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Tax Consulting as a Special Type of Service Activity

Abstract: Tax consulting is a special type of service activity, with certain specifics related to some other activities. The name itself indicates that it involves providing advisory services, given by specially qualified and trained professionals, with respect to professional-ethical and professional principles, and above all the principles of legality, independence, autonomy, expertise, conscientiousness and professional secrecy as well as other principles that are mutually determined and supplemented. The main purpose of tax consulting is to help taxpayers in completing their tax obligations and to properly understand and apply tax laws. In a broader sense, it means representing the taxpayer in tax and court proceedings. On the other hand, observing the complexity of the tax-legal relationship, the inequality of the parties in this relationship, which stems from the very nature of taxes, it is indisputable that tax advice contributes to tax efficiency and overall tax policy, humanization of tax-legal relationship, development of taxpayers' awareness on the importance of taxation and the development of tax morale. The goal of this paper is to investigate tax consulting in Bosnia and Herzegovina and the countries of the region, using research, historical, normative and comparative methods.

Key words: tax consulting, tax advisor, taxpayer.

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1. INTRODUCTION

The very nature of the tax-legal relationship, the content of which consists of a set of tax authorizations and duties on the part of tax authorities, which act as a state authority, and a set of rights and obligations of taxpayers who owe and pay taxes, indicates that alitigants are not equal in this relationship.¹ Besides the complexity of the nature of the tax-legal relationship and the inequality of the parties in this relationship, the complexity of the entire tax issue, and its connection with other areas of law and economics, especially with administrative law, civil law, commercial law, accounting, and the dynamics of change in tax regulations, justifies the need of taxpayers to seek professional assistance from qualified professionals in the performance of their obligations, not only in fulfilling regular obligations to pay taxes, but also assistance in getting to know the entire tax matter.

¹ Tomić. Z. (1991). *Administrative law*. Belgrade: Nomos, 73.

In order to comply with tax laws, taxpayers must be informed about the operation of the entire tax system and the manner of determining the tax liability, in a word, they must understand the tax matter. In addition to other taxpayers' rights (right to appeal, consistent application of legal regulations, right to confidentiality and confidentiality of data), the right to information and the right to certainty are of particular importance because they allow taxpayers to anticipate tax liabilities that may affect planning their own economic and other activities.²

Therefore, the complexity of the tax matter, as well as the dynamics of changes in tax regulations are the main reasons that explain the need to provide advisory services in the tax matter. In order to ensure healthy financial relations in the country, it is necessary that all taxpayers have the opportunity to receive expert advice on tax issues, i.e. to establish the activity of tax consulting. Thus, from ancient times (in ancient Greece, the Roman Empire) the first forms of tax advice were recorded.³ In the Middle Ages, scribes were the ones who, among other things, provided certain assistance to persons in fulfilling their tax obligations, and these persons reflect the beginning of counseling and auditing that we know today. In the period of the new century, commercial bookkeeping developed, which required special experts of bookkeepers and accountants, whose task was to show tax revenues. In the 20th century, as a new form of tax, it was introduced into the tax system of other European countries, when the existing auditors specialized in tax consulting.

However, as the tax system became more complicated over time with the introduction of new forms of public revenue, in practice there was a need for qualified tax advice, so at the beginning of the twentieth century, tax consulting developed into an independent professional activity. Germany is considered to be the first country to most fully regulate the activity of tax consulting by adopting: the Law on Tax Advisers, the Ordinance on the Application of the Law on Tax Advisers, the Professional Code for Tax Advisers and the Ordinance on Fees for Tax Advisers.⁴ By complicating the tax system and the need to establish cooperation with taxpayers, other countries, relying on legal solutions from German tax legislation, have established the activity of tax consulting, including countries from the former Yugoslavia.

However, despite the establishment of tax consulting as a special service activity that aims to provide advice and professional assistance to taxpayers, we should not neglect the efforts of tax authorities to increasingly count on cooperation with taxpayers in the taxation process and the commitment of tax authorities to take certain measures to improve the position of taxpayers.⁵ Some of the elements aimed at improving the position of taxpayers are as follows: improved level of organization and modernization of tax services, introduction of electronic communication between taxpayers and tax authorities, which provides access to a wide range of information needed for taxation and the need for direct participation of taxpayers in the taxation process.

² Drljača, Z. (2018). *Public finance and financial law*. Istočno Sarajevo: Faculty of Law PIM University in Lukavica, 152.

³ Dabić, Lj. (2007). Tax consulting and tax advisors in transition countries. *Legal Life - Journal of Legal Theory and Practice*, 12, 5-32.

⁴ Ilić-Popov, G. (2013). Tax advisors and their activity in the tax law of the countries of the former SFRY. *Foreign Legal Life*, 1, 26-43.

⁵ Anđelković, M. (1999). *Tax Law-Theoretical Aspects and Tax Reforms*. Niš: Center for Publication of the Faculty of Law in Niš, 118.

2. THE IMPORTANCE OF TAX CONSULTING

The profession of tax advisor has acquired one of the most prestigious professions, because its importance is recognized not only in protecting the interests of taxpayers, but also presupposes greater certainty in the collection of public revenues, which contributes to the stability of the budget system and realistic planning of public expenditures. For the taxpayer, expert and professional advice in tax matters means security in fulfilling tax obligations and protection of his rights in tax proceedings, ie it gives him security in exercising the right to consistent application of tax laws, while respecting the principles of fairness and impartiality. At the same time, it should be borne in mind that the efficiency of taxation depends on the cooperation of taxpayers and tax authorities, without which the function of the tax as the primary instrument of economic and fiscal policy would not be achieved. By strengthening trust between the subjects of the tax relationship, the antagonism between tax authorities and taxpayers is alleviated, and the efficiency of the tax system is increased, the degree of which increases with the strengthening of trust.

