

In accordance with Article 88 Item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**ENACTMENT ON
PROCLAIMING THE LAW ON TAX ON PROFIT OF LEGAL PERSONS
("Official Gazette of RoM", no. 65/01, 12/02, 80/04)**

This is a proclamation of the Law on Tax on Profit of Legal Persons, adopted by the Parliament of the Republic of Montenegro at the second meeting of the second regular session in the year 2001, on 27th December 2001.

Number: 01-3872/2

Podgorica, 28 December 2001

President of the Republic of Montenegro

Milo Đukanović, signed

**THE LAW ON
TAX ON PROFIT OF LEGAL PERSONS
(CORPORATE PROFIT TAX)**

I GENERAL PROVISIONS

Article 1

- (1) This law introduces the obligation of legal persons to pay tax on profit (hereinafter: the tax on profit).
- (2) The tax on profit is payable to the Budget of the Republic of Montenegro.

II TAXPAYER

Article 2

- (1) A taxpayer of the tax on profit shall be a resident or non-resident legal person, which carries out a business activity for profit.

- (2) Limited partnership shall be treated as a legal person under this law as well.

Resident and non-resident

Article 3

- (1) A resident legal person (hereinafter: resident) shall be a person established in the Republic of Montenegro (hereinafter: Montenegro), or with its main office of management and control in the territory of Montenegro.
- (2) Non-resident legal person (hereinafter: non-resident) shall be a legal person that is not established in Montenegro, and with no main office of management and control in Montenegro, but carries out its business activities through a permanent establishment.

III OBJECT OF TAXATION

Article 4

- (1) Object of taxation of a resident shall be the profit that the resident realizes in and outside of Montenegro.
- (2) Object of taxation of a non-resident shall be the profit that the non-resident realizes in Montenegro.
- (3) The object of taxation of a non-resident's permanent establishment (hereinafter: permanent establishment) shall be the profit attributable to that permanent establishment.
- (4) Permanent establishment shall mean a permanent place of business activities through which a legal person in whole or in part carries its business activities and it is organized in one of the following forms: a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas deposit, a quarry or any other place of exploitation of natural resources. A construction site or a prefabricated building constitutes a permanent establishment only if it continues to exist for the period exceeding six months.
- (5) The permanent establishment referred to in paragraph 4 of this Article shall not imply to be the following:
1. use of facilities for storage, display or delivery of goods belonging to the legal person;
 2. keeping of stocks of goods belonging to the legal person for the purpose of storage, display or delivery;
 3. keeping of stocks of goods belonging to the legal person for processing by another legal person;

4. maintenance of a permanent business location for procurement of goods or collection of information for the legal entity;
 5. maintenance of a permanent business location for business activities of the legal person and any other activity of preparatory or auxiliary character;
 6. maintenance of a permanent business location for any purpose mentioned in items 1 to 4 of this paragraph providing that the overall activities of the permanent business location be of a preparatory or auxiliary character.
- (6) Object of taxation of a non-resident with no permanent establishment shall be the revenues realized in respect of: dividends, shares in profit, royalties, interest, capital gain and income from lease of real estate located in Montenegro.

Sources of profits

Article 5

- (1) The following shall be treated as sources of profits in Montenegro:
1. sale of goods produced in Montenegro;
 2. provision of services in Montenegro;
 3. interest generated by resident taxpayers and permanent establishments of non-residents;
 4. dividends paid by residents;
 5. use of property rights in Montenegro;
 6. exploitation of natural resources;
 7. immovable and movable property located in Montenegro;
 8. sale of immovable property located in Montenegro;
 9. sale of movable property, if the seller is located in Montenegro;
 10. insurance and reinsurance from risks realized in Montenegro.
- (2) Sources of profits in Montenegro shall also imply other revenues if realized in respect of activities in Montenegro.
- (3) The Minister in charge of finances may, if needed, issue more detailed regulations to define what is considered to be the revenues referred to in paragraph 2 of this Article.

IV TAX EXEMPTIONS

Article 6

Tax on profit shall not be paid by:

1. the Central Bank of Montenegro;

2. public funds and public institutions established by the Republic of Montenegro or local self-government units, except for profit they generate from sale of goods and services in the market.

V TAX BASE

Article 7

- (1) Tax base of the tax on profits represents the taxable profit of a taxpayer.
- (2) Taxable profit shall be determined by adjustment of the profit of the taxpayer shown in the income statement in the manner envisaged by this Law.

