

MONTENEGRO

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I. SUMMARY

A. TYPES OF ORGANIZATIONS

The enactment of the Constitutional Charter of Serbia and Montenegro in February 2003 resulted in a loose confederation whose prerogatives were never clearly articulated. In May 2006, Montenegro held a referendum on independence, and one year after adopted a new Constitution. Following the referendum, the Union of Serbia and Montenegro gave way to two fully independent states. This Note covers the legal framework governing non-governmental organizations (NGOs) in Montenegro; a separate Note covers [Serbia](#).

Organizational forms in Montenegro include:

- Associations;
- Foundations; and

- Foreign non-governmental organizations

Other not-for-profit legal forms, which are outside the scope of this Note because of their limited relevance for U.S. grantmakers, include political parties, trade unions, chambers of commerce and cooperatives.

B. TAX LAWS

The Income Tax Laws generally exempt NGOs from taxation on grants, donations, membership dues, and non-economic sources of income. Profits from related and unrelated economic activities are exempt up to €4,000 (approximately \$5,500), provided that certain conditions are satisfied. If an NGO's profits exceed €4,000, the NGO is obliged to register to carry out commercial activities, unless the profit it generates is below 20 percent of the operational budget of the NGO for that year.

A value-added tax (VAT) regime went into effect on April 1, 2003, with a standard rate of 17 percent, which was increased in July 2013 to 19 percent. In January 2018, it was increased to 21 percent. Foreign grants and donations are not subject to VAT, nor are imported humanitarian goods.

There are limited incentives for philanthropy as the concept of "public benefit" status in tax law is not well developed.

II. APPLICABLE LAWS

- Constitution of Montenegro (2007)
- Law of Non-Governmental Organizations (2011, amended in 2017) ("NGO Law")
- Corporate Income Tax Law (2001, amended in 2002, 2004, 2008, 2009, 2011, 2012, 2013, and 2016)
- Anti-Discrimination Law (2010, amended in 2017)
- Personal Income Tax Law (2001, amended in 2006, 2009, 2011, 2012, 2013, 2014, 2015, and 2016)
- Value Added Tax Law (2002, amended in 2002, 2003, 2006, 2007, 2013, 2015, and 2017) ("VAT Law")

III. RELEVANT LEGAL FORMS

A. GENERAL LEGAL FORMS

Organizational forms follow the traditional civil law distinction between associations (i.e., membership organizations) and foundations (i.e., non-membership, property-based organizations).

Associations. The new NGO Law, which was enacted on July 22, 2011, defines an association as a voluntary not-for-profit membership organization established by natural or legal persons, domestic or foreign, to pursue public or private benefit goals (Article 2, NGO Law).

Foundations. The NGO Law defines a foundation as a voluntary not-for-profit organization without members, established with or without property by natural or legal persons, domestic or foreign, to pursue public benefit goals (Article 3, NGO Law).

Foreign non-governmental organizations. The NGO Law defines a foreign non-governmental organization as an NGO with the status of a legal person in a foreign jurisdiction based on the legislation of that country and that carries out activities on the territory of Montenegro (Article 4, NGO Law).

B. PUBLIC BENEFIT STATUS

The framework law and tax laws reflect different concepts of public benefit (see Section IV, V). Therefore, NGO framework and tax legislation provide only limited guidance to U.S. grantmakers seeking to determine whether a prospective grantee is the equivalent of a U.S. public charity under U.S. law.

IV. SPECIFIC QUESTIONS REGARDING LOCAL LAW

A. INUREMENT

Article 30, Paragraph 1 of the NGO Law states that the assets of an NGO, including income generated from economic activities, must be used exclusively and directly to pursue its public or mutual benefit goals, and may not be distributed between the founders and members of the organization, members of its governing bodies, employees, and the relatives of those persons, unless the law provides otherwise. The law does not impose any specific cap on salaries paid by NGOs.

B. PROPRIETARY INTEREST

The NGO Law precludes organizations from returning contributions to founders and/or members upon dissolution, as the remaining assets of a dissolved organization must be distributed to another organization or a public institution in Montenegro pursuing public benefit goals as enumerated in the Law (Article 32, Paragraph 2, and Article 40, NGO Law).

C. DISSOLUTION

Under Montenegrin law, the remaining assets of a dissolved association or foundation must be distributed to another organization or a public institution in Montenegro in accordance with the statute of the organization. If the competent body of an organization fails to render a decision on property distribution before the organization is removed from the NGO Registry, the remaining assets shall become the property of local municipality of the territory where the NGO had a place of business, and the assets must only be used to advance the public benefit goals for which the NGO was established (Article 40, NGO Law). There is no regulation of this issue for foreign non-governmental organizations.

D. ACTIVITIES

1. GENERAL ACTIVITIES

Associations, foundations and foreign non-governmental organizations are legal persons and, as such, are permitted to engage in a broad range of activities, provided they are not specifically prohibited by law.

Foundations must serve the public benefit, whereas associations may pursue mutual benefit or public benefit purposes.

