

**Government of Montenegro**

**Ministry of Finance**

## **Questionnaire**

Information requested by the European Commission to the Government of Montenegro for the preparation of the Opinion on the application of Montenegro for membership of the European Union

### **16 Taxation**

**Minister: Igor Luksic**

**Podgorica, December 2009**



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**CHAPTERS OF THE ACQUIS – ABILITY TO ASSUME THE  
OBLIGATIONS OF MEMBERSHIP**

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## **Chapter 16: Taxation**

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## ***I. INDIRECT TAXATION***

The Government of Montenegro and the Ministry of Finance are responsible for tax policy, and in the Ministry there is the Indirect Tax Division within the Department for Tax and Customs System of the Ministry that conducts the tasks related to: preparation of integral solutions for the system and policy related to indirect taxes (excise, value added tax, transit fees and other types of indirect taxes; drafting laws and enabling regulations related to indirect tax; harmonization of regulations on indirect tax with the EU law and the best international practice.

The Tax Administration is responsible for implementation of tax policy, and the Ministry of Finance supervises its activities.

Indirect taxation system in Montenegro is regulated by the **Value Added Tax - VAT** (OGRM 65/01, 38/02, 72/02, 21/03, 76/05 and OGM 16/07) and the **Excise Law** (OGRM 65/01, 76/05 and OGM 76/08 and 50/09).

**The Law on VAT** was passed at the end of 2001, and has been implemented since 1 April 2003. The VAT Law introduced the obligation of payment of net all-phase sales tax that replaced the previous sales tax. The Law is based on the following principles: consumption form of the VAT; crediting method of determination of tax liability; destination principle; wide coverage of taxable transactions; application of the general rate of 17%, reduced rate of 7% and zero rate. The share of VAT in the structure of revenues generated at the level of the State in the fiscal year of 2008 was 28.54%.

The Law has been harmonised to the greatest extent with the Council Directive 2006/112/EC on the common system of value added tax.

**Excise Law** (OGRM 65/01, 76/05 and OGM 76/08 and 50/09) that has been applied since 1 April 2002, introduced the obligation of excise payment for the following three groups of goods: alcohol and alcohol beverages, tobacco goods and mineral oils, their derivatives and substitutes. Excise is paid on excise goods produced in Montenegro and excise goods imported to Montenegro. The mentioned legal solutions prescribe equal treatment of domestic and import excise goods. The share of excise in the structure of revenues generated at the level of the State in the fiscal year of 2008 was 7.80%.

Excise Law has been fully harmonized with the following directives: Council Directive 92/80/EEC (amendments: 99/81 EEC and 02/10/EC) on the approximation of taxes on manufactured tobacco other than cigarettes and the Council Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages. The Law has been partially harmonized with the following directives: Council Directive 92/79/EEC (amendments: 99/81 EEC and 02/10/EC) on approximation of taxes on cigarettes; Council Directive 2003/96/EEC on restructuring the Community framework for the taxation of energy products and electricity and Council Directive 92/12/EC on general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products.

### **A. General**

The answer on this question is given in sub- chapter I Indirect taxation.

#### **1 Please specify the elements of your VAT and excise legislation which might provide for:**

The Law on VAT and the Law on Excise Tax provide for the equal tax treatment, i.e. the application of the same tax rates on both the domestic and the imported products, which means that the tax is calculated and paid in the same way on domestic and imported products, which is in line with the provisions of Article 90 of the Amsterdam Treaty.

**a) a higher level of taxation on imported products than that imposed on similar domestic products (Article 90 Amsterdam Treaty);**

In the Law on Value Added Tax - VAT (Official Gazette of the Republic of Montenegro 65/01, 38/02, 72/02, 21/03, 76/05 and Official Gazette of Montenegro 16/07) and the Law on Excise Tax (Official Gazette of the Republic of Montenegro 65/01, 76/05 and Official Gazette of Montenegro 76/08 and 50/09), there are no provisions setting higher tax rates on the imported products in comparison to the rates set for the domestic products.

**b) repayment of tax on exported products which exceeds the internal tax imposed on them (Article 91 Amsterdam Treaty).**

If the tax is paid for the supplies made within the country, and the products are exported, according to the provisions of the Montenegrin legislation the repayment of tax on exported products cannot exceed the amount of tax paid in the country. Therefore, the repayment of tax on exported products cannot exceed the amount of tax paid in the country on the same products, which is in line with the provisions of Article 91 of the Amsterdam Treaty.

## **B. Value Added Tax**

**2 Please provide a copy of your country's VAT legislation (in one of the official EU languages), including other related legislation, such as administration guidelines, etc.**

Translations of the Law on Value Added Tax (Official Gazette of the Republic of Montenegro 65/01, 38/02, 72/02, 21/03, 76/05 and Official Gazette of Montenegro 16/07) ([Annex 102](#)), as well as the secondary legislation acts, to English language are available in the Attachment.

The secondary legislation acts for the implementation of this Law are the following:

- Rulebook on the Enforcement of the Law on Value Added Tax (Official Gazette of the Republic of Montenegro 65/02, 13/03, 59/04, 79/05 and 16/06), ([Annex 121](#))
- Rulebook on the Determining of Products and Services Taxed by the Lower Rate of VAT (Official Gazette of the Republic of Montenegro 81/05, 2/06, 10/06, and Official Gazette of Montenegro 6/08, 46/08 and 11/09), ([Annex 117](#))
- Rulebook on the Design and Contents of the Application Form for the Registration of the Value Added Tax Payers (Official Gazette of the Republic of Montenegro 6/06), ([Annex 125](#))
- Rulebook on the Design and Contents of the Tax Return for the Calculation of the Value Added Tax (Official Gazette of the Republic of Montenegro 79/05 and 28/06) ([Annex 126](#))
- Rulebook on the Method of the Exercising of the Right to the Excise and Value added Tax Exemption for the Diplomatic and Consular Representation Offices and International Organizations (Official Gazette of the Republic of Montenegro 74/04), ([Annex 133](#)) i
- Instruction on the Method of Implementation of Procedure Related to the Exercising of the Right to the Value added Tax Exemption in Cases when it is Provided for by an International Agreement or Treaty (Official Gazette of the Republic of Montenegro 34/03). ([Annex 114](#)),
- Decree on the Delayed Payment of Customs Debt (Official Gazette of Montenegro 25/09 and 48/09), ([Annex 110](#)),
- Decree on the Usage of Fiscal Cash Register and the Method of Recording of Turnover of



- Products or Services on the Cash Register (Official Gazette of Montenegro 27/08 and 40/08), ([Annex 109](#)),
- Rulebook on the Contents of Records on the Cash Registers (Official Gazette of Montenegro 38/08), ([Annex 118](#)),
  - Rulebook on the Design and Contents of the Service Book of the Cash Register (Official Gazette of Montenegro 38/08) ([Annex 129](#)),
  - Rulebook on the Amount of Expenses on which no Value Added Tax is Due (Official Gazette of the Republic of Montenegro 74/06) ([Annex 131](#))

**3 Please give a detailed description of your current VAT regime particularly in the following areas:**

**a) taxable persons (i.e. conditions for being subject to tax, ceilings, etc.); liable persons (i.e. who is paying the tax);**

**i) the response should include the VAT treatment of government bodies and public institutions; non-resident taxable persons, small and medium sized entrepreneurs, liberal professions, non-profit organisations, affiliated enterprises, groups, etc;**

VAT payer is every legal or natural person who independently and on permanent basis performs an activity with the intention of generating income, and who has realized taxable turnover exceeding EUR 18,000 over the last 12 months. Persons who realized a turnover of goods or services in the amount below EUR 18,000 over the last 12 months are not VAT payers. However, they may become VAT payers if they submit a VAT registration application to the relevant tax authority, with the obligation to maintain that status for at least three years (Article 13 paragraph 1 and Article 42 of the Law).

VAT payer is also any person who occasionally performs an activity related to the supply of newly built building structures (Article 13 paragraph 3 of the Law).

VAT payer is any person who imports the products or receives a product from abroad on his/her own account, as well as any person on whose account the products is being imported (Article 13 paragraph 5 of the Law).

State authorities and organizations, as well as the local self-government authorities, political parties, trade unions, professional chambers, and other public legal entities are not deemed as VAT payers if they are performing the activities from their area of responsibility or authority. If these bodies perform an economic activity, and exemption of that activity from taxation would impair the rules of competition, Tax Administration will determine if they are to be deemed as taxpayers for that activity (Article 13 paragraphs 6 and 7 of the Law and Articles 23 through 27 of the Rulebook).

Non-resident taxpayers who perform the supply of products and services in Montenegro may be registered as VAT payers.

Montenegrin Law on VAT does not prescribe a special/separate procedure for the taxation of small and medium-sized enterprises.

Law on VAT does not contain any special/separate provisions on the taxation of groups or connected companies.

Non-profit organizations must be deemed as VAT payers if they perform taxable supply of products or services and if the amount of their annual turnover is higher than EUR 18 000.

In addition to the legal persons, natural persons are also deemed as VAT payers if they incur income from independent profession (lawyers, dentists, auditors, etc.), from agriculture and forestry, from property and property rights, or any other independent activity with the taxable turnover exceeding EUR 18,000 over in the period of the last 12 months.

**ii) how many VAT taxable persons are there in your country?**

In the registry of VAT taxable persons on 30 September 2009, there were 21,374 taxpayers in total. Out of that number, 19,191 are legal persons, and 2,183 natural persons.

On 31 December 2008, there were 20,557 registered VAT taxable persons in total, out of which 18,357 legal persons and 2,200 natural persons.

**b) scope of taxable transactions (supply of goods, including immovable property, and services, incl. self-supply, private use);**

VAT is paid on the supply of goods and services the taxpayer performs within the performance of his/her activity for a consideration, on the use of goods for his/her personal needs or the needs of taxpayer's employees, on the import of goods, and also on the first supply of the newly built structures, on the transfer of *ius in rem* /rights in property and participation in the real estate which grant the holder (owner) the property right or the possession right to the piece of real estate or its part (Articles 3,4,5,6,7,8,9,10 and 11 of the Law).

Supply of immovable structures built before entry into force of the Law on VAT, that is before 1 April 2003, then of land (agricultural, building, developed and undeveloped), as well as the supply of used passenger cars, motorbikes and vessels, for which the taxpayer, on occasion of the supply, was not entitled to deduct the input VAT, shall not be considered as object of VAT taxation (Article 4 paragraph 4 of the Law).

**c) importation (taxation, suspension regimes, exemptions, etc.). How are goods that have been placed under a suspension regime treated in respect of VAT?**

**Taxation:** In line with the provision of Article 3 of the Law, value added tax is paid on the import of goods in Montenegro. The import of goods is any entry of goods into the customs territory of Montenegro. On occasion of import of goods, VAT is calculated and charged by the Customs Administration. Tax base on occasion of import of goods is the value of goods determined in line with the customs legislation, inclusive of the amount of customs duty, excise duty, and other duties charged in the customs clearance procedure (Article 22 of the Law).

**Suspension regime:** Provisions of the Article 30 of the Law (special exemptions) provide for a suspension (deferred payment) regime in relation to the goods entered into a free customs zone and free customs warehouse before they are placed in the free circulation of goods that would be taxed on their entry in Montenegro. Suspension/deferment of payment also applies to the goods submitted to the customs authority for inspection and for which it is permitted that they be stored temporarily in accordance with customs regulations, and also to the goods for which the customs warehousing procedure or the import procedure for the purpose of export under suspension arrangement has been initiated (Article 30 of the Law)

*Decree on Suspension of Payment of Customs Liability*, which is of temporary nature and which will be valid until 31 December 2009, regulates the suspension/deferment of payment of customs

liability (customs duty and the value added tax) incurred on occasion of import of goods. Customs liability incurred on occasion of import of goods is suspended and it is to be paid within 30 days from the day of receipt of the customs declaration, provided that the payment of suspended customs liability is guaranteed by the submission of a bank guarantee in the amount corresponding to the amount of suspended customs liability.

**Exemptions:** VAT is not paid on the import of those goods for which the exemption of VAT payment on import has been prescribed. These include: imported goods the supply of which is exempted from VAT payment in Montenegro, goods brought into Montenegro as part of a customs transit procedure, goods imported by state bodies or humanitarian aid organizations and organizations of disabled persons, which are intended for the free-of-charge distribution to the persons in the state of social need, imported goods exempted from the payment of customs duty, intended for the official purposes of diplomatic, consular organizations and international organizations and to members of such organizations, within the limits and under the conditions set forth in international conventions on establishment of these organizations, and on the basis of the opinion of a minister responsible for foreign affairs, gold and other precious metals, bank notes and coins imported by the Central Bank of Montenegro; goods specifically developed for education, enabling or employment of blind and deaf persons, or other physically or mentally handicapped persons, if these were acquired free of charge and imported by the institutions or organizations whose activity is education or assisting of these persons, and if the donor does not express a commercial purpose, based on the opinion of the ministry in charge of social affairs; passenger vehicles, especially those adapted to transportation of disabled persons in wheelchairs, but only if they are imported for the needs of persons who, due to a physical handicap, are in need of wheelchair, under the conditions prescribed by customs regulations (Article 28 of the Law)

Temporarily imported goods are exempt from VAT payment on condition that they are exempt from customs duties under to the customs legislation (Article 29 of the Law). Article 329 of the Decree on the Enforcement of Customs Law specifies the goods exempt from the payment of customs duty, under the Customs Law.

#### **d) exportation (exemptions);**

Export of goods and supply of services, including the transport and other ancillary services directly linked to the export or import of goods, are taxed at the zero rate, and the exporter is entitled to the deduction of input VAT (Article 25 paragraph 1 items 1 and 2 of the Law).

VAT is paid at the zero rate on the goods and services used in relation to the international air and maritime traffic (Article 25 paragraph 1 item 7 of the Law); goods and services intended for the official purposes of diplomatic and consular representation offices; official purposes of international organizations, if this is envisaged by an international treaty; personal needs of foreign staff of diplomatic and consular representation offices including their family members; personal needs of foreign staff of international organizations including members of their families, if provided for by international treaties (Article 25 paragraph 1 item 8 of the Law); medicines and medical devices determined by the list of medicines or medical devices prescribed and issued at the expense of the Health Insurance Fund of the Republic (Article 25 paragraph 1 item 9 of the Law); goods and services used for exploration of oil drills on the open sea (Article 25 paragraph 1 item 10 of the Law); delivery of goods into the free zone, free and customs warehouses, and delivery of goods within the free zone, free and customs warehouses (Article 25 paragraph 1 item 11 of the Law); delivery of goods or services in cases in which it has been envisaged by an international agreement or a donation contract that no tax expenses will be paid from the obtained monetary funds (Article 25 paragraph 1 item 12 of the Law).

**e) exemptions without credit for input VAT;**

Exemptions from payment of VAT without the right to the deduction of the input VAT apply, among other things, to the services in public interest, financial and banking services, insurance and reinsurance services, and other services, as well as the import of goods as specified in detail in the answer to the Question 3c. (Articles 26 through 30 of the Law on VAT)

**Services in public interest**

Exemption from the VAT payment is prescribed for the services in public interest as follows: public postal services, as well as the supply of goods directly related with these deliveries; health services and care and delivery of goods including supply of human organs, blood and human milk, performed in accordance with regulations on health insurance; social security services and the supply of goods directly linked to social security services performed in accordance with the regulations governing the field of social security; services in pre-school education and the education and training of children, youth and adults, including the supply of goods and services directly linked to these activities, provided these activities are performed in accordance with the regulations governing this field; services and deliveries of goods by nursery schools, primary and secondary schools, universities, and by student catering and boarding institutions; services related to culture including tickets for cultural events and supply of goods directly linked to those services performed by non-profit organizations in line with the regulations governing the field of culture; services related to the sports and sport education, which are performed by the non-profit organizations (unions, associations, etc); services of public broadcasting service, with the exception of services of commercial character; religious services and supply of goods directly linked to the religious services performed by religious communities in order to satisfy the needs of the faithful, in line with the regulations applying to those communities; services provided by non-governmental organizations established in accordance with the regulations governing the activities of these organizations, unless there is probability that such exemption would lead to a distortion of competition (Article 26 of the Law).

**Other services exempt from the payment of VAT**

Exemption from the payment of VAT without the right to the input tax deduction has also been prescribed for the services of insurance and reinsurance, including the services supplied by the insurance brokers and agents; supply of immovable property, with the exception of the first transfer of property right or the disposal right of the newly built structure; services of leasing or subleasing residential houses, apartments, or residential premises for permanent residence for periods longer than 60 days, as well as the leasing of agricultural land or forests entered into the land registry; banking and financial services including the following: granting and managing (handling) credits, as well as granting and managing guarantees or other forms of credit insurance on the part of the creditor; services related to the managing (handling) of deposits, savings, bank accounts, performance of payment transactions, payment orders (transfers), executing due liabilities, cashing cheques or other financial instruments, except for the recovery (enforcement) and factoring of debts; transactions, including the issuance of banknotes and coins that are a legal means of payment in any country, with the exception of collector items (e.g. numismatic collection); in line with this item, the following objects are deemed as collector items: golden and silver coins, coins made of other materials, banknotes not accepted as legal means of payment in any country, and coins of numismatic value; trading in shares or other forms of equity interests in companies, bonds and other securities, including their issuance, except for the safekeeping of securities; managing of investment funds; valid postal stamps, administrative and court fee stamps, and fiscal stamps; supply of gold and other precious metals to the Central Bank of Montenegro; services related to the games of chance and entertaining games (Article 27 of the Law).

**f) place of supply (goods and services);**

Place of taxation is defined by the provisions of Articles 14 through 17 of the Law on VAT.

The following is deemed as the place of taxation of the supply of goods: the place in which the goods are located in the moment of dispatching or transport. If the dispatching or the transport of goods are initiated outside Montenegro, it is considered that the importer has performed them within Montenegro;

The following is considered as the place of taxation: the place in which the goods are installed or assembled, if these goods are installed or assembled by the supplier or another person in the name and for the account of the supplier; the place in which the goods are located in the moment of the completion of the supply, if the supply of goods is performed without the dispatching or transport; and the place of receipt of the electric power, gas, and energy for heating, freezing or refrigerating (Article 15 of the Law).

For purposes of import, the place in which the goods have entered Montenegro is considered as the place of supply of goods (Article 16 of the Law).

The place where the supply of services is performed is considered to be the place in which the taxpayer who supplies the service has his/her principal business establishment or a business unit from which the services are provided, or a place of permanent or habitual residence if he/she has no business establishments or units, unless otherwise provided by the Law (Article 17 of the Law).

The exceptions from the general rule of the place of supply of services are prescribed for the following services:

- for the services related to the immovable property, including the property agent/brokerage services, valuations of immovable property and preparatory works for construction (architect services, authorized supervisor services, etc.), the place of taxation is the place in which the immovable property is located (Article 17 paragraph 2 item 1);

- for the transport services, the place of taxation is the road or the part of road where the transport is performed. If the transport service is not performed solely within Montenegro (but also abroad), this Law applies only to that portion of the transport service which is performed inside Montenegro (Article 17 paragraph 2 item 2);

- for the services in the field of culture, art, science, education, sports, entertainment, and similar, including the services rendered by the organizer of performance of these services, ancillary transport services (loading, unloading, transferring, warehousing and other services that are commonly linked to the transport); services of providing expert opinion, valuation and assessment of the movable property, the place of taxation is the location at which the service has been actually rendered (Article 17 paragraph 2 items 3-a, 3-b and 3-c of the Law);

- for the transfer, cession, and the use of copyrights, patents, licenses, trade marks and other intellectual property rights; telecommunication services, services in the field of advertising, services provided by engineers, lawyers, notaries, auditors, accountants, interpreters, translators, and other similar consultancy services; services of the electronic processing of data and providing of information, including the information of business procedures and experiences, banking, insurance and reinsurance services; agency services in employment of labour; rental of movable goods, except for the means of transportation; withdrawal from business, agency services in relation to all the above-listed services, if they are performed by the agents in the name and for the account of the customer, the place of supply is the place of the principal business establishment of the recipient of service. If the services are rendered in a business unit, the place of the business unit of the recipient of service is deemed as the place of supply. If the recipient of service has his permanent residence abroad, the place of supply is the place of the recipient's permanent residence (Article 17 paragraph 3 items 1 through 10 of the Law); with regards to the agency services, the place of supply of goods or services for which the agency service was rendered is considered to be the place of supply (Article 17 paragraph 4 of the Law).

**g) chargeable event and chargeability of tax;**

Tax liability is incepted at the moment of supply of goods or the rendering of services. Goods are considered to be delivered, or services performed, at the moment of issuance of the invoice. If the invoice is not issued, VAT is accounted for eight days after the delivery of goods, or the performance of services (Article 18 paragraphs 1 through 3 of the Law and Article 35 of the Rulebook).

Tax liability is also incurred in case of advance payments being received. If the payment has been partly or wholly performed before the issuance of the invoice or before the supply of goods or services, tax liability is incurred on the day of receipt of remuneration, chargeable on the amount of that remuneration (Article 18 paragraphs 4 of the Law).

In cases when consecutive invoices are issued for the supply of goods or rendering of services, and consecutive payments are made, tax liability is incepted on the last day of the period to which the invoice or the payment refers (Article 18 paragraph 5 of the Law).

At importation of goods, tax liability is incepted at the moment at which the obligation of accounting for customs duty and other import charges is incurred (Article 19). Customs debt, according to the provisions of Article 201 of the Customs Law, is incurred on the day of acceptance of the customs declaration. After the amount of debt is entered into the accounting records, the debtor is notified of it in appropriate way. The debt has to be paid within eight days from the day of receipt of notification (Article 223 of the Customs Law).

Taxpayer determines his VAT liability based on the amounts charged on taxable supplies from the invoices issued for the goods delivered or services rendered in the tax period. The following is to be considered as amounts charged: amounts on the invoices issued; amounts of advance payments made; value of goods supplied or services rendered; amounts on the invoices issued by the taxpayer that has a registered office abroad (Article 34 of the Law).

