

16 Annex - Taxation

**103. LAW ON CORPORATE PROFIT TAX**

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

***I GENERAL PROVISIONS***

Article 1

- 1) This Law shall govern the system and shall introduce the obligation of payment of a tax on profit of legal entities (hereinafter referred to as: the Profit Tax).
- 2) The revenues from the Profit Tax shall belong to the Budget of Montenegro.

## **II TAXPAYER**

### Article 2

- 1) A taxpayer of the Profit Tax shall be a resident or non-resident legal entity, which carries out a for-profit activity.
- 2) For the purpose of this Law, a limited partnership shall also be considered as a legal entity.

### Resident and Non-resident

#### Article 3

- (1) A resident legal entity (hereinafter referred to as: the resident) shall be an entity established in Montenegro, or having registered office having actual headquarters and control on the territory of Montenegro.
- (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.
- 2) The object of taxation of a non-resident shall be the profit that the non-resident realizes in Montenegro.
- 3) The object of taxation of the non-resident's permanent establishment (hereinafter referred to as: the permanent establishment) shall be the profit attributable to such permanent establishment.
- 4) The permanent establishment shall mean a permanent place of operations through which a legal entity in entirety or partly carries out its operations and is organized in one of the following forms: a headquarters, 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 structure shall constitute 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 structures for storage, display or delivery of goods belonging to the legal entity;
  - 2) keeping of stock of goods belonging to the legal entity for the purpose of storage, display or delivery;
  - 3) keeping of stock of goods belonging to the legal entity for processing by another legal entity;
  - 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 operations of the legal entity and any other activity of preparatory and auxiliary character;
  - 6) maintenance of a permanent business location for any purpose mentioned in items 1 to 4 of this paragraph provided that the overall activities of the permanent business location arising from this purpose are of preparatory and auxiliary character.
- 6) The object of taxation of the non-resident without the permanent establishment shall be the revenues referred to in Article 29, paragraph 1, item 2 of this Law.

#### Sources of Profit

#### Article 5

- (1) The revenues realized from following grounds shall be considered as sources of profit in Montenegro:

- 1) sale of goods produced in Montenegro;
  - 2) provision of services in Montenegro;
  - 3) interest, if debited to the resident or the non-residents through its permanent establishment in Montenegro;
  - 4) dividends and profit shares paid by residents;
  - 5) use of property rights in Montenegro;
  - 6) exploitation of natural resources;
  - 7) immovable property and rights on immovable property located in Montenegro;
  - 8) sale of immovable property located in Montenegro;
  - 9) sale of movable property, if its seller is located in Montenegro;
  - 10) insurance and reinsurance against risks realized in Montenegro.
- (2) Other revenues shall also be considered as sources of profit in Montenegro if realized in respect of activities carried out in Montenegro.
- (3) The ministry competent for finance may, if needed, prescribe in more details what is considered as revenues referred to in paragraph 2 of this Article.

## **IV TAX EXEMPTIONS**

### Article 6

- (1) State authorities, state administration authorities, local self-government authorities, public funds, public institutions, tourism organisations, sports clubs, sports associations and federations, religious communities, arts associations, political parties, chambers, trade unions and non-governmental organisations, shall not pay the Profit Tax if they are established under a special law to carry out a non-profit activity.
- (2) Exceptionally, if parties referred to in paragraph 1 of this Article carry out a for-profit activity, such parties shall be obligors of the Profit Tax for such activity.

**V TAX BASE**

Article 7

- 1) Tax base of the Profit Tax shall represent the taxable profit of a taxpayer.



The following shall not be recognized as expenses:

- 1) costs incurred for the purposes other than carrying out of 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 case of parties to which is simultaneously owed;
- 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 an expected life exceeding one year and with 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 determination of 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 total revenue.

#### Article 15

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

#### 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 (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;
  - 2) such claim has been written off in the taxpayer's books as uncollectible;
  - 3) the taxpayer presents required evidence of unsuccessful collection of such claims.
- (2) Doubtful claims, which are recognized as expenses, and then collected, shall be included in the revenues of the taxpayer at the time of their collection.

#### 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

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, so that 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 interest 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 in 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 capital gain, the sale price of the asset shall be considered as the market value of the asset received as monetary or non-monetary compensation reduced by the costs of sale 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 or the estimated fair value of the asset, determined in accordance with regulations governing accounting and reduced 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 against profit generated in future assessment periods, but not exceeding five years.
- 2) The tax benefits referred to in paragraph 1 of this Article shall also apply in the case of status changes.

## **VI TAX TREATMENT OF STATUS CHANGES AND LIQUIDATION**

### Status Changes

#### Article 26

- 1) Transfer of assets in a case of status change (acquisition, merger or division) and distribution of the share capital shall not be considered as the status change for the purpose of this Law.
- 2) Tax liability arising from capital gains referred to in paragraph 1 of this Article shall occur at the time when a legal entity, created as a result of the status change, sells the assets taken over resulting from the status change.
- 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 determination of 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 gross revenue.
- (3) Withholding tax shall be calculated and paid in accordance with regulations applicable at the time of the payment of revenues.
- (4) Withholding tax shall also be paid by an establishment of a non-resident legal entity at the time of payment of compensation referred to in paragraph 1, item 2 of this Article.
- (5) Notwithstanding provisions of paragraph 4 of this Article, withholding tax shall not be paid in case the compensation is attributed as revenue of the establishment of a non-resident legal entity.