The skill of tax policy makers is reflected in taking measures to increase the number of taxpayers who understand and pay tax obligations in compliance with the norms of tax legislation.⁶ The development of trust between tax authorities and taxpayers is influenced by several factors, such as: perception of the unfairness of the tax law for some categories of the population, inconsistent and rigid tax penal policy, complexity of the law that can be reduced by understanding the tax liability that is provided to taxpayers, etc.

Tax consulting has a special dimension for the state, i.e. its tax authorities, because it presupposes greater certainty in tax collection, given that in performing his/her activity the tax advisor is bound by the basic principles that accompany the performance of his/her activity: legality, independence, expertise and conscientiousness, which is a significant guarantee that the taxpayer who hires a tax advisor will not commit tax evasion, but will pay the correct amount of tax. The tax advisor, who in the performance of his/her activity assumes personal responsibility for the quality of the services he/she provides, is expected to behave professionally, which gives a certain guarantee in the application of the law from taxpayers and tax authorities.

Tax consulting has its own, extremely important and international dimension. In the conditions of creating a global market and conducting business activities beyond national borders, the role of the tax advisor consists, in particular, in developing a tax plan for the taxpayer, which should offer him a choice of appropriate countries of residence or investment, in order to minimize world income, while remaining within the limits of the law.⁷

3. TAX ADVISORY NORMATIVE REGULATION SYSTEMS

At the international level, the matter of tax advice is not explicitly regulated by international conventions, but considering the rights of taxpayers in the context of basic human rights, which in most countries are guaranteed by the Constitution, which is based on basic principles established by the European Convention on Human Rights and the fundamental freedoms, we can conclude that the right to certainty and information, i.e. the right that taxpayers, among other rights, have the right to be acquainted with tax laws, is guaranteed

⁶ Bird M, R., Cassenegra, M. (1992). *Improving Tax Administration In Developing Countries*. IMF 1, 306-308.

⁷ Ilić-Popov (2013a).

by the aforementioned Convention.⁸

Examining the normative regulation of tax consulting, in the countries of the European Union and countries that are not members of this international organization, we came to the conclusion that this activity is differently regulated, or not regulated at all.⁹

1) the system of full regulation of tax consulting in the countries that have regulated the profession of tax advisor by law, as we have already stated in Germany, then in Austria, Canada, Japan, the Czech Republic, Poland, Croatia,

2) system of partial regulation¹⁰ of tax consulting in countries that accept the model that even unqualified persons can give tax advice or can prepare and submit a tax return for a taxpayer, with the obligation to provide basic information about the taxpayer, to sign the tax return, enter the social number used for tax purposes (in our legislation "JIB") and the employer's number, whereby the applicant or the compiler of the tax return, took responsibility for the correctness of the tax return or tax return (the USA, Australia),

3) the system of complete non-regulation of tax consulting as a separate activity, represented mainly in underdeveloped countries, i.e. the countries undergoing the transition process, where the activity of tax consulting, preparation of tax returns and tax returns is not specifically regulated, but also in some highly developed countries, e.g. the Netherlands, which does not have formally regulated tax counseling, but has two very powerful organizations dealing with tax issues, and which the government has appointed as partners in disputes in determining certain solutions in tax issues.

4. COMPARATIVE OVERVIEW OF THE NORMATIVE REGULATION OF TAX CONSULTING IN THE COUNTRIES OF THE REGION

In the countries of the region, i.e. the countries that were part of the former SFRY, tax consulting is regulated differently, so we will give an overview of the normative regulation of tax consulting in Slovenia, Croatia, Montenegro, Macedonia, Serbia, with a special overview of tax consulting in Bosnia and Herzegovina.

4.1. Tax consulting in Slovenia

In Slovenia, which has a highly developed tax advisory activity, this matter is not regulated by a special law, although the draft Law on Tax Consulting (*Zakon o davčnem svetovanju*) was sent to the parliamentary procedure in 1998.¹¹ Persons providing tax consulting services are gathered in a professional association - the Association of Tax Advisers of Slovenia (*Društvo davčnih svetovalcev Slovenije (DDSS)*), which was founded in 1993, as a voluntary association of people engaged in tax consulting.¹² This company, as a profe-

⁸ European Convention for the Protection of Human Rights and Fundamental Freedoms 1999. *Official Gazette of BiH*, no. 6/99.

⁹ Drljača, Z. (2018). Some aspects of taxpayer rights in the light of tax reforms. In: V. Čolović (ed.) *Yearbook of the Faculty of Law* 8, 169-181.

¹⁰ Dabić (2017a).

¹¹ Kovačević, E. (2007). Status davčnega svetovalca v Sloveniji in na Hrvaškem. (specijalističko delo). Univerza v Ljubljani, Ekonomska fakulteta. Retrieved Jun 5, 2021, from <http://www.cek.ef.uni-lj.si/spscijalist/kovacevic/3401.pdf>.

¹² Društvo davčnih svetovalcev Slovenije. Available at <http://www.slonep.net/finance/davki/zbornica-davcnih-svetovalcev> (10.05.2021).

ssional association, has established a legal framework for the provision of services of tax advisors, with built-in standards from the field of tax consulting set by the European Fiscal Council, of which the Association of Tax Advisers of Slovenia is a full member. The legal framework consists of the following: Rules on taking the exam for a tax advisor (*Pravilnik o opravljenju ispita za davčnega svetovalca*)), Rules on the license of tax advisors of Slovenia (*Pravilnik o pridoviti certifikata in licence za delo davčnega svetovalca Društva davnih svetovalcev Slovenija*). In addition to the Association of Tax Advisors in Slovenia, tax advisory services are also provided by the Institute of Auditors (*Slovenski inštitut za revizija*) established in 1993.¹³

For performing the activity of a tax advisor in Slovenia, the Rulebook on taking the exam for a tax advisor¹⁴, the general conditions are determined, as follows: 1) that the person is an EU citizen; 2) to have at least higher education and three years of practical experience in the field of tax, audit or accounting; 3) that the person has completed a lecture on tax legislation, 4) that he/she actively speaks the language of the EU member state; 5) that he/she has not been convicted of criminal offenses of economy, payment transactions or abuse of official position, while special conditions include: that he/she has passed the exam for a tax advisor and that he/she has been issued a license to provide tax advisor services.