Taxpayer must pay the tax liability within the term prescribed for the submission of the tax return, that is by the 15<sup>th</sup> day of the month following the expiry of the tax period, i.e. the calendar month (Article 36 paragraph 1 of the Law in relation to the Article 35 paragraph 2 of the Law).

If the taxpayer fails to pay his tax liability within the prescribed term, i.e. on occasion of submission of the tax return, or when the administrative decision has become enforceable, tax authority initiates the procedure of enforced collection provided for by the provisions of the Articles 56 through 71 of the Law on Tax Administration. Enforced collection procedure is initiated by a Conclusion on Enforced Collection of the Tax Liability. Against the Conclusion on Enforced Collection an appeal may be lodged within three days from the day of its delivery, and it does not postpone its enforcement. The following items may be subject to the enforced collection: taxpayer's financial assets, accounts receivable, and property (movable and immovable). In order to secure the tax claim, a lien may be imposed or a mortgage put on the taxpayer's property during the procedure of the enforced collection, by the method provided for in the Law on Property and Legal Relations (Official Gazette of Montenegro 19/09).

**h) VAT rates, including the application of zero rates (levels and scope). Are reduced VAT rates set at levels, which would in the normal course of events permit complete deduction of input tax? Are supplies of services liable to a special VAT rate?**

VAT is calculated and paid at the general rate of 17% on any supply or import of goods and services. For a number of goods and services it is prescribed that VAT is to be paid at the reduced rate of 7%, while for some other goods and services the zero-rate (0%) is prescribed (Article 24 of the Law).

VAT is calculated and paid at the reduced rate of 7% on supply or import of goods and services (Article 24a paragraph 1 of the Law) as follows:

- basic products for human nutrition (bread, flour, milk and dairy products, infant food products, fat, oil, meat and sugar);
- medications, including those for veterinary use, with the exception of the medications referred to in Article 25 paragraph 1 item 9 of the Law;
- orthotic and prosthetic aids and appliances, as well as medical appliances surgically implanted into the human body, with the exception of the medical appliances referred to in Article 25 paragraph 1 item 9 of the Law;
- textbooks and teaching aids;
- books, monographs and serial publications;
- accommodation services in hotels, motels, apart-hotels, tourist settlements, pensions, camps and villas;
- drinking water, with the exception of bottled water;
- daily and periodical press, with the exception of the press consisting completely or mostly of the advertising content;
- services of public transport of passengers and their personal luggage;
- services of public hygiene;
- funeral services and related products;
- copyrights and services in the field of education, literature and art;
- copyrights in the field of science and works of art, collections, and antiques referred to in Article 45 of the Law;
- services charged through the sale of admission tickets for cinema and theatre shows, concerts, museums, fairs, amusement parks, exhibitions, zoos, and similar cultural or sports events, with the exception of those for which the exemption from the payment of VAT has been prescribed;
- services related to the use of sports facilities for non-profitable purposes;
- repair and maintenance services rendered in marinas (until the accession of Montenegro to EU);
- computer equipment (until the accession of Montenegro to EU);
- livestock fodder, fertilizers, plant protection products, seeds and plant reproduction material, and livestock.

Taxpayers trading at the reduced rate are entitled to the refund of input VAT in the full amount.

VAT is paid at the rate of 0% (Article 25 paragraph 1 of the Law) on the following:

- goods exported from Montenegro by the supplier, or goods exported by another person for the account of the supplier;
- supply of services, including the transport and other ancillary services (except the services referred to in Articles 26 and 27 of the Law), which are directly related to the export or import of the goods, in line with Article 16 paragraph 2 or Article 30 paragraph 1 item 1 of the Law;
- goods exported from Montenegro by the buyer, or other person for the buyer's account that is not established in Montenegro, except for the goods intended to supply private vessels, aircrafts or any other means of transport for private use;
- services supplied in respect of products imported to Montenegro and exported by the person that has supplied such services or by the contracting party, if the latter neither is established, nor has a business unit, or a permanent or habitual residence in Montenegro;
- supply of services delivered by agents or other intermediaries in the name and for the account of another person, provided such services are a part of the services referred to in Article 25 of the Law, or the services rendered outside Montenegro. Exemption does not apply to the travel agents providing services in the name and for the account of the persons travelling outside Montenegro;
- supply of fuel and other necessary goods used to supply the vessels intended for sailing on the open sea, that transport passengers for a consideration, or intended for commercial or industrial purposes; vessels for rescue and assistance at the sea; military vessels leaving Montenegro with destinations in foreign harbours or anchorages;
- goods and services used in relation to the international airline and maritime transport;

- goods and services intended for the following purposes:
  - a) official needs of diplomatic and consular representative offices,
  - b) official needs of international organizations, if it is provided for by an international treaty,
  - c) personal needs of the foreign staff of diplomatic and consular representative offices, including their family members;
  - d) personal needs of the foreign staff of international organizations, including their family members, if it is provided for by an international treaty;
- medications and medical appliances as determined by the list of medications and medical appliances prescribed and issued at the expense of the Health Insurance Fund of the Republic;
- goods and services used for the exploration of oil drills on the open sea;
- supply of goods to or within the free zone, free and customs warehouses;
- supply of goods or services where it has been envisaged, by an international agreement or a donation contract, that no tax expenses will be paid from the received funds.

**i) scope and procedures (credit/refund of VAT) in respect of the right of deduction. How long on average does it take to refund VAT to traders e.g. in the case of exports? Do you have any limitations to the right of deduction, and if so, which ones?**

The requirements for the deduction of input VAT are prescribed by Article 37 of the Law, and Articles 93, 94 and 99 of the Rulebook on Implementation of the Law on Value Added Tax.

Taxpayers supplying taxable goods and services are entitled to the deduction of input VAT provided that the invoices for purchased goods and services contain all data prescribed by the provisions of Article 32 paragraph 1 of the Law, the goods or services have been supplied (accepted) by another VAT taxable person, the right to the input VAT deduction is not excluded in respect of accepted goods or services, and that the accepted goods or services are intended for the conduct of the taxpayer's business activity.

Import VAT calculated and charged by the customs authority is also considered as input VAT (Article 37 paragraph 1 of the Law).

Furthermore, the amount of VAT that the taxpayer, as the recipient of services, has calculated in line with Article 12 items 2 and 3 of the Law is also deemed as input VAT.

The deduction of input VAT is also acceptable in case of advance payments, if the payee has issued, and the payer has received the invoice in line with Article 32 of the Law.

The taxpayer whose VAT deduction in respect of pre-tax exceeds its tax liability for the tax period, is entitled to tax credit for the subsequent tax period. The taxpayer is entitled to the refund of the tax credit within 60 days from the day of submission of its VAT return. The taxpayer is also entitled to request the reallocation of VAT credit funds for the purpose of settlement of other tax liabilities (Article 50 paragraph 1 of the Law, Article 109 paragraph 1 of the Rulebook). Taxpayers that predominantly export goods and those who have declared surplus of the input VAT in more than three consecutive tax periods, VAT credit is refunded within 30 days from the day of submission of VAT return (Article 50 paragraph 2 of the Law and Article 109 paragraph 2 of the Rulebook).

The Law on Value Added Tax does not prescribe any limitations with regard to the right to deduct the input VAT.

Limitations of the right to deduct the input VAT are related to the goods and services exempt from the payment of VAT without the right to deduct the input VAT (services of public interest, financial and banking services, insurance and reinsurance services, and other services, as well as the import of goods (Article 26 through 30 of the VAT Law) which has been explained in details in the answers to the questions 3e and 3c).



**j) right to deduct input VAT by a taxable person;**

When calculating his tax liability (by monthly return), VAT taxable person is entitled to deduct VAT he is liable to pay or has paid already on purchases of goods or services from another taxpayer, or at importation of goods, if these goods or services have been or will be used for the purposes of performance of a VAT chargeable activity (Article 37 paragraph 1 of the Law).

Taxpayer who has no registered office in Montenegro is entitled to the refund of the input VAT charged to him by other taxpayers in Montenegro, or at importation of goods to Montenegro, under the conditions prescribed by Article 51 of the Law.

**k) special regimes (small and medium sized enterprises, second-hand goods, works of art, collectors items and antiques, flat-rate scheme for farmers, travel agents, simplification procedures, investment gold, others);**

Provisions of the Law on VAT prescribe equal treatment of small, medium-sized and large enterprises.

Law on VAT envisages special taxation procedures for the “small taxpayers” (legal and natural persons whose taxable supplies of goods and services in the past 12 months do not exceed EUR 18,000), farmers, services of travel agencies and tour operators, sale of second-hand goods, works of art, collections and antiques, and auction sales.

Small taxpayers are the persons whose taxable value of supply of goods or services in the past 12 months did not exceed the amount of EUR 18,000 (Article 42 of the Law and Article 127 of the Rulebook). Such persons must not calculate or indicate VAT on invoices, they are not entitled to the deduction of input VAT, and are not supposed to keep accounting records as regulated by Article 53 of the Law. However, if they wish to take advantage of the VAT system, they may register as VAT payers, with the obligation to keep such status for at least three years.

Individual agricultural producers, who are not VAT taxable persons and who supply agricultural and forestry goods or services, are entitled to charge their buyers (who are VAT taxable persons) a lump-sum compensation in the amount of 5% of the purchase of goods or services (Article 43 of the Law).

Travel agencies and tour operators apply a special taxation procedure to determine the amount of the tax base for their services as the difference between the total amount of compensation (VAT excluded) invoiced against their clients/passengers and the actual expenses (inclusive of VAT) charged against these agencies by other VAT payers in the direct supply of goods or services for the benefit of their clients/passengers (Article 44 of the Law).

Provisions of Articles 45 through 49 of the Law prescribe special rules of taxation for the resellers of second-hand objects, works of art, collections and antiques. These provisions determine the types of products taxed under a special procedure, and the taxation is performed by determining of the tax base as the difference between the selling price and the purchase price.

Supply of used passenger cars, motorcycles, and vessels for which the taxpayer has not been entitled to deduct input VAT on occasion of the purchase is not subject to VAT taxation (Article 4 paragraph 4 of the Law).

There is no special taxation procedure prescribed by the Law for investment gold.

**l) rules governing administration and records, including registration, records, invoices;**

Taxpayers are obliged to submit the application for the entry into the VAT payers' register when commencing their entrepreneurial activities. This registration application is submitted on the form PR PDV-1, which is regulated by the *Rulebook on the form and contents of the application for registration of Value Added Tax payers*.

For each supply of goods or services the taxpayer is obliged to issue an invoice or another document that serves as the invoice and contains the prescribed data (Articles 31 and 32 of the Law). The obligation of issuance of invoice applies neither to the farmers selling agricultural products in green markets, nor to the sale of tobacco products, tickets and tokens in passenger transport (train, bus, cable car), stamps, administrative fee stamps, securities and forms used in postal services, periodical press, and vending machine sale (Article 32 paragraphs 5 and 6 of the Law).

In order to secure the highest possible quality of the infrastructure for efficient monitoring and control of calculation and payment of VAT, taxpayers who charge the supply of goods and services in cash are obliged to register their supplies using fiscal cash registers. The Government of Montenegro has passed a *Decree on the use of fiscal cash registers and method of recording the supply of goods and services through cash registers*, which regulated in detail the use of fiscal cash registers and the method of recording the supply of goods and services through such cash registers. The above-mentioned Decree elaborates on the following issues: procedure of granting the consent for the commencement of the use of fiscal cash registers, method of recording the turnover (supply of goods and services) on the fiscal cash registers, fiscalization procedure, and the method of repair and maintenance of fiscal cash registers.

The taxpayer must provide for his accounting records to include all the data required for correct and timely calculation and payment of VAT, and in particular the data on the total value of performed supply of goods or services, keep separate books of issued and received invoices, separate records of the input VAT paid at import of goods, etc. Taxpayers maintain prescribed tax records of issued and received invoices (Article 53 of the Law and Articles 120 through 125 of the Rulebook on VAT).

Tax authority maintains the register of VAT taxable persons, records of the tax returns filed by tax period, records of the tax liabilities declared and tax credits claimed, records of the taxable supplies, and records of the unpaid liabilities and non-filers of tax returns.

Tax authority provides the data for all taxpayers on several levels, including the following: by individual taxpayer, by type of business, by territory, or other criteria.

**m) assessment and appeals (VAT returns, assessment and collection, procedure for claiming the credit and refund, penalties, appeal procedure, international mutual assistance and recovery of VAT claims);**

Taxpayers are obliged to declare their tax liabilities on the monthly return for the calculation of VAT – form PR PDV-2. The return is submitted to the relevant tax authority on or before the 15<sup>th</sup> day of the month following the expiry of the tax period (Article 35 paragraphs 1 and 2 of the Law). The form, contents and the method of filling out of the form PR PDV-2 are prescribed by the *Rulebook on the form and contents of the return for calculation of Value Added Tax*.

Tax period for accounting for VAT is the period from the first until the last day of a month (both inclusive), i.e. the calendar month (Article 33 of the Law).

Tax liability is due for payment on the 15<sup>th</sup> day of the month following the expiry of the tax period (Article 36 of the Law).

The procedure for the recovery of VAT credit is conducted by the Tax Administration at the request of the taxpayer stated on the tax return by ticking the answer to the question "Do you request the repayment of your VAT credit?", or in a special request the taxpayer may submit to the relevant tax authority.

Fines for violation of the provisions of the Law are prescribed by Articles 58 through 60 of the Law, and they range from ten-fold to the three hundred-fold amount of the minimum wage in Montenegro. Legal persons, responsible persons within the legal persons, and entrepreneurs are subject to penalty for a tax-related violation. The fines apply to the following types of tax-related violations: non-issuance of the VAT invoice, non-filing of VAT return, failure to inform the tax authority of the commencement of, the change in, or the termination of the business activity, failure to calculate VAT liability or incorrect calculation of this liability.

Pursuant to the provisions of Article 95 of the Law on Tax Administration, on the amount of unpaid or underpaid tax liability the interest is paid at the daily rate of 0.03%, starting from the day following the due day of the tax liability.

Appeal procedure is prescribed by the Law on Tax Administration and the Law on General Administrative Procedure. Appeals are decided upon by the second-instance authority – the Ministry of Finance. Filing of an appeal does not stay the enforcement of the administrative act subject to the appeal. The appeal is filed within 15 days from the day of the receipt of the fiscal administrative act. The decision awarded in respect the appeal is subject to a suit to be filed with the Administrative Court of Montenegro. According to the provisions of Article 40 paragraph 1 of the Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03), the final and binding decision of the Administrative Court may be subject to extraordinary legal remedies including the request for extraordinary decision review and the request for a new trial.

There is the practice of international cooperation and assistance in the data exchange, which are performed at the request of Montenegrin tax and customs authorities, or the same bodies of another country.

#### **n) transitional and temporary measures of the current VAT system;**

Provisions of Article 24a of the Law prescribe that VAT is charged at a lower rate of 7% on the repair and maintenance services rendered in marinas and the computer equipment until the accession of Montenegro to the European Union. The Law does not contain any other temporary or transitional measure.

Decree on the Deferred Payment of Customs Debt regulates a temporary, valid until 31 December 2009, deferment of payment of the customs debt (customs duty and the value added tax) incurred at importation of goods. Customs debt incurred at importation of goods is deferred and paid within 30 days from the day of acceptance of the customs declaration.

#### **o) taxable persons not established within your country (obligations, right to refund of VAT, etc.);**

Taxpayers that are not established in Montenegro, but supply goods and services in Montenegro through their business units, are subject to VAT taxation. If they have no business units in Montenegro, they are obliged to appoint a tax representative. In that case, the tax representative is also considered to be the taxable person. If the taxpayer not established in Montenegro fails to appoint a tax representative, VAT is charged from the recipient of goods or services (Article 12 of the Law).

Taxpayer not established in Montenegro is entitled to refund of input VAT charged from it either by other taxpayers in Montenegro, or when importing goods to Montenegro, under the conditions and in the way determined by the Law (Article 51 of the Law).

A foreign person conducting business activity through a business unit, and a foreign person that has appointed a tax representative for the purpose of conducting business activity in Montenegro, are not entitled to the VAT refund, but are entitled to the deduction of input VAT (Article 110 of the Law).

**p) control procedures:**

**i) Is VAT control incorporated with the control of other taxes or is it separate?**

Control of VAT is performed together with the control of other types of tax. VAT control is mostly connected with the control of Corporate Profit Tax, so the higher-ranking tax inspectors are also engaged for these types of control.

**ii) How many tax officials are involved in VAT control, excluding Customs?**

VAT controls are mostly performed by the tax inspectors, the number of which in 2008 was 118. Controls of the filing of returns, as well as the formal and arithmetical correctness of the filed returns are performed by other employees, engaged on the processing of tax returns, and they are correcting the mistakes that can be determined without the field control/audit procedure.

Besides that, the control of the tax analytical card (personal taxpayer's file) is also performed, as well as that of other taxpayer records, encompassing the calculation and payment of all types of tax. Based on the control of analytical cards and other taxpayer records it is determined whether a taxpayer has failed to declare tax liability by submission of the tax return, and whether he has paid his tax liability within the prescribed timeline. If omissions are identified, tax authority takes the measures of enforced collection and files administrative offence /misdemeanour charges.

**iii) What is your experience in the exchange of information for tax purposes?**

Tax administrations exchange information only at request and situations in which one tax administration informs the other about the data that may be of importance for that tax administration of another country are rare. There are signed agreements on cooperation and mutual assistance, mostly with the countries in the region, and the exchange of data between the tax administrations is performed on the basis of written requests.

**4 Please provide information regarding rules governing travellers' allowances on import and export. Is a general tax rate envisaged? How would it be collected?**

Under the provisions of Article 28 paragraph 1 item 9 of the Law, imported goods that are exempt from the payment of customs duty under Article 184 paragraph 1 items 2, 3, 9 and 13 of the Customs Law are also exempt from the payment of VAT. This exemption applies to the following: goods of non-commercial nature that the travellers bring into the country when returning from abroad provided they are in line with the prescribed type, value and quantity requirements; goods contained in the parcels sent from abroad to the natural persons in Montenegro, provided that these parcels are not of commercial nature; agricultural products, products of crop husbandry,

livestock farming, forestry, fish farming and apiculture originating from the estates located in the border zone of a neighbouring country and owned by Montenegrin citizens who live in the border zone; goods that serve for direct performance of activities related to the museums, archives, restoration, literature, art, musical-theatrical art and film, based on the opinion issued by the relevant ministry.

Buyer – natural person, who has no permanent or temporary residence in Montenegro and takes the products purchased in Montenegro outside of Montenegro, is entitled to the refund of VAT if the amount paid for the goods on one invoice, or on several invoices issued on the same day and by the same seller, exceeds EUR 100. This right does not apply to mineral oils, alcohol and alcoholic beverages, or tobacco products. The buyer must submit the request for refund within six months from the day of issuance of the invoice (Article 52 of the Law and Article 115 of the Rulebook). VAT refund procedure is prescribed by the provisions of Articles 117 through 119 of the Rulebook on Implementation of VAT Law.

**5 Does your country operate free zones? If yes, please provide the text of the relevant act. Which regime is applied in the free zones for VAT and excise purposes? Are the free zones excluded from the territorial application of VAT and/or excise duties?**

The Law on Free Zones (Official Gazette of the Republic of Montenegro 42/04 and Official Gazette of Montenegro 11/07 and 76/08) ([Annex 224](#)), regulates the establishment of free zones and the regime of conducting the economic activities in those zones.

Free zone is established with a previously granted consent of the Government of Montenegro, at the proposal of the Ministry of Economy, and based on the submitted study of economic justifiability of the establishment of the free zone, prescribed by the *Decision on the contents of the economic justification study of the establishment of free zones and free warehouses* (Official Gazette of the Republic of Montenegro 53/04 and Official Gazette of Montenegro 81/08) ([Annex 134](#)).

The Customs Law (Official Gazette of the Republic of Montenegro 07/02, 38/02, 72/02, 21/03, 31/03, 29/05, 66/06 and Official Gazette of Montenegro 21/08) ([Annex 106](#)), regulates specific issues of the customs procedure and the supervision of the entry and exit of goods in and out of the free zone.

Decree on the Implementation of the Customs Law (Official Gazette of the Republic of Montenegro 15/03 and 81/06 and Official Gazette of Montenegro 38/08) ([Annex 108](#)), prescribes the methods of record keeping and customs supervision conducted within the free zone.

User of the free zone may be a domestic or foreign legal or natural person who performs a specific economic activity in its area.

In the free zone, all types of economic activities may be carried out, except for those that jeopardize the environment, human health, material goods or the national security. Total equality of all foreign investors is ensured in terms of the right to invest, acquire ownership over the built structures, and organize activities within them.

Value added tax is not paid on the goods brought into the free zone regardless of the type of goods or its intended use once inside the zone. This also applies to the goods that the operator and the user of the free zone bring in for the purpose of building or maintaining of facilities, infrastructure and equipment inside the zone, and generally, for the creation of conditions for the operation and development of the zone (Article 18 of the Law on Free Zones).

Goods from the free zone, which are dispatched to the rest of the territory of Montenegro for the purpose of being released into open trade, are subject to the obligation of payment of the value added tax, and also to the application of restrictive measures or safeguard measures prescribed by the law governing the field of foreign trade (Article 21 of the Law on Free Zones).

Free zone tax treatment

VAT on supply of goods to the free zones, free and customs warehouses, as well as the supply of goods within the free zones, free and customs warehouses, is paid at the zero-rate (Article 25 paragraph 1 item 11 of the Law on VAT).

Any dispatch of excise goods from an excise warehouse or a plant of the exempt user of excise goods to the free zone is not subject to the excise liability according to the provisions of Article 13 of the Excise Law.

**6 What are your targets for future developments of your VAT legislation (short/long term)? Please specify these in terms of timetables and anticipated problem areas.**

Amendments to the VAT Law should contribute to additional harmonization of the current legal solutions with the law and practice of the European Union.