#### Article 29a

- 1) In case of calculation of the withholding tax for revenues paid to a non-resident legal entity, a payer of revenues shall apply provisions of an agreement for avoiding double taxation, provided that the non-resident proves the resident status in the country with which Montenegro has concluded the agreement for avoiding double taxation and that the non-resident is the real owner of revenues.
- 2) Non-resident shall prove the status of a resident of the country with which the agreement for avoiding double taxation was concluded, for the purpose of paragraph 1 of this Article, to the payer of the revenues by a certificate or other appropriate document, notarized by a competent authority of other country party to the agreement the entity is the resident of.
- 3) If the payer of revenues applies provision of the agreement for avoiding double taxation and the requirements referred to in paragraphs 1 and 2 of this Article are not met, which as

consequence results in a less paid amount of taxes, it shall be obliged to pay the difference of paid tax and tax due under this Law.

- 4) Tax authority shall be obliged to issue a certificate on tax paid in Montenegro upon the request of a non-resident legal entity.
- 5) Obligor of a withholding tax shall be obliged to submit to the competent tax authority once a year a report on paid withholding tax, which shall be submitted until the end of February of the current year for the previous year.
- 6) The ministry competent for finance shall prescribe the form and content of the report referred to in the paragraph 5 of this Article.
- 7) The tax authority shall inform a foreign tax authority, upon its request, on assessed withholding tax for a non-resident legal entity.

## **VIII TAX HOLIDAYS AND RELIEFS**

Article 30 and 30a are deleted

### Article 31

- 1) Newly established legal entity in an economically underdeveloped municipality 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 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 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.
- 6) Legal entity shall not be considered as a newly established legal entity if it ceased to exist within the period of three years preceding the establishment of such legal entity, or terminated operations in the same or similar activity.
- 7) Newly established legal entity shall not be entitled to tax relief if a related party is its founder or co-founder.
- 8) The ministry competent for finance shall adopt a more detailed regulation for use of tax reliefs.

### Article 32

- 1) Legal entity established as a non-governmental organization, registered to carry out commercial activities, the tax base shall be reduced for the amount of 4,000 euro provided that uses the profit for realization of objectives which it has been established for.
- 2) Deduction referred to in paragraph 1 of this Article shall be recognized up to the amount of the tax base.







- 2) Obligor referred to in paragraph 1 of this Article shall be obliged to submit to a competent tax authority relevant proofs on the size of this share in capital of a non-resident affiliation, duration of such share and tax paid to another country by the affiliation, along with its income statement.
- 3) Provisions of paragraphs 1 and 2 of this Article shall also apply accordingly in case when the parent company realizes indirect control over a non-resident affiliation by owning 10% or more shares or interest of another non-resident affiliation.
- 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.



- 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 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.
- 3) The price expected to be achieved from asset-related transactions or contractual obligations between parties that were operating at arm's length basis or greater price than arm's length shall be considered as the arm's length price.

## **XI ASSESSMENT AND PAYMENT OF THE PROFIT TAX**

### Tax Period

#### Article 39

- 1) Tax period for which the Profit Tax shall be assessed 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 the year.
- 3) The Profit Tax shall be assessed after the expiration of the financial year or other period for tax assessment, according to the tax base realized in such period.

### Tax Return

#### Article 40

- 1) Taxpayer of the Profit Tax shall be obliged to submit to the competent tax authority a tax return for the period for which the tax is assessed.
- 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 assessed. The tax stated in the return shall also be paid within the same deadline.
- 3) Attached to the tax return referred to in paragraph 1 of this Article, the taxpayer shall submit income statement and balance sheet prepared in accordance with the law governing accounting.
- 4) At the proposal of the competent tax authority, the ministry competent for finance shall prescribe the form and contents of the tax return.

#### Article 41 -deleted

### Application of Other Regulations

#### Article 42

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The law governing the tax procedure shall apply accordingly to relations not specifically regulated by this Law (appeal procedure, enforced collection procedure, interest rates and other).

## ***XIa PENALTY PROVISIONS***

### Article 42a

- (1) A pecuniary fine in the amount from ten-fold to three hundredfold of the minimum wage in Montenegro shall be imposed for an offence on a taxpayer – legal entity if:
  - 1) fails to calculate, calculates incorrectly or fails to pay the withholding tax on paid revenues referred to in Article 29 of this Law;
  - 2) fails to submit report on assessed withholding tax within prescribed deadline (Article 29a);
  - 3) fails to submit to the competent tax authority a tax return or fails to submit along with the tax return an evidence on paid tax or income statement and balance sheet within the prescribed deadline (Article 40, paragraphs 2 and 3);
  - 4) fails to pay within the prescribed deadline the advance payment of the Profit Tax (Article 41, paragraph 2).
- (2) A pecuniary fine in the amount from two fold to twenty fold of the minimum wage in Montenegro shall be also imposed for the offence referred to in paragraph 1 of this Article on a responsible person in the legal entity.



## ***XII TRANSITIONAL AND FINAL PROVISIONS***

### Article 43

The ministry competent for finance shall adopt more detailed regulations for application of this Law within six months as of the day this Law enters into force.

### Article 43a

Notwithstanding provisions of Article 29, paragraph 2 of this Law, the withholding tax rate for interests paid to a non-resident legal entity shall be 5% until 1 January 2010.

### Article 44

Taxpayers who acquired the right to use tax reliefs 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 provisions of Article 41 of this Law, the monthly advanced payment of the Profit Tax for the period January-April 2002 shall be paid in the amount of the last paid monthly advanced payment of the profit tax for 2001.

### Article 46

Tax balance for 2001 shall be compiled 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 under that Law.

### Article 47

On the day of commencement of application of this Law, the Law on Tax on Profit of Companies