In the general conditions, therefore, it is not determined that it is a person who is a citizen of Slovenia, nor is residence in Slovenia a condition for providing the services of a tax advisor in Slovenia. This should be seen in the context of the obligation of the EU member states to apply the EU Internal Market Services Directive¹⁵, which main goal is to provide full support to the development of the integrated market of the EU member states in the field of services through the simplification of administrative procedures, removal of obstacles to the performance of service activities, strengthening mutual trust between Member States and trust between service providers and recipients. The Directive otherwise applies to a wide range of services, and its provisions are essentially based on the case law of the European Court of Justice in the areas of business residence and freedom of providing services.

4.2. Tax counseling in Croatia

In Croatia, tax counseling is regulated by the Law on Tax Consulting.¹⁶ The said Law regulates the activity of tax consulting as an independent and autonomous profession of tax advisors, their powers and obligations, as well as the establishment, position and activity of the Croatian Chamber of Tax Advisors. Since Croatia is an EU Member State, the Law stipulates that the above-mentioned Directive 2006/23/EC of the European Parliament and the Council on services in the internal market is transferred into the legal order of the Republic of Croatia.

¹³ Slovenski inštitut za revizija. Retrieved June 5, 2021, from: <https://www.si-revizija.sio-institutat>.

¹⁴ Pravilnik o opravljenju ispita za davčnega svetovalca. Available at https://0501.nccdn.net/4_2/000/000/03f/0C/7/6_Pravilnik_o-opravljenju-ispita_za_davac-nega-svetovalca.pdf (11.5.2021).

¹⁵ Directive 2006/23/EC of the European Parliament and of the Council of 12 December 2006 on Services in the Internal Market, *OJ* L376 of 27.12.2006, p. 36.

¹⁶ Law on Tax Consulting in Croatia - revised text 2000 *Official Gazette of Croatia*, no. 127/2000, 76/2013, 115/2016.

The legislator in Croatia stipulates that tax consulting is the activity of providing advice on issues related to legislation related to taxes and other public benefits, preparation and certification of tax returns and other acts in the tax-legal relationship, continuously contracted supervision of the correctness of tax and accounting records, that are conducted for the purpose of preparing tax returns and other tax documents, representation in all tax and misdemeanor proceedings before tax authorities, participation in tax disputes, expertise by decision of a court or tax authority in tax cases.¹⁷ In addition to providing advice on these tax issues, legislators in Croatia, leaves the possibility that in addition to tax consulting, you can also perform business bookkeeping, financial reporting, services in the field of accounting and finance, valuation services, and other related services. A tax advisor is a natural person who performs the activity of tax consulting and whose status and activity is regulated by the Law on Tax Consulting.¹⁸

When it comes to organizing the activity of tax consulting, the Croatian legislator determines that the activity of tax consulting can be performed by: 1) tax advisors who perform the activity of tax advisor as an independent activity; 2) public companies for tax consulting; 3) a limited liability company for tax consulting and 4) foreign tax advisors and companies.¹⁹

A tax advisory company from a contracting state to the European Economic Area may establish its branch office in Croatia in accordance with Croatia's obligations under an international agreement, as well as the provisions of the Companies Act and the Tax Advisory Act.

In order for a person to acquire the profession of tax advisor, he/she must meet the general and special conditions, and must obtain the approval (license) of the Croatian Chamber of Tax Advisory to provide the services of a tax advisor. The general conditions are: 1) to have legal capacity; 2) to have a permanent residence in the territory of the Republic of Croatia or a contracting state to the European Economic Area, 3) to speak Croatian and write in Latin script or another language and script that are in official use in the area where the activity is to be performed;²⁰ 4) that he/she has not been convicted of a criminal offense against property, against the security of payment operations and business, against the judiciary, against the credibility of the document, and against official duty. Special conditions are: that the person is a Bachelor of Economics or a Bachelor of Law or a Master of Economics or a Master of Law, with a diploma recognized in Croatia, at least five years of work experience in tax affairs - work on tax and accounting regulations, to have passed the exam for tax advisor, and to have a work permit (license) from the Croatian Chamber of Tax Advisory.

¹⁷ Art. 2 of the Law on Tax Consulting in Croatia.

¹⁸ Art. 3, Art. 2 of the Law on Tax Consulting in Croatia.

¹⁹ Art. 7, Art. 2 of the Law on Tax Consulting in Croatia, leaves the possibility that, limited tax consulting, without the right to sign tax returns, continuous supervision of the correctness of tax records, representation in tax and misdemeanor proceedings, in administrative disputes, can be performed by independent certified auditors and audit firms, within their powers under the Audit Act.

²⁰ Citizens of the Contracting States of the European Economic Area who provide tax advisory services in Croatia must know the Croatian language at the level necessary for unhindered and necessary communication with taxpayers, tax authorities and for understanding Croatian tax legislation. The Croatian Chamber of Tax Advisory, Article 8, paragraph, checks the knowledge of the Croatian language at the required level. 3. Law on Tax Consulting in Croatia.

Taking the exam for a tax advisor is regulated by the Ordinance on the program and conditions for taking the exam for a tax advisor, which is passed by the Assembly of the Croatian Chamber of Tax Advisers with the consent of the Minister of Finance.²¹ The exam is taken before a commission of nine members, including the chairman of the commission. The exam consists of a written and an oral part, with the written part of the exam being a condition for taking the oral exam. It is interesting to point out that the exam is not public, and that candidates sign the written part of the exam, i.e. certain codes are not used as candidates' marks, which for the sake of objectivity has already become a practice when taking other exams (e.g. written part of the notary exam). The program for taking the exam for a tax advisor is determined by the Croatian Chamber of Tax Advisory, and the program includes eight units: 1) the basis of the tax system, tax policy and financial equalization; 2) tax law in the Republic of Croatia; 3) profit tax; 4) income tax and contributions; 5) indirect taxes and customs duties; 6) accounting, financial reports and audit; 7) company law, 8) subjects of tax-legal relationship.