Adjustment of revenues

Article 8

For determination of taxable profit, recognized shall be revenues in the amounts set in the income statement, in accordance with the law regulating accounting, with the exception of revenues for which this Law prescribes a different manner of calculation.

Article 9

Revenues from dividends and shares in other legal persons' profit shall not be included in the tax base.

Adjustment of expenses

Article 10

For determination of taxable profit, recognized shall be expenses in the amounts set in the income statement, in accordance with the law regulating accounting, with the exception of expenses for which this Law prescribes a different manner of calculation.

Article 11

The following shall not be recognized as expenses:

1. costs incurred for the purposes other than business activity performance;
2. costs that cannot be documented;
3. interests on untimely paid taxes and contributions;
4. interests paid to non-residents, if paid at the rate higher than normal commercial rate;

5. administrative costs paid by a permanent establishment to non-resident main office;
6. earnings of employees or other persons in respect of profit sharing;
7. fines and penalties;
8. contributions to political organizations.

Article 12

Material costs and acquisition value of sold merchandise shall be recognized in the amounts calculated by FIFO or average price method, in accordance with the law regulating accounting.

Article 13

- (1) Fixed assets depreciation shall be recognized as an expense in the amount determined in the manner envisaged in this Law.
- (2) Permanent fixed assets from paragraph 1 of this Article imply tangible and intangible assets with an expected life over one year and with the value exceeding 200 Euro.
- (3) Fixed assets from paragraph 2 of this Article shall be classified in five groups with the following depreciation rates:
 - group I 5%
 - group II 15%
 - group III 20 %
 - group IV 25 %
 - group V 30%
- (4) Depreciation of permanent fixed assets classified in group I shall be calculated according to the straight-line method for each asset individually.
- (5) Depreciation of fixed assets classified in the remaining groups (II – V) shall be calculated according to declining-balance method on the value of assets classified by groups.
- (6) Minister in charge of finances shall pass a more detailed regulation on classification of fixed assets by groups and methods for determination of depreciation.

Article 14

Expenses incurred to health, education, scientific, religious, cultural, sports and humanitarian purposes, as well as to environmental protection shall be recognized as expenses in the amount not exceeding 3% of total revenue.

Article 15

Representation expenses shall be recognized as expenses in the amount up to 1% of total revenue, provided that: they incur for business activities improvement, they are documented and their recipient is not a related person.

Article 16

Membership fees for chambers, alliances and associations shall be recognized as expenses in the amount not exceeding 0.1% of total revenue, except for the membership fees the amount of which is prescribed by law, which shall be recognized in the amount prescribed by law.

Article 17

- (1) Adjusted doubtful debts (written off values) shall be recognized as expenses provided that:
1. it has positively been proven that those debts had previously been included in taxpayer's revenues;
 2. the debt has been written off in the taxpayer's books as uncollectible;
 3. the taxpayer presents adequate evidence of unsuccessful collection of the debts.
- (2) Doubtful debts, which are recognized as expenses, and then collected, shall be included in the revenues of the taxpayer at the moment of their collection.

Article 18

- (1) Reserve funds of banks shall be recognized as expenses in the amount not exceeding the amount prescribed by the law regulating operations of banks.
- (2) Reserve funds of other legal persons shall not be recognized as expenses.

Article 19

Interest and relevant costs due to a creditor with the status of a related person shall be recognized as an expense in the amount not exceeding interest costs in the open market, if those costs do not exceed the actually paid amount.

Article 20

The difference between interest calculated on the arm's length basis and the amount of interest actually received shall be included in the tax base of the recipient of the interest.

Capital gains and losses

Article 21 (Official Gazette of the RoM, No. 80/04)

- (1) Capital gain shall be considered to be the revenue that a taxpayer realizes through sale or other transfer with compensation (hereinafter: sale) of land, building constructions, property rights, equity interest and securities.
- (2) The entire amount of capital gain shall be included in the tax base for the taxable year in the year in which it is realized.
- (3) Capital gain realized from the sale of securities reinvested within 12 months for the purchase of new securities shall not be included in the tax base in the year when the gain is realized.
- (4) If the capital gain is not reinvested within the time limit referred to in paragraph 3 of this Article, that amount shall be included in the tax base in the year following the year when capital gain is realized.
- (5) Capital gain realized by the sale of securities that the taxpayer held in his portfolio for the period longer than two years shall not be subject to tax.

