



Bulgarian Stock Exchange (BSE) submitted an official enquiry to the **National Revenue Agency (NRA)** regarding the tax treatment under the **Personal Income Tax Act (PITA)** and the Corporate Income Tax Act (CITA) on income from the disposal of financial instruments admitted to trading on the **MTF BSE International** multilateral trading facility.

The following enquiries were addressed to NRA:

1. What are the tax liabilities for natural and legal entities when receiving dividend yield (dividend payment) from issuers admitted to trading on a regulated market in a Member State and country of origin as follows: Germany, Great Britain, France, Finland, the Netherlands, USA, Canada, Israel, Russia and Ireland? Information was requested regarding the tax liabilities both to the respective country and to the state budget according to the Bulgarian legislation, including in the cases when Bulgaria has a Double Taxation Agreement (DTA) with the above-mentioned countries.
2. Is there a tax liability to the state budget under the Bulgarian legislation for natural and legal entities in the realisation of profits from transactions for purchase and sale of foreign shares and exchange-traded funds concluded on the MTF BSE International market, provided that these instruments are already admitted to trading on a regulated market in another Member State?

In this regard, we inform you about the answers received as follows:

On the first question:

Tax treatment under the Personal Income Tax Act:

According to Art. 12 (1) of the PITA, taxable under this law is the income from all sources, acquired by the taxable person during the tax year, except for the non-taxable income defined by law. The procedure for taxation of personal income, according to Bulgarian tax legislation, depends widely on whether the person is considered local or foreign.

According to Art. 4 (1) of the PITA, regardless of citizenship, a local natural person is a person who:

1. has a permanent address in Bulgaria, or
2. resides on the territory of Bulgaria for more than 183 days within any 12-month period, or
3. has been sent abroad by the Bulgarian state respectively its bodies and/or organisations, by Bulgarian enterprises, and the members of his/her family, or
4. has a centre of vital interests, located in Bulgaria.

Falling into one of the listed hypotheses, the natural person is considered local in the sense of the Bulgarian legislation except for the cases under Art. 4 (5) of the PITA, namely: The person who has a permanent address in Bulgaria, but the centre of his vital interests is not located in the country, is not a local natural person. In this regard, it should be taken into consideration that the centre of vital interests is located in Bulgaria when the interests of the person are closely related to the country. When determining them, the family, the property, the place wherefrom the person carries out labour, professional or economic activity, and the place wherefrom he/she manages his/her property can be taken into account (Art. 4 (4) of the PITA).

Local individuals are liable for taxation on income from sources in the Republic of Bulgaria and abroad, and foreign individuals are liable for taxation on income from sources in the Republic of Bulgaria (Art. 6 and 7 of the PITA).

According to Art. 38 (1), item 2b of the PITA, taxable income from dividends and liquidation shares in favour of a local individual from a source abroad is subject to final tax. The final tax on dividend income depends on the gross dividend amount under the dividend distribution decision (Art. 38 (2) of the PITA), and according to Art. 46 (3) of the PITA the tax rate is 5 per cent. In accordance with Art. 67 (4) of the PITA, when the income is acquired by a local natural person from a source abroad, the tax under Art. 46 shall be paid by April 30 of the year following the year of the income acquisition and shall be declared in the annual tax declaration under Art. 50 of the PITA (Annex N° 8, Part IV).

According to the provision of Art. 50 (1), item 4 of the PITA, the local natural persons shall submit an annual tax declaration as per a form regarding the owned shares and participations in companies, place of business, registered address and real estate abroad, which are only for information indicated in Annex N° 8, Part II of the declaration.

Regarding tax treatment in other countries, NRA is not competent to express an opinion.

Tax treatment under the CITA:

The taxation of the income and profits of legal entities is regulated in the CITA. According to Art. 3 (2) of the CITA, local legal entities are taxed under this law for their profits and income from all sources in the Republic of Bulgaria and abroad. Foreign legal entities that carry out economic activity in the Republic of Bulgaria via a place of economic activity, dispose of property at such a place of economic activity or receive income from a

source in the Republic of Bulgaria are defined as taxable persons under this law pursuant to Art. 2 (1), item 2 of the CITA.

