

## **PROCEDURES IN THE TAX PROCEDURE**

### **NORMATIVE DECISIONS**

- **Law on Tax Administration** ("Official Gazette of the RoM", No. 65/01 and 80/04);
  - **Regulations on Form and Contents of Statements of Withholding Taxes Payments**("Official Gazette of the RoM", No. 31/02, 33/02 and 67/02);
  - **Regulations on Criterion for Determination of Big Taxpayers** ("Official Gazette of the RoM", No. 16/05);
  - **Decree on Level of Tax Obligations Enforcement** ("Official Gazette of the RoM", No. 24/05);
  - **Regulations on Form and Contents of Registration Form for Taxpayers** ("Official Gazette of the RoM", No. 24/05);
  - **Regulations on Manner of Tax Base Determination by Means of Evaluation** ("Official Gazette of the RoM", No. 36/05);
  - **Regulations on the Manner of Sale of Taxpayer's Property in the Procedure of Enforcement of Claims** ("Official Gazette of the RoM", No. 36/05, 73/05 and 33/06);

Subsidiary application of the following Laws:

- **Law on General Administrative Procedure** ("Official Gazette of the RoM", No. 60/03);
- **Law on Inspection Control** ("Official Gazette of the RoM", No. 39/03);
- **Law on Executive Procedure** ("Official Gazette of the RoM", No. 23/04);
- **Law on Mortgage** ("Official Gazette of the RoM", No. 52/04);
- **Law on Pledge** ("Official Gazette of the RoM", No. 38/02).

### **BASIC CHARACTERISTICS OF THE LAW ON TAX ADMINISTRATION**

- Law on Tax Administration is based upon the positive experiences from the Anglo-Saxon and European Tax Legislation, as well as the legislations of certain countries in transition (countries of former Yugoslavia and Eastern European countries);
- It represents a codification of legal standards (procedures), which regulate the procedure of determination, control and collection of taxes and other duties depending on the type of tax as well as other issues, which should have been regulated in a different manner than in the manner regulated by the general regulation due to their peculiarity;
- Subsidiary application of the Law on General Administrative Procedure and the Law on Inspection Control is regulated for all the issues of procedure that have not been regulated by this law, while the instructing norm for application of the Law on Executive Procedure, Law on Mortgage or Law on Pledge is offered for certain issues;

- Self-taxation is the basic principle in the procedure of determination and enforcement of taxes and other duties;
- Assessment principle has been established as authorization and obligation of the tax authority in the situations when tax determination is not executed or incompletely or wrongly executed by the principle of self-taxation, or if it is regulated by the tax law.

### **SELF-TAXATION IN THE TAX SYSTEM**

- Self-taxation is voluntary participation of a taxpayer in tax events in accordance with the tax laws;

For implementation of the system of self-taxation it is necessary:

- To execute registration of taxpayer with the competent tax authority and assign him/her a tax identification number (TIN);
- To provide that the taxpayer, tax authority and all the mediators in tax events to use the tax identification number in the way that TIN is filled in all the documents and it becomes the basic connection in relation to all taxpayer's transactions;
- To publish all the laws and other tax regulations duly in the "Official Gazette of the Republic of Montenegro";
- To produce and make available in due time and free of charge registration forms, tax returns, statements, records etc., as well as the instructions to fill in the same to taxpayers and tax mediators;
- That taxpayer duly keeps business records, executes documentation composing in due time and provides other data and information, which he/she can use to calculate the tax obligation in accordance with the requests of the tax law;
- That the taxpayer prepares and files a tax return in due time and accurately, without previous consultation with the tax authority;
- That the taxpayer, according to his own initiative or initiative of tax authority, corrects in due time the incomplete or wrongly filled tax returns;
- That the tax authority provides for a fair and impartial relation to all the taxpayers, treating the tax return data with full confidentiality, and keeps records of the declared tax amount in the account of taxpayer without any check up, as well as all the changes, which occur according to the proposal of taxpayer or on the basis of the findings of the inspection control of the tax authority;
- That tax authority consistently applies offence and other sanctions regulated by the law and calculates interest rate in accordance with the law aimed at change of the taxpayer's behaviour and creation of tax discipline, not in any case for the purpose of reprisal due to non-execution of the law;
- That tax authority establishes efficient tax administration, supported by powerful information system, connected to the integral information system of the Republic;
- This system may not be open to negotiations, bargaining, arbitrary approvals or non-acceptance of tax credits, postponement of obligations to file tax returns, statements,

payments and selective approach in relation to taking measures of enforcement of claims against taxpayers.