Article 22

- (1) Capital gain shall be the difference between the selling price of the asset referred to in Article 21 of this Law (hereinafter: asset) and its purchase price adjusted in the manner envisaged in this Law.
- (2) Negative difference referred to in paragraph 1 of this Article shall be considered as a capital loss.
- (3) If the participants in the sale of assets are related persons and if the selling price is lower than the market value, then the adjustment of the market value shall be performed by a competent tax authority.
- (4) Capital losses may be offset by capital gains realized in the same year.
- (5) If even upon the offset with capital gains realized in the same year, the capital loss still occurs, the taxpayer may carry forward the capital loss counting on future capital gains in the next five years.

Article 23 (“Official Gazette of RoM”, No. 80/04)

For the purpose of determining capital gain, the selling price shall be considered to be the market value of the asset received as monetary or non-monetary compensation deducted by the selling costs or costs of other transfer of the asset.

Article 24

For the purpose of determining capital gain, the purchase price of the asset shall be the price at which the taxpayer acquired the asset, determined in the law regulating accounting and deducted by depreciation costs established in the manner envisaged in this Law.

Tax treatment of operating losses

Article 25

- (1) Losses resulting from business relations, excluding those resulting in capital gains and losses, may be transferred forward to offset profit generated in future calculation periods, but not exceeding five years.
- (2) The tax benefits referred to in paragraph 1 of this Article shall also be applied in the case of status changes.
- (3) In case of status changes, the tax benefits referred to in paragraph 1 of this Article shall be proportionally divided based on the value of the assets, and the competent tax authority shall be informed thereof.

VI TAX TREATMENT OF STATUS CHANGES AND LIQUIDATION

Status changes

Article 26

- (1) Transfer of assets in case of status changes and distribution of equity capital shall not be considered as sale of assets in respect of this Law, if the parties to those changes are residents.
- (2) Purchase value of assets and equity capital in case of status changes, for purposes of determining capital gain, shall equal the book value of that asset prior to status changes.

Legal person liquidation

Article 27

- (1) The legal person shall be obliged to, in case of legal person's liquidation, compute capital gain or loss as if it had sold the asset at its market price.
- (2) The purchase price of distributed assets in the liquidation procedure, for the purposes of determination of capital gain, shall equal the market value of the assets prior to distribution thereof.
- (3) Capital gain or capital loss shall be determined in the manner envisaged in Article 22 of this Law.
- (4) In the case when the assets of a subsidiary are transferred to a parent company, the parent company shall not be obliged to determine capital gain, or loss.

VII TAX RATES

Profit Tax Rates

Article 28 ("Official Gazette of RoM", No. 80/04)

The rate of profit tax shall be proportional and amount to 9% of tax base.

Withholding Tax Rates

Article 29 ("Official Gazette of RoM", No. 80/04)

- (1) A taxpayer of profit tax is obliged to calculate and pay withholding tax on payments made on the following bases:
 - 1) dividends and shares in legal persons' profits
 - 2) royalties, interest, capital gain and real estate lease fees paid to non-resident legal person.
- (2) The tax rate from paragraph 1 of this Article shall be 15% except for interests that are taxed at the rate of 5%.
- (3) Withholding tax shall not be paid on dividends and shares in profits used for increase of initial capital of a taxpayer.

VIII TAX EXEMPTIONS AND RELIEVES

Article 30 (“Official Gazette of RoM”, no. 80/04)

- (1) For the taxpayers who employ new employees in a business year for indefinite time period but not less than two years, the tax base shall be reduced by the amount of paid salaries to the new employees increased by contributions for obligatory social insurance paid by employer.
- (2) Taxpayer may use the right to deduction of the tax base referred to in paragraph 1 of this Article for one year from the day of employment of a new employee.
- (3) If the taxpayer terminates the employment to the new employee referred to in paragraph 1 of this Article, unless requested by him, prior to expiry of two years from the moment of his employment, the tax base shall be increased by the amount of used relief in respect of this Article in the year of termination of the employment.
- (4) The deduction from the tax base referred to in paragraph 1 of this Article shall be accepted up to the amount that does not exceed the amount of the tax base.
- (5) The newly employed referred to in paragraph 1 of this Article shall be considered to be an employee who has concluded a contract on employment for an indefinite period of time.
- (6) The newly employed shall not be considered to be a person employed in a direct or indirect subsidiary legal person of the taxpayer.