Concerning the tax treatment of accounting income from dividends, please, keep in mind the provision of Art. 27 (1), item 1 of the CITA according to which the accounting income from the distribution of dividends by local legal entities and foreign persons who are local persons for tax purposes of a Member State of the European Union or of another country, party to the Agreement on the European Economic Area (EEA Agreement), is not recognised for tax purposes (taxable).

The CITA does not contain special provisions for the tax treatment of accounting income from dividends accrued by companies outside the above areas (see local to Bulgaria legal entities or companies from an EU Member State or another country party to the EEA Agreement). This means that the accounting income from dividend distribution in such cases is recognised for tax purposes (taxable), and it does not transform (reduce) the accounting financial result when determining the tax financial result.

The answer to the question about taxation in other countries is outside the statutory competences of NRA in view of the fact that it is related to the application of foreign legislation.

It is necessary to take into consideration the provisions of Art. 13 of the CITA and Art. 75 of the PITA, stipulating that when an international treaty ratified by the Republic of Bulgaria, promulgated and in force, contains provisions other than the provisions of the law, the relevant international treaty provisions shall prevail. Such treaties are the DTAs. In their nature, the DTAs concluded by the Republic of Bulgaria are an international treaty that does not create new tax liabilities but only spreads the powers of the states regarding the taxation of certain incomes.

On the second question:

Tax treatment under the PITA:

According to Art. 13 (1), item 3 of the PITA, income from the disposal of financial instruments within the meaning of §1, item 11 of the Additional Provisions to the PITA shall not be taxable. According to the mentioned provision "Disposal of financial instruments", the transactions that serve Art. 13 (1), item 3, are:

- a) in units and shares of collective investment schemes and national investment funds, shares, rights and government securities, executed on a regulated market within the meaning of Art. 152 (1) and (2) of the **Markets in Financial Instruments Act (MFIA)**; rights in sentence one mean the securities giving the right to subscribe to a certain number of shares in connection with a decision to increase the capital;
- b) concluded under the terms and conditions of redemption carried out by collective investment schemes admitted to a public offering in the country or another EU Member State, or a state party to the EEA Agreement;
- c) concluded under the terms and conditions of redemption carried out by national investment funds admitted to a public offering in the country; the distribution of funds in case of liquidation of closed-end national investment funds is considered redemption;
- d) concluded under the terms and conditions of a tender offer under Chapter Eleven, Section II of the **Public Offering of Securities Act (POSA)**, or similar transactions in another EU Member State or a state party to the EEA Agreement.

Concerning the income from sale or exchange of shares, units, compensatory instruments, investment vouchers and other financial assets, which do not fall within the scope of the non-taxable income, the taxable income according to Art. 33 (3) of the PITA is the total profit realised during the year reduced by the total loss realised during the year, both determined by each specific transaction, considered acquired as of the date of transfer. The taxable income under Art. 33 (3) of the PITA is subject to taxation on a total annual tax base and declared in Appendix N° 5 to the annual tax declaration under Art. 50 of the PITA.

Tax treatment under the CITA:

The CITA regulates tax preferences for taxation of financial instruments admitted to trading on a regulated market, applicable only if the criteria specified in the law are met.

The provisions of Art. 44 and Art. 196 of the CITA introduce income tax relief for transactions in financial instruments executed on a regulated market within the meaning of Art. 152 (1) and (2) of the MFIA.

According to Art. 44 of the CITA, when determining the tax financial result shall be eliminated the profits and losses from disposal of financial instruments within the meaning of §1, item 21 of the Additional Provisions to the CITA.

According to Art. 196 of the CITA, the income from the disposal of financial instruments within the meaning of §1, item 21 of the Additional Provisions of the CITA is not liable to withholding tax.