The Croatian Chamber of Tax Advisory, which represents tax advisors as a whole, promotes, harmonizes and represents the common interests of tax advisors, keeps certain records on persons who have passed the exam for a tax advisor and records on persons who have been issued approval (license) for the provision of tax advisory services. The Chamber was founded in 2011 and is a member of the European Tax Advisers (CFE).²² According to the records of the Croatian Chamber of Tax Advisory, the activity of tax advisory is performed by 29 tax advisors in Croatia. Namely seven tax advisors who perform the activity of tax consulting as an independent activity and others who provide tax consulting in 15 tax advisory companies as tax services.²³

4.3. Tax consulting in Montenegro

In Montenegro, tax consulting is regulated by the Law on Tax Advisors.²⁴ The activities of tax consulting include: providing advice on tax and customs issues, preparation of tax returns (but not certification, as defined in Croatia), preparation of tax balances and other documents relevant to taxation, as well as representation in tax proceedings before administrative and judicial authorities, and in customs proceedings, before ministries and judicial authorities. In addition to tax consulting, it is allowed to keep business books, prepare financial statements and other related activities, in the manner prescribed by a special law (e.g. the Law on Accounting).

The duties of a tax advisor in Montenegro may be performed by a person who meets the general and special conditions. The general conditions stipulate: 1) that the person has

²¹ Ordinance on the program and conditions for taking the exam for a tax advisor, 2017. *Official Gazette of the Republic of Croatia*, no. 2/2017.

²² The Association of European Tax Advisers based in Brussels - CFE, was founded in 1959, in order to contribute to the coordination and development of tax legislation in Europe, and coordination in promoting national laws governing and protecting the profession of tax advisor. 26 European countries. Available at <https://www.taxodviserseurope.org/about-us> (10.5.2021).

²³ Data on the number of tax advisors in Croatia. Available at <https://www.hgk.hr-pristup> (11.5.2021).

²⁴ Law on Tax Consulting 2007, *Official Gazette of Montenegro*, no. 26/2007, 34/2007, 73/2010, 47/2019.

business and health ability, 2) that he/she has not been convicted of a criminal offense that makes him/her unfit to perform the duties of a tax advisor - criminal offenses against property, payments and business, state authorities, judiciary and official duties. Special conditions for performing the duties of a tax advisor are the following: 1) VII 1 level of education qualification, so it is not determined as in Croatia that he/she has a degree in Economics or Law, 2) that he/she has at least five years of experience in preparing or applying tax, customs and accounting regulations ; 3) to have passed the exam for a tax advisor; 4) that the person has received a work permit from the Chamber of Tax Advisors. For a tax advisor from the country of the European Economic Area, as one of the conditions for providing the services of a tax advisor in the territory of Montenegro, it is necessary to speak the Montenegrin language to the extent that is sufficient to perform the activities of tax consulting.²⁵

The organization of the exam for a tax advisor is carried out and organized by the Ministry of Finance of Montenegro, which also appoints the Commission for taking the exam for a tax advisor. In Montenegro, the Commission has five members and a president, i.e. six members, which is a little questionable how the Commission decides whether a person has passed the exam, because it is an even number of members of the Commission, and hypothetically it may happen that three members of the Commission vote that the candidate has passed the exam, and three members to vote against. Unlike in Croatia, where the Commission is appointed by the Chamber, in Montenegro the Commission for taking the exam for a tax advisor is appointed by the Ministry of Finance, with half of the Commission members being representatives of the Ministry of Finance, tax and customs authorities, and three members being economic and legal experts. A person who passes the exam for a tax advisor, submits a request to the Ministry of Finance for the issuance of a permit (license) for work, i.e. the provision of tax consulting services.²⁶

In the organizational sense, tax consulting, as a special service activity, can be provided by: 1) natural persons - tax advisors as an independent profession if they have received a work permit; 2) companies if they are registered to perform that activity; 3) a tax advisor and a company registered to conduct tax consulting in a state signatory to the Treaty on the European Economic Area (EFA). When performing the activity of tax consulting in the form of a company for performing tax consulting, the legislator in Montenegro stipulates that the company may establish one or more tax advisors, with the obligation to use the term "tax advisor" and a member of the company can only be a tax advisor.

The Law of Montenegro determines the significant role of the Chamber of Tax Advisors, as a professional and independent organization, which represents tax advisors, promotes their work and represents their common interests, issues approvals (licenses) for work with recognized public authorizations,²⁷ keeps a register of issued licenses and company register, provides conditions for improving the professional knowledge of advisors and organizes the education of tax advisors. The establishment of the Chamber requires at least ten tax advisors who have received approval for work, and if that is not achieved, the tasks within its competence are performed by the Ministry of Finance. In order to create the basic preconditions for the application of the Law, and the performance of tax consulting activities, in the transitional and final provisions of the Law, it is possible for the

²⁵ Art. 4, para. 5 of the Law on Tax Consulting of Montenegro.

²⁶ Art. 7 of Law on Tax Consulting of Montenegro.

²⁷ Art. 19 of the Law on Tax Consulting of Montenegro.

Ministry to issue a maximum of five licenses within six months from the entry into force of the Law, without taking the exam for a tax advisor, and based on the work experience and professional titles of the applicant, with a certain period of validity, and the obligation of the person to whom the license was issued, to pass the exam within two years.