Article 31

- (1) Legal person newly established in an underdeveloped municipality conducting a production activity shall be exempted from profit tax for the period of the first three years as of the day of the commencement of the activity, in respect of profit generated by conducting the activity in the underdeveloped municipality.
- (2) The taxpayer that generates profit in a newly established business unit conducting the production activity in the underdeveloped municipality shall be entitled to a profit tax deduction for the duration of three years, proportionally to the share of such realized profit in the total amount of taxpayer's profit.
- (3) The tax credit referred to in paragraph 2 of this Article shall be realized provided that separate recording of business operations of the business unit is kept in underdeveloped municipality.
- (4) The first year within which the right to tax exemption is exercised shall commence as of the day of entry into the court registry.

- (5) Legal person created by merging or division of an existing legal person, or a legal person established as a result of any status change shall not be considered to be a newly established legal person.
- (6) Legal person shall not be considered to be newly established legal person if it ceased to exist in the period of three years preceding the establishment of that legal person, or terminated operating in the same or similar activity.
- (7) Newly established legal person shall not be entitled to tax relief if a related person is its founder or cofounder.
- (8) If a newly established legal person terminates its business activities during the tax relief period it shall be obliged to pay non-paid tax for the period of utilizing the tax relief.
- (9) Minister in charge of finances shall adopt a more detailed regulation for use of tax relief.

Article 32

- (1) Legal persons established as non-governmental organizations shall be exempted from profit tax up to the amount of 4,000 Euro provided that they use that profit for realization of goals which they have been established for.
- (2) Exemption referred to in paragraph 1 of this Article shall be established by a decision of the competent tax authority.

IX AVOIDANCE OF DOUBLE TAXATION OF PROFIT

Article 33

- (1) For a resident taxpayer that makes profit outside of Montenegro and pays tax on that profit in another country a tax credit is approved in amount equal the amount of tax on profit paid in that country.
- (2) The tax credit referred to in paragraph 1 of this Article shall not exceed the amount that would be calculated by application of the provisions of this Law on the profit realized in another country.

Article 34

Any agreement on avoiding double taxation shall supersede the provisions of this Law.

X GROUP TAXATION AND TRANSFER PRICES

Article 35

- (1) Parent and subsidiary companies in respect of this Law shall constitute a group of related companies if the parent company has direct or indirect control over at least 75% of shares or equity of the subsidiary company.
- (2) Related companies have a right to tax consolidation provided that those companies are residents of Montenegro.
- (3) The parent company shall submit a request for tax consolidation to the competent tax authority.

Article 36

- (1) Each member of the related companies group is obliged to submit its tax return to the competent tax authority, while the parent company shall submit the consolidated tax return for the group of related companies.
- (2) In the consolidated tax return, losses of related companies shall be offset against the profit of other related companies in the group.
- (3) For the calculated tax in respect of consolidated tax return, taxpayers are individually related companies from the group, proportionally to the taxable profit from individual tax returns.
- (4) The Minister in charge of finances shall prescribe more detailed manner for avoiding double exemptions or double taxation of specific positions in the consolidated tax return.

Article 37

- (1) Once approved, tax consolidation shall be applied for the period of no less than five years.
- (2) If prior to the expiry of the time period referred to in paragraph 1 of this Article, the conditions referred to in Article 35 paragraphs 1 and 2 of this Law change or one or more related companies decide for individual taxation, each member of the group shall pay the proportional difference for the tax relief used.

Transfer Prices

Article 38

- (1) The price originated from assets transactions or creation of obligations between related persons shall be considered a transfer price.

- (2) The person related with a taxpayer shall be considered to be a legal or physical person in whose relations with the taxpayer there is a possibility of control or significant influence on business decisions.
- (3) The price expected to be achieved from asset transactions or contract obligations between parties that had been dealing at arm's length or greater than arm's length shall be considered the arm's length price.
- (4) The difference between an arm's length price and a transfer price shall be included in the tax base.
- (5) The arm's length price shall be determined by applying the comparable price method and when this is not possible, then the resale price or cost-plus method shall be used.
- (6) The Minister in charge of finances shall prescribe more detailed manner for establishment of the price from paragraph 5 of this Article.

XI CALCULATION AND PAYMENT OF TAX ON PROFIT

Tax period

Article 39

- (1) Tax period for which tax on profit shall be calculated shall be a financial year.
- (2) Financial year shall be a calendar year, except for the case of liquidation or commencement of performance of activity during a year.
- (3) Tax on profit shall be calculated after the expiration of the financial year or other period for tax determination according to the tax base realized in that period.

