

Pursuant to Article 88 Item 2 of the Constitution of the Republic of Montenegro I hereby pass the

**DECREE PROMULGATING THE LAW ON TAX ON PROFIT OF LEGAL ENTITIES  
(Official Gazette of the Republic of Montenegro No 65/01 of 31 December 2001, 12/02 of 15 March 2002, 80/04 of 29 December 2004; Official Gazette of Montenegro No 40/08 of 27 June 2008, 86/09 of 25 December 2009)**

I hereby promulgate the Law on Tax on Profit of Legal Entities, adopted by the Parliament of the Republic of Montenegro at the second sitting of the second regular session in 2001 on 27 December 2001.

Number: 01-3872/2

Podgorica, 28 December 2001

The President of the Republic of Montenegro

Milo ukanovi , m.p.

## **LAW ON TAX ON PROFIT OF LEGAL ENTITIES**

- (2) A non-resident legal entity (hereinafter referred to as the non-resident) shall be an entity that is not established in Montenegro, and without registered office having actual headquarters and control in Montenegro, but that carries out its operations through a permanent establishment.

### **III OBJECT OF TAXATION**

#### **Article 4**

- (1) The object of taxation of a resident shall be the profit that the resident realizes in Montenegro and outside of Montenegro.

Official Gazette of the Republic of Montenegro, No 65/01 of 31 Dec 2001, 12/02 of 15 Mar 2002, 80/04 of 29 Dec 2004;  
Official Gazette of Montenegro, No 40/08 of 27 J

## **Adjustment of Revenues**

### **Article 8**

The revenues in the amounts set forth the income statement shall be recognised when assessing the taxable profit, in accordance with the law governing accounting, with the exception to revenues for which this Law prescribes a different manner of assessment.

### **Article 9**

The revenues from dividends and share in profit of other legal entities shall be excluded from the tax base of the recipient, if the payer thereby is the tax obligor under this Law.

## **Adjustment of Expenses**

### **Article 10**

The expenses in the amounts set forth in the income statement shall be recognised when assessing the taxable profit, in accordance with the law governing accounting, with the exception to expenses for which this Law prescribes a different manner of assessment.

### **Article 11**

The following shall not be recognized as expenses:

- 1) costs incurred for the purposes other than carrying out of the activity;
- 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 customary commercial rate;
- 5) administrative costs paid by a permanent establishment to the non-resident headquarter;
- 6) earnings of employees or other persons arising from profit sharing;
- 7) pecuniary fines and penalties;
- 8) correction of value of a single claim in a case of parties to which is simultaneously owed to;
- 9) contributions given to political organizations.

### **Article 12**

Costs of material and acquisition value of sold merchandise shall be recognized in the amounts calculated by applying average cost method or FIFO method, in accordance with the law governing accounting.

### **Article 13**

- (1) Depreciation of permanent fixed assets and investments in immovable property shall be recognized as an expense in the amount determined in the manner envisaged under this Law.
- (2) Permanent fixed assets referred to in paragraph 1 of this Article shall cover tangible and intangible assets with a life exceeding one year and having the value exceeding 300 euro.

- (3) Fixed assets referred to in 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 the 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) The ministry competent for finance shall adopt a more detailed regulation on classification of fixed assets by groups and methods for determining the depreciation.

#### **Article 14**

Expenses incurred for healthcare, education, scientific, religious, cultural, sports, and humanitarian purposes, as well as for environmental protection shall be recognized as expenses in the amount not exceeding 3.5% of the total revenue.

#### **Article 15**

Business entertainment expenses shall be recognized as expenses in the amount up to 1% of the total revenue provided that: they are incurred for improvement of business operations, they are documented, and their recipient is not a related party.

#### **Article 16**

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

#### **Article 17**

- (1) Adjusted (written off value) doubtful claims shall be recognized as expenses provided that:
- 1) has been proven positively that such claims were previously included in taxpayer's revenues;

### **Article 18**

- (1) Provisioning (reserves) of banks shall be recognized as an expense in the amount not exceeding the amount prescribed by the law governing operations of banks.
- (2) Provisioning against special risks for stock-exchange intermediation companies shall be recognized as an expense in calculated amounts and not exceeding the amount envisaged by regulations governing securities.
- (3) Technical provisioning of insurance companies shall be recognized as an expense in calculated amounts and not exceeding the amount envisaged by the law governing insurance.
- (4) Provisioning for renewable natural resources, warranties for sale of goods and services (warranty period), expected losses arising from court disputes (sensitive contracts), shall be recognized as an expense in accordance with the regulations governing accounting, while provisioning for severance payments and jubilee awards up to the amount envisaged by the labour law.
- (5) Provisioning referred to in this Article shall be recognized in such manner that revenues are excluded and expenses recognized, thus the revenues and expenses used to increase and decrease the tax base in the past are not included in the tax base again.

### **Article 19**

Interest and appurtenant costs due to a creditor with the status of a related party shall be recognized as an expense in the amount not exceeding interest costs in the open market, if such 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 such interest.

## **Capital Gains and Losses**

### **Article 21**

Capital gain shall be considered to be the revenue that a taxpayer realizes through sale or other transfer with compensation (hereinafter referred to as the sale) of land, building constructions, property rights, equity interests and securities.

### **Article 22**

- (1) Capital gain shall represent the difference between the sale price of the asset referred to in Article 21 of this Law (hereinafter referred as the asset) and its acquisition price adjusted in the manner envisaged under this Law.
- (2) Negative difference referred to in paragraph 1 of this Article shall be considered as a capital loss.