2. PUBLIC BENEFIT ACTIVITIES

Associations and foreign non-governmental organizations can be established for mutual benefit or public benefit purposes. Foundations, however, can only be established to pursue “public benefit goals.” The NGO Law specifies goals deemed for public benefit, which renders an organization eligible to apply for public funds (i.e., support from the state or municipal budget). These goals include: social and medical care, poverty reduction, protection of persons with special needs, children, youth and elderly care, promotion and protection of human and minority rights, rule of law, support to civil society and volunteer activities, support to Euro-Atlantic and European integration, institutional and informal education, science, art, culture and technical culture, environmental protection, agricultural and rural development, sustainable development, consumer protection, gender equality, addressing corruption and organized crime, prevention of drug addiction, as well as other goals and activities deemed for public benefit (Article 32, NGO Law).

As discussed in Section V, below, tax law provides deductions for donations that advance medical, educational, scientific, humanitarian, religious, environmental, and “sport” purposes. As a result, there is a discrepancy in the notion of public benefit as construed in the tax law and the framework regulation in that the former provides for a significantly narrower concept of public benefit.

3. ECONOMIC ACTIVITIES

Associations and foundations are permitted to engage in economic activities provided those activities are envisaged by the organization’s statute, registered with the Registry of Commercial Entities, and all profits are invested in the organization’s main statutory activities (Article 29, NGO Law). However, if income from the organization's economic activities in the current year exceeds € 4,000, it must cease those activities until the end of that year, unless the income generated from economic activities does not exceed 20 percent of the organization's overall income in the prior calendar year. Otherwise, if the € 4,000 threshold is met, an organization must register to carry out commercial activities with the Tax Administration. If the organization fails to do so, it must transfer all the proceeds exceeding the € 4,000 threshold to the state budget (Article 29, NGO Law).

E. POLITICAL ACTIVITIES

The NGO Law does not address the extent to which NGOs may engage in political activities.

F. DISCRIMINATION

The Constitution of Montenegro of 2007 contains provisions prohibiting discrimination on "any grounds" other than that seeking to remedy national, gender and other social

inequalities (Articles 7-8, Constitution). The Law on the Minorities' Rights and Freedoms bars racial discrimination in both private and public schools, though schools are permitted to engage in affirmative action to benefit certain underrepresented groups (Roma, Albanians, Croats, Bosniaks). In addition, the Montenegrin Anti-discrimination Law (2010) forbids any type of discrimination against any person on any basis.

G. CONTROL OF ORGANIZATION

Montenegrin law expressly allows associations and foundations to be established by foreigners, and imposes no limitations on the ability of for-profit entities to establish associations and foundations (Articles 2-3, NGO Law). Foreign natural and legal persons may be founders of an association regardless of their residence status, provided at least one founder of an association has a residence or place of business in Montenegro. On the other hand, foreign legal or natural persons may establish a foundation in Montenegro regardless of their residence status (Article 10, NGO Law).

V. TAX LAWS

A. TAX EXEMPTIONS

Associations and foundations are exempt from income tax on foreign and domestic grants, donations, membership dues, and similar forms of income not related to the organization's economic activities.

The Income Tax Law provides that NGOs are exempt from income taxation on their economic activities up to € 4,000, provided that all of the exempt income is allocated to the primary statutory objectives for which the organization was established (Article 32, Income Tax Law of 2001).

B. DEDUCTIBILITY OF CHARITABLE CONTRIBUTIONS

Under Montenegrin law, corporations (Article 14, Corporate Income Tax Law of 2001) and individuals (Article 24, Personal Income Tax Law of 2001) may deduct up to 3.5 percent of their gross (pretax) income for contributions to "medical, educational, scientific, religious, cultural, sport, humanitarian and environmental purposes."

As noted above, the concept of public benefit in tax legislation does not correspond with the concept of public benefit in the framework regulation. As a result, it is not clear whether a donation to an organization promoting, for example, rule of law or European integration would qualify for a tax deduction, although those goals are recognized in the framework regulation as public benefit goals (see Section IV).

In addition, the NGO Law (Article 31) requires that the state provide support to NGOs from its budget and enforce tax and other benefits in accordance with the national legal framework.

C. VALUE ADDED TAXES

A VAT system went into effect on April 1, 2003, in Montenegro. The standard rate is currently 21 percent (when it went into effect in 2003, it had been 17 percent; between July 2013 and January 2018, it was 19 percent). Any legal entity with an annual turnover of less than €18,000 (approximately \$25,000) is exempt from paying VAT, which effectively removes a large number of NGOs from the VAT regime. Foreign grants and donations are not subject to VAT. In addition, the law provides a broad exemption for all services provided by NGOs, unless the exemption would distort market competition (Article 26, VAT Law). Services of “public interest,” which include educational, cultural, sporting, and religious services, are also exempted from VAT (Article 26, VAT Law).

D. DOUBLE TAX TREATIES

The United States has no double tax treaty with Montenegro.

VI. KNOWLEDGEABLE CONTACTS

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