4.4. Tax Consulting in Macedonia

In Macedonia, the activity of tax consulting is not specifically regulated, although in 2008, a draft Law on Tax Advisers (Zakon za danočni sovjetnici)²⁸ was established, which was supposed to regulate tax consulting issues in line with the laws of other countries that fully regulated this area. By analyzing the Law on Tax Procedure (Zakon za danočna postupka)²⁹, we determined that the tax advisor is not listed as a procedural party, but it is determined that in the tax procedure the taxpayer can be represented by a legal representative (in cases specified by law) and by authorization, the taxpayer's attorney, without specifying that the taxpayer's attorney may also be a tax advisor.

4.5. Tax consulting in Serbia

In Serbia, tax consulting is not regulated by a special law, but the regulations in this area are regulated by the regulations of the Professional Association of Tax Advisers of Serbia, which, based on the Statute of the Association,³⁰ adopts the Ordinance on Tax Adviser Examination, the Academy of Tax Advisers, which operates within the Association of Tax Advisers of Serbia, organizes a lecture on thematic units for paying the exam for a tax advisor.³¹ In relation to the program for taking the exam for tax advisor in other countries in the region, in Serbia, the program also includes international agreements and tax planning, tax evasion and tax crimes, prevention of money laundering and tax counseling in the EU, as separate thematic units.

When determining the conditions for taking the exam for a tax advisor, the conditions in Serbia are much more flexible, so that the exam can be taken by persons who meet the following conditions: 1) at least a university degree (major is not specified); 2) three years of practical experience in the field of tax, audit or accounting; 3) that they have completed training on Serbian tax legislation lasting at least 48 hours; 4) that they have not been convicted of criminal offenses against property, economy and legal transactions; and 5) that they have not been sentenced to imprisonment for a term of two years or more. Otherwise, the exam is taken only in writing (lasts three hours) and includes questions from the field of tax regulations in Serbia. Article 17 of the Law on Tax Procedure and Tax Administration defines the definition of a tax advisor, in such a way that a tax advisor is

²⁸ Nacrt Zakona za danočni sovjetnici. Združenie na danočni sovjetnici na Republika Makedonija. Available at <http://www.donocnisovjetnici.org.mk> (10.5.2021).

²⁹ Zakon-za-danačna-postupka. Available at [Ujp.gv.mk/files/attachment/0000/0900/Zakon-za-danačna-postupka-290 od 27-12-2020.pdf](http://Ujp.gv.mk/files/attachment/0000/0900/Zakon-za-danačna-postupka-290%20od%2027-12-2020.pdf) (10.5.2021).

³⁰ Statute of the Association of Tax Advisers of Serbia. Available at <http://ups.rs.com/organi-udru.htm.ml> (10.5.2021).

³¹ Thematic units, which are adapted to the program of taking the exam for a tax advisor in Serbia are: introduction to tax parvo, tax procedure, parvo of companies, accounting and financial reports, all forms of taxes in the tax system of Serbia, contributions, international agreements and tax planning, tax consulting in EU. Available at <http://ups-rs.com/ispit-za-poreskog-savetnika.html> (10.5.2021).

a natural person who performs tax consulting activities of a taxpayer in tax proceedings, and if he/she acts as a taxpayer's attorney, he/she must have a power of attorney to receive tax attorney, submits a tax return, pays taxes and undertakes other legal actions in the tax procedure, as a proxy of the taxpayer.³²

In Serbia, the Association of Tax Advisers was founded in 2014, in order to improve and develop the profession of tax advisor, acquire and disseminate knowledge in the field of tax, accounting, auditing, which is a member of the European Tax Association of Tax Advisers (SFE). The members of the Association are, in addition to tax advisors, accountants, auditors, lawyers and other persons with higher education, who are interested in professional development and are committed to the development of a complex area of taxation. According to the Association of Tax Advisers of Serbia, licenses were issued for 29 tax advisors.³³

5. TAX CONSULTING IN BOSNIA AND HERZEGOVINA

In Bosnia and Herzegovina, tax consulting is not regulated in the entire territory of Bosnia and Herzegovina, i.e. in the Federation of Bosnia and Herzegovina, a special activity of tax consulting is not regulated, but auditors, accountants, accountants, lawyers, special consulting agencies activities, while in the Republic of Srpska, tax consulting as a special activity is regulated by the Law on Tax Consulting, which was adopted in 2008.³⁴ The mentioned Law normatively regulates the area of tax consulting, providing professional assistance in tax issues related to the tax rights of the Republic of Srpska, regulates the manner and conditions for acquiring the title of tax advisor, as well as forms of their organization, tax issues. Professional assistance in tax matters includes: assistance in keeping records that are important for tax issues, assistance in preparing tax balances and documents that are important for taxation and representation in tax matters before the competent authorities.

The definition of tax consulting is not precisely defined in the Law itself, although in its title the Law contains the term "tax consulting" but it is defined in Article 2 of the Ordinance on the manner and conditions for acquiring the title of tax advisors,³⁵ in such a way that tax consulting is defined as professional activity related to providing professional assistance and advice to business entities in getting acquainted with the tax and financial aspects of business, keeping records that are important for tax issues, preparation of tax balances and documents important for taxation, as well as representing these entities in tax matters before competent authorities. Unlike the definition of tax consulting in the legislation of Croatia and Montenegro, in the Republic of Srpska tax consulting does not include the provision of expert advice in customs procedures, preparation of tax returns, tax balances and other documents relevant to taxation, nor is the possibility for a tax advisor to perform tasks of keeping business books, preparing financial statements and other related activities, but exclusively, that it is the activity of providing professional assistance

³² Law on Tax Procedure and Tax Administration. Available at <https://www.paragraf.rs/kancelarko/softver-za-administraciju-e-kancelarija-program-za-kancelariju.html?s=a783af847b0ed49338f2cf0705e8a41e#forma-za-prezentaciju-kancelarko> (10.5.2021).

³³ Available at <http://ups-rs.com/licencirani-poreski-svjetnici.html> (10.05.2021).

³⁴ Law on Tax Consulting 2008, *Official gazette of the RS*, No. 17/2008.