The Ministry of Finance is planning to make an analysis of implementation effects of the current legal solutions of the key taxes in Montenegro including the value added tax. Based on the results of such analysis the Ministry of Finance will prepare the tax strategy for 2010-2014. The strategy will be the framework for further improvement of legal solutions in this area in line with the current law and practice of the European Union, the future changes in this area and particularly the needs of our economy. Time frames and transitional period will be determined based on the economic crisis context.

The amendments related to taxation of real estate, including land, as well as the possibility of the VAT return filing by electronic way were originally planned by 2009, but they have been delayed for two reasons. First, the Ministry of Finance made the decision to delay these amendments since the time of global economic crisis that has influenced the economy of Montenegro is not the right time for significant amending of legal solutions, since it would represent additional burden for the construction sector which suffered the most serious consequences of the crisis, as well as the overall economy of Montenegro. Also, in addition to the planned amendments the Ministry wanted to cover additional changes and clarifications identified during the to-date implementation of the Law on Value Added Tax and thus improve specific legal solutions such as taxation of foreign persons, financial services, etc.

The amendments to be covered by future legal solutions are to regulate VAT, particularly in relation to: defining of goods and services that are allowed to be taxed at the reduced rate; abolishing the zero rate for domestic transactions (medications and medical supplies paid for from the Republic Health Insurance Fund); expansion of special taxation procedures (sale of investment gold, electronic services); establishing of a legal framework for exchange of information related to VAT among EU countries (VIES), with the objection to fully harmonize the mentioned law with the European Union law and practice relevant to value added tax.

### **C. Excise duties**

Excise tax policy of Montenegro falls within the scope of responsibility of the Ministry of Finance (Sector for tax and customs system), thus, the Department for indirect taxation has been established within it.

**Excise Tax Law** (Official Gazette of the Republic of Montenegro 65/01, 76/05 and Official Gazette of Montenegro no. 76/08 and 50/09), in force since April 2002, introduces the duty of excise tax payment for three groups of products, as follows: alcohol and alcoholic beverages, tobacco products and mineral oils, their derivatives and substitutes. Excise tax is charged on excise goods produced in Montenegro and excise goods imported in Montenegro. The above mentioned legal texts prescribe equal tax treatment for locally produced and imported excise goods.

In the previous period, the mentioned Law has been amended, thus ensuring further harmonization with the EU Directives, especially with regard to cigarettes.

The Excise Tax Law is fully harmonized with the following Directives: Directive 92/80/EEC (amendments: 99/81 EEC and 02/10/EC) on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 92/83/EEC on the harmonization of the structure of excise duties on alcohol and alcoholic beverages. The Law is partially harmonized with the following Directives: Directive 92/79/EEC (amendments: 99/81/EEC and 02/10/EC) on the approximation of taxes on cigarettes; Directive 2003/96/EEC on the restructuring of the Community framework for the taxation of energy products and electricity and the Directive 92/12/EC on the general arrangements for products subject to excise duty and for the holding, movement and monitoring of such products.

**7 Please provide a copy of your country's excise duty legislation (in one of the official EU languages), including other related legislation, such as administration guidelines, etc.**

English translation of the Law on Excise Tax (Official Gazette of the Republic of Montenegro 65/01, 76/05 and Official Gazette of Montenegro 76/08 and 50/09), ([Annex 104](#)) is in the Attachment, as well as that of the secondary legislation acts.

Secondary legislation acts for the implementation of this Law are the following:

Decree on the Marking of Tobacco Products and Alcoholic Beverages with Control Excise Stamps (Official Gazette of the Republic of Montenegro 82/05 and Official Gazette of Montenegro 22/09), ([Annex 111](#))

Decree on Method and Procedure of Determining the Most Popular Price of Cigarettes (Official Gazette of Montenegro 30/09), ([Annex 113](#))

Rulebook on the Implementation of the Law on Excise Tax (Official Gazette of the Republic of Montenegro 18/02, 9/06 and 78/06 and Official Gazette of Montenegro 18/09), ([Annex 122](#))

Rulebook on the Method of Exercising the Right to the Excise and Value Added Tax Exemption for the Diplomatic and Consular Representation Offices and International Organizations (Official Gazette of the Republic of Montenegro 74/04), ([Annex 133](#)) and

Rulebook on the Procedure of Colouring and Marking of Mineral Oils Used as Heating Fuel (Official Gazette of the Republic of Montenegro 23/02) ([Annex 123](#)).

**8 Please give a detailed description of your current excise legislation, particularly in the following areas:**

**a) Taxable scope (product categories liable to excise duty). The following are of particular interest:**

Provisions of Article 1 of the Law on Excise Tax (Official Gazette of the Republic of Montenegro 65/01, 76/05 and Official Gazette of Montenegro 76/08 and 50/09) introduced the obligation of payment of excise duties on three groups of products: alcohol and alcoholic beverages, tobacco products, and mineral oils, its derivatives and substitutes.

**i) alcohol and alcoholic beverages;**

Provisions of Article 37 of the Excise Tax Law stipulate types of alcohol and alcoholic beverages subject to excise tax payment, as follows: beer, wine, other fermented drinks, intermediate beverage and ethyl alcohol. Type of alcohol, i.e. alcoholic beverages is regulated depending on classification of those products and their tariff numbers, contained in the nomenclature of the

Customs Tariff and depending on the alcohol content in them. Alcohol content is the amount of alcohol in the product expressed as a percentage of the total volume of the product at a temperature of 20° Celsius.

**ii) cigarettes and other manufactured tobacco;**

Tobacco products subject to excise tax payment are: cigarettes, cigars and cigarillos, finely shredded tobacco (for rolling cigarettes) and other smoking tobacco (Art. 46, 47, 48 and 49 of the Law).

Cigarettes are:

- 1) rolls of tobacco, that can be used for smoking the way they are, and that are not classified as cigars and cigarillos;
- 2) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette paper tubes; or
- 3) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

The roll of tobacco is a cigarette with the length, exclusive of filter or mouthpiece, of up to 9 cm; two cigarettes, exclusive of filter or mouthpiece that are longer than 9 cm but not exceeding 18 cm; three cigarettes exclusive of filter or mouthpiece that are longer than 18cm but not exceeding 27cm, and so on.

Cigarettes are also products that are totally or partially produced from tobacco surrogates, except for products used for health purpose only.

Cigars and cigarillos are tobacco rolls that can be smoked as they are if they are:

- 1) made entirely from natural tobacco;
- 2) with an outer wrap of natural tobacco;
- 3) with an outer wrap in the colour of tobacco, fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar and a binder of reconstituted tobacco, and in the wrap minimum 60% of the tobacco particles are both wider and longer than 1.75 mm; or
- 4) with an outer wrap in the colour of tobacco, made of reconstituted tobacco, where the unit weights, exclusive of filter and mouthpiece, is higher than 2.3 grams, and in the wrap minimum 60% of tobacco particles are wider and longer than 1.65 mm and the circumference is equal to minimum one third of its length, but not less than 34 mm.

Cigars and cigarillos are also products that are totally or partially produced from tobacco surrogates, except for the products that are used for medical purposes only, on condition that they have the following:

- 1) wrap of natural tobacco or reconstituted tobacco and
- 2) wrap and binder of tobacco, both of reconstituted tobacco.

Smoking tobacco consists of:

- tobacco that is cut or otherwise split, twisted or pressed into blocks that can be smoked without further industrial processing;
- tobacco refuse that can be smoked.

Smoking tobacco also includes products that are totally or partially produced from tobacco surrogates, excluding products that are used for health purposes only. Smoking tobacco also includes fine-cut tobacco for rolling cigarettes in which more than 25% of tobacco particles with respect to weight are shorter and narrower than 1.4 mm.



**iii) mineral oils (petrol, diesel heating oil, etc.) and other energy products (electricity, natural gas, coal);**

The type of mineral oils, their derivatives and substitutes subject to excise tax payment, according to the provisions of Article 51 of the Excise Tax Law, are determined in accordance with the classification of these products in the Customs tariff, regulated by the Law on Customs Tariff (Official Gazette of the Republic of Montenegro 75/05 and 17/07), that is, based on the characteristics of the individual products (see Annex no. 225 of Chapter 29).

Provisions of Article 52 of the Excise Tax Law stipulate the type of mineral oils, their derivatives and substitutes that are subject to excise tax payment, as follows:

1) leaded petrol (tariff number CN 2710 11 31 00, 2710 11 51 10, 2710 11 51 90 and 2710 11 59 00);

2) unleaded petrol (tariff number CN 2710 11 31 00, 2710 11 41 00, 2710 11 45 00 and 2710 11 49 00);

3) kerosene (tariff number CN 2710 19 21 00 and 2710 19 25 00) used for the following:

- motor fuel
- heating fuel;

4) gas oil (tariff numbers CN 2710 19 41 to 2710 19 49) used for the following:

- motor fuel;
- motor fuel for industrial and commercial purposes;
- heating fuel;

5) heating oil (tariff number CN 2710 19 61 00 to 2710 19 69 00);

6) fluid oil gas (tariff number CN 2711 12 11 00 to 2711 19 00 00) used for the following:

- motor fuel;
- motor fuel for industrial and commercial purposes;
- heating fuel.

According to the provisions of the Excise Tax Law, the following are also considered to be mineral oils:

1) products that are sold or used as motor fuel;

2) additives or extenders added in motor fuels;

3) other hydrocarbon produced from the raw oil and that is sold or used as a heating fuel except for coal, lignite, peat or biomass.

**iv) motor vehicles (excise duties, registration taxes, circulation taxes);**

Use of motor vehicles does not fall within the scope of the Excise Tax Law. **The Law on tax on the use of passenger motor vehicles, floating vessels, aircrafts and airplanes** (Official Gazette of the Republic of Montenegro 28/04 and 37/04) regulates the tax payment on the use of passenger motor vehicles, vessels, aircrafts and airplanes. The tariff for payment of this tax is: for motor vehicles it ranges from EUR 15 to EUR 500 (whereas the tax is reduced by 5% for each year of use of the vehicle, but not exceeding 70% of the tax obligation), for motorcycles it ranges from EUR 10 to EUR 200, for boats and yachts from EUR 5 to EUR 400, and for aircrafts and flying vessels from EUR 1,000 to EUR 5,000.

The Law on Roads (Official Gazette of the Republic of Montenegro 42/04) stipulates that the following duties are charged for the use of public roads:

- 1) annual duty at the time of registration of road motor vehicles, tractors and auxiliary vehicles;
- 2) special duty for road motor vehicles and their auxiliary vehicles for the purpose of securing undisturbed transportation and provision of information services to the road users;
- 3) duty charged for special transport;
- 4) duty charged for the use of specific roads and facilities (road charge);
- 5) duty charged on foreign road vehicles, used for the roads.

*The Decision on the level of duty – road fee for the use of Sozina tunnel and access roads* (Official Gazette of the Republic of Montenegro 48/08) stipulates the level of the road fee charged, and the manner of payment. It also regulates the system of relieves in the collection of this fee depending on the type of vehicle, its size and load capacity. Collection of duty – road fee is made in cash or through the system of monthly tickets, or using the system of no-stop passage of passenger vehicles.

The charge - road fee defined by this Decision can be subject to uniform 10% discount in case of purchase of the ticket with minimum 50 passes.

Eco fee is charged in equal amounts, without discrimination, to the local and foreign road users.

This fee is regulated by the *Decree on the level of charges, manner of calculation and payment of charges due to environmental pollution* (Official Gazette of the Republic of Montenegro 26/97, 9/00, 52/00 and Official Gazette of Montenegro no. 33/08, 5/09 and 64/09). The charge is paid by foreign legal and natural persons when entering the territory of Montenegro, as well as local natural and legal persons at the time of registration of their motor vehicles and auxiliary vehicles.

Eco fee is charge in equal amounts, without discrimination, to local and foreign road users. The Decree stipulates the duty of the foreign legal and natural persons using motor vehicles and auxiliary vehicles of the weight up to 3.5 tons to pay annual eco-fee, and to pay daily, weekly, monthly or annual eco-fee for the use of motor vehicles and their auxiliary vehicles whose weight ranges from 3.5 to 12 tons and the weight exceeding 12 tons, depending on the duration of stay.

With the amendments to the Decree the duty remained to pay an annual eco-duty for local natural and legal persons using motor vehicles and their auxiliary vehicles for all categories of vehicles. Implementation of this amended Decree is supposed to begin on February 1, 2010.

**v) other product categories constituting a major part of excise income.**

The Excise Tax Law does not stipulate other categories of products subject to excise tax payment.

**b) Establishment of the duties, i.e. how are they calculated (e.g. by volume, weight, ad valorem, etc.)?**

The excise tax duty, according to the Montenegrin Excise Tax Law, is determined based on measurement unit, except for cigarettes, where combined method of determination is used (specific and ad valorem excise). Excise tax base for mineral oils, their derivatives and substitutes is expressed in kilograms or litres, depending on the type of those products. Excise tax base for wine, intermediate alcoholic drinks and other fermented beverages is the quantity of excise goods expressed in hectolitres, and in case of beer and ethyl-alcohol per volume of alcohol contained in one hectolitre.

*Alcohol and alcoholic beverages:*

The excise tax base for wine, intermediate alcoholic beverages and other fermented beverages, in accordance with the provisions of Article 43 of the Excise Tax Law, is the quantity of the excise product measured in hectolitres; and for beer and ethyl alcohol it is the volume of alcohol per hectolitres.

*Tobacco products:*

The excise tax base for tobacco products, according to the provisions of Article 50 of the Excise Tax Law, is 1000 pieces and retail price, that is, one kilo of the product. The excise tax for cigarettes is paid as a specific excise tax determined per 1000 pieces and as proportional excise tax determined as percentage of retail sale price of cigarettes. The excise tax on other tobacco products (cigars, cigarillos, finely shredded tobacco and other smoking tobacco) is paid per kilo of those products.

*Mineral oils, their derivatives and substitutes:*

The excise tax base for mineral oils, according to the provisions of Article 51 of the Excise Tax Law, is the quantity of mineral oils in kilograms or litres. If the quantity unit for excise tax is a litre, such litre is measured at a temperature of +15°C.

**c) Exemptions from duty.**

The Excise Tax Law stipulates exemptions from the payment of excise tax for the excise licensee and the exempt excise goods beneficiary, for diplomatic and consular missions and international organizations, the use of ethyl-alcohol and mineral oils for purposes that are not subject to excise tax payment, and other exemptions.

According to the provisions of Article 12 of the Excise Tax Law, an excise licensee may be excise tax exempt when:

- 1) excise goods are stored in an excise goods warehouse of another excise licensee and such licensee confirms receipt of the consignment on a copy of the excise document;
  - 2) excise goods are stored in an exempt excise tax beneficiary plant and such beneficiary confirms receipt of the consignment on a copy of the excise document;
  - 3) excise goods are exported and the customs authority confirms on the document that such goods have been physically conveyed outside the customs territory of Montenegro in accordance with customs regulations..
- (2) An excise licensee is exempt from paying excise tax on excise goods stored in such licensee's excise goods warehouse, if the excise goods are::
- 1) used as the basic component in the production of other excise goods in the excise goods warehouse;
  - 2) used as analysis samples in testing production or for scientific purposes;
  - 3) used for purposes of customs control,
  - 4) used for quality control which is performed by authorized persons in a bonded warehouse;
  - 5) destroyed under the supervision of a tax authority;
  - 6) a shortfall of excise goods is established which an excise licensee proves to be the result of force major (excluding theft) or which is necessarily related to the production process, storage and transportation of such good;
  - 7) alcohol fully denatured in accordance with article 44 of this law;
  - 8) tobacco products, denatured and used for industrial or horticultural purposes.

An exempt excise goods beneficiary is exempt from paying an excise tax if:

1) the excise goods are dispatched and stored in an excise goods warehouse and if an excise licensee confirms receipt of the consignment on a copy of the excise document;

2) the excise goods are used for purposes specified in article 44 or article 54 of this law (use of ethyl alcohol for purposes that are not subject to excise tax payment or use by small producers of alcoholic beverages) and indicated in the license of an exempt excise goods beneficiary.

(4) An exempt excise goods beneficiary shall also be exempted from paying an excise tax

if:

1) the excise goods are used as analysis samples in production testing in the production facilities or warehouse of such beneficiary;

2) the excise goods are used for customs control purposes;

3) the excise goods are used for quality control purposes carried out by authorized persons in the beneficiary's facilities or warehouse;

4) the excise good are destroyed under the supervision of a tax authority;

5) a shortfall of excise goods is established which is proved to be the result of force major (excluding theft) and a shortfall which is necessarily related to the production process, storage or transportation of goods in the production of which excise goods are utilized.

#### *Excise tax exemption for diplomatic and consular missions and international organizations*

Provisions of Articles 31 and 32 of the Excise Tax Law stipulate that excise tax is not charged on the excise goods:

1) for the official needs of diplomatic and consular missions accredited in Montenegro;

2) for the official needs of international organizations, if this is established by international agreements;

3) for the personal needs of foreign staff members of diplomatic and consular missions accredited in Montenegro, including their family members;

4) for the personal needs of foreign staff members of international organizations, including their family members, if this is established by international agreements.

5) that are sold on ships and in aircraft on international traffic routes;

6) that a passenger may bring in from abroad as part of his/her personal luggage, and they are exempted from paying import duty in line with customs regulations;

7) mineral oils, mineral oil derivatives and their substitutes in the standard reservoirs of motor vehicles, vessels or aircrafts arriving from abroad and are not intended for further sale and are exempt from import duties in accordance with customs regulations.

The manner of exercise of the right to exemption from excise tax duty on products and services procured by diplomatic and consular missions and international organizations for official and personal needs during their work, that is, stay in Montenegro, is regulated by the Rulebook on manner of exercise of the right to excise tax exemption and VAT exemption for diplomatic and consular missions and international organizations.

#### *Other excise tax exemptions*

Provisions of Article 32 of the Law stipulate that excise tax is not charged on the excise products:

1) that are sold on ships and in aircraft on international traffic routes;

2) that a passenger may bring in from abroad as part of his/her personal luggage, and they are exempted from paying import duty in line Article 9 of the Decree on the implementation of the Customs Law;

3) mineral oils, mineral oil derivatives and their substitutes in the standard reservoirs of motor vehicles, vessels or aircrafts arriving from abroad and are not intended for further sale and are exempt from import duties;

4) dispatched from the bonded warehouse to duty free shops that are opened at international border crossings to sell the goods to the passengers in accordance with Article 184 of the Customs Law, where customs and passport control has been provided.

*Use of ethyl-alcohol for purposes that are not subject to excise tax payment*

The use of ethyl alcohol from Tariff number CN 22.07 is excise tax exempt, according to the provisions of Article 44 of the Excise Tax Law, if used as a raw material in the following:

- 1) production of fermented products;
- 2) production of vinegar from Tariff number CN 22.09;
- 3) production of food items on condition that the alcohol content in chocolate goods from Tariff number CN 18.06 of the Customs tariff does not exceed 8.5 litres of pure alcohol per 100 kilograms of goods, or for other food items 5 litres of pure alcohol per 100 kilograms of goods;
- 4) chemicals and cosmetics manufacturing.

*Use of mineral oils for purposes that are not subject to excise tax payment*

Provisions of Article 54 of the Excise Tax Law stipulate that excise tax is not charged on mineral oils:

- 1) that are used as fuel in air and maritime traffic and as fuel for registered fishing boats, except when aircraft, vessels and fishing boats are used for private purposes;
- 2) that are used as fuel in the production of electricity and in plants for the joint production of electric and heat energy;
- 3) that a producer uses in his/her production plant for further processing, that is, for the production of other mineral oils, except if they are used as fuel for means of transportation;
- 4) that are injected in blast furnaces for chemical reduction purposes as an additive to coke as the basic fuel.

**d) What is the level of duty applied for each product concerned? Is the rate level the same for similar imported products? If not, explain why.**

For alcohol and alcoholic beverages:

Type of alcohol and alcoholic beverage	Excise tax duty
Beer	1.90 € per volume content in one hectolitre of beer
Table wine	»0« (zero) EUR per hectolitre of table wine
Sparkling wine	35 EUR per hectolitre of sparkling wine
Other non-sparkling fermented drinks	»0« (zero) EUR per hectolitre of other non-sparkling, fermented drinks
Other sparkling fermented drinks	35 EUR per hectolitre of other sparkling, fermented drinks
Intermediate alcoholic beverages	70 EUR per hectolitre of alcoholic beverages

## 16 Taxation

Pure alcohol	550 EUR per hectolitre of pure alcohol
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For cigarettes and other tobacco products:

Tobacco products		Excise tax duty
Cigarettes	Specific excise	5.00 €/1000 pieces (until September 30, 2009, specific excise tax was 3.00€/1000 pieces)
	Ad valorem Proportional excise	35% of retail price of cigarettes (until September 30, 2009, ad valorem excise tax was 30% of retail price of cigarettes).
Other tobacco products		
- cigars and cigarillos		11 €/kg
- finely shredded tobacco		32 €/kg
- other smoking tobacco		20 €/kg

For mineral oils, their derivatives and substitutes:

Type of mineral oil	Excise tax duty
Leaded petrol	464 € per 1000 litres
Unleaded petrol	459 € per 1000 litres
Kerosene used as:	
- motor fuel,	156 € per 1000 litres
- heating fuel	89.7 € per 1000 litres
Gas oil used as:	
- motor fuel,	370 € per 1000 litres,
- motor fuel for industrial and commercial purposes,	169 € per 1000 litres,
- heating fuel	117 € per 1000 litres
Heating oil	19.5 € per 1000 kilograms
Fluid oil gas used as:	
- motor fuel,	123.5 € per 1000 kilograms
- motor fuel for industrial and commercial purposes	58.5 € per 1000 kilograms
- heating fuel	26 € per 1000 kilograms

### e) Chargeable event and chargeability of the duty.

The Excise Tax Law prescribes that excise tax shall be paid on products manufactured on the territory of Montenegro and excise products imported to Montenegro. The requirement to calculate excise is established at the moment of putting excise products in free circulation. Excise taxpayer

shall calculate excise tax and thereby submit calculation in a relevant tax return which is submitted to the tax authority until the 15<sup>th</sup> day of the month for the previous month which is the deadline for the payment of excise tax requirement.