Tax return

Article 40 ("Official Gazette of RoM", No. 80/04)

- (1) Taxpayer of tax on profit shall be obliged to submit a tax return for the period for which the tax is calculated to the competent tax authority.
- (2) The return referred to in paragraph 1 of this Article shall be submitted no later than three months after the expiration of the period for which tax is being calculated. The tax indicated in the return shall be paid within the same time limit.

- (3) Attached to the tax return referred to in paragraph 1 of this Article taxpayer shall submit income statement and balance sheet prepared in accordance with the law regulating accounting.
- (4) The Minister in charge of finances shall, at the proposal of competent tax authority, prescribe the form and contents of the tax return.

Advance payment of tax on profit

Article 41

- (1) Taxpayers shall, during a year, pay tax on profit in form of monthly advance payments, determined on the basis of the tax return for tax on profit for the previous year.
- (2) The advance payment referred to in paragraph 1 of this Article shall be paid by the end of the current month for the previous month, in the amount of 1/12 of the tax liability for previous year.
- (3) The advance payment of paid tax referred to in paragraph 2 of this Article shall be considered as a credit with relation to the tax liability according to the tax return.
- (4) If, in the form of advance payment, during the year taxpayer has paid more tax than he was liable to pay according to the tax return, the overpaid tax shall be refunded at his request, or shall be included in advance payments for the subsequent period.
- (5) Taxpayer who commences performance of an activity during a year shall determine the advance installments of the tax on profit based on its estimate of the profit to be realized for that year.

Application of other regulations

Article 42

The law regulating tax procedure shall be accordingly applied to relations not specifically regulated by this Law (appeal procedure, enforced collection procedure, penalties, interest rates and other).

XIa PENALTY PROVISIONS

Article 42a (“Official Gazette of RoM”, No. 80/04)

- (1) A pecuniary fine in the amount of 50 fold to 300 fold amount of the minimum wage in Montenegro shall be imposed on a taxpayer – legal entity for an infringement if:
 1. it fails to calculate, calculates incorrectly or fails to pay the withholding tax on payments of dividends and shares in legal person’s profit, royalties, interest, capital gains and real estate lease compensations paid to non-resident legal persons (Article 29, paragraph 1);
 2. it fails to submit a tax return or fails to submit along the tax return an evidence on paid tax or income statement and balance sheet to the competent tax authority within the prescribed time limits (Article 40, paragraphs 2 and 3);
 3. it fails to pay within the prescribed time limits the advance payments of tax on profit (Article 41, paragraph 2).
- (2) Pecuniary fine in the amount of 5 fold to 20 fold amount of minimum wage in Montenegro shall be imposed on the responsible person in the legal entity for the infringement referred to in paragraph 1 of this Article.

XII TRANSITIONAL AND FINAL PROVISIONS

Article 43

The Minister in charge of finances shall adopt more detailed regulations for application of this Law within six months from the day when this law enters into force.

Article 44

Taxpayers who acquired the right to use tax relieves based on the provisions of the Law on Tax on Profit of Companies (“Official Gazette of the Republic of Montenegro, No 3/92, 30/93, 3/94, 42/94, 13/96 and 45/98) shall continue to use them until they cease to be valid.

Article 45

Notwithstanding Article 41 of this law, monthly advanced payment of tax on profit for the period January-April 2002 shall be paid in the amount of the last paid monthly advanced payment of tax on profit for 2001.

Article 46

Tax balance for 2001 shall be composed in accordance with the Law on Tax on Profit of Companies (“Official Gazette of the Republic of Montenegro, No 3/92, 30/93, 3/94, 42/94, 13/96 and 45/98) and regulations passed on the basis of that Law.

Article 47

The Law on Tax on Profit of Companies (“Official Gazette of the Republic of Montenegro” No 3/92, 30/93, 3/94, 42/94, 13/96 and 45/98) and regulations passed on the basis of that Law shall be rescinded as of the day of commencement of application of this Law.

Article 48

This law shall enter into force on the eighth day after its publication in “Official Gazette of the Republic of Montenegro”, and shall be applied as of 1st January 2002.

LAW ON AMENDMENTS TO THE LAW ON TAX ON PROFIT OF LEGAL PERSONS

(“Official Gazette of RoM”, no. 80/04)

Article 8

This Law shall enter into force on the eighth day after its publication in “Official Gazette of the Republic of Montenegro”, and shall be applied as of 1st January 2005.