

Rulebook on Exemption from Capital Gains Tax on the Transfer of Copyright and Related Rights and Industrial Property Rights ("Official Gazette of RS", no. 71/2024)

The Rulebook on Exemption from Capital Gains Tax on the Transfer of Copyright and Related Rights and Industrial Property Rights ("Official Gazette of RS", no. 71/2024, "Rulebook") comes into effect and will be applied from August 24, 2024. It specifies the conditions for obtaining the right to exemption from capital gains tax on the transfer of copyright and related rights, as well as industrial property rights, which the taxpayer of the capital gains tax contributes as non-monetary capital to a resident company of the Republic of Serbia. It also outlines the conditions under which the right to tax exemption may be lost, in accordance with Article 79b of the Personal Income Tax Law ("Official Gazette of RS", no. 24/2001, 80/2002... 6/2024 – updated dinar amounts, "Law").

Conditions for obtaining the right to tax exemption under Article 79b of the Law include the following:

- The subject of the transfer must be proprietary copyright and related rights in works deposited with the authority responsible for intellectual property, as well as industrial property rights registered according to applicable laws;
- These proprietary rights must be contributed as non-monetary capital to the company, either as non-monetary capital to the initial capital of a newly founded company or to the capital of an existing company through a capital increase;
- The value of the proprietary rights must be assessed by a licensed appraiser, court-appointed financial expert registered with the competent authority, or an auditor or audit company conducting the valuation of the capital, in accordance with the law governing auditing.

Proof of all the above circumstances (registration of proprietary rights, contribution to non-monetary capital, and proper valuation) must be submitted with the tax declaration for determining the capital gains tax. It is important to note that tax exemption is not automatically applied; the competent tax administration must establish and grant the right to tax exemption based on the submitted documentation during the tax procedure.

The condition for final exemption from capital gains tax in this case is that the resident company of the Republic of Serbia, in whose capital the proprietary right covered by the Rulebook is contributed, does not fully dispose of the proprietary right. In case of disposal, the company must notify the taxpayer, and the taxpayer is required to notify the competent tax administration of the loss of the right to tax exemption within a maximum of 30 days from the day of the transfer of the proprietary right. The same applies if the resident company that acquired the proprietary right transfers that right to an affiliated entity or an entity owned by its affiliated party within two years of acquiring the right, under terms that do not comply with the arm's length principle.

If the company or taxpayer does not follow these steps, the tax administration has the authority to establish the tax liability ex officio.

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