Requirement to pay excise tax on import of excise products, except for cigarettes, is established at the moment of paying import duties except in the cases when deferred payment of excise tax is possible (storage in customs warehouses or facility of exempt excise products beneficiary).

Excise tax on cigarettes (domestic or imported) shall be paid within 60 days as from the day of taking over the control excise stamps (Articles 13, 14 and 33 of the Excise Tax Law).

#### **f) Importation/exportation.**

##### *Import:*

Excise tax requirement on import is established at the moment of bringing (importing) excise products to Montenegro (Article 5, paragraph 1, item 2 of the Law).

The requirement to pay excise tax on import shall be established at the moment of paying import duties according to the amounts or rates which are valid on the day when the requirement to calculate the excise tax is established (Article 14 of the Law).

As regards import of cigarettes, the requirement to pay excise tax is established as on the day of taking over the excise stamps.

In addition, within the meaning of Article 15 of the Law, the requirement to pay excise tax is also established when the customs authority sells customs goods that have been confiscated or transferred to the customs authority (Article 15 of the Law).

The excise taxpayer on import is importer of excise products (Article 17 of the Law).

Excise tax on import shall be paid as part of the customs debt except in the event of importing cigarettes. In such cases the excise tax shall be paid within 60 days as from the day of taking over the excise stamps.

##### *Export:*

Excise tax is not either calculated or imposed on export of excise products.

The excise tax that has been paid may be reimbursed to the importer who returns imported products abroad in an unchanged condition and importer who exports abroad the excise products for which the excise tax has already been paid.

#### **g) Registered/non-registered traders.**

Under provisions of Articles 17 and 63 of the Excise Tax Law, the excise taxpayer is producer or importer of excise products. Any person becoming excise taxpayer shall submit application for registration to the tax authority no later than 15 days before initiating production, storage, receipt or dispatch of excise products. Excise taxpayer shall notify the tax authority of the day of initiation, change or termination of an activity for which it is responsible to calculate and pay excise tax.

**h) Do you have a tax warehousing system for some/all product categories subject to excise? If not, what system do you apply:**

Taxation system based on excise warehouse is defined by the Excise Tax Law which prescribes that excise warehouse is one or several interconnected, enclosed areas or facilities that constitute a technological unit in which an excise licensee produces, stores, receives or dispatches products under a deferred excise tax payment regime and which must bear clearly visible markings and be physically separated from the other areas or facilities (Article 4 of the Law).

Excise licensee is natural or legal person that has been granted excise license by the tax authority in order to produce, finish, process, refine, store, receive and dispatch excise products under a deferred excise tax payment regime in performance of his/her activities. More detailed procedure concerning production and storage of excise products, marking and taking inventory of stored goods as well as matters concerning equipment, measuring instruments and quantity restrictions for excise warehouse are prescribed by the Rulebook on implementation of the Excise Tax Law.

**i) to domestic products?**

The Excise Tax Law prescribes equal treatment of domestic and imported products.

**ii) to imports?**

The Excise Tax prescribes equal treatment of domestic and imported products.

**iii) how far down the distribution chain does each warehousing system generally reach? Do general warehouses exist to which any importer may consign his products? How is duty financially secured? What physical security is required? How are movements between warehouses and between the frontier and warehouses handled?**

Warehousing system under the deferred excise payment regime is defined by the Excise Tax Law which prescribes deferred payment of excise tax as long as the goods are stored in the excise warehouse (Articles 6, 7 and 8 of the Law).

Excise tax payment shall be secured through the bank guarantee or cash deposit. Instruments are used to secure excise tax payment for excise products that are produced or stored in the excise warehouse, for excise products that are dispatched from the excise warehouse under the deferred excise payment regime and for interests arising from the excise payment for which the payment instrument has been given. Amount of the instrument for securing excise payment in the excise warehouse shall correspond to 100% amount of average excise debt calculated for inventories of excise products in the previous year as follows: for mineral oils of one day storage, beer, fermented drinks, intermediate alcohol beverages and ethyl alcohol of five day storage and other tobacco products of seven day storage. During the period of the deferred excise payment (calculated excise tax on cigarettes shall be paid within 60 days as from the day of taking over the excise stamps) the taxpayer is obliged to provide instrument for securing the payment in the amount of calculated excise tax. In the event of starting up an activity the value of the instrument for securing the payment of excise tax shall be determined by the applicant on the basis of personal evaluation of inventories of excise products with the consent of tax authority. Excise licensee checks value of the instrument for securing the payment of excise tax once a year and



prepares report thereof which is submitted to the tax authority for verification.

Owner of the excise warehouse (excise licensee) shall take care of physical security of the excise warehouse and notify tax authority of all matters.

Provisions of Article 4 of the Rulebook on implementation of the Excise Tax Law prescribe that movement of excise products between different warehouses as well as between the warehouse and the border shall be carried out with mandatory filling in of excise document or simplified excise document. Simplified excise document may be any commercial document containing the following data: number of the document and indication of it being a simplified excise document, name of the dispatcher or excise licensee, tax identification number of the dispatcher, registration number of the excise taxpayer, address of the warehouse from which the dispatch is performed and address of the warehouse to which the product is dispatched and registration number of these warehouses, name of the consignee, tax identification number of the consignee, name of the trucker and vehicle registration number, date of dispatch from the excise warehouse, dispatched quantities classified according to the type of excise products, date of takeover of the consignment by the consignee, signature and seal of the consignee.

**i) Do you operate other suspension schemes, i.e. tax arrangements applied to the production, processing, holding and movement of products where excise duties are being suspended? Is there a special tax regime with any non-EU countries requiring no excise duty payment or tax stamping?**

Excise payment may be deferred if the goods are placed in temporary storage, under the customs procedure of warehousing, transit, active refinement, temporary import, processing under customs surveillance, re-export, that is if the products have been taken into the free zone.

In addition, if the goods are in the procedure of releasing goods for free movement and thereby import duties and VAT have been paid the excise payment may be deferred if the goods are referred to the excise warehouse.

Other deferred excise tax payment systems are not applied during import of goods. In addition, Montenegro does not apply special tax regimes with the non-EU countries under which the excise tax are not paid or marking with excise stamps is not applied.

**j) Do you apply special regimes for certain producers, such as farmers, small producers, etc.?**

Provisions of Articles 17 and 45 of the Excise Tax Law prescribe that the excise taxpayer is producer or importer of excise products. Excise taxpayer is also a natural person – registered producer of alcohol beverages (small producer of alcohol beverages) above the quantities exceeding those for personal use if such alcohol beverages are put in circulation (sale). Small producers of alcohol beverages pay excise tax for produced quantities of such beverages in the calendar year reduced by quantities allowed for personal use.

More detailed procedure concerning the payment of excise tax by small producers as well as the threshold of alcohol beverages for personal use shall be prescribed by the regulation of the Ministry of Finance to be prepared together with the Ministry of Agriculture, Forestry and Water Management.

**k) Rules governing administration and records, including registration, invoices.**

Rules defining administration and records, including registration and accounts are prescribed by the Law on Tax Administration (Official Gazette of the Republic of Montenegro 65/01 and 80/04) and Excise Tax Law.

Regional units of Tax Administration, of which there are eight, keep records on excise taxpayers and payment of excise taxes on domestic production and tobacco products from import.

Excise taxpayers shall report their excise tax requirement to the territorially competent regional units of Tax Administration by submitting monthly returns. The Excise Tax Law and Rulebook on implementation of the Excise Tax Law prescribe the records to be kept by taxpayers and submitted to the tax authority. The Excise Tax Law prescribes monthly submission of returns and other periodical records to be delivered by excise taxpayers. Tax Administration enters these data into the information system and monitors settlement of taxes. Monthly returns are submitted until the 15<sup>th</sup> day of the month for the previous calendar month. Information system provides monitoring of paid taxes and accrued interests for payment default. In the event of major payment default the Tax Administration takes measures for enforcement of the claim.

**l) Assessment and appeals (assessment and collection, procedure for claiming the credit and refund, penalties, appeal procedure, international mutual assistance and recovery of excise claims).**

The amount of excise tax to be paid by excise tax payer on import of tobacco products is calculated by the taxpayer and controlled by tax authority. As regards import of other excise products (alcohol and alcohol beverages and mineral oils, their derivatives and substitutes) the calculation of excise tax is controlled by customs authority which collects the payment within the set deadline, like for the other customs debt, except in cases of deferred excise tax payment (Article 14 of the Law).

The amount of excise tax on products manufactured in the country shall be calculated by the taxpayer and controlled by tax authority. The amount of excise tax on domestic excise products shall become due for payment on the last day of the taxation period and it shall be paid within 15 days from the maturity date. The amount of excise tax on tobacco products manufactured in the country and on those that are imported shall be paid within 60 days as from the day of taking over the control excise stamps.

Order on the manner of payment of public revenues (Official Gazette of the Republic of Montenegro 82/04...53/07 and Official Gazette of the Republic of Montenegro 6/07...47/09) prescribes the incoming payments account for the payment of excise tax on certain types of excise products. Producer and importer deliver bank guarantee for securing the payment of excise tax on tobacco products in the amount of calculated excise tax. Bank guarantee is the guarantee payable on first demand and it is submitted to the tax authority at the time when the control stamps are taken over.

Reimbursement of overpaid excise tax is prescribed by Article 30 of the Excise Tax Law and Article 29 of the Rulebook on implementation of the Excise Tax Law. The request for reimbursement is submitted to the competent tax authority within 30 days from the day of expiry of the month in which the excise tax has been paid. Tax authority decides on reimbursement by the decision rendered after having determined the other facts significant for taxation.

Taxpayer shall have the right to file appeal against the decision on the amount of determined excise tax that has been rendered by the first instance body. Appeal procedure is prescribed by the Law on Tax Administration as well as the Law on General Administrative Procedure. The second instance body – the Ministry of Finance decides on appeal. Appeal does not suspend enforcement

of the appealed act. Complaint against the decision on appeal may be filed with the Administrative Court of Montenegro.

Pursuant to provisions of Article 40 paragraph 1 of the Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03) extraordinary legal remedies against the final and enforceable decision of Administrative Court may be filed as follows:

- request for extraordinary examination of court decision;
- request for reopening the procedure.

Valid legal provisions provide for international mutual assistance in the field of excise taxes. So far there have been no requests for international mutual assistance in the field of excise taxes.

Tax administrations exchange data only on the basis of requests and rarely does one tax administration inform another tax administration about the data that might be relevant for the tax administration of another country. Agreements on cooperation and mutual assistance have been signed mainly with the countries in the region and data are exchanged only on the basis of the written requests between individual tax administrations.

**m) Control procedures (in particular, what use is made of tax stamps and other fiscal markings, including fiscal markings for mineral oils).**

The procedure of marking excise products is defined by Article 57 of the Excise Tax Law which prescribes that the producer or importer is bound to mark tobacco products and alcoholic beverages, except beer and table wine, with the control excise stamp before putting them into use or free circulation. Control excise stamp for tobacco products shall be affixed on the packaging under the cellophane or other wrapping in such way to be visible and not removable without damaging the packaging, except for the original packaging of cigars and cigarillos, which are not wrapped in cellophane or other wrapping where the excise stamp may be affixed directly on the packaging. Imported cigarettes and imported bottled alcoholic beverages shall bear the mark and the name of the importer which are impressed on the box or bottle directly by printing or in the form of an adhesive label that is affixed on the packaging under the cellophane or other wrapping in which the box or bottle is packed. Tobacco products and bottled alcoholic beverages which are sold in duty free shops shall be marked with special stamp.

For the purpose of implementing aforementioned legal provisions the Government of Montenegro adopted the Decree on marking the tobacco products and alcohol beverages with the control excise stamps (Official Gazette of the Republic of Montenegro 82/05 and Official Gazette of Montenegro 22/09) which prescribes form and content of the control excise stamp, the manner of marking tobacco products and alcohol beverages with such stamps, the manner and procedure of approval, printing and issuance of excise stamps as well as the manner of keeping records on destroyed, issued, used, damaged and unused excise stamps for tobacco products and alcohol beverages.

Mineral oils used as heating fuel shall be marked with the prescribed colour and indicator. Mineral oils may be marked only in the excise warehouse which has the license for marking issued by tax authority. If the mineral oils have not been marked in the excise warehouse it shall be considered that these oils are not marked.

Mineral oil imported to Montenegro is considered marked if the importer submits a statement of a foreign tax or customs authority, producer or foreign authority that performs marking which indicates that marking has been performed outside Montenegro and with a view to the type and quantity it contains at least those substances for marking that are prescribed under this Law. In the event of failure to submit statement or if it may not be proved the mineral oils shall be considered unmarked.

Warehousing of certain mineral oils shall be organised in a manner ensuring that other

products do not affect neutralisation of the colour or indicator.

More detailed procedure concerning colouring and marking the mineral oils used as heating fuel is prescribed by the Rulebook on the procedure of colouring and marking mineral oils that are used as heating fuel.

**n) Transitional and temporary measures.**

The Excise Tax Law does not contain provisions on interim and provisional measures.

**9 What are your targets for future developments in your excise legislation (short/long term)? Please specify these in terms of timetables and anticipated problem areas.**

The Ministry of Finance plans to conduct analysis of the effects of implementation of valid legal provisions on key taxes in Montenegro including excise taxes. On the basis of results of the analysis the Ministry of Finance will prepare the Taxation Strategy for the period 2010 – 2014. The Strategy will constitute framework for further advancement of legal provisions in this field with a view to the existing law and practice of the European Union, monitoring of future changes in this field and particularly taking care of the need of economy and it will also determine the transition period in the framework of economic crisis.

The Excise Tax Law will be amended in the time to come with the relevant EU Directives (92/79/EEC, 92/80 EEC, 95/59/EC, 99/81/EC, 2002/10/EC) particularly in the part regarding harmonisation of the amount of excise tax on cigarettes.

After a more detailed analysis of the effects on economy and household is conducted, the possibility to include other energy sources (electrical power) in the excise system of Montenegro will be considered whereby these arrangements will envisage transitional period for their implementation. Practice gained in implementation so far will be borne in mind in amending these legal regulations.

After the aforementioned legal provisions have been amended the relevant secondary legislation for their implementation will also be adopted.

## II. DIRECT TAXATION

The Government of Montenegro and the Ministry of Finance are responsible for conducting tax policy, and the Department for Tax and Customs System, precisely the Division for Direct Taxes and Elimination International Double Taxation of the Ministry carries out tasks with regards to: preparation of integral solutions for the system and policy on direct taxation (corporate profit tax, personal income tax, contributions for compulsory social insurance and other grounds for direct taxation); preparation of laws and enabling regulations on direct taxation; harmonisation of regulations on direct taxation with the EU legislation and with the best international practice; participation in bilateral negotiations with regard to entering into Double Taxation Avoidance Treaties; preparation of opinions and positions with regard to elimination of international double taxation; follow up of activities at international level (OECD and UN) in the field of double taxation avoidance. The Tax Administration is responsible for implementation of the tax policy, and the Ministry of Finance carries out the oversight of its work.

The direct taxation system in Montenegro is governed by the Law on Tax on Profit of Legal Entities (Law on Corporate Profit Tax) (Official Gazette of the Republic of Montenegro, No 65/01 and 80/04; and Official Gazette of Montenegro No 40/08) and by the Law on Tax on Income of Natural Persons (Law on Personal Income Tax) (Official Gazette of the Republic of Montenegro 65/01, 37/04, and 78/06).

**Law on Corporate Profit Tax**, in application since 1 January 2002, introduced the obligation of payment of the profit tax, and taxpayers are resident and non-resident legal entities carrying out a for-profit activity. The profit tax rate is one of the lowest in the region and the rate is 9%. The revenues from corporate profit make 4.07% of the state-level revenues.

The Law is mostly harmonised with the relevant European Union regulations in this field: EU Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (last amended by the Council Directive 2003/123/EC); EU Council Directive 90/434/EEC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States (last amended by the Council Directive 2005/19/EC); EU Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

**The Law on Personal Income Tax**, in application since 1 July 2002, governs the taxation of income generated by natural persons. Tax rate of the personal income tax is one of the lowest in the region and in 2009 was 12%, while as of 2010 and forward the rate will be 9%. This Law is entirely harmonised with the *Acquis* (the Commission's Recommendations on tax treatment of enterprises and tax treatment of non-resident natural persons, 94/79/EC and 94/390/EC).

### **10 Does your legislation allow, for domestic operations of mergers, divisions, transfers of assets and exchange of shares, a deferral of the taxation of capital gains until their actual realisation (i.e. until disposal of the assets to which they relate)?**

Provisions of Article 26 of the Law on Corporate Profit Tax (Official Gazette of the Republic of Montenegro, No 65/01 and 80/04; and Official Gazette of Montenegro No 40/08) prescribe a tax treatment of status changes of legal entities.

Provisions of the above referenced Article prescribe that the transfer of assets in case of status changes (acquisition, merger or division) is not deemed as sale of assets. The tax liability resulting from capital gains occurs at the time when a legal entity, created by the status change, sells assets acquired as a result of the status change.

Right to defer payment of the profit tax for capital gains created in this manner is acquired in a case when 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.

Tax period for assessing profit tax is a calendar year. Revenues in the tax period are also all other revenues generated as a result of activities of the taxpayer. Capital gains are included in the tax base of the profit tax and are taxed pursuant to the Law on Corporate Profit Tax. Provisions of Article 21, paragraph 1 of the Law on Corporate Profit Tax stipulate that the capital gains are considered as the revenues that a taxpayer realises through sale or other transfer with compensation of land, building constructions, property rights, equity interest and securities. Pursuant to provisions of Article 22 of the stated Law, capital gain represents the difference between the sale price of the stated asset and its acquisition price.

**11 What are the essential features of your regime for the taxation of the disposal of fixed (long-term) assets of corporations?**

As far as the disposal of fixed (long-term) assets of business organisations is concerned, in terms of the corporate profit tax, sale of fixed (long-term) assets is taxable through the system of assessing capital gains and capital losses. Article 21, paragraphs 1 and 2 of the Law on Corporate Profit Tax stipulates that that capital gain is considered to be the revenue that a taxpayer realises through sale or other transfer with compensation of land, building constructions, property rights, equity interest and securities. Pursuant to provisions of Article 22 of the above referenced Law, capital gain represents the difference between the sale price of the stated asset and its acquisition price. 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 is considered as the sale price of the asset. Acquisition price of the asset is 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 under this Law (Articles 23 and 24 of the Law).

The 50% of revenues from the capital gain are included in the tax base in the year in which are generated.

Negative difference between the sale price and acquisition price of the asset represents a capital loss. Capital losses may be offset against capital gains realised in the same year. If even upon the offset against capital gains realised 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 22, paragraphs 4 and 5 of the Law).

**- What kind of exceptions/exemptions do you apply to the taxation of capital gains of corporations?**

The 50% of revenues from the capital gain are included in the tax base in the year in which they are generated (Article 21, paragraph 2 of the Law).

**- Do the same rules apply within a trade or business of an individual? If not, what are the rules for individuals?**

A natural person, when performing a self-employment activity, is taxed in accordance with the Law on Personal Income Tax which does not stipulate taxation of capital gain.

**- What are the applicable rules for individuals in the framework of their portfolio management?**

Starting from 2007, capital gains of natural persons are exempt from taxation. Since capital gains realised from the sale of securities are not subject to the personal income tax, the Law does not prescribe taxation in the framework of portfolio management of natural persons.

**12 Do you apply a special tax regime for business reorganisations?**

Provisions of Article 26 of the Law on Corporate Profit Tax (Official Gazette of the Republic of Montenegro, No 65/01 and 80/04; and Official Gazette of Montenegro No 40/08) stipulate a special tax regime for reorganisations of legal entities.

**- What are the reorganisations covered?**

Reorganisation of a business organisation, for tax purposes, covers status changes (acquisition, merger, or division).

The Law on Corporate Profit Tax prescribes a tax treatment in case of liquidation of a business organisation as well.

Pursuant to the Law on Corporate Profit Tax, changes of the form of organisation of the business organisation are not taxable.

**- How does this special tax regime work?**

Transfer of assets in case of status changes (acquisitions, mergers, or division) and distribution of share capital are not deemed as sale of assets. The tax liability resulting from capital gains occurs at the time when a legal entity, created by the status change, sells assets acquired as a result of the status change (Article 26, paragraphs 1 and 2 of the Law on Corporate Profit Tax).

In case of liquidation of a legal entity, such entity is obliged to determine a capital gain or loss as if it had sold the assets at the market price. The acquisition price of distributed assets in the liquidation procedure, for the purposes of determination of the capital gain, is equal to the market value of the assets prior to the distribution thereof. In the case when the assets of a subsidiary are transferred to a parent company, the parent company is not obliged to determine capital gain or loss (Article 27, paragraphs 1, 2, and 4 of the Law on Corporate Profit Tax).

**- Does this tax regime apply in cross-border situation? If yes, which?**

The Law on Corporate Profit Tax does not stipulate special taxation regime for reorganisation of business organisations in cross-border transactions, therefore foreign and national legal entities have the same tax treatment in reorganisation of legal entities, provided that the tax treatment of capital gains is not treated by a double taxation avoidance treaty, which supersedes the national legislation.

**13 Please provide information on the taxation of raising of capital by companies.**

The Law on Business Organisations (Official Gazette of the Republic of Montenegro, No 6/02 and Official Gazette of Montenegro, No 17/07 and 80/08) prescribes the procedure of raising and increase of capital of business organisation. Initial capital or increase of capital are not taxable according to the Montenegrin tax laws, thus it is not a subject of the Law on Corporate Profit Tax

**14 Does your legislation allow for levying withholding taxes on payments (dividend, interest, royalties or rent etc.) to other legal entities (natural persons or corporations) residing in and/or outside your country?**

Provisions of Article 29, paragraph 1, item 1 of the Law on Corporate Profit Tax stipulate that a taxable person of the profit tax is obliged to calculate, withhold and pay withholding tax on payments made on the bases of dividends and interests in profit paid to resident and non-resident legal entities and natural persons. The item 2 of above stated Article of the Law stipulates that the withholding tax is assessed and paid on interests, royalties and other intellectual property rights compensations, capital gains, movable and immovable assets lease compensations, revenues from provision of consulting services, market research services and audit services paid to a non-resident legal entity. The withholding tax rate for above stated revenues is 9%, except for interests for which the applicable rate is 5% until 1 January 2010, and it will be 9% from 1 January 2010. Withholding tax is also be paid by an establishment of a non-resident legal entity at the time of payment of stated compensations.

