therefore, it would be unjustified to further burden such payments with taxation, as long as the government lacks efficient methods to enable this right to be exercised. Even if the government does believe that support payments should be taxed, this should be clearly determined by specifying that income from support payments is to be taxed at a particular rate of tax, so that taxpayers would precisely know what their obligations are, instead of seeking to interpret a very general provision.

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