## **TAX AUTHORITY COMPETENCE**

- Activities of determination, collection and control of taxes, which are introduced by the Republic, are performed by the competent Republic administration authority – Tax Administration of the Republic of Montenegro;
- Activities of determination, collection and control of taxes, which are introduced by the Office of Local Governance, are performed by the competent authority of the local governance;

## **AUTHORIZATION OF THE TAX AUTHORITY**

- In realization of its competences regulated by the law the tax authority is authorized to:
  - Perform inspection activities, take collection measures and other actions and activities it is in charge of according to the laws;
  - Make decisions on the rights of taxpayers;
  - Register taxpayers and keeps tax register;
  - Perform determination of taxes in the way and according to the procedure regulated by the law;
  - Request from the taxpayers and other legal persons to submit the documentation and offer other necessary information for determination of tax obligation;
    - Invite persons to participate in the tax procedure;
    - Come in and search the business premises, in which are kept or may be kept the business documents and records or other objects necessary for tax regulations application;
    - Exclude the business documents and records and other objects necessary for tax regulations application in accordance with the law;
    - Pronounce penalties for tax offences regulated by tax laws;
    - Use services of experts and masters, physical and legal persons in the procedure of determination of tax obligations, when professional knowledge is necessary;
    - Institute and conduct first instance administrative and offence proceeding;
    - Plan and implement training of employees;
    - Keep tax records;
    - Inform the taxpayers on inspection control development and on their rights and obligations in that procedure;
    - Offer professional assistance to the taxpayers in relation to application of tax regulations;
      - Provide the taxpayers with a tax return form free of charge;
      - Keep tax secret;
      - Refer to taxpayers and other persons with respect and consideration;
      - File criminal charges, economic offence charges i.e. request for instituting offence proceeding;

- Send the information, including tax secrets, which were revealed during criminal investigation or which were come across during such due dilligence, to the authorities in charge of law implementation, when there is a founded suspicion that an offence or criminal act were committed;
- Apply international agreements and contracts on avoidance of double taxation and other advantages related to tax payment;
- Prepare statements about situation in the field of taxes;
- Give initiative for adopting regulations and other acts for arrangement of tax system and tax policy of the Ministry of Finance;
- Cooperate with other authorities and organizations in the country and abroad about issues related to criminal tax acts and in accordance with the international contracts or agreements;
  - Take measures that are necessary for tax officers' security;
  - Take measures for preventing corruption of officers in performing their official duties;
  - Organize functioning of Single Information System in the field of taxes;
  - Provide for execution of statements and conclusions of the Government in the field of taxes.

## **RIGHTS OF THE TAXPAYER**

- Taxpayer is entitled to:
  - Be informed about all issues, which enable him/her to file and pay the tax obligations accurately and in due time;
    - Request from the tax authority to keep secret the collected data about tax obligation determination and use them i.e. reveal it only to the institutions and bodies in the manner and according to the procedure regulated by this law;
    - Request reexamination and new determination of his/her tax obligation, in the way which is regulated by this law;
      - Get free of charge from his/her tax authority information on tax regulations, rights and obligations, which arise from them;
      - Get tax return form and other tax forms;
      - Enjoy respect and consideration of the tax authority;
      - Represent his/her own interests to the tax authorities, alone or through his/her authorized person;
      - Use tax reliefs in accordance with the tax regulations;
      - Get insight into data on determination and collection of tax obligation, which are kept about him/her with the tax authority and request change of inaccurate and incomplete data;
      - Attend the inspection control;
      - Use also other rights envisaged by the law.