Provisions of Article 29a, paragraphs 1, 2, 4, and 5 of the stated Law stipulate that in case of calculation of the withholding tax for revenues paid to a non-resident legal entity, a payer of revenues applies provisions of a double taxation avoidance treaty, provided that the non-resident proves the resident status in the country with which Montenegro has concluded the double taxation avoidance treaty and that the non-resident is the actual owner of revenues. Non-residents can prove the status of a resident of the country with which the double taxation avoidance treaty was concluded to the payer of the revenues by a certificate or other appropriate document, notarized by a competent authority of other country party to the treaty the entity is the resident of. A tax authority is obliged to issue a certificate on tax paid in Montenegro upon the request of the non-resident legal entity. The obligor of the withholding tax is obliged to submit to the competent tax authority, once a year, a report on paid withholding tax of the non-resident legal entity, which is submitted until the end of February of the current year for the previous year.

**a) What are the main features of the taxation regime on income from capital (personal and corporate)?**

Revenues from capital of natural persons are considered to be: revenue from interests; interest in profits realised by the members of management and employees in money or in shares; revenue from the use of property and services by the owners and co-owners of the capital for their private needs; as well as earnings from shares and equity interests of members of management and employees of corporations received or purchased under preferential terms (Article 37 of the Law on Personal Income Tax). The payer of revenues is obliged to calculate, withhold and pay the income tax from capital at the rate of 12%, while the rate of 9% will apply from 2010. The tax rate on revenues from interests paid to non-resident natural person is 5%. The tax base for withholding taxes is a total amount of revenues generated from capital.

- Profit of a legal entity is taxed in accordance with the Law on Corporate Profit Tax. Profit tax rate is 9% (Article 28 of the Law). Taxable profit of the taxpayer represents the tax base. Taxable profit is established by adjusting profit of the taxpayer stated in the income statement in accordance with the law which governs accounting, prescribing the application of the International



Accounting Standards – IAS, except for revenues and expenditures for which a different manner of assessment is stipulated by Articles 8 to 20 of the Law on Corporate Profit Tax (e.g. revenues from dividends and interest in profit of other legal entities are excluded from the tax base of the recipient, if the payer thereby is the taxable person under this Law; following costs are not recognised as expenses: costs incurred for the purpose other than carrying out of the activity, costs that cannot be documented, interests on untimely paid taxes and contributions, interests paid to non-residents, if paid at the rate higher than customary commercial rate, administrative costs paid by a permanent establishment to the non-resident headquarter, earnings of employees or other persons arising from profit sharing, pecuniary fines and penalties, correction of value of a single claim in case of parties to which is simultaneously owed, contributions given to political organisations; expenses incurred for healthcare, education, scientific, religious, cultural, sports, and humanitarian purposes, as well as for environmental protection are recognized as expenses in the amount not exceeding 3.5% of total revenue; business entertainment expenses are 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; membership fees for chambers, alliances and associations are 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 are recognized in the amount prescribed by law, etc). If the remaining profit after taxes is kept by the business organisation, then the taxation procedure is completed. If dividends and interests in profit are paid to resident and non-resident legal entities and natural persons, then the profit tax is withheld and paid at the rate of 9% (Article 29, paragraphs 1 and 2 of the Law).

**b) Are there withholding taxes on income from capital (interest on bank deposits, debt instruments)? Please indicate tax base, tax rates, exemptions, fiscal treatment of residents (on domestic and foreign income) and non-residents, automatic reporting etc.**

Payer pays no withholding tax on revenues from interest generated by legal entities at the event of the payment thereof, but such revenues are included in total revenues of the taxpayer when assessing the profit.

Provisions of Article 50 of the Law on Personal Income tax stipulate that the payer of revenues from capital calculates, withholds and pays the tax on revenues from capital. The payer of revenues is obliged to submit a report to the competent tax authority as well as to the taxpayer on paid withholding tax. Natural person that generates revenues from capital outside of Montenegro is obliged to file to the competent tax authority an annual tax return for assessment and payment of the personal income tax for such revenues, by 30 April of the current year for the previous year. A tax credit is approved to the taxpayer for the taxation of income from abroad in the amount of income tax paid abroad, but only up to the level of the tax that would have been assessed by applying provisions of the above referenced Law on income generated abroad.

**c) Are turnover taxes or stamp duties applied to securities, credit contracts, insurance contracts, etc.?**

Pursuant to the Law on Tax on Insurance Premiums (Official Gazette of the Republic of Montenegro, No 27/04 and 37/04), the automobile liability insurance premiums and premiums of full comprehensive third party insurance (aka Casco insurance) of motor vehicles are taxable in Montenegro. The stated Law introduced the obligation of payment of tax on insurance premiums. Tax rate is 6% on automobile liability insurance premiums and 3% on premiums of Casco insurance of motor vehicles. Insurance companies pay this tax regardless whether such insurance activities are conducted directly or through intermediaries thereof. Tax obligation is paid on 10<sup>th</sup> day in a month for previous month.

**15 How is foreign income, received by resident taxpayers, treated in your country? What kind of system do you apply to prevent double taxation?**

Revenues (income or profit) generated by resident taxpayers abroad or outside of Montenegro have the same tax treatment as revenues the residents generate in Montenegro. Income or profit generated by resident taxpayers in Montenegro and outside of Montenegro are taxed pursuant to provisions of the Law on Personal Income Tax and Law on Corporate Profit Tax respectively, unless otherwise provided for by an international bilateral or multilateral treaty.

A method of a tax credit is applied in order to avoid double taxation, when taxing income or profit generated abroad. The tax credit is approved to the resident taxpayer that generates income or profit outside of Montenegro and pays income tax or profit tax in another country in the amount of tax paid in such country. The tax credit cannot exceed the amount that would be obtained by applying tax rates prescribed by law on income or profit realised in another country.

Under the Decision on Declaration of Independence of the Republic of Montenegro (Official Gazette of the Republic of Montenegro, No 36/06), Montenegro assumed 36 international treaties and agreements for double taxation avoidance entered into by SFRY and FRY and acceded by the state union of Serbia and Montenegro, which regard Montenegro and are in conformity with its legal order.

Treaties with following country are in application: Albania, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Egypt, Finland, France, Greece, the Netherlands, Croatia, Italy, China, Cyprus, Korea, Kuwait, Latvia, Hungary, Macedonia, Malaysia, Moldova, Germany, Norway, Poland, Romania, Russia, Slovakia, Slovenia, Sri Lanka, Sweden, Turkey, Ukraine, and Great Britain.

We would like to mention that Montenegro, as an independent country, initiated signing of treaties with several countries, out of which the Treaty on Double Taxation Avoidance with Malta was ratified, with India signed, and with Ireland initiated.

**16 Please provide a copy (in one of the official EU languages) of your country's legislation on the taxation of income, profits and/or capital gains, including other related legislation, such as regulations concerning investment incentives or administrative guidelines, etc. Please describe the procedures for payment of personal income tax and calculation methods used. How is control carried out?**

The Law on Tax on Profit of Legal Entities (Law on Corporate Profit Tax) (Official Gazette of the Republic of Montenegro, No 65/01 and 80/04; and Official Gazette of Montenegro No 40/08) ([Annex 103](#)) and enabling regulations thereof govern the obligation of payment of the profit tax of legal entities, the English language versions of which are provided in the Annex.

Enabling regulations for the application of the Law on Corporate Profit Tax are:

- Rulebook on the Form and Content of the Tax Return for Assessing Profit Tax of Legal Entities (Official Gazette of Montenegro, No 08/09) ([Annex 127](#));
- Rulebook on the Form and Content of the Report of Calculated and Paid Withholding Tax on Revenues Generated by a Non-Resident Legal Entity (Official Gazette of Montenegro, No 09/09), ([Annex 128](#));
- Rulebook on Detailed Manner of Use of Tax Reliefs against Investments into Fixed Assets Used for Energy Generation from Renewable Sources and Energy Efficiency (Official Gazette of Montenegro, No 09/09), ([Annex 132](#));
- Rulebook on Use of Tax Reliefs against Corporate Profit Tax in Underdeveloped Municipalities (Official Gazette of the Republic of Montenegro, No 3/03), ([Annex 130](#));

- Rulebook on Classification of Fixed Assets into Groups and Methods for Determining Depreciation (Official Gazette of the Republic of Montenegro, No 28/02), ([Annex 120](#)).

The Law on Tax on Income of Natural Persons (Law on Personal Income Tax) (Official Gazette of the Republic of Montenegro 65/01, 37/04, and 78/06) ([Annex 105](#)) and enabling regulations thereof govern the obligation of payment of the income tax of natural persons, the English language versions of which are provided in the Annex.

Enabling regulations for the application of the Law on Personal Income Tax are:

- Decree on Manner of Recalculation of Existing Net Wages into Gross Wages (Official Gazette of the Republic of Montenegro, No 34/02), ([Annex 112](#));
- Rulebook on the Form and Content of Annual Return for Calculation and Payment of Personal Income Tax (Official Gazette of the Republic of Montenegro, No 16/08 and Official Gazette of Montenegro No 21/09), ([Annex 116](#));
- Rulebook on Classification of Fixed Assets into Groups and Methods for Assessing Depreciation for Obligors Generating Revenues from Self-Employment Activity (Official Gazette of the Republic of Montenegro, No 58/02), ([Annex 119](#));
- Rulebook on Lump-sum Taxation of Revenues from Self-Employment Activity (Official Gazette of the Republic of Montenegro, No 03/05 and Official Gazette of Montenegro, No 80/08) ([Annex 124](#));
- Instruction on the Manner of Calculation and Payment of Taxes and Contributions from and on Employment-based Personal Earnings (Official Gazette of the Republic of Montenegro, No 81/06), ([Annex 115](#)).

The obligor of the personal income tax is a resident or non-resident natural person who generates taxable income on the territory of Montenegro. Resident natural person (resident), for the purpose of stated Law, is a natural person who has habitual residence or centre of business and vital interests, or one who resides on the territory of Montenegro for more than 183 days during a tax year.

Revenues generated from following sources are subject of the income tax:

- Personal earnings;
- Self-employment activity;
- Property and property rights;
- Capital.

The revenues from capital gains (generated from sale immovable property and securities) are exempt from the taxation under the Law on Amendments to the Law on Personal Income Tax (Official Gazette of the Republic of Montenegro 78/06) which is in application as of 1 January 2007.

Taxable income reduced by the amount of loss carried forward and personal allowance (€840 annually) represents a tax base for the payment of annual personal income tax.

Taxable income represents a difference between income and recognised expenditures (expenses) incurred by the taxpayer while generating and maintaining the income.

The personal income tax rate for 2009 is 12%, and in 2010 and forward it will be 9%.

Revenues from Personal Earnings

Withholding tax on personal earnings is calculated by applying tax rate on the tax base, which consists of gross personal earnings reduced by monthly personal allowance (€70). The employer

or payer of personal earnings calculates, withholds and pays the tax on such earnings at the event of each payment of earning by applying the prescribed tax rate on the tax base.

#### Revenues from Self-employment Activity

Taxable revenue from self-employment represents taxable profit of the taxpayer. Tax profit is established by adjusting taxpayer's profit stated in the income statement in accordance with the accounting regulations corrected in a manner envisaged by a tax law.

Persons that carry out a self-employment activity, and generate operating loss, may carry forward such loss against future periods, but not exceeding a period of five years.

During the year, the income tax on revenues from self-employment activity is paid in form of monthly advance instalments, until the end of current month for previous month in the amount of 1/12 of the tax liability according to the annual tax return for the previous year. The advance instalment of paid tax for this purpose is considered as credit against liabilities as set in the tax return for the current year.

The tax authority may approve to the taxpayer having a total turnover (revenue) of less than 18,000 euro for the year that precedes the year for which the tax is assessed (or planned turnover, in cases of commencement of the activity), to pay tax in an annual lump-sum instalment. The Rulebook on Lump-sum Taxation of Revenues from Self-Employment Activity classifies taxpayers, depending on the type of activity, into four groups, each group is classified into four sub-groups, depending on the level of generated or planned turnover, and for each sub-group an amount of annual lump-sum tax is established by way of a tax scale. Taxpayer pays taxes on monthly basis, based on a decision of the tax authority, until the end of the month for previous month, in the amount of 1/12 of the tax liability established in the tax scale, and paid advance instalments are considered as finally assessed tax liability.

Standard expenses of 40% of generated revenues are recognised to the taxpayer that generates revenues from an occasionally performed self-employment activity (which does not represent a core activity of the taxpayer) in case it fails to document its actual expenses. The net revenue which represents a difference between generated revenues and actual or standard expenses of the taxpayer, as the case may be, will be the tax base for payment of this tax. The tax rate for these revenues is 15% of the tax base. Persons generating revenues from occasionally performed self-employment activity are not obliged to file tax return for such revenues, while paid advance instalments of tax are deemed as finally assessed tax liability.

#### Revenues from Property and Property Rights

Tax base for payment of income tax on revenues from property and property rights (revenues generated from lease of movable and immovable property and revenues from time-limited copyrights assignment, industrial property rights, and other property rights) represents a difference between the total revenue generated from stated property and total expenses incurred while generating such revenues in the same tax period. Expenses against property and property rights are considered as the actual expenses incurred while generating such revenues (if documented) or standard costs in the amount of 40% of generated revenues from the property and property rights. In case of revenues from rental of rooms, apartments and holiday houses to travellers and tourists, standard expenditures are 50% of the generated revenues.

Advance instalment of the income tax on revenues from property and property rights during year is calculated, withheld, and paid by payer of the revenue (legal entity or entrepreneur) in case of collection of each revenue by applying the rate of 15% on a stipulated tax base.

In case of direct generation of revenues from property and property rights (when natural person leases property to another natural person) income tax is paid at the event of filing of the annual tax return.

#### Revenues from Capital

The payer of revenues from capital is obliged to calculate, withhold and pay the tax on such revenues concurrently with the payment of revenues at the rate of 12%, while the rate of 9% will be applied from 2010.

The tax rate on revenues from interests generated by a non-resident natural person is 5%.

No expenses are recognised when assessing taxable income from capital (all revenues are taxable).

#### Calculation of Annual Personal Income Tax

The obligor of personal income tax is obliged to submit to the competent tax authority (as per place of habitual residence), an annual tax return for assessment and payment of the personal income tax upon the expiry of a fiscal year. The annual tax return is filed until the end of April of the current year for previous year on the Form "GPP-FL", the content of which is stipulated by the Rulebook on the Form and Content of the Annual Return for Calculation and Payment of the Personal Income Tax.

The taxpayer performs a self-assessment of personal income tax in the annual tax return, by applying tax rate (Article 10 of the Law) on the tax base (Article 8 of the Law), whereby the amount of advance instalments of paid tax during year is deducted from the total amount of assessed tax.

If the taxpayer has paid during the year higher amount of taxes than he/she is obliged to do so according to the tax return, the excess of paid tax is returned at his/her request or is included in the advance instalments for the next tax period

Natural persons, who generate income from following sources, are not obliged to file an annual tax return:

- Personal earnings (from wages of employees) if such earnings are generated from the same employer in the same accounting period;
- Revenues from other self-employment activities other than the core activity of the taxpayer;
- Revenues from capital;
- Revenues from self-employment activity subject to lump-sum taxation and paid in advance instalments, are considered as the final tax assessment.

#### Control of Calculation and Payment of the Personal Income Tax

The control of calculation and payment of the personal income tax is carried out depending on the manner of calculation and payment of the tax. In majority of cases when revenues are generated by natural persons, the obligation of calculation, withholding and payment of the withholding tax lays with the payer of revenues or with the legal entity. The payer of revenues submits to the tax authority relevant reports on calculated and paid tax, thus an off-site control of accuracy of data and removing of irregularities if any takes place at the event of very submission of the report. Control of calculation and payment of taxes is also carried out in the form of on-site control with the payer of revenues, and often it takes place during the control of all revenues that the taxpayer is obliged to pay.

Direct control, through off-site and on-site control method is carried out with persons engaged in self-employment activities, as well as with other persons who are obliged to file an annual tax

**17 Do you apply any preferential tax schemes? If so, please provide a detailed description of these schemes (the main purpose of the scheme, the minimum requirements, the tax benefits, if it is time-limited, the kind of beneficiaries, etc.).**

Montenegrin legislation provides for tax reliefs for obligors of taxable persons of profit tax and

taxable persons of personal income tax.

The Law on Corporate Profit Tax envisages a possibility of several tax reliefs to be used (for carrying out activity in economically underdeveloped municipality, employment of new workers, programme activities of non-governmental organisations).

Provisions of Article 31, paragraphs 1 and 2 of the above referenced Law stipulate that a newly established legal entity in an economically underdeveloped municipality conducting a production activity has a profit tax holiday for the period of first three years as of the day of the commencement of the activity. This tax benefit can also be used by other legal entities that establish a business unit in the underdeveloped municipality.

Provisions of Article 30, paragraphs 1, 2, and 3 of the above referenced Law stipulate that the taxpayer that employs new workers in a business year for an open-end period, but not less than for two years, is entitled to the deduction of the tax base by the amount of paid gross wages for such workers, increased by associated contributions for compulsory social insurance. The taxpayer may use the right for this tax relief for one year as of the day of the employment of a new worker. If the taxpayer terminates the employment contract with the newly employed worker (unless requested by such person), prior to the expiry of two years from the time of such employment, the taxpayer is obliged to increase the tax base by the amount of used relief for the year of termination of the employment contract.

Provisions of Article 32, paragraph 1 of the above referenced Law stipulate that the tax base is reduced for the legal entity established as a non-governmental organisation, registered to carry out commercial activities by the amount of 4,000 euro, provided that it uses the profit for carrying out of objectives for which it has been established.

The Law on Amendments to the Law on Corporate Profit Tax (Official Gazette of Montenegro, No 40/08) provides for an option to use tax reliefs for investments in permanent fixed assets (plants, equipment, and other) which are used for electricity generation from renewable sources (solar energy, wind energy and other) and energy efficiency (the tax base is reduced by 50% of investments but not exceeding the amount of the tax base – Article 30a of the Law).

The Law on Personal Income Tax sets forth tax reliefs for persons engaged in self-employment activity in case of investments in fixed assets and employment of new workers.

Provisions of Article 32 of the Law on Personal Income Tax stipulate that in a case of taxpayer engaged in self-employment activity invests in fixed assets for his/her own activity, the assessed tax is reduced by 50% of made investments, provided that that deduction cannot exceed 70% of the total tax liability for the same tax period.

Provisions of Article 32a of the above referenced Law stipulate that the tax base is reduced to a taxpayer that in a business year employs new workers for an open-ending period but not less than for two years, for the amount of paid gross wages to such employees, increased for the associated compulsory social insurance contributions paid by the employer, whereby the tax relief is recognised up to the level of the tax base. The taxpayer may use the right for this tax relief one year after the employment of the new worker. If the taxpayer terminates the employment contract with the newly employed worker (unless requested by such person), prior to the expiry of two years from the time of such employment, the taxpayer is obliged to increase the tax base for the amount of used relief and so for the year of termination of the employment contract

Resident of Montenegro, (natural person who has habitual residence or centre of business and vital interests, or one who resides on the territory of Montenegro for more than 183 days in the tax year) according to Article 9 of the above referenced Law, is entitled to a personal allowance of 840 euro annually (70 euro per month), which represents part of the income of natural person not subject to taxation.

### **III. Administrative cooperation and mutual assistance**

#### **18 Please indicate how you cooperate with other countries in the field of administrative assistance in tax matters**

Montenegrin Tax Administration is a permanent member of IOTA, which is Intra-European Organization of Tax Administrations, from 2003 and actively participates in this organization.

As a full member, the Tax Administration enjoys the following benefits:

- Participation in IOTA training programmes (such as seminars, workshops, study visits);
- Participation in IOTA "Area group" activities;
- Publication of opinions and news through IOTA magazine -Tax Tribune;
- Giving proposals at the meetings of IOTA General Assembly (right to speech);
- Making decisions at the meetings of IOTA General Assembly (right to vote);
- Possibility to be elected for statutory positions of IOTA – such as the President, member of Executive Council and member of the Commission for Finance Control.

Three groups are active in IOTA: Prevention and detection of VAT fraud, large taxpayer treatment and audit and Taxpayer education and services, and the Tax Administration of Montenegro has its representatives in all of these three groups. The members of the area group, in addition to regular meetings, also maintain continuous cooperation between the meetings, aimed at exchange of experience and application of acquired knowledge in the work of the Tax Administration.

#### **19 What is your policy to promote good governance in tax matters?**

The Tax Administration has made significant efforts to information and education development, both for its employees and taxpayers. The Tax Administration is open for cooperation with taxpayers and, through its activities, it tends to create favourable ambient in which a taxpayer shall recognize Tax Administration as a partner and thus participate in shaping of tax discipline.

The communication of the Tax Administration with taxpayers and the public is carried out through the Sector for providing services to taxpayers. Taxpayers are welcome to resolve their dilemmas regarding implementation of tax regulations in direct contact with advisors in all branch units and to get free-of-charge tax forms, which are also available at the website of the Tax Administration, as well as instructions and advises for filling and submitting of tax returns.

In addition to regular information and education of taxpayers, one of the priorities is to inform and educate all citizens of Montenegro and the overall public. This is so called external level of information providing and training, which is being implemented in several ways.

The public is updated on daily basis with all significant issues and work results via website: [www.poreskauprava.gov.me](http://www.poreskauprava.gov.me) while press releases are also being sent directly to all media via electronic mail.