- (3) If participants in the sale of assets are related parties and if the sale price is lower than the market value, then the competent tax authority shall make the adjustment of the market value.
- (4) Capital losses may be offset against capital gains realized in the same year.
- (5) If even upon the offset against capital gains realized in the same year, the capital loss still occurs, the taxpayer may carry forward the capital loss against future capital gains in the next five years.

### **Article 23**

For the purpose of determining the capital gain, the sale price of the asset shall be

- (3) Capital gain referred to in paragraph 2 of this Article shall be calculated as a difference between the sale price of the asset and its bookkeeping value, established in accordance with the accounting regulations, reduced by depreciation costs established in a manner envisaged by this Law.
- (4) Right to defer payment of the Profit Tax on capital gains realized in the manner referred to in paragraph 1 of this Article shall be acquired in a case the owner of the legal entity which transferred the assets in the event of acquisition, merger, or division received a compensation in a form of shares or interest in the legal entity to which the assets were transferred, as well as in the case of possible cash compensation the amount of which does not exceed 10% of the par value of acquired shares or interest.

### **Liquidation of a Legal Entity Article 27**

- (1) A legal entity shall be obliged to, in case of a liquidation of the legal entity, determine a capital gain or loss as if it had sold the assets at market price.
- (2) The acquisition price of distributed assets in the liquidation procedure, for the purposes of determining the capital gain, shall equal the market value of the assets prior to the distribution thereof.
- (3) The 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**

### **The Profit Tax Rates Article 28**

The rate of the Profit Tax shall be proportional and amount to 9% of the tax base.

### **Withholding Tax Rates Article 29**

- (1) A taxpayer of the Profit Tax shall be obliged to calculate, withhold and pay withholding tax on payments made on the following bases:
  - 1) dividends and interests in profits paid to resident and non-resident legal entities and natural persons;
  - 2) interest, royalties, and other intellectual property rights compensations, capital gain, movable and immovable assets lease fees, revenues from provision of consulting services, market research services and audit services paid to a non-resident legal entity.
- (2) The withholding tax shall be paid at the rate of 9% to a base made of the gross revenue.



Official Gazette of the Republic of Montenegro, No 65/01 of 31 Dec 2001, 12/02 of 15 Mar 2002, 80/04 of 29 Dec 2004;  
Official Gazette of Montenegro, No 40/08 of 27 Jun 2009, 86/09 of 25 Dec 2009

[

### **Article 30a**

Deleted (Official Gazette of Montenegro, No 86/09)

### **Article 31**

- (1) Newly established legal entity in economically underdeveloped municipalities conducting a production activity shall have the profit tax holiday for the period of the first three years as of the day of the commencement of the activity, in respect of profit generated by carrying out the activity in the underdeveloped municipality.
- (2) The taxpayer that generates profit in a newly established business unit conducting the production activity in underdeveloped municipalities shall be entitled to a profit tax deduction for the duration of three years, proportionally to the share of such generated 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 a separate recording of operations of the business unit in the underdeveloped municipality is kept.
- (4) The first year within which the right to tax holiday is exercised shall commence as of the day of registration in the court register.
- (5) Legal entity created by merging or division of an existing legal entity, or a legal entity established as a result of any status change shall not be considered as a newly established legal entity.



- (4) The ministry competent for finance shall regulate in more details the manner of exercising rights to a tax credit referred to in paragraph 1 of this Article.

## **X GROUP TAXATION AND TRANSFER PRICES**

### **Tax Consolidation**

#### **Article 35**

- (1) For the purpose of the tax consolidation, parent and subsidiary companies, shall constitute a group of related companies if the parent company has direct or indirect control over at least 75% of shares or interest of the subsidiary company.
- (2) Related companies shall have a right to tax consolidation provided that such companies are residents of Montenegro.
- (3) The parent company shall submit a request for tax consolidation to the competent tax authority no later than by 31 December of the current tax period.
- (4) The competent tax authority shall be obliged to adopt a decision approving the tax consolidation within 30 days as of the day of the submission of request referred to in the paragraph 3 of this Article.

#### **Article 36**

- (1) Each member of the group of related companies shall be 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) Losses of related companies in the consolidated tax return shall be offset against the profit of other related companies in the group.
- (3) For the tax assessed according to the consolidated tax return, the taxpayers shall be individually related companies from the group, proportionally to the taxable profit from an individual tax return.
- (4) The ministry competent for finance shall prescribe a more detailed manner for avoiding double tax holidays or double taxation of specific line items in the consolidated tax return.

#### **Article 37**

- (1) Once approved, a tax consolidation shall apply for the period of no less than five years.
- (2) If prior to the expiry of the 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 an individual taxation, each member of the group shall be obliged to 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 parties shall be considered a transfer price.
- (2) Related parties shall be considered as the parties among which exist special relations that may have direct impact on the conditions or economic outcomes of transactions among such parties, in accordance with the law governing tax administration.

(4) At the proposal of the competent tax authority, the ministry competent for finance shall

Official Gazette of the Republic of Montenegro, No 65/01 of 31 Dec 2001, 12/02 of 15 Mar 2002, 80/04 of 29 Dec 2004;

Official Gazette of Montenegro, No 40/08 of 27 Jun 2009, 86/09 of 25 Dec 2009

[uno.0007 Tcdtpanslation]