## **OBLIGATIONS OF TAXPAYER**

- Taxpayer is obliged to:
  - File a tax return for the purpose of registration to the tax authority in charge;

- Calculate accurately the tax and file tax return to the tax authority in due time and in the manner determined by tax regulations;
- Report to the tax authority in charge any change of the main place of doing business, i.e. residence and other data from the register of taxpayer;
- Keep business books and records in the regulated manner and maintain them in accordance with the law;
- Settle tax obligations in the manner and within terms determined by the law and other regulation adopted pursuant to the law;
- Submit documents and other data, which are necessary for determination of tax obligation at the request of tax authority;
- Enable undisturbed work of employees of the tax authority in performing their legal authorizations;
- Execute other obligations determined by the tax regulations.

## **REGISTRATION OF TAXPAYERS**

- Registration of taxpayers is performed by entry into the register of taxpayers, which is kept by the tax authority in charge:
  - Registration is performed on the basis of registration forms PR-1 and PR-2, which are submitted by the taxpayer;
  - Registration form PR-1 is submitted by the taxpayers, legal persons or organizations, which earn income in the Republic or outside the Republic and foreign legal persons or organizations, which earn their income in the Republic;
  - Registration form PR-2 is submitted by physical persons, who earn their income or possess property in the Republic or outside the Republic and foreign physical persons, who earn their income or possess property in the Republic;
  - Legal persons and organizations submit their registration forms to the tax authority, which is in charge of that person's main place of doing business, i.e. organization within five working days from the day of entry into the court or other register;
    - Physical persons submit their registration form to the tax authority according to the place of residence, i.e. living place of these persons within five working days from the day of earning the taxable income, entry into the relevant register, i.e. acquiring the property, which is subject to taxation;
  - Physical persons, who do not have residence, i.e. living place, submit their registration form to the tax authority headquarters, within five working days from the day of earning taxable income, i.e. acquiring property, which is subject to taxation;
  - Legal persons – big taxpayers, listed according to the criteria for determination of big taxpayers, submit their registration form to the the headquarters of the tax authority;
  - Along with the registration form the taxpayers submit also evidence about identification (act on registration of legal person or entrepreneur, personal ID, passport, driving licence, certificate on Household, title deed, evidence about employment);

- If legal or physical person does not submit a registration form within the regulated deadline, the tax authority will submit the form for these persons on the basis of available data;
- For the purpose of identification of taxpayer, the tax authority makes decision about registration, by which the legal and physical persons are given PIB;
- PIB is single and only number of legal i.e. physical person for all kinds of taxes and it is kept in case of change of registered office, residence i.e. living place of the taxpayer;
- PIB is entered into:
  - Act, which is submitted to the tax authority, state authorities and authorities of local administration by the taxpayer;
  - Act, which is submitted to the taxpayer by the tax authority;
  - Order according to which the taxpayer pays the tax obligation.

### **DETERMINATION OF TAX OBLIGATION BY MEANS OF TAX RETURN (SELF-TAXATION)**

- Tax procedure is started by filing a tax return in the way and within the terms regulated by the law, which regulates certain types of taxes.;
- Tax return is filed by taxpayer to the tax authority, which entered him/her in its register of taxpayers;
- If the tax return is not filed by taxpayer within the envisaged term, the tax authority will file it within three days from the day it got information that the tax return is not filed;
- The tax authority is authorized to fill up the incomplete and correct the wrongly completed tax return, immediately after it got information about omissions and mistakes in the filed tax return and to inform the taxpayer about that;
- Taxpayer is entitled to file a changed tax return within 10 days from the day of expiration of term for filing the tax return, in case of a mistake or omission in the tax return;
- The tax return is filed by filling up the form regulated by the Ministry of Finance in accordance with the law, which regulates individual types of taxes;
- Tax return is filed by the taxpayer himself or through the authorized person;
- The tax return must consist of the PIB of the taxpayer and authorized person, if the tax return is filed by that authorized person;
- Tax return is filed to the tax authority directly, by postl or electronic mail;;
- Tax authority is obliged to receive the filed tax return regardless of its accuracy, and if the tax return is filed directly, the tax authority will on the basis of visual control, indicate to the taxpayer obvious mistakes or omissions, which he/she can correct within the term for its filing;
- Determination of tax obligation is performed by the taxpayer on the basis of data from the business records and documentation, which he is obliged to keep according to the law, i.e. the newly

registered taxpayer on the basis of estimate of the income to be earned in the tax period for which he/she files the tax return.