³⁵ Ordinance on the manner and conditions for acquiring the title of tax advisor 2018, *Official Gazette of RS*, no. 15/2018.

and advice to business entities that are important for taxation.

A tax advisor is determined as a person who has passed the exam for a tax advisor (Article 7 of the Law), while Article 11 stipulates that based on the certificate of passing the exam, the Minister of Finance issues a decision approving the work of tax consulting (license).

The organization of tax consulting in the Republic of Srpska occurs in two forms: as an independent entrepreneur and a tax consulting company, which is established as a partnership or limited partnership (company of persons). In relation to the establishment of a company of persons whose business is related to some other activities, when founding a tax consulting company, the legislator determined that the founders of a tax consulting company can only be persons who have acquired the title of tax advisor or that the director of a tax consulting company possesses the title of a tax advisor.

The establishment of the company itself takes place in two phases, the preliminary procedure with the Ministry of Finance, which issues approval (license) for performing tax consulting activities and the registration procedure with the competent court for registration of business entities,³⁶ with the obligation that the company contains the name "Tax Consulting Association". In determining the registered office of the company, the legislator adopted the Anglo-Saxon approach of determining the registered office according to the place of establishment, i.e. the registered office. The law stipulates on an optional basis that tax advisors may form the Chamber of Tax Advisors of the Republic of Srpska, provided that at least 20 tax advisors receive approval for the work of a tax advisor. Within the competence of the Chamber, it is stated that the Chamber takes care of issues of professional importance for the overall membership of the Chamber, to monitor the fulfillment of professional obligations of tax advisors, represents its membership in state bodies and organizations, mediates in the conflict between the members of the Chamber and their principals, proposes candidates for the Court of Honor, proposes experts requested by the court or some other state body, proposes tax advisors for members of the Examination commission for taking the exam for tax advisor, adopts a professional code on the work of tax advisors and determines the tariff and price list of services of tax advisors, monitors developments in the field of tax system and gives initiatives for amendments to the Law and bylaws in the interest of tax advisors. Until the constitution of the Chamber of Tax Advisors, the tasks within its competence are performed by the Ministry of Finance.³⁷ Members of the Chamber, in addition to tax advisors, may also be directors of the tax consulting company and members of the management boards of the tax consulting company.

6. MANNER AND CONDITIONS OF ACQUIRING THE TITLE OF TAX ADVISOR IN THE REPUBLIC OF SRPSKA

The title of tax advisor in the Republic of Srpska is acquired by a person who passes the exam for tax advisor before the Commission for taking the exam for acquiring the title of tax advisor. In order for a person to take the exam for acquiring the title of tax advisor, he/she must meet certain conditions: has completed a four-year study at the Faculty of Economics or Law, i.e. has acquired the title of a Bachelor of Economics or a Bachelor of Law; 2) to have at least five years of work experience in the application of tax laws; 3) that

³⁶ Law on Registration of Business Entities in the Republic of Srpska 2013. *Official Gazette of RS*, no. 67/1013, 15/2016 i 84/2019.

³⁷ Art. 23 of the RS Law on Tax Consulting.

he/she has not been punished for a criminal offense due to which the candidate would be considered unfit to perform tax consulting activities, and 4) to submit proof that no criminal proceedings are being conducted against him. We can conclude that in the Republic of Srpska there are no precisely defined criminal acts that would make a candidate unfit to perform the duties of a tax advisor, but that it is an imprecise formulation “that he/she has not been convicted of criminal acts that make him/her unsuitable for performing tax consulting”, unlike the legislator in Croatia and Montenegro, where it is precisely determined that these are criminal offenses against property, payment transactions, forgery of documents, against official duty, etc.

The Ordinance on the Manner and Conditions for Acquiring the Title of Tax Advisor determines the exam program in the field of: 1) administrative procedure and tax procedure; 2) basics of the tax system and tax policy of Bosnia and Herzegovina, the Republic of Srpska, the Federation of Bosnia and Herzegovina and the Brčko District of BiH; 3) basis of accounting and auditing; 4) commercial law; 5) public finance and financial law.

The exam for acquiring the title of tax advisor is taken before the Commission, which has five members, and which is appointed by the Minister of Finance of the Republic of Srpska, for a period of four years.³⁸ The members of the Commission are a representative of the Ministry of Finance who is also the President of the Commission and four members, who are appointed from among prominent experts in the field that make up the content of the exam program and who have at least ten years of work experience in applying tax regulations.³⁹

The exam consists of two parts, written and oral, with the written part of the exam consisting of two parts. The first part, which is in the form of a test, contains 20 questions with offered answers to which the candidate answers by circling the correct answer and the second part of the written part of the exam which contains five tasks that require written answers with theoretical presentation and solution. The total number of points that a candidate can achieve in the written part of the exam is 100, and the written part of the exam is considered passed if he achieves at least 60 points, which is a condition for taking the oral part of the exam. Based on the results of the written and oral exam, the candidate is graded “passed” or “failed”.

7. APPROVAL FOR THE WORK OF A TAX ADVISOR IN THE REPUBLIC OF SRPSKA

At the request of the natural person who passes the exam for acquiring the title of tax advisor, who meets the general and special conditions determined by the Law, the Minister of Finance issues a work permit (license), which approves the performance of professional activity in the title of tax advisor. Along with the request for the issuance of a work permit, a person who has passed the examination for acquiring the title of tax advisor, among other evidence, encloses proof that he/she has not been convicted of criminal offenses for which he/she would be considered unfit to perform months. The applicant shall submit proof that he/she has not been convicted of criminal offenses for which he/she would be considered unfit to perform the duties of a tax advisor with the request for

³⁸ Art. 7 of the Ordinance on the manner and conditions for acquiring the title of tax advisor.