According to the definition provided in §1, item 21 of the Additional Provisions to the CITA, "Disposal of financial instruments" in Art. 44 and Art. 196 of the CITA means transactions:

a) in units and shares of collective investment schemes and national investment funds, shares, rights and government securities, executed on a regulated market within the meaning of Art. 152 (1) and (2) of the MFIA; rights in sentence one mean the securities giving the right to subscribe to a certain number of shares in connection with a decision to increase the capital;

A definition of the regulated market is provided in §1, item 70 of the Additional Provisions to the CITA, referring to the regulated market as defined under Art. 152 (1) and (2) of the MFIA.

A regulated market according to Art. 152 (1) and (2) of the MFIA is a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments in the system and following its non-discretionary rules in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and conforming to this law and its implementing regulations.

A regulated market is also any multilateral system that is licensed and operates in accordance with the requirements of MiFID II Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

b) concluded under the terms and conditions of redemption carried out by collective investment schemes admitted to a public offering in the country or another EU Member State, or a state party to the EEA Agreement;

c) concluded under the terms and conditions of redemption carried out by national investment funds admitted to a public offering in the country; the distribution of funds in case of liquidation of closed-end national investment funds is considered redemption;

d) concluded under the terms and conditions of a tender offer under Chapter Eleven, Section II of the POSA, or similar transactions in another EU Member State or a state party to the EEA Agreement.

e) in shares, carried out on a third country market that is considered as equivalent to a regulated market and for which the European Commission has adopted a decision on the equivalence of the legal and supervisory framework of the third country in accordance with Directive 2014/65/EU.

In connection with determining the tax treatment of the income from disposal of financial instruments admitted to trading on the MTF BSE International, the Financial Supervision Commission (FSC) was asked whether the MTF organised by BSE is considered a regulated market within the meaning of Art. 152 (1) and (2) of the MFIA, with a view to the applicability of the special tax treatment under Art. 44 and Art. 196 of the CITA and under Art. 13 (1), item 3 of the PITA.

In response to letter N° 09-03-140/26.11.2021, the FSC has expressed the following opinion:

“Bulgarian Stock Exchange as a market operator has a permit issued by the FSC under Art. 154 (1) of the MFIA to organise the above-mentioned MTF – MTF BSE International. According to the European legislation, with which the Bulgarian legislation is harmonised, there are three types of trading venues where transactions in financial instruments are concluded – regulated market, multilateral trading facility (MTF) and organised trading system. Under §1, item 18a of the Additional Provisions to the MFIA is given a legal definition of an MTF, namely: The MTF is a multilateral system organised by an investment intermediary or market operator, combining multiple interests of third parties to buy and sell financial instruments within the system itself and conforming to its non-discretionary rules, in a way that leads to the conclusion of a contract in accordance with Chapters Two to Nine of the MFIA. According to §1, item 17 of the Additional Provisions to the MFIA, a “multilateral system” is a system or mechanism in which multiple interests of third parties in the purchase and sale of financial instruments can meet through the system. Every trading venue functions as a multilateral system.

Because of the above, it should be noted that MTF BSE International is not a regulated market within the meaning of Art. 152 (1) or (2) of the MFIA, but an MTF within the meaning of §1, item 18a of the Additional Provisions to the MFIA. The provision of Art. 152 (2) of the MFIA states that a regulated market is also any multilateral system that is licensed and operates under the requirements of Directive 2014/65/EU. The term “multilateral system” used in the norm differs from the term “multilateral trading facility”. As mentioned above, the “multilateral system” is defined in §1, item 17 of the Additional Provisions to the MFIA as a system or mechanism in which multiple interests of third parties in the purchase and sale of financial instruments can meet through the system. The multilateral system is a functionality of every trading venue including the multilateral trading facility but is not a trading venue itself. **To conclude the mentioned so far, it should be noted that MTF BSE International is not a regulated market within the meaning of Art. 152 (1) and (2) of the MFIA.**”

Given the above and the fact that MTF BSE International is not a regulated market within the meaning of Art. 152 (1) and (2) of the MFIA, the income generated from the disposal of financial instruments on this market does not fall within the scope of the special tax treatment under Art. 44 and Art. 196 of the CITA and under Art. 13 (1), item 3 of the PITA.”



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