## **DETERMINATION OF TAX OBLIGATION BY THE TAX AUTHORITY**

- The tax authority determines the tax obligation if:
  - Taxpayer did not file a tax return;
  - The tax return is filed incorrectly or incompletely and the mistake is not corrected or the new tax return is not filed within the legal term;
  - During the inspection control procedure, on the basis of new facts and circumstances, the inspection states that the taxpayer did not determine the tax properly;
  - It is regulated by the tax law (assessed taxes);
  - Determination of tax obligation is performed by the tax authority on the basis of business books, records of the taxpayer;
  - If the tax authority can not determine the tax obligation on the basis of business books and records of the taxpayer then it will determine the tax obligation on the basis of the tax base estimate;
- In the course of tax obligation determination by tax base estimate, the tax authority proceeds from:
  - Available duly business documentation, if it is not entered in the books;
  - Available duly business documentation about doing business within a certain period, which is shorter than the taxation period (daily, weekly or monthly);
  - Data and facts about achieved turnover (daily, weekly or monthly) found by the inspection control;
  - Data obtained by making comparison with other taxpayers, who do the same or similar business in the same or similar location under approximately same conditions;
  - Other relevant data and facts the tax authority disposes of;
  - The tax authority determines the tax obligation by tax decision, against which an appeal may be filed, which does not put off its non-execution.
- Determination of assessed taxes
  - Tax authority always makes decision on determination of assessed taxes when it is regulated by the law;
  - Assessed taxes are:
    - Tax on real estate determined by the municipal tax authority;
    - Tax on turnover, and
    - Tax on turnover of used motor vehicles, vessels, airplanes and aircrafts.
  - These two taxes are determined by the Tax Administration of the Republic of Montenegro.

## **DETERMINATION OF TAX OBLIGATION BY THE PAYING AGENT**

- Determination (calculation, suspension and payment) of withholding tax is done by the tax paying agent, i.e. mediator, through tax return (report) he/she files to the tax authority reskom organu as follows:
  - collective tax return on the same day when payment of revenue is made and the individual tax return on January 31 of the current year for the previous year at the latest.

### **TAX OBLIGATION PAYMENT**

- Tax obligation is paid by the taxpayer within the term regulated by the law, which regulates individual type of tax;
- Tax obligation payment is made, by rule, through the holder of payment operations, by making payments on the relevant payment accounts;
- Day of tax obligation payment is considered the day when the tax obligation payment is received on the relevant payment account;
- Tax obligation, which is determined in the procedure of self-taxation, is paid simultaneously with filing the tax return;
- Tax obligation, which is determined by the tax decision, is paid within 10 days from the day of submitting the decision, provided that it is not regulated otherwise by the tax law.

### **ENFORCEMENT OF CLAIMS RELATED TO TAXES**

- If the taxpayer does not pay the tax obligation in the course of filing the tax return i.e. when the tax decision became executive, the tax authority undertakes the procedure of enforcement of claims;
- The enforcement of claims procedure is initiated by the conclusion on enforcement of claims related to tax obligations;
- An appeal can be filed against the decision on enforcement of claims related to tax obligation and the appeal does not put off the execution of conclusion.

### **SUBJECT OF ENFORCEMENT OF CLAIMS**

- Subject of enforcement of claims can be:
  - Funds of the taxpayer;
  - Monetary claims of the taxpayer;
  - Property (movable and immovable) of the taxpayer.

### **PLEDGE, i.e. MORTGAGE**

- For the purpose of tax claims security, the taxpayer's property can be mortgaged or right to pledge can be determined in the course of procedure of enforcement of claims;
- Determination of right to pledge, i.e. mortgage is performed in the manner regulated by the Law on Pledge, i.e Law on Mortgage.

## **ENFORCEMENT OF CLAIMS FROM THE FUNDS**

- Enforcement of claims from the funds of taxpayer is performed by transfer of funds from the account of the taxpayer to the account of the one to whom tax obligation payment is made;
- Enforcement of monetary claims of the taxpayer is performed in the manner and according to the procedure regulated by the Law on Executive Procedure;
- Conclusion on enforcement of claims is performed by the Central Bank of Montenegro.

## **COLLECTION OF TAXES FROM THE PROPERTY**

- Enforcement of claims related to tax obligations from the property of the taxpayer consists of attachment and sale of property (movable and immovable) and usage of funds obtained through the sale or other procedure to collect the tax obligation.

## **PROPERTY ATTACHMENT**

- Attachment consists of inventory and estimate of property;
- Attachment is [erformed by an officer of the tax authority in the presence of two witnesses;
- Attachment procedure lasts until the tax obligatin is settled or until the enforvcement of claims is discontinued;
- The authorized officer makes minutes about the implemented attachment procedure, in which he states apart from the title of the authority, names and surnames of the authorized officer and witnesses, name and surname, title, residence i.e base and PIB of the taxpayer, inserts also the place and time of attachment, debt amount, interest rate and costs of the attachment, name, sign and description of the attached object, value of the attached object according to the estimate, surname, name, address and residence of the person to which the attached object is left to keep it;
- The taxpayer and other persons from which the property was attached are each given a copy of the attachment minutes.

## **ATTACHED PROPERTY SALE**

- Attached property sale is done by the tax authority that carried out the attachment, through an announcement of the property sale, which is announced in the media and in the notice-board of the tax authority within five days from the day of attachment;
- Officers of the tax authority, spouse, ancestors and descendants of the officers, then ancestors and descendants of his/her spouse can not take part in the announcement for public bidding neither directly nor indirectly;
- In case that the attached property is nondurable, when the value of the attached property is less than 10 thousand Euro and when the tax authority estimates that there are extremely important

circumstances, which justify unpostponable sale, the sale can be executed by direct deal;

- The funds earned through the attached property sale are used to settle the tax obligations in the following order: procedure costs, interest rate, tax.

## **INSPECTION CONTROL**

- Inspection control includes the procedure of checking the facts and data that are important for the taxpayers and other persons' taxation and taking measures in accordance with the law;
- Inspection control is performed by the tax authority through tax inspectors;
  - The inspection control procedure is initiated by the order for inspection control, which contains:
    - Subject of the inspection control,
    - Period of the inspection control,
    - Form of the inspection control (office or on-site control),
    - Time (start) of the inspection control,
  - Order for the inspection control is submitted to the taxpayer 15 days i.e. to big taxpayers 30 days before starting the control.

## **MEASURES OF THE INSPECTION**

- In the course of inspection the tax inspector is obliged and authorized to order taking following measures:
  - Submit needed documentation and data;
  - Temporary dispossess the documentation, equipment and working devices;
  - Compulsory open or close the facilities for the purpose of inspection activities;
  - Prohibit disposal of the funds on the account;
  - Prohibit performing the activities, i.e. performing certain activities for a certain period of time;
  - Temporary dispossess illegally obtained property benefits;
  - Temporary dispossess raw materials, production materials, semi-manufactured products, finished products and goods which are not accompanied with the evidence about supply, when the goods are put into circulation by a person, who is not registered for that or does not have evidence about the origin of goods, when the circulation of products is done without a proscribed mark, when the goods are transported without obligatory documentation and when the goods are sold outside the business registered office or other place, which is determined by the competent state authority;
  - Files a complaint to the competent authority for a committed criminal act or economic offence and submits a request for instituting the offence proceeding;
    - Pronounces mandatory penalty;
    - Take other measures that he is authorized by means of the law and other tax regulations.

## LIMITATIONS

- Limitation period for the right to tax obligation determination is five years from the expiry of the year in which the obligation was to be determined;
- Limitation period for the right to tax obligation collection is three years from expiration of the year in which the tax was determined;
- Limitation period for return of the excess payment of tax obligation is three years from expiration of the year in which the excess payment was made;
- Limitation period for the right to determination, collection and return of tax is always 10 years from the expiry of the year in which the tax was to be determined, collected i.e. in which the excess payment was made.

**Prepared by: Petar Mrdak,**  
**Chief**  
**of the Department for the Second Instance**  
**Administrative and Customs Procedure**