³⁹ After the establishment of the Chamber of Tax Advisors of the Republic of Srpska, in Art. 27. pts. e) it is determined that the Chamber proposes tax advisors for members of the Tax Commission for taking the exam for acquiring the title of tax advisor.

taking the exam for a tax advisor, but since it may take a long time from the time of taking the exam to the time of applying for a work permit, it is justified to ask the person who has passed the exam for a tax advisor to prove that he/she has not been convicted and the proof cannot older be older than three months. The permit is issued for an indefinite period of time, unlike e.g. Slovenia, where the permit is issued for a period of two years, with the obligation of the tax advisor to achieve a certain number of points in that period on the basis of various types of education trainings, which is a condition for license extension.⁴⁰

Although the legislator in the Republic of Srpska explicitly stipulates that the approval for the work of a tax advisor is issued only to a person who has passed the exam for acquiring the title of tax advisor, the Rulebook on the manner and conditions for obtaining the title of tax advisor members of the commission and their deputies who are appointed by the decision of the Minister after the entry into force of the Ordinance are granted the license of tax advisor without any restrictions. We believe that this provision is discriminatory because the legislator, when appointing members of the Commission, does not set the condition that members of the Commission are persons authorized to work as a tax advisor, so there is no justification that members of the Commission and their deputies, without passing the exam for a tax advisor, are issued approval that they may perform the duties of a tax advisor, or that they may be founders of a tax advisory company.⁴¹ A work permit (license) is also issued to a tax consulting company, and this is, as we stated above, one of the conditions for entry into the Register of business entities.

Termination of the tax advisor's work permit, which is usually issued for an indefinite period of time, is envisaged in the event of the death of the tax advisor and at the personal request of the tax advisor. In addition to the termination of the validity of the approval for the work of a tax advisor, the legislator also determined the cases when the Minister of Finance revokes the approval, against the will of the tax advisor, as follows:

1) if the tax advisor performs an activity that is incompatible with the title of tax advisor; 2) if the tax advisor does not pay the prescribed compulsory insurance against danger from his professional activity; and 3) if he/she loses his/her legal capacity.⁴²

In the Law of Montenegro, e.g. one of the reasons for revoking the license of a tax advisor is the non-compliance of the tax advisor with the principles of legality, conscientiousness, expertise and the code of ethics of tax advisors.⁴³

In the Republic of Srpska, the institute of exemption of a tax advisor has not been determined in certain cases, such as, for example, it is determined in the Law of Croatia and Montenegro, in such a way that the provisions of the law governing the tax procedure on exemption of an official in a tax procedure or customs procedure are applied to a tax advisor, which is decided by the official conducting the tax or customs procedure.⁴⁴

8. RESPONSIBILITY OF TAX ADVISORS

Tax advisors perform their activities on their own, professionally and independently,

⁴⁰ Art. 11 and 19 of the Rules on the Assignment of a Certificate and License for the Work of a Tax Advisor of Slovenia. Available at http://www.davki.org/549/Interni_akti_ZDSS (11.5.2021).

⁴¹ Art. 45 of the Ordinance on the manner and conditions for acquiring the title of tax advisor.

⁴² Art. 13 of the Law on Tax Consulting of the Republic of Srpska.

⁴³ Art. 31 of the Law on Tax Advisors of Montenegro

⁴⁴ Art. 15 of the Law on Tax Advisors in Croatia and Article 12 of the Law on Tax Advisors of Montenegro.

with the obligation to respect the principles of constitutionality and legality, impartiality, keeping business secrets, rules of the code of ethics, etc. The tax advisor is responsible for non-compliance and omissions in the performance of his/her activity, but also for ignorance of professional obligations. Considering that the tax advisor acts independently in his/her work, although it is not explicitly stated in the law of the Republic of Srpska, nor in other laws, which we mentioned in this paper, we can conclude that the responsibility of the tax advisor is personal, because he is responsible if he does not adhere to the said principles in his work, that are defined as the basic principles of providing the services of a tax advisor. The gravity of the violation in performing the activity of a tax advisor is decided in disciplinary or criminal proceedings. His property liability, due to the damage caused to the party because of the failure of the tax advisor, shall be decided in the civil proceedings before the competent court.

The liability of a tax advisor is based on the law and the concluded contract on the provision of tax consulting services, which is concluded in writing, individually with each party, unless it is a matter of giving oral advice. The obligation to conclude a contract in writing (*ad solemnitatem*) as an essential element for the validity of the contract concluded between the tax advisor and the party, is prescribed e.g. in the Law of Croatia and the Law of Montenegro, while in the Law on Tax Consulting of the Republic of Srpska it is not specifically stated, but considering the nature of the activity of the tax advisor, which is an independent occupation, we can conclude that the mutual relations of the tax advisor and the party are regulated by contract. Based on the concluded contract, in some countries, e.g. Montenegro and Croatia, a party is allowed to object to the tax advisor on his work, and in case the tax advisor does not act on the party's complaint and does not eliminate the observed omissions within a certain period, the party has the right to file a complaint to the Chamber of Tax Advisors or to exercise his rights at the competent court. Bearing in mind that the relations between tax advisors and parties are more closely determined by the contract, respecting the powers and duties of the tax advisor, which are determined by law or regulations of professional associations, it turns out that tax advisors are subject to contractual liability, which could be reflected in aiding or abetting tax evasion, or unlawful tax evasion.⁴⁵ The contract stipulates the obligations of the contracting parties, i.e. the obligation of the party to cooperate with the tax advisor in addition to paying the fee for the services of a tax advisor, which implies the submission of certain data and documents, otherwise the tax advisor may terminate the contract on providing tax consulting services (e.g. Article 14, paragraph 4 of the Law on Tax Advisors, Croatia).

From the above stated, regarding the responsibility of tax advisors, we can conclude that the specific powers and duties of the tax advisor, in addition to legal powers and obligations, arise from the concluded contract with the party, which binds both parties in relation to what is determined for the subject of the contract, that is, the tax advisor is to provide the services of a tax advisor, but also to represent the party in tax matters before the competent authorities (tax authority and courts).⁴⁶ However, it should be borne in mind that by concluding the contract, the tax advisor is not automatically authorized to represent the taxpayer in tax and court proceedings, but in that case, he must have a special power of attorney of the taxpayer with a precisely defined scope of power, e.g. to

⁴⁵ The contractual responsibility of the tax advisor is defined in Art. 22 para. 1 of the Law on Tax Advisory Croatia.