All questions and answers related to tax regulations, which the Tax Administration receives in writing or in electronic forms, are also available at the website of the Tax Administration, within the section "Tax Practice".

Taxpayers and all stakeholders, physical or legal persons, are welcome to get the answers to their question regarding implementation of tax regulations by calling free-of-charge phone number 19707 in the Call Centre, which works within the Sector for providing services.

Appreciating the significance of informing the Ministry of Finance, as the line Ministry, as well as the general public, the Tax Administration has developed comprehensive and integrated system of information and education of taxpayers, in compliance with strict implementation of the work transparency principle, in line with European standards being respected in this tax authority.

In order to provide information and education to as large as possible number of citizens and taxpayers during a year, the Tax Administration actively and regularly cooperate with all Montenegrin printing and electronic media. This cooperation includes presenting press releases on the work results achieved, terms and obligations deriving from tax legislation, as well as results achieved in increase of the number of taxpayers that cooperate with the tax authority.

In addition, the Tax Administration provides education to taxpayers on daily basis, in regular contacts with taxpayers, in respect to their registration, control and collection of tax debt, and all employees engaged for this task provide expert assistance to taxpayers, information, tax advices or warnings for failure in fulfilment of liabilities.

**20 With which countries do you currently have Exchange of Information agreements for taxation of capital and income? What kinds of income and capital sources are covered by such agreements? Are there any restrictions on the availability or use of such information?**

The Agreement on Cooperation and Mutual Assistance was signed between Tax Administrations of Macedonia, Bosnia and Herzegovina, Bulgaria, Serbia and Montenegro, in mid June 2006. Having in mind the significance of providing accurate calculation and collection of taxes and other public revenues, as well as the implementation of agreements on avoidance of double taxation, considering that tax misdemeanours inflict damage to economy and trade and that efforts aimed at preventing violation of tax regulations and ensuring proper collection of taxes and other public revenues may be more efficient due to cooperation between tax administrations, two signatory countries of this Agreement have a close cooperation in coordination, harmonization and implementation of tax regulations.

In respect to sources of capital and revenues included by this Agreement, the tax administration of one party, on its own initiative or upon the request of the tax administration of other party, exercises intensified supervision over:

- 1) Calculation and payment of taxes and other public revenues by persons that are recognized or there is a doubt that violate tax regulations of the other Signatory Party;
- 2) Turnover of goods and financial transactions for which the tax administration of other Signatory Party deems to be a subject to illegal actions at the territory of its state or from that territory or from a territory for which there is a such suspicion;
- 3) Transport means which are known to be used for violation of tax regulations valid in the territory of other Signatory Party, for which there is a suspicion of doing that;
- 4) Places used for storing of goods that may be a subject to avoiding of tax payment in the territory of other Signatory Party;

The Agreement also envisages that tax administrations may, based on mutual agreement, use the method of controlled deliveries of goods and financial transactions that are subjects to illegal actions, in order to identify persons involved in illegal trade of these goods and commodities. Illegal shipping for which deliveries are being controlled in accordance with agreements achieved, with consent of both tax administrations, may be intercepted and their further transport may be stopped, with keeping or complete confiscating or partial replacement of illegal shipping.



In the part with restraints in respect to availability or utilization of information, the Agreement defines the following:

1. Information, deeds and other data obtained in accordance with the Agreement are used exclusively for purposes listed in this Agreement. They may be supplied or used for any other purposes only with the consent of the tax administration which has given those documents.

2. Request, information, expertises and other data provided in accordance with this Agreement to the tax authority of one party, in any form, enjoy full confidentiality by the tax authority which has received them, as prescribed in that country for own information of equivalent character and content. Signatory parties efficiently protect received information against unauthorized access and display.

3. Information received and documents obtained in accordance with this Agreement are used only for tax purposes and misdemeanour and criminal proceedings and will be accessible only to persons, law authorities or judicial authorities in charge for specific tax case or enforcement of misdemeanour or criminal proceeding related to that case.

The Agreement envisages the following exemptions in providing assistance:

1. When the tax authority of the one Signatory Party deems that fulfilment of a request may cause damage to its sovereignty, security, public order or any other significant interest of the state of that Signatory Party, it may, wholly or partially, reject a cooperation envisaged by this Agreement or to provide it, with respecting specified conditions and requirements.

2. If there is any danger that provision of a legal assistance would lead to disclosure of official or professional secret or that the resident taxpayer would suffer a large scale damage.

This Agreement does not impose any obligation to neither of Signatory Parties to enforce measures or supply information that are not in accordance with own laws and administrative regulations.

**21 Do you have agreements with other countries for the recovery of taxation, and/or the serving of official notices from other states?**

Tax Administration of Montenegro has not signed any agreement with any country on refunding tax claims or serving of official notes from other state.

## ***IV. Operational capacity and computerisation***

### **A. Tax Policy**

#### **22 Describe the current and envisaged tax policy of your Government (notably, introduction of new taxes and/or abolition of existing ones).**

The tax policy of Montenegro is based on the inclusiveness of all taxpayers (natural and legal persons), low and competitive tax rates and very selective tax relieves. The tax policy is regulated in detail by specific tax laws, which are compatible with tax laws of the most EU countries.

General principles on which the tax policy is based upon are self-taxation, simplicity, neutrality, efficiency, stability and applicability. The objectives of the Montenegrin tax policy are focused on the following: Establishment of competitive tax system of Montenegro that would make it more attractive for investments, elimination of business barriers, including simplified procedures, which would contribute to higher implementation efficiency of the taxation system.

The laws that regulate taxation policy of Montenegro are as follows:

**1. The Law on Personal Income Tax** regulates taxation of income acquired by natural persons, including: taxpayer, tax base, tax period, tax rate, revenues exempted from income, income exempt from taxation, sources of income and method of its determination, personal allowance as non-taxable part of income, advance tax payment and determination and payment of annual income tax, tax relieves, avoidance of double taxation and penalty provisions.

**2. The Law on Corporate Profit Tax** regulates taxation of profit derived by legal entities, including: taxpayer, tax base, tax exemptions, incurrance of tax liability and payment of tax, adjustment of revenues and expenses, tax period, tax rate, exemptions and relieves, group taxation, avoidance of double taxation and penalty provisions.

**3. The VAT Law** contains provisions on Value Added Tax, including: Subject to taxation, place of taxation, taxpayer, incurrance of tax liability and payment of tax, tax base, tax exemptions, obligation to invoice issuance, taxation period, tax rates, deduction of input VAT, VAT refund, specific taxation procedures, maintaining of tax records, keeping of files and penalty provisions.

**4. The Excise Law** contains provisions that regulate the following: incurrance of excise duty, regime of postponed payment of excise, incurrance of excise duty calculation and payment, excise payer, general requirements for excise warehouses, exempted user of excise goods, refund of pre-paid excise, exemption from excise duty payment, excise products, marking of excise products, bookkeeping of persons liable to excise duty and keeping of documentation, supervision of calculation and payment, registration application and registration of excise duty payers and penalty provisions.

**5. The Law on Tax Administration** (Official Gazette of the Republic of Montenegro 65/01 and 80/04), ([Annex 101](#)) is a codification of legal provisions (procedures), which regulate the procedures for determination, control and collection of taxes and other public revenues, depending on type of tax, and regulate organization principles of the tax authority in Montenegro. According to its effect, this Law is the basic act in the scope of the reformed tax system of Montenegro and it applies to all state authorities and local self-government authorities when deciding on rights and obligations of taxpayers. This Law regulates the most issues of tax procedure, with a prescribed possibility of subsidiary implementation of the general regulation that regulates administrative procedures for all issues that are not subject to this Law. This Law has established self-taxation as a basic principle in the procedure of determination and collection of tax and other public revenues, while assessment principle has been established as competence and obligation of the tax authority in cases when determination is not applied or is applied inconsequently to self-taxation principle or if the tax law prescribes it.

**6. The Low on Tax on Turnover of Immovable Property** (Official Gazette of the Republic of

Montenegro 69/03 and 17/07) completely regulates payment of the turnover of immovable property tax (only used real estate and not new one). The tax on turnover of immovable property is 3% out of market value of immovable property (the acquisition of newly built immovable property is taxed by VAT, at the rate of 17%). Natural persons do not pay tax on turnover of immovable property when with that immovable property they are settling the question of where to live, at most up to 20 m<sup>2</sup> per a household member. State authorities, authorities of local self-government units and international organizations acquiring immovable property for conducting their activities do not pay tax on turnover of immovable property. The tax on turnover of immovable property is paid in a period of 15 days following the day of the receipt of the decision on assessment of the tax liability.

**7. The Law on Tax on Turnover of Used Motor Vehicles, Vessels, Aircrafts and Flying Objects** (Official Gazette of the Republic of Montenegro 55/03) completely regulates payment of the tax on turnover of used motor vehicles, vessels, aircrafts and flying objects. The taxable person of this tax is a purchaser, or acquirer of used motor vehicle, vessel, aircraft or flying object, if its turnover is not a subject of VAT. The tax rate is 5% out of the market value of the product that is subject to turnover. Tax exemptions are reduced to the utmost degree and are related to inheritance and gift in the first degree of kinship. Tax liability is paid in the period of 15 days following the day of the tax liability incurrence.

**8. The Law on Tax on Usage of Passenger Motor Vehicles, Vessels, Aircrafts and Flying Objects** (Official Gazette of the Republic of Montenegro 28/04 and 37/04) regulates payment of the tax on usage of passenger motor vehicles, vessels, aircrafts and flying objects. Natural and legal persons that are owners of registered passenger vehicles, vessels, aircrafts and flying objects pay this tax. Tariffs for payment of this tax are as follows: from 15 to 500 € for motor vehicles (the tax is reduced by 5% for each completed year of a car's age, and maximum up to 70% of the tax liability), from 10 to 200 € for motorcycles, from 5 to 400 € for boats and yachts and from 1.000 to 5.000 € for aircrafts and flying objects.

**9. The Law on Insurance Premiums Tax** (Official Gazette of the Republic of Montenegro 27/04 and 37/04) regulates payment of the tax on insurance premiums. The tax rate is 6% on premiums for liability and 3% on comprehensive road vehicle insurance. Insurance companies pay this tax, whether they carry out insurance activities directly or via their agents. The tax liability is paid up to the 10<sup>th</sup> of the month for the past month.

**10. The Law on Contributions for Social Insurance** (Official Gazette of Montenegro 13/07 and 79/08) regulates the system of providing funds for financing of compulsory social insurance (contributions for pension and disability insurance, health insurance and insurance against unemployment), including: persons liable to contributions, insurer, base for payment of contributions, contribution rates, calculation methods and deadlines for contributions payment and penalty provisions.

**11. The Law on Immovable Property Tax** (Official Gazette of the Republic of Montenegro 65/01) regulates taxation of immovable properties in Montenegro. According to the provisions of this Law, taxpayer of the real estate tax is any legal and natural person who is the owner of immovable property (land, buildings, residential and commercial parts of a building or some other construction facility) on the day of 1<sup>st</sup> January of the year for which the tax is determined, while the tax base is the market value of an immovable property on that day. The immovable property tax rate may range from 0.08% to 0.80% of the immovable property market value, which is determined by the decision of a municipality, depending on the kind of a real estate, its location, quality, age, etc.

**12. The Law on Tax on Games of Chance and Entertainment Games** (Official Gazette of the Republic of Montenegro 27/06) regulates payment of tax on games of chance and entertainment games. The Law regulates general elements (taxpayer, taxable base, etc), whilst each municipality adopts its decision, which provides for height of the tax, method of its calculation and payment. Taxpayers of the tax on games of chance are companies registered with authorized court, which have got license by the Ministry of Finance for organization of such games. Taxpayers of the tax on entertainment games are legal entities and entrepreneurs that organize such games using coin operated machines. Tax rate for organization of games of chance (except with coin-operated machines) may range up to 10% of concession fee paid for organization of those games. The tax for organization of games of chance with coin operated machines may range up to 20€ per each

machine. For organization of entertainment games, the tax may range up to 15€ per each coin operated machine.

**13. The Law on Temporary Residence Fee** (Official Gazette of the Republic of Montenegro 11/04 and 13/04) regulates the system of payment of temporary residence fee. Person liable to pay temporary residence fee is a persons who, out of his/her residing place, uses accommodation services in accommodation facility in which tourist or other catering activity is carried out. Temporary residence fee is paid for each day of stay in a tourist facility up to 30 days. The Law provides for that temporary residence fee may range from 0.10 € to 0.80 €.

**14. The Law on Financing of Local Self-Government** (Official Gazette of the Republic of Montenegro 42/03 and Official Gazette of Montenegro 5/08) regulates sources of funds, the manner of financial equalization and usage of conditional subsidies, as well as a manner of financing own activities of local self-government (municipalities, Capital and Old Royal Capital), and provides for municipal taxes that are own revenues of local self-government, as well as the distribution of common revenues between the State and local self-government. Local self-government, by its decision, prescribes for the height of tax and manner of tax payment, but within the limits regulated by this Law.

Funds for financing of local self-government activities, in compliance with provisions of this Law, are provided from own sources, common taxes and fees imposed by the State, Equalization Fund and subsidies from the State Budget.

The own sources include:

1. Local taxes (surtaxes on personal income tax, real estate tax, consumption tax, tax on trade name, tax on unbuilt buildable land and tax on games of chance and entertainment games),
2. Local fees (temporary residence fee, local utility tax and local administrative fee),
3. Local remunerations (remuneration for development of buildable land, remuneration for use of municipal roads and for environmental improvement), and
4. Other local revenues (revenues deriving from property owned by a municipality and revenues deriving from property rights, fines and interests, revenues from concession fees for carrying out public utility services, and revenues from other concession contracts, made by a municipality in compliance with the Law, revenues deriving from activities of municipal authorities, services and organizations, revenues from voluntary contributions, revenues based on donations and subsidies and other revenues prescribed by the Law).

Common taxes and fees imposed by the State

A part of taxes and fees imposed by the State is directly assigned to municipalities, including:

- 10% of revenues from personal income tax acquired in the territory of respective municipality, except for the Capital, to which 15% of all thus based revenues is assigned),
- 50% of revenues from real estate transfer tax acquired in the territory of a respective municipality and
- 30% of revenues from concession and other fees for usage of natural goods (forests, waters, ore, sand, gravel and stone);

Equalization Fund

Equalization fund is used for financial equalizing of developing municipalities. These funds are provided from revenues deriving from personal income tax (11% of collected revenues from this tax) and revenues from turnover on immovable property tax (20% of collected revenues from this tax).

### Subsidies from the State Budget

Conditional subsidies for financing of priority investment projects are provided from the State Budget to municipalities.

**15. The Law on Administrative Fees** (Official Gazette of the Republic of Montenegro 55/03 and 80/05, and Official Gazette of Montenegro 22/08 and 77/08 ) completely regulates the system of payment of administrative fees for documents and activities carried out before state administration authorities, local self-government authorities and other legal entities with public competencies . The height of state administrative fee is determined by fee tariff and depends on type of activity or document subjected to fee payment.

**16. The Law on Local Utility Taxes** (Official Gazette of the Republic of Montenegro 27/06) regulates general elements for payment of local utility taxes (tax base, taxable persons, continuation of calculation liability, etc), and local self-government, by its act, prescribes tax height, tax relieves and methods of calculation and payment of the tax liability. Taxpayer of local utility taxes is user of certain rights, items or services, the utilization of which is prescribed as subject to payment of local utility tax. A municipality, in compliance with its powers prescribed by law, may determine local tax according to usable surface area, utilization period or may determine this tax as fixed amount. The height of local utility taxes is determined depending on type of activity, surface area, location or zone in which facilities or items are situated, or in which services are provided that are prescribed for payment of this tax.

**17. The Law on Integrated Registration and Reporting System of the Calculation and Collection of Taxes and Contributions** (Official Gazette of the Republic of Montenegro 29/05) regulates establishment and management of the Central Register of persons liable to payment of personal income tax, insurers of compulsory social insurance and persons liable to payment of compulsory social insurance. The Central Register is a central database of taxpayers of personal income tax, insurers of compulsory social insurance (pension and disability insurance, health insurance and insurance against unemployment) and persons liable to payment of compulsory social insurance. The implementation of this Law will contribute to reduction of business barriers, since the registration procedure is significantly simplified and shortened (a single form is submitted instead of several), as well as the procedure of recording calculation and collection of the personal income tax and contributions for compulsory social insurance.

**18. The Law on Tax Advisors** (Official Gazette of the Republic of Montenegro 26/07 and 34/07) regulates requirements for carrying out activity of tax advisor. The activity of a tax advisor includes providing advices on tax and customs issues, drafting tax returns, tax balance sheets and other documents relevant for taxation, as well as representing in tax proceedings before administrative and judicial authorities and before ministries and judicial authorities regarding customs proceedings. Natural persons may carry out the activity of tax advisor as an independent profession if they have work license and specialized legal entities (company) for tax counselling may carry out this activity if registered for carrying out this activity. Tax advisors are obliged to join the Chamber of Tax Advisors, which is an independent and autonomous organization with legal entity status. The Organization represents tax advisors, promotes their work and represents their common interests.

### ***THE FUTURE TAX POLICY***

The new concept of the tax system in Montenegro has been implemented over last few years, leading to significantly improved tax structure and tax rates, including introduction of VAT in 2003, as well as the new taxation concept related to the profit of legal entities and personal income, with a single tax rate. Indirect taxation prevails within the tax structure.

The Ministry of Finance plans to conduct an analysis of effects of the implementation of current legislation concerning crucial taxes in Montenegro. Based on results of that analysis, the Ministry of Finance will develop the tax strategy for the period from 2010 to 2014, which will be based upon

already established principles of voluntary taxation, simple procedures, reduced number of exemptions and competitive tax rates. The Strategy will be a framework for further legislation upgrading in this area, taking into account current EU law and practices and future developments in this area.

One of the most important principles of future tax policy will be more efficient tax administration, in order to ensure further simplification of procedures and elimination of business barriers, which is to be achieved through the project of integrated registration and collection of taxes and contributions, electronic filing of tax returns and electronic payment of taxes, as well as better services to taxpayers.

## **B. General Tax Administration**

### **23 Please provide information on the organisational structure of your administration responsible for taxation, including excise duties.**

The Tax Administration is authorized for determination, collection and control of taxes and other public revenues (contributions, fees, remunerations, etc).

The Customs Administration is authorized for collection of customs and other duties collected at the import of goods - VAT and excises (for more details, please see Chapter 29, question number 29).

The Rulebook on organization and systematization of the Tax Administration regulates internal organization and systematization of the Tax Administration of Montenegro.

#### ***Organizational units of the Tax Administration are as follows:***

- 1) Sector for providing services to taxpayers and for registration;
- 2) Sector for receipt and processing of tax returns, revenue accounting and information system;
- 3) Sector for monitoring of enforcement of tax regulations, inspection audit and administrative proceeding;
- 4) Sector for collection enforcement;
- 5) Division for monitoring of control and collection effects and human resources development;
- 6) Division for internal control;
- 7) Service for economic-financial affairs;
- 8) Service for human resources, legal, technical and general affairs;
- 9) Branch units.

Sector for providing services to taxpayers and for registration includes:

Department for support and providing services to taxpayers, with the following groups:

Group for support and providing services to taxpayers,

Group for providing services within the Call Centre.

Department for public education;

Department for registration;

The Sector for receipt and processing of tax returns, revenue accounting and information system includes:

- Department for reporting and management services;
- Department for accounting of revenues;
- Department for receipt and processing of tax returns;
- Department for operational planning and control;
- Department for development of information system.

The Sector for monitoring of enforcement of tax regulations, inspection audit and administrative proceeding includes:

- Department of inspection audit;
  - Group for planning of inspection audits and risk assessment;
  - Group for operational planning and control;
  - Group for organization and technique of inspection control;
- Department for monitoring of enforcement of tax regulations and administrative proceeding;

The Sector for collection enforcement includes:

- Department for delinquent tax accounts with the group:
  - Group for collection within the Collection Call Centre;
- Department for delinquent tax returns;
- Department for planning of workload and operational audit;

The Service for economic-financial affairs includes:

- Public procurement office
- Office for excise stamps

The Service for human resources, legal, technical and general affairs includes:

- Archive, typewriting office and car herd.

The Branch unit includes:

- Affiliations, offices and branch offices.

Activities of sectors, divisions and services

The Sector for providing services to taxpayers and for registration carries out activities related to:

Development of education programmes and instructions in providing services to taxpayers; publishing tax regulations; development of information material, brochures, forms, publications; providing technical assistance and support to branch units and offices; exercising supervision over work of branch units and in part related to providing services to taxpayers within their respective authority; providing answers to questions received via call centres in written form and via e-mail;

drafting press releases, communication with media, registration of taxpayers, foreign and legal persons and other activities.

Sector for receipt and processing of tax returns, revenue accounting and information system carries out activities related to:

Defining programmes and procedures of projecting, development of functioning and maintenance of information system of the Tax Administration; defining programmes, procedures, forms and reports for receipt, recording and processing of tax returns; development of programmes, procedures, forms and reports regulating tax accounting; organization of receipt of data on payment to tax accounts; drawing up reports for system needs; work monitoring and implementation of programmes in branch units.

Sector for monitoring of enforcement of tax regulations, inspection audit and administrative procedure carries out activities related to:

Determination and establishment of programmes and procedures of inspection audit; development and adoption of general annual audit plan and designing objectives and tasks of inspection audit; development of work and technique procedures; ensuring integrated application of standard procedures within the Tax Administration; surveillance of performances of branch units; ensuring respecting of policy and procedures, as well as inspection audit plans; ensuring expert affairs of branch units regarding issues within audit procedure related to submission of tax returns; determination of areas with law implementation failures and proposing strategies of proceedings in such cases; planning needs and executors per each planned inspection audit; development of risk assessment programmes for inspection audit needs; drafting technical training material; participation in establishment and development of information system; follow-up of tax regulations, drafting secondary legislation in the taxation area adopted by the Tax Administration or the Director of the Tax Administration, participation in drafting tax regulations, according to the order of Director; drawing up initiatives for amendments to tax regulations; providing expert opinions; analysis of misdemeanour proceedings in branch units; pursuing second-instance administrative procedures for appeals on decisions of tax inspectors, and in other cases as prescribed by law, and other affairs in line with procedures.

