

# 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. Following the referendum, the Union of Serbia and Montenegro has given 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 and
- foundations.

Other not-for-profit legal forms, which are outside the scope of this Note because of their limited interaction with U.S. grantmakers, include political parties, trade unions, chambers of commerce, cooperatives, private institutions (faculties and universities), and associations of foreigners.

## **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 (USD \$ 5,000), provided that certain conditions are satisfied.

A VAT regime went into effect on April 1, 2003, with a standard rate of 17 percent. Foreign grants and donations are not subject to VAT, nor are imported humanitarian goods.

There are limited incentives for philanthropy, and the concept of “public benefit” status is not well developed.

## **II. Applicable Laws**

- [Constitution of Montenegro](#)
- [Law on Non-Governmental Organizations of the Republic of Montenegro \(1999\) \(“NGO Law”\)](#)
- [Corporate Income Tax Law \(2001\)](#)
- [Personal Income Tax Law \(2001\)](#)
- [Value Added Tax Law \(2002\) \(“VAT Law”\)](#)

## **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 NGO Law defines an association as a not-for-profit membership organization established by natural or legal persons, domestic or foreign, to accomplish individual or common interests, or to accomplish and promote public interests ([Article 2, NGO Law](#)).

*Foundations.* The law defines a foundation as a not-for-profit organization without members, established by domestic or foreign persons, and formed to manage certain property for the accomplishment of public benefit goals ([Article 3, NGO Law](#)).

## **B. Public Benefit Status**

The concept of “public benefit” is not well-developed in Montenegrin NGO legislation. For example, the law provides that foundations must serve the public benefit, but it is unclear what criteria registration officials use to make this determination. Moreover, the framework laws and tax laws reflect different concepts of public benefit (see Section V, below). 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**

Montenegrin law is silent on the issue of private inurement. [\[1\]](#)

## **B. Proprietary Interest**

The NGO law does not seem to preclude organizations from returning contributions to founders and/or members upon dissolution.

## **C. Dissolution**

Under Montenegrin law, the remaining assets of a dissolved association or foundation must be distributed to other humanitarian or nongovernmental organizations, in accordance with the decision of the organization’s “competent organ.” If this body fails to render a decision before the organization is removed from the NGO registry, the Government, following the Ministry of Justice’s proposal, “shall decide on the distribution of remaining property” ([Article 29, NGO Law](#)).

## **D. Activities**

### **1. General Activities**

Associations and foundations are legal persons and, as such, are permitted to engage in a broad range of activities, provided the activities are enumerated in the organization's charter. Foundations must serve the public benefit, whereas associations may pursue mutual benefit or public benefit purposes.

### **2. Public Benefit Activities**

Associations can be established for mutual benefit or public benefit. Foundations, however, must manage property for the accomplishment of "public benefit goals." This term is not defined in relevant legislation.

As discussed in Section V, below, tax law provides deductions for donations that advance medical, educational, scientific, humanitarian, religious, environmental, and "sport" purposes. There is ambiguity, however, as to how the relevant authorities define and apply these terms.

### **3. Economic Activities**

Associations and foundations are permitted to engage in economic activities provided that all profits are invested in the organization's main statutory activities ([Article 25, NGO Law](#)). Amendments to the NGO Law enacted in November 2007, however, mandate that an NGO whose income from economic activities in the prior financial year exceeds 4,000 Euro or 20% of the organization's overall income must establish a separate corporation to engage in economic activities ([Article 25, NGO Law](#)). Although it is unlikely that the authorities would register an entity whose primary activities are for-profit, the current laws do not explicitly address this issue.

## **E. Political Activities**

The NGO Law does not address the extent to which NGOs may engage in political activities. In practice, few organizations have engaged directly in lobbying campaigns for candidates and parties.

## **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 (Article 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).

## **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 ([Article 2-3, NGO Law](#)). However, in order for foreign natural persons to be founders of an association, they must have permanent or temporary residence in Montenegro. A foreign legal person may not be a founder of an association because the law requires that a legal person must have a seat in Montenegro. On the other hand, foreign legal or natural persons may establish a foundation in Montenegro regardless of their residence status (Article 9, 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 Corporate 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, Corporate 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.”

It is unclear, however, how these tax provisions relate to public benefit concepts found in the NGO Law. [\[2\]](#)

### **C. Value Added Taxes**

A VAT system went into effect on April 1, 2003, in Montenegro. The standard rate is 17 percent. Any organization with an annual turnover of less than €18,000 (US \$22,500) 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**

- Rade Bojovic: [radeb@cg.yu](mailto:radeb@cg.yu) (not an English speaker)
  - Stevo Muk: [crnvo@cg.yu](mailto:crnvo@cg.yu)
  - Goran Djurovic: [crnvo1@cg.yu](mailto:crnvo1@cg.yu)
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## **Footnotes**

[1] The NGO Law does state that both associations and foundations are "not-for-profit" organizations, but this term is not defined, and it is not clear how it applies in practice.

[2] For example, foundations in Montenegro must serve the public benefit. It is unclear, however, whether a donor could make a tax-deductible contribution to a foundation that pursued a public benefit purpose other than those enumerated in the tax laws.