⁴⁶ Art. 1, para. 2, item c) Law on Tax Consulting of the RS.

make statements on the minutes, to receive submissions, to file an application on behalf of the taxpayer, to pay the main and secondary taxes on behalf of the taxpayer, to object to the minutes on the performed control, etc. Therefore, regardless of the fact that the relationship between the tax advisor and the party is regulated by the contract, in order to be represented before the tax authorities and competent courts, and other procedures, it is necessary for the party to give the tax advisor an individual power of attorney for each individual case, i.e. the tax advisor has to act in the name and on behalf of the party within the power limit that have been given to the advisor.

9. TAX ADVISOR'S LIABILITY INSURANCE

In order to reduce the risks of damage that a tax advisor could possibly cause to a foreigner in the course of his business (e.g. by giving wrong advice, missing the deadline for filing a legal remedy, etc.), the tax advisor in all countries of the region has a legal obligation to insure himself against liability at the company liability insurance.

In order to reduce the risk and protect the interests of taxpayers, to whom the tax advisor provides services, in most countries, the law determines the minimum amount of the insured amount, which must be contracted for liability insurance for damage to each tax advisor. Thus, e.g. in Montenegro, the law stipulates a minimum amount of insurance of 3,000 euros, for each tax advisor individually, even for tax advisors who perform their activity in the form of a company of tax advisors.⁴⁷ In Croatia, the lowest amount of insurance is 200,000 kunas,⁴⁸ in Slovenia 33,300 euros, while the Law of Republic of Srpska does not specify the minimum amount of insurance for which liability insurance must be agreed for each tax advisor, but stipulates that the conditions for insurance in the Republic of Srpska are determined by the Chamber of Tax Advisors and Insurance Companies and by the Ministry of Finance until the establishment of the Chamber. According to the Croatian law it is possible that in the case that a tax advisor does not conclude an insurance contract with an insurance company, the liability insurance contract will be concluded by the Chamber of Tax Advisers of the Republic of Croatia.⁴⁹

We have seen how important it is to conclude a contract on liability insurance for tax advisors, which is one of the reasons for revoking the license of a tax advisor in most countries. If the tax advisor does not pay the required insurance from his professional liability, as one of the conditions for the issuance of a permit for the work of a tax advisor, submission of evidence that a tax advisor acting as a sole proprietor or a tax consulting company has concluded a professional liability insurance contract.⁵⁰ Tax advisors have a legal obligation to duly extend liability insurance.

10. CONCLUSION

Although international conventions and the *acquis communautaire* do not create an obligation to enact a national law governing tax consulting, most countries in the region and beyond have regulated this area by a special law or regulation of professional associations established to develop and improvement of tax consulting activities.

The complexity of the tax matter, as well as the dynamics of changes in tax regulati-

⁴⁷ Art. 14 of the Law on Tax Consulting of Montenegro.

⁴⁸ Art. 23 of the Law on Tax Consulting in Croatia.

⁴⁹ Art. 23, para. 5 of the Law on Tax Consulting in Croatia.

⁵⁰ Art. 16 of the RS Law on Tax Consulting.

ons, are the main reasons that explain the need to provide consulting services in the tax matter. In order to ensure healthy financial relations in the country, it is necessary that all taxpayers have the opportunity to receive expert advice on tax issues, i.e. to establish the activity of tax consulting. Tax advisors are experts who, within the scope of tax consulting, advise taxpayers and help them to settle their obligations to the state in an orderly and legal manner. They use their professional knowledge within the limits of the application of current and international legislation, in order to minimize the tax burden of the taxpayer with whom they have concluded a tax advisory contract, without exposing him to tax evasion or any other illegal conduct in tax proceedings.

Tax consulting is extremely important not only for taxpayers, because by providing expert advice on tax matters, taxpayers gain confidence in the work of tax authorities and fair application of tax regulations, but tax consulting also has a very important role for the state because it presupposes a significant guarantee that tax taxpayers who hire a tax advisor will not commit tax evasion, which, overall, contributes to an efficient tax system, raising awareness of the obligation to pay taxes and developing tax morale.

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Poresko savetovanje kao posebna vrsta uslužne delatnosti

Rezime: Poresko savetovanje je posebna vrsta uslužne delatnosti, sa određenim specifičnostima vezanim za neke druge delatnosti. Samo ime ukazuje na to da uključuje pružanje savetodavnih usluga koje pružaju posebno kvalifikovani i obučeni profesionalci, poštujući profesionalno-etička i profesionalna načela, a pre svega principe zakonitosti, nezavisnosti, samostalnosti, stručnosti, savesnosti i profesionalne tajne, kao i drugi principi koji se međusobno određuju i dopunjuju. Glavna svrha poreskog savetovanja je da pomogne poreskim obveznicima u ispunjavanju njihovih poreskih obaveza i da pravilno razumeju i primenjuju poreske zakone. U širem smislu, to znači zastupanje poreskog obveznika u poreskim i sudskim postupcima. S druge strane, posmatrajući složenost poresko-pravnog odnosa, nejednakost strana u ovom odnosu, koja proističe iz same prirode poreza, nesporno je da poreski saveti doprinose poreskoj efikasnosti i ukupnoj poreskoj politici, humanizaciji poresko-pravni odnos, razvoj svesti poreskih obveznika o značaju oporezivanja i razvoj poreskog morala. Cilj ovog rada je istražiti poresko savetovanje u Bosni i Hercegovini i zemljama regiona, koristeći istraživačke, istorijske, normative i uporedne metode.

Ključne reči: poresko savetovanje, poreski savetnik, poreski obveznici.



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