The Sector for collection enforcement carries out activities related to:

Determination and development of programmes for tax debt collection; identification of persons that fail to submit tax return; defining annual and monthly work programmes for collection of delinquent tax liabilities, as well as their enforcement; establishing programmes and procedures for collection activities in tax administration premises and in premises of taxpayer; Providing technical instructions and guidelines to branch units and to the Department for field control; drafting reports necessary for determining successful implementation of the plan for delinquent debt collection; enforcement of operative audits and analyses of work of branch units; development of risk assessment programmes for collection needs; ensuring implementation of policy, procedures and legislation; undertaking measures in the area of non compliance with the law, and other activities. The activities of the Sector are grouped into departments:

Department for monitoring of effects, control, collection and human resources development carries out activities related to: Monitoring of effects of implementation and enforcement of tax legislation; adjustment of implementation of operational business plans of the Tax Administration, including all functions; coordination of activities within the Tax Administration in the area of tax legislation enforcement; monitoring of efficiency of the Tax Administration work and development of quantitative and quality analyses, providing proposals and guidelines; development and implementation of general and specialized training for public servants and state employees, in cooperation with the Human Resources Administration; assessment of training needs; evaluation of training results; training promotion; proposing and assigning employees of the Tax Administration for seminars organized by international tax organizations; defining periodical and annual plans for the Tax Administration; establishing and keeping training records for the Tax Administration; keeping and updating training files of employees.

Department for internal control carries out activities related to the control of: Compliance with the Code of Ethics of employees, implementation of operational procedures and instructions,



implementation of efficiency of programmes and procedures, implementation of laws and other legislation and defined policy, implementation of standpoints and conclusions of competent bodies in the taxation area; taking samples received by the supervision Sector, particularly in terms of tax determination and collection, tax fines and control in other high risk areas in the scope of the tax authority; control of enforcement of measures ruled by courts and other bodies; control of internal work and affairs that are mutual for all organizational units (keeping records, accounting and other financial affairs), and other affairs.

The service for economic-financial affairs carries out activities related to:

Collection of data for plan development by type of costs and revenues, planning of incurred liabilities for received goods and services, updating fixed assets value, keeping records of incurred costs by their type and incurrence time, collection of data from organizational units for calculation of salaries, remunerations and other income of employees, submitting requests to the State Treasury for transfer of funds within approved Budget lines, payment of cash accounts by cashier, payment for import of respective goods in foreign currency (cash registers), submitting requests to authorized printing company for printing excise stamps, issuing excise stamps to excise duty payers, payments through authorized commercial banks, making contracts with commercial banks for specific types of payment, disbursement of salaries, remunerations and other income to employees, completing prescribed statistical reports, development of annual and six months financial statements and other statements related to accounting plan affairs.

The Service for human resources, legal, technical and general affairs carries out activities related to:

Communication with the Human Resources Administration; employment of civil servants and state employees, assignment of employees, termination of work contract, keeping all records regarding labour issues; prepares and conducts disciplinary procedure; organizes representation activities, contacts with judiciary authorities and the public prosecutor; activities regarding housing issues, planning and collecting requests for purchase of office stationery, technical maintenance of premises of the Tax Administration, activities regarding investment, construction and maintenance of facilities, registration of vehicles, general, office, typewriting and other auxiliary activities.

#### *The activities of branch units and branch offices*

Branch unit carries out the following activities:

Receipt and processing of tax returns, tax accounting, collection of tax liabilities and drawing up prescribed reports; registration of taxpayers, providing information and support to taxpayers regarding implementation of specific tax legislation, receipt and processing of requests for issuance of excise stamps and requests for printing of excise stamps, as well as issue of certificates and other documents certifying revenues of citizens required for exercising of respective rights and obligations of taxpayer; inspection audit in premises of a branch unit and in premises of taxpayer, control of accounting and other business records relevant for taxation of taxpayer, as well as undertaking measures in case of violation of regulations; collection of overdue tax debt in branch unit premises or in premises of taxpayer, control of accuracy of submitted tax returns, providing unsubmitted returns, identifying taxpayers and non-filed property; pursuing first instance misdemeanour proceeding in case of violation of tax regulations; general administrative and technical affairs.

The branch office carries out activities related to:

Accounting of revenues; receipt and processing of tax returns; providing services to taxpayers and registration of taxpayers and administrative-technical affairs, and, in some branch offices, collection of taxes.

## 24 Describe the laws governing the tax administration and taxpayers' rights and obligations.

**The Law on Tax Administration** is a codification of legal provisions (procedures), which regulate the procedures for determination, control and collection of taxes and other public revenues, depending on type of tax, and regulate organization principles of the tax authority in Montenegro. This Law regulates the most issues of tax procedure, with a prescribed possibility of subsidiary implementation of the general regulation that regulates administrative procedure for all issues that are not subject to this Law.

### Principal features of this Law

This Law establishes self-taxation principle as the main principle in the procedure of determination and collection of taxes and other public revenues, whilst assessment principle is established as the competence and obligation of the tax authority in cases when determination is not applied or is not applied according to self-taxation principle, or if it is prescribed by the tax law, which is not often (for determination of real estate tax and real estate turnover tax).

### Rights and obligations of taxpayer

The taxpayer has the following rights:

To be accurately and timely informed on all issues allowing him/her to file and pay tax liabilities; to require from the tax authority to keep secret collected data on tax liability determination and use them or assign only to institutions and bodies, in the manner and in accordance to procedure prescribed by this Law; to request re-examination and new determination of his/her tax liability, in a manner prescribed by this Law; to receive by the tax authority free of charge information on tax legislation, and resulting rights and obligations; to get tax return and other tax forms; to enjoy respect and consideration of the tax authority; to represent personal interests before the tax authority, alone or by a person authorized by him/her; to get an insight into data on determination and collection of tax liability, which are kept related to him/her with the tax authority and demand changing of inaccurate data or updating of incomplete data; to be present during inspection control. Taxpayers whose rights are violated have a right to be protected, which is exercised by filing appeal to competent court.

### Taxpayer is obliged:

To file a tax return for registration with the competent tax authority; to calculate tax accurately and to file tax return in due time and in the manner prescribed by tax regulations; to report to the tax authority any change of the principal business place, residence and other data from the register of taxpayers; to keep books and records in a prescribed manner and keep them in compliance with the law; to pay tax liabilities in a manner and in due time, as prescribed by the law and secondary legislation; to submit documents and other data necessary for determination of the tax liability, at the request of the tax authority; to enable undisturbed work of tax authority officials in performing their legal competences; to fulfil other obligations provided for by the tax legislation.

### Taxation procedure

1. Implementation of the self-taxation principle – the taxpayer initiates tax procedure by filing the tax return, in due time and in the manner prescribed by the laws regulating respective types of taxes. The taxpayer submits the tax return to the tax authority with which is enrolled in the register of taxpayers. If the taxpayer has not filed the tax return in due time, the tax authority will file it within the period of three days from the day of cognizance that the tax return has not been filed. The tax authority is empowered to amend incomplete tax return and correct tax return if it is incorrectly filled in, immediately upon cognizance of failures and mistakes in filed tax return and to

inform taxpayer about it. The taxpayer has the right to submit amended tax return within 10 days from the expiry date for tax return filing, in the case of mistake or failure in the return. The tax return is filed on the form prescribed by the Ministry of Finance, in compliance with the law regulating respective tax. The tax return is filed by the taxpayer him/herself or by legal representative authorized by the taxpayer. The tax return must contain FIN (Fiscal Identification Number) of the taxpayer or his/her authorized legal representative, if this person files the tax return. The tax return is filed directly to the tax authority, by mail or via electronic mail. The tax authority is obliged to receive submitted tax return disregarding its accuracy. If the tax return is submitted directly, the tax authority, based on visual control, will point to person submitting it to failures and mistakes in the tax return that may be corrected in due time. The taxpayer determines the tax liability based on data from business records and files, which a taxpayer is obliged by law to keep, and newly registered taxpayer determines the tax liability based on the assessment of revenues to be acquired in the tax period for which the tax return is filed.

2. Determination of tax liability by the tax authority – the tax authority itself determines the tax liability when thus prescribed by the law (assessed taxes). Assessed taxes are as follows: Real estate tax (determined by the municipal tax authority), and real estate transfer tax and the tax on usage of passenger motor vehicles, vessels, airplanes and aircrafts (determined by the state tax authority). The tax authority determines tax liability in the following cases, as well: If the taxpayer has not filed the tax return; if the filed tax return is incorrect or incomplete, and the failure has not been corrected in due time or the new tax return has not been filed; if the tax authority in the procedure of the inspection control, based on new facts and circumstances, determines that the taxpayer has not properly determined his/her tax liability; if the tax authority determines the tax liability on the basis of books and records of the taxpayer; if the tax authority cannot determine the tax liability on the basis of books and records, the authority will determine the tax liability on the basis of assessment of the tax base. While determining the tax liability through the assessment of the tax base, the tax authority will take into account the following: available duly business records, if not entered in the books; available duly business records on business activity during a specific period shorter than the taxation period (daily, weekly or monthly); data and facts on achieved turnover (daily, weekly or monthly), found by the inspection control; data obtained by comparison with other taxpayers carrying out an equivalent or similar activity, in the equivalent or similar zone, under approximately equal conditions; other relevant data and facts available to the tax authority. The tax authority determines the tax liability by the tax decision, against which an appeal may be filed, but it shall not stay the enforcement of the decision.

3. Determination of the tax liability by the payer of the tax – determination (calculation, withholding and payment) of the withholding tax is performed by the payer of the tax or the intermediary, through the tax return (report) submitted to the tax authority, including collective tax return, submitted on the same day of the payment of income, and individual tax return, submitted no later than 31<sup>st</sup> January of the current year for the previous year.

Appeal procedure: Procedures that allow taxpayers to contest tax decisions (rulings or conclusions) in an appellate proceedings against decisions (rulings or conclusions) adopted by the Tax Administration and its branch units in the first instance tax administrative procedure. The Law on General Administrative Procedure (Official Gazette of the Republic of Montenegro 60/03) provides for that the party and other persons that have not been enabled to participate in the first instance procedure have the right of appeal (Article 219). Within the meaning of this Article of the Law, the party is deemed the taxpayer for whom the appeal is admissible as a regular legal means. In compliance with the right of the legal remedy, established by the Constitution of Montenegro (Official Gazette of Montenegro 1/07) and the two instance principle provided for by the Law on General Administrative Procedure, Article 70 of the Law on Public Administration (Official Gazette of the Republic of Montenegro 38/03 and Official Gazette of Montenegro 22/08) prescribes that the Ministry of Finance decides upon appeals in tax administrative matters. The Ministry of Finance pursues procedures for making decision upon appeal in compliance with the Law on General Administrative Procedure. Provisions of this Law prescribe that the appeal is to be lodged within 15 days from the day of submission of the first instance decision (Article 224) directly to the Ministry of

Finance or through the first instance tax authority. If the appeal is submitted directly to the Ministry of Finance, the Ministry will return the appeal to the first instance tax authority for assessment and completing the case files. Following the receipt of the appeal, the first instance tax authority examines whether the appeal has been submitted in due time and whether it is admissible and lodged by an authorized person. If found any of above-mentioned failures, the first instance authority dismisses such appeal as untimely or inadmissible or lodged by an unauthorized person. If the appeal is assessed as timely, admissible and lodged by the authorized person, the first instance tax authority has the powers and obligation to amend the procedure, if assessing that, due to these reasons, the decision will be revoked (Articles 230 and 231). The first instance tax authority is obliged to amend the procedure always, if the party has not been interrogated and he/she asks for it in the scope of the appeal. Depending on the scope of amending procedure and new facts and evidences found through that amend, the first instance tax authority may replace former decision by the new one, but only if it completely complies with the appeal content.

If the first instance tax authority does not replace the first instance decision with the new one, it is obliged to submit the appeal to the Ministry of Finance within 15 days from the day of the appeal receipt. The first instance tax authority is obliged to enclose all files related to the case together with the appeal. If the first instance tax authority fails to submit case files to the Ministry within the prescribed time limit, the Ministry shall require submitting of the appeal with the files from the first instance tax authority and shall define the new deadline. If the first instance tax authority keeps failing to submit appeal with the case files within the new deadline, the Ministry will decide upon the appeal without case files.

If the appeal is inadmissible, untimely or lodged by unauthorized person, and the first instance tax authority has failed to dismiss it for those reasons, the Ministry of Finance will dismiss it for the same reason as the reason of the first instance tax authority. The Ministry of Finance may dismiss the appeal, completely revoke the decision or amend it partially. The Ministry will dismiss the appeal if found, in the procedure pursued upon the appeal, that the rules of procedures have not been violated, that factual situation has not been determined completely and properly and that the substantive law has not been violated. If the Ministry of Finance finds that the first instance decision is based on the substantial violation of the rules of procedure as referred to in Article 226 of the Law on General Administrative Procedure, it will revoke the first instance decision *ex officio* and return the case to the first instance authority for the repeated procedure. If the Ministry of Finance, in the procedure upon the appeal, finds that the first instance authority has failed to take into account rules of procedure, or that the factual situation has been incompletely or improperly determined and thus the substantive law has been implemented incorrectly, the Ministry itself may eliminate those irregularities and completely or partially revoke the first instance decision or may dismiss the appeal. If the Ministry of Finance finds the decision proper in respect to found facts and in respect to the law implementation, but the objective that was the reason for such decision may be achieved using other means favourable for the party, the Ministry will amend the first instance decision in that sense. The Ministry may revoke the first instance decision and return case to the first instance tax authority for the repeated procedure if it estimates that the procedure pursued by the first instance tax authority will be more efficient and cost effective.

The first instance tax authority is obliged to comply with the second instance decision, completely and without delay, and to render the new decision at the latest within 30 days from the day of the case receipt. If the appeal is lodged because the first instance tax authority has failed to render decision within prescribed time limit, the second instance authority will ask the first instance tax authority to present reasons for failing to render decision in due time. If the second instance authority finds that the decision has not been rendered in due time for justified reasons or because of the fault of the party, it will define the time limit, which may not be longer than one month, to the first instance tax authority to render the decision. If reasons for failing to render decision in due time are not justified, the Ministry of Finance will ask the tax authority to submit case files to the Ministry, which will pursue procedure and render the decision by itself. The Ministry of Finance is obliged to render the second instance decision within 60 days from the day of the appeal receipt. The Ministry of Finance, as a rule, sends the second instance decision, together with case files, to

the first instance tax authority, which is obliged to deliver it to the parties within 8 days from the day of the receipt of the case files.

Decision of the Ministry of Finance is final in the scope of administrative procedure and any appeal may not be lodged against it, but the administrative dispute may be initiated through an appeal before the Administrative Court of Montenegro.

The administrative dispute is in the scope of the judiciary protection, which ensures legality of administrative or other act deciding on rights and liabilities or interests of parties (taxpayers) and other persons having legal interest in specific administrative tax matter. The administrative dispute may be initiated against administrative or other second instance issued act, against the first instance administrative or other act against which any appeal is not admissible in administrative or other procedure, and when competent authority has not issued appropriate administrative or other act upon request or appeal of the party (silence of administration) The appeal is lodged to the Administrative Court of Montenegro within 30 days from the day of submission of the administrative act to the party. Administrative Court decides upon appeal in the chamber of judges consisted of three judges, in compliance with procedures prescribed by the Law on Administrative Dispute (Official Gazette of the Republic of Montenegro 60/03).

**25 Please give a detailed description of the infrastructure of your VAT, excise and direct tax administration, including staff levels and IT systems.**

The Tax Administration is competent for taxes and excise duties, and the Ministry of Finance supervises the work of the Tax Administration.

- Sector for providing services to taxpayers and for registration – 13 employees
  - Department for support and providing services to taxpayers, with the following groups:
    - Group for support and providing services to taxpayers,
    - Group for providing services within the Call Centre.
  - Department for public education;
  - Department for registration;
  
- Sector for receipt and processing of tax returns, revenue accounting and information system – 21 employees
  - Department for reporting and management services;
  - Department for accounting of revenues;
  - Department for receipt and processing of tax returns;
  - Department for operational planning and control;
  - Department for development of information system.
  
- Sector for monitoring of enforcement of tax regulations, inspection audit and administrative procedure – 16 employees
  - Department of inspection audit;
  - Group for planning of inspection audits and risk assessment;
  - Group for operational planning and control;
  - Group for organization and technique of inspection audit;
  - Department for monitoring of enforcement of tax regulations and administrative procedure;

- Sector for collection enforcement - 17 employees
  - Department for delinquent tax accounts with the group;
  - Group for collection within the Collection Call Centre;
  - Department for delinquent tax returns;
  - Department for planning of workload and operational supervision;
  
- Service for economic-financial affairs –13 employees
  - Public procurement office
  - Office for excise stamps
  
- Service for human resources, legal, technical and general affairs – 26 employees
- Division for monitoring of control and collection effects and human resources development – 6 employees;
- Division for internal control – 3 employees.

The Tax Administration includes 8 branch units, which are structured of affiliations, offices and branch offices with 492 employees.

The infrastructure of the Information system of the Tax Administration is provided within the answer to the question number 26.

**26 Please describe the current state of computerisation of your country's administrative IT systems.**

Information system of the Tax Administration has been developed within the legislative framework defined by the set of laws adopted in December 2001, as well as by secondary legislation, and consists of the following components:

- Registration of taxpayers
- Receipt and processing of tax returns for all types of taxes (profit, VAT, excise duties, personal income, real estate turnover, etc)
- Collection enforcement
- Inspection audit
- Accounting and bookkeeping of public revenues
- Undertaking, verification and archiving data from payment system institutions
- Internal control/ safety
- Reports to management, strategic planning and execution
- Undertaking, verification and archiving data of third parties

Each system component enables user to enter new data, change and update existing data, search existing data by criteria, create specific reports, issue certificates, decisions and similar forms, along with using other user-oriented programmes.

The current system: is a client server application, which supports Tax Register at the central level and enables business data at the levels of affiliations or at the central level;

## development tools and environment

Operation system	– Windows 2000 Server / Professional / XP
DBMS	– ORACLE DBMS 9i
Development tools	– Visual Studio 6.0 /NET (Visual Basic, Source Safe, Front Page); Crystal Report v.8.5; T.O.A.D. Professional / Expert
Computers	- PC compatible

Oracle DBMS has been chosen based on the following facts:

Former Secretariat for Development, as authorized public administration body, has defined standards for the Government information systems. ORACLE DBMS is already adopted standard used by many systems. Use of the same DBMS facilitates connection and maintenance of the system.

In addition:

- Tax information system will be the largest one in the country;
- Customs system, which will be connected with the Tax information system, already uses ORACLE DBMS;
- Information systems of several public administration and national institutions use Oracle as DBMS (Ministry of Interior Affairs and Public Administration, Commercial Court, Pension and Disability Insurance Fund, Health Insurance Fund)

Windows 2000 Server/Professional has been chosen as, at that time, the newest and widely applied operation system.

Visual Basic and Crystal Reports have been chosen as development tools.

T.O.A.D. Professional is deemed as the best tool for the access to ORACLE databases, for flip-flop mode, store procedures, creating and changing items in schemes, etc.

This concept enables work with a single database at the state level. This also provides accessibility and consistency of all information, which are possible to obtain in real time through analytical and statistical activities. Therefore, there is no need for replications of local bases (in order to obtain insight into evidences at the state level), neither for partial replication of the central base to farther bases (in order to provide data from the state level to local services of the Tax Administration). At the same time, by the reduction of number of bases existing in the system, the scope of works on the system administration is being reduced and easier maintenance of the system is being enabled.

The solution for networking of the Tax Administration (LAN and wan)

Network description

The priority in the implementation of the WAN network of the Tax Administration is providing connections of the following:

- 0) Affiliations of the Tax Administration, located in larger municipalities of Montenegro, with the central station
- 1) Branch offices of the Tax Administration, located in smaller municipalities of Montenegro, with the central station
- 2) Spatially separated offices of Tax Administration in some branch units

Having in mind that the Tax Administration does not have its own communication channels, it had to use services provided by the Telekom of Montenegro. A number of meetings between interested

parties have been held and two parties have agreed that the central server will be connected with seven affiliations via digital channels, using existing resources of the Telekom of Montenegro. The standards E1 (G.703) is used, which enables high-quality connection with the pass-band of 2Mb/s. Affiliations connected via this link are Bar, Budva, Herceg Novi, Nikšić, Pljevlja, Bijelo Polje and Berane. The affiliation Podgorica is connected via pair of HDSL modems with the velocity of 2.3 Mb/s. Due to vicinity of the buildings of Podgorice affiliation and the central server (approximately 4000m), and considering low lease price of telephone matches, this solution is much more acceptable than the lease of digital link with the same velocity. For other affiliations, previously mentioned capacities according to the standard E1 (G.703) have been leased.

All affiliations are now connected to the multipoint network in the central server of the Tax Administration via digital link E1 (G.703) and the affiliation Podgorica, which is connected via pair of HDSL modems. Modems are declared to the highest velocity of 2.3 Mb/s, but they are also auto sensitive, which means they may be adjusted to its velocities if a drop of transfer quality of leased match occurs. In addition to these links towards affiliations, there is also a link to the Ministry for Information Society, former Secretariat for Development. It is provided by the lease of 2Mb/s, according to the same standard E1 (G.703), by the Telekom. The link has been set via the pair of modems FCD-E1A manufactured by the RAD (Israel). Modems are installed in the "bridge" mode.

*Note 1:* In addition to those links between specific parts of the Tax Administration and its central station, the Tax Administration has decided to desist from planning and establishing of backup links, because of the following reasons. Telekom uses the same communication paths for the transmission of signals via E1 (G.703) that would be used if the backup goes via dial-up ISDN. Moreover, current links and connections between individual municipalities in Montenegro are of the annular type. This ensures high safety of the existing established links. If one connection fails, Telekom may provide it by alternative path within the existing ring.

