



REPORT

ON PARAFISCAL CHARGES in Montenegro

- summary

Podgorica, 2017. year

Report on parafiscal charges in Montenegro

EXECUTIVE SUMMARY

Difficult business conditions, particularly for small and medium-sized enterprises, as a result of the increase of VAT, excise duties, customs and other fiscal burdens, still adversely complicate business environment by uncritical and non-systematic introduction of a wide range of parafiscalities as additional „duties“ impeding business development and thus negatively affect development of the state and local self-government, and also development of the entire community. In this context it is important to consider the effects or counter-effects of the institute of parafiscality on the overall social development.

Comparing to some neighboring countries, Montenegro has significant impact on the scope and types of parafiscalities, along with a very disputable legal framework governing this issue, which was also elaborated in details in the present report. In that sense, normative analysis of the parafiscalities has shown a rather “confusing” state of the parafiscalities in most of their segments, ranging from enormous number of parafiscalities, uncontrolled and disharmonized introduction, their governing by different level of legal enactments, uncertainties about the concept of parafiscalities, their overlapping and similar phenomena.

Also, the report shows certain problems and dissatisfaction of employers with their involvement, i.e. non-transparency of the decision making process in this area. They believe that the number and amount of parafiscal charges are impeding starting up and running businesses, which was also confirmed by the local self-government opinion presented during the research, uneven application of regulations, expression of “fear” from introducing new parafiscalities, along with the fact that parafiscal burdens make entrepreneurs do a part of their business in the grey zone. Besides, especially small businessmen show the lack of their own capacities for monitoring frequent changes in extensive regulations as well as the lack of an adequate communication, particularly with local self-government in this area. They personally stress the lack of a unique registry of parafiscal burdens, which would make their job easier.

The present situation in the units of local self-governments, especially in the North of Montenegro, in terms of the business environment has been assessed as relatively good. The prevailing opinion is that not all potentials have been used, but local authorities invest additional efforts to improve business environment in their respective local self-government units. In addition, it is estimated that positive opinion of entrepreneurs prevails for doing business in the local self-government units in Montenegro, which is reflected in the increase of number of primarily small and medium-sized enterprises in this area. It is interesting that local authorities agree that the start-up fees are not high, but were defined at the realistic grounds, while the procedures have been considerably simplified compared with the previous period.

It is also the fact that representatives of local self-governments have recognized parafiscal charges as a business barrier. For that reason, during the research we received information on what business people recognized as significant barriers in the functioning of local governments as well as their relationship with business people:

- The lack of the registry of parafiscal burdens, and very difficult monitoring of the introduction of parafiscalities at local level, especially for small enterprises;
- Failure to involve business people in the decision-making process;
- Very rigorous penal policy and in most cases the lack of educational, but only exercising repressive measures by inspectors;
- The level of parafiscalities, which is not in line with the amount of profit/income of the business people, but is fixed in a number of cases, thus contributing a lot to the business people doing some of their activities in the informal zone;
- Insufficient transparency of work of the local self-government and frequent unavailability of decisions enforced by the local self-government units on their websites;
- The issue of the ratio of unpaid parafiscal charges and qualities/values of services that the business people receive from the local self-government;
- Examples of double collection of the same parafiscal charges.

Based on the identified issues, the Montenegrin Employers' Federation is proposing the following actions for their overcoming:

1. Revisiting parafiscalities from the aspect of their scope and size and developing a list of parafiscal charges in all local self-governments, as well as making regular update of all changes, so that business people always know what their obligations are at the specific moment.
2. Codification of parafiscalities at state and local levels
3. Clear definition of the concept of parafiscalities
4. