

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 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 and
- foundations.

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 Euro (US \$5,500), provided that certain conditions are satisfied.

A value-added tax (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 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) ("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 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).

B. Public Benefit Status

The framework law and tax laws reflect different concepts of public benefit (see Section IV, 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

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, 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 on which territory the NGO had a place of business, and must only be used to advance the public benefit goals for which the NGO was established (Article 40, 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 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 can be established for mutual benefit or public benefit. 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 Euro, it must cease those activities until the

end of that year, unless the income generated from economic activities does not exceed 20% of the organization's overall income in the prior calendar year. Otherwise, if the 4,000 Euro threshold is met, an organization must establish a separate corporation to engage in economic activities. If it fails to do so, the organization must transfer all the proceeds exceeding the 4,000 Euro 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. 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). 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 Corporate Income Tax Law provides that NGOs are exempt from income taxation on their economic activities up to 4,000 Euro, 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.”

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 the European integrations would qualify for a tax deduction, although those goals are recognized in the framework regulation as public benefit goals (Section IV).

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 Euro (US \$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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