*Note 2:* the existing FireWall CISCO PIX 515 is established toward the Ministry for Information Society, because it is the only network from which an unauthorized access is possible. By disconnection of this link, and when independent and direct access to Internet is enabled, the configuration of the FireWall and its protection against intrusion from the Internet will be necessary.

*Note 3:* All branch units of the Tax Administration are networked within unified information system of the Tax Administration.

## System safety

Each system user has own individual user name and password to access the system. Different groups of users are defined and each group will have different, appropriate accessibility to functions and data of the system. The system administrator monitors connections to the system. Passwords are being changed periodically for safety reasons.

Having in mind that the system contains important identification and financial information, regular back up of the database is being organized. Each server and data station has UPS to prevent system breakage caused by electric power supply failure.

Special procedures are carried out to avoid information outflow, loss of data or infiltrating during data exchange between different levels (central server, affiliation, branch office).

The implementation of the Project of Integrated Registration and Collection is underway in the Tax Administration, and the full implementation is planed as of 1 January 2010. A special information system with central established database situated in the Tax Administration has been developed for the needs of the project implementation. Since main users of this system, beside the Tax Administration, are state funds of pension and disability insurance and health insurance, providing of appropriate networking method for these institutions was necessary, as well as to establish the register of taxpayers and insurers. Establishment of an initial register is the first project phase, prior to which collation of registered data of different state bodies has been completed.



Key system component are as follows:

#### Central registration

Centralized registration includes registration through the unified registration form, which is submitted to competent authority – Tax Administration. Based on defined form, each institution uses respective part of necessary data from the central register. The software for the integrated registration has been applying from 1 March 2009.

#### Stating and control of taxes and contributions

In compliance with the Unified registration form, the unified form for stating and control of tax and contributions liabilities is to be introduced, for all types of income of natural persons, including all forms of tax and contribution payments from income of citizens, as well as all data on tax payer and tax revenue and detailed data for employed persons grouped by revenue types. This form should be introduced starting from 1 January 2010, according to the implementation plan and programme.

#### Defining of payment

In compliance with development of the unified form for recording of tax and contribution on revenues of citizens, the unified payment account for these revenue types should be introduced as well, as a separate system component.

#### Electronic tax filing

The Project envisages introduction of electronic filing of all documents prescribed for the integrated registration and collection. It should be noted that the competent authority is expected to provide conditions for functioning of electronic signature, along with providing electronic filing system within the framework of this Project.

### **27 What are your plans regarding preparations towards full interconnectivity of your IT systems?**

The Tax Administration makes available data from its own information system to competent institutions, agencies and bodies, upon their request and within 24 hours. The Tax Administration has an exchange of information on daily base with:

- Directorate for Development of Small and Medium Enterprises
- Customs Administration
- Ministry of Tourism, Ministry of Interior Affairs and Public Administration, Ministry of Finance, Ministry of Economy
- Statistical Office
- Development Fund
- Pension and Disability Insurance Fund
- Health Insurance Fund
- Employment Office

The Tax Administration signed the Protocol on data exchange with the Customs Administration in 2003. The Ministry of Interior Affairs and Public Administration has the access to data in the system of the Tax Administration.

From 2005, data on executed payments of contributions for social insurance are forwarded daily to state funds (Pension and Disability Insurance Fund, Health Insurance Fund and Employment Office).

The Project of Integrated Registration and Collection enables integrated services to all three funds, which are currently under testing procedure. Following the completion of the Project of Integrated Registration and Collection, all interested institutions will be enabled to interconnect with the system of the Tax Administration and to have access to data that are not classified as tax secret.

**28 Please provide statistics for 2006-2008 on measures against tax evasion. In particular, how much additional tax was claimed by the Tax Office, what proportion of the additional tax was collected, how many tax crimes were investigated by the Police, how many of these were prosecuted, and to how many convictions did they lead? What sentences were imposed?**

The Tax Administration conducted the following number of controls of taxpayers over the period from 2006 to 2008:

- 3570 controls in 2006, with new liabilities determined in 2133 cases;
- 3005 controls in 2007, with new liabilities determined in 1690 cases;
- 2969 controls in 2008, with new liabilities determined in 1623 cases.

Amounts of additional taxes are outlined in the following table:

DESCRIPTION	2006	2007	2008	TOTAL
Value Added Tax	20358194	17076256	26454564	63889014
Corporate Profit Tax	1683435	6549316	3959875	12192626
Tax and contributions for social insurance	27313724	13988465	12675571	53977760
TOTAL	49355353	37614037	43090010	130059400

In addition to these controls, justification for VAT and excise refunding requests were examined, as well:

- 920 audits in 2006;
- 1831 audits in 2007;
- 972 audits in 2008.

The fines referring to the prohibition to carry out activity was imposed in 119 cases during 2006, 91 during 2007 and in 17 cases in 2008.

Prohibition to dispose of funds on the commercial account was imposed to 381 taxpayers in 2006, 78 in 2007 and 175 in 2008.

The fine referred to the seizure of means of business activity was imposed in 19 cases in 2006, 10 in 2007 and in 9 cases in 2008.

In 2006, 13 criminal charges were brought, 13 in 2007 and 17 in 2008.

In 2006, 3962 misdemeanour charges were brought, 3852 in 2007 and 4440 in 2008.

The collection procedure has also included measures of oral or written warnings on the tax debt due and measures of forced collection.

During 2006, there were also 4640 telephone calls through the Call Centre, 4404 in 2007 and 6200 in 2008.

In addition, during this period, the mortgage was a subject to foreclosure for 543 taxpayers in order to settle the tax debt.

The procedure of forced collection was initiated for each undue payment of tax liability and 8700 conclusions on forced collection were issued in 2006, 6143 in 2007 and 7236 in 2008.

Concerning tax evasion, the police detect and pursue irregularities as referred to in Article 264 – evasion of taxes and contributions - of the Criminal Code of Montenegro. The Criminal Code and the Law on Police are the basis for procedures of the Police, since the tax evasion is a criminal offence being pursued *ex officio*.

Perpetrators of criminal offence of the evasion of taxes and contributions are usually responsible persons in business organizations (joint stock companies and limited liability companies), which do not comply with tax legislation, provide false data on legally derived revenues and, in cases of compulsory tax return, do not submit legally derived revenue or in some other way conceal data related to determination of liabilities based on taxes and contributions. Citizens acquiring income in capacity of natural persons are also often suspected for this offence.

Illegal actions in terms of evasion of tax liabilities investigated by the police are mostly avoidance of payment of VAT, corporate profit tax and personal income tax.

The police pursued the following number of criminal offences concerning evasion of taxes and contributions from 2006 to 2008:

Year	Number of criminal offences evasion of taxes and contributions
2006	45
2007	41
2008	13
Total:	99

Providing evidences on executed criminal offence, the Police cooperate with the Tax Administration and the Customs Administration. Cooperation with these authorities is based upon the Agreement on cooperation between the Police Directorate and the Tax Administration and the Agreement on cooperation between the Police Directorate and the Customs Administration.

During the period from 01 January 2006 to 31 December 2008, State Prosecutor Offices in Montenegro have received criminal charges against 58 persons for criminal offence of evasion of taxes and contributions as referred to in Article 264 of the Criminal Code. The criminal charges were dismissed for 6 persons out of 58, whilst criminal proceedings were instituted for 52 persons.

The proceedings were stayed for 23 persons, based on withdrawal of the Prosecutor from pursuing, whilst the indictments were brought for 18 persons. Among these 18 persons, 4 persons have been finally and enforceable sentenced, with suspended sentences and fines; for 1 person a final and enforceable verdict of release was pronounced; final and enforceable verdicts of abandonment were pronounced for 2 persons, whilst the proceedings are ongoing against other persons.

Data of the Police Directorate and the State Prosecutor Office may not be necessarily identical, having in mind that the Police gives initial qualification, which may be pre-qualified as another criminal offence, or that the State Prosecutor Office may not accept charges brought by the Police.

According to data of the Supreme Court of Montenegro covering the period from 2006 to 2008, basic courts competent for this criminal offence have pronounced 19 final and enforceable judgements for the criminal offence concerning evasion of taxes and contributions, including 3 judgements in 2006, 5 in 2007 and 11 final and enforceable judgements in 2008.

The structure of final and enforceable judgements includes 16 criminal convictions (prison sentence, fines and suspended sentence), one verdict of release and two verdicts of abandonment due to withdrawal of indictment by the State Prosecutor.

**29 Please provide information on corruption in the Tax Office. How are such cases dealt with? Have any cases reached the courts?**

The Tax Administration carries out regular internal controls of work of employees and organizational units, and unconscientious performing of duties and tasks have been found in three cases. In order to determine existence of accountability, criminal proceedings have been initiated against those employees aimed at determining whether such actions have been related to corruption. Criminal proceedings are ongoing in two more cases initiated before 2006.

The Tax Administration has not received any complaint by taxpayers or other stakeholders during this period, which would indicate corruptive conduct of any employee and responsible persons.

## **C. Revenue**

**30 Please provide a detailed description and relevant statistics of the overall revenue structure (taxes and social contributions) and of its main components (according to OECD revenue classification.)**

Over the period from 1<sup>st</sup> January to 31<sup>st</sup> December 2008, overall revenues of the State amounted to € 1,598,609,854.75 , out of which own tax and other revenues of the State Budget and budget of municipalities amounted to 1,010,810,455.92 €, total consolidated revenues of the State Budget and budget of municipalities were € 218,942,648.59 and total contributions amounted to 368,856,750.24 €.

**STRUCTURE OF ACQUIRED REVENUES AT THE STATE LEVEL  
FOR THE PERIOD OF 2006-2008**

		2006		2007		2008	
		Amount (in €)	%	Amount (in €)	%	Amount (in €)	%
<b>I</b>	<b>Own State Budget revenues (1to 8)</b>	<b>430,712,290.96</b>	<b>48.28</b>	<b>615,546,763.56</b>	<b>48.78</b>	<b>730,677,950.49</b>	<b>45.71</b>
1	Value Added Tax	273,106,957.98	30.61	392,806,342.51	31.13	440,064,484.29	27.53
2	Corporate profit tax	12,681,282.08	1.42	39,076,661.67	3.10	62,803,344.12	3.93
3	Excise duties	72,376,242.18	8.11	94,538,367.25	7.49	120,303,864.65	7.53
4	Customs revenues	54,477,741.68	6.11	65,586,481.29	5.20	72,926,890.00	4.56
5	Tax on usage of passenger motor vehicles, vessels, airplanes and aircrafts	2,934,265.41	0.33	4,072,808.36	0.32	4,607,303.33	0.29
6	Tax on transfer of used motor vehicles, vessels, airplanes and aircrafts	745,684.82	0.08	1,553,466.60	0.12	2,174,265.07	0.14
7	Insurance premiums tax	855,816.64	0.10	113,033.94	0.01	1,748,024.50	0.11
8	Fees (administrative and court)	13,534,300.17	1.52	17,799,601.94	1.41	26,049,774.53	1.63
<b>II</b>	<b>Other own State Budget revenues (1 to 4)</b>	<b>47,149,307.21</b>	<b>5.28</b>	<b>57,665,573.75</b>	<b>4.57</b>	<b>79,296,708.43</b>	<b>4.96</b>
1	Revenues from sale of non-financial property	5,200,075.08	0.58	6,738,537.14	0.53	16,156,501.54	1.01
2	Revenues from sale of financial property	1,087,846.64	0.12	4,083,799.46	0.32	8,660,981.23	0.54
3	Other revenues (capital revenues, fines and forfeited property gain, etc)	31,548,012.97	3.54	40,959,828.00	3.25	45,480,397.88	2.84
4	Revenues from loan repayment	9,313,372.52	1.04	5,883,409.15	0.47	8,998,827.78	0.56

## 16 Taxation

	<b>TOTAL: I + II</b>	<b>477,861,598.17</b>	53.56	<b>673,212,337.31</b>	<b>53.35</b>	<b>809,974,658.92</b>	<b>50.67</b>
III	<b>Own municipal taxes</b>	27,073,251.00	3.03	32,617,784.00	2.58	39,769,507.00	2.49
IV	<b>Other own municipal taxes</b>	49,894,718.00	5.59	117,528,012.00	9.31	161,066,290.00	10.08
	<b>TOTAL III + IV</b>	<b>76,967,969.00</b>	8.63	150,145,796.00	11.90	200,835,797.00	12.56
	<b>Total own tax and other revenues of the State Budget and municipal budget (I to IV)</b>	<b>554,829,567.17</b>	62.19	<b>823,358,133.31</b>	65.24	<b>1,010,810,455.92</b>	63.23
V	<b>Consolidated revenues of State and municipal budgets (1 to 3)</b>	<b>128,971,877.69</b>	14.46	<b>179,695,654.95</b>	14.24	<b>218,942,648.59</b>	13.70
1	Personal income tax	93,179,982.73	10.44	108,075,488.00	8.56	142,063,889.39	8.89
2	Real estate transfer tax	14,513,310.86	1.63	41,174,089.73	3.26	38,095,286.13	2.38
3	Other joint revenues (charges)	21,278,584.10	2.39	30,446,077.22	2.41	38,783,473.07	2.43
VI	<b>Contributions (1 to 4)</b>	<b>208,371,211.32</b>	23.36	<b>258,918,569.89</b>	20.52	<b>368,066,929.63</b>	23.02
1	for pension and disability insurance	126,993,574.69	14.23	159,606,953.33	12.65	213,850,904.32	13.38
2	for health insurance	75,268,326.82	8.44	91,908,768.11	7.28	144,804,607.00	9.06
3	for insurance against unemployment	6,109,309.81	0.68	7,402,848.45	0.59	9,411,418.31	0.59
VII	<b>Other contributions (Restitution Fund and Development Fund)</b>					<b>789,820.61</b>	<b>0.05</b>
	<b>TOTAL CONTRIBUTIONS :VI</b>	<b>208,371,211.32</b>	23.36	<b>258,918,569.89</b>	20.52	<b>368,856,750.24</b>	23.07
	<b>TOTAL STATE REVENUES</b>	<b>892,172,656.18</b>	100.00	<b>1,261,972,358.15</b>	100.00	<b>1,598,609,854.75</b>	100.00

Source: Ministry of Finance – State Treasury

**31 How much, as a percentage of total State revenue, is generated by VAT, excise duties, taxes on income, profits and capital gains respectively?**

Revenues from taxes provided as a percentage of total State revenues

Type of tax	2006	2007	2008
Value Added Tax	30.61	31.13	27.53
Excise duties	8.11	7.49	7.53
Personal income tax	10.44	8.56	8.89
Corporate profit tax*	1.42	3.10	3.93

\*Note: Revenues from the tax on capital gains are included by revenues from corporate profit tax.

**32 Which proportion of your tax due did you receive in 2008:**

The following table outlines the structure of tax due in 2008 (in %), including revenues received in 2008, revenues collected after the end of 2008 and uncollected taxes.

Type of tax	% collected in due time	% collected after	not collected at all
VAT	78.35	11.42	10.23
Excise duties	89.39	5.86	4.75
Corporate profit tax	72.78	18.86	8.36
Personal income tax	85.95	7.3	6.75

Source: Information system of the Tax Administration / analytical data for first three types/ Synthetic data have been used for the personal income tax, considering payments by the State Treasury for its sub-beneficiaries, for this tax

### 33 What is your estimation of your grey economy and how do you calculate it?

Statistical Office (MONSTAT) has assessed unenclosed economy for legal activities, which is included in the GDP calculation. Illegal activities, such as: drugs, prostitution, trafficking of human beings, illegal trade of CDs, video tapes, illegal usage of software, trade of weapon, are not being assessed and, therefore, they are not included in the calculation.

The assessment of unenclosed economy has been based on results of *ad hoc* survey (conducted in the scope of OECD<sup>1</sup> project during 2007 for the data related to 2006), number of employees and assessments of experts in cases of non-responding, sub-reporting, etc. The objective of the calculation of unenclosed informal economy is to determine comprehensive scope of commercial transactions in economic territory of Montenegro.

#### Participation of unenclosed economy in Montenegro for the period 2005--2007

	2005	2006	2007
Participation of unenclosed economy in GDP of Montenegro, in %	5.3	4.9	4.7

Source: MONSTAT

The basis for assessment of unenclosed economy in 2007 in the activity:

For agriculture, hunting and forestry – number of households dealing with agricultural production, as well as data from *ad hoc* surveys on average income and expenditures of agricultural household.

For assessment of unenclosed economy in 2007 in the activity:

Hotels and restaurants – data on number of households registered for renting rooms and beds for tourists, obtained by municipal tourist centres, as well as data from *ad hoc* surveys on the average income and expenditures of households engaged in tourist activities.

Calculation of informal economy in the activity:

Construction industry – data on the number of worker from the Questionnaire on work force, as well as expert assessment of income and expenditures of workers that have not filed income.

Calculation of informal economy in the activity:

Education for 2007 – the following formula, which is one of calculation methods according to OECD recommendations, has been applied:

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<sup>1</sup> Organisation for economic cooperation and development



*Number of employed persons based on the Questionnaire on work force / number of employed persons based on the statistical survey on employed persons and their wages (RAD-1)<sup>2</sup> = coefficient*

Value of informal economy for other activities has been estimated based on expert experience, due to shortage of data sources.

### The value of unenclosed economy and its participation in GDP for 2007

Nace Rev.1	Value of unenclosed economy (000 €)	Participation of unenclosed economy in GDP (in %)
A Agriculture, hunting and forestry	19 561.0	0.7
D Manufacture	1 501.0	0.1
F Construction industry	9 611.9	0.3
G Wholesale and retail trade; repair of vehicles, personal and household goods	57 887.0	2.1
H Hotels and restaurants	7 463.7	0.3
I Transport, storage and communications	19 761.0	0.7
K Real estate renting and business activities	10 948.0	0.4
M Education	102.0	0.0
N Health and social work	4 478.0	0.2
Total:	131 313.9	4.7

Source: MONSTAT

**34 Please explain how your tax control is organised and resourced and how it functions. Furthermore, which is your control strategy for VAT, direct taxation and excise duties? In this context, please highlight which is the authority (or authorities) that are setting the overall control strategy and which are the main features of this strategy.**

The Law on Tax Administration, Articles 73-91, provides for the procedure of tax control. Inspection control is carried out based on the order submitted to a taxpayer at least 15 days prior to control beginning, whilst this time limit is 30 days in advance for large taxpayers.

Inspection control is being carried out for each tax period, but the most often for a calendar year, including all types of taxes a taxpayer is liable to. The Article 87 of this Law prescribes measures that a tax inspector is obliged and authorized to apply when determining that the law or some other

<sup>2</sup> Statistical Questionnaire Code

tax regulation are violated. A tax inspector is obliged and authorized to order undertaking of the following measures:

- 1) Submission of required files and data;
- 2) Temporary seizure of files, equipment and means of business activity;
- 3) Forced opening or closure of premises for conducting the inspection control;
- 4) Prohibition to dispose of funds on the account;
- 5) Prohibition to carry out business activity or particular activities for a specified time;
- 6) Temporary forfeiture of unlawfully acquired property gain;
- 7) temporary seizure of raw material, reproduction material, semi-products, final products and goods when there are no proofs of the manner of purchase of goods, when the goods are traded by a non-registered person or person not having a proof of goods origin, when the goods are traded without the prescribed mark, when the goods are transported without prescribed documentation and when the goods are sold outside the business headquarters or other place determined by the competent state authority;
- 8) bring charges for the criminal or corporate offence to the competent authority and submit request for initiation of misdemeanour proceedings;
- 9) Impose fines;
- 10) undertake other measures for which he is authorized by law and other tax regulations.

General plan of inspection controls is adopted by the Director of Tax Administration, after being drafted by the Sector for monitoring of tax legislation enforcement, inspection audit and administrative procedure. In line with defined General plan, branch units are obliged to conduct a defined number of controls, for taxpayer categories as defined by the plan, as well.

The Sector for monitoring of tax legislation enforcement, inspection audit and administrative procedure makes the risk assessment, and submits data on performed assessment to the branch units.

Beside the Director of the Tax Administration, the selection of taxpayers for inspection control may be also performed by the Deputy Director for control, heads of branch units and chiefs of affiliations for inspection control.

Several sources are used while selecting taxpayers for the control, including the following:

- Records of the Tax Administration including data on filed revenues, calculated and paid tax liabilities, available capacities of taxpayers, number of employees, the scope of business activity, etc.
- Data acquired through the control procedure and crosscutting comparison of different taxpayers;
- Data acquired by submission of information to the Call Centre;
- Data obtained directly from other authorities or available on the websites of other authorities (Customs Administration, Real Estate Administration, etc);
- Data submitted by other state authorities through official written correspondence;
- Complaints and reclamations of taxpayers and citizens.

Inspectors employed in the branch units are being assigned to conduct inspection audit and they are often rotated by engaging inspectors to work in different branch unit. Inspector is independent in performing his/her duties, but is monitored through entire procedure by respective inspector – supervisor. The tax inspector – quality controller makes the first evaluation of the performed

inspection audit procedure. Head of branch unit gives proposal of the annual evaluation and the Director of the Tax Administration brings the final one.

Methods of control within the Tax Administration office and in premises of taxpayers are used for the audit procedure. Databases available in the Tax Administration enable tax inspectors to obtain significant part of information through the insight into files of the Tax Administration and, therefore, a number of controls over small and medium enterprises that may be performed through the tax office constantly increases.

The Strategy of audit conducting is as follows:

- The audit includes taxpayers that often have tax credit;
- Regarding VAT, the selection of taxpayers to be controlled is performed together with conducting risk assessment procedure or assessment of taxpayers that often avoid payment of tax liabilities (construction industry, services, etc)
- For direct taxation, real stated margin, or the height of the stated costs, is being determined, and then the audit includes those taxpayers whose margins deviate from the real ones;
- The audit also includes taxpayers with consecutive losses in financial statements;
- Control of excise duties encompasses comparison of data on quantity of imported excise products and their turnover in Montenegro, and the audit procedure is initiated if any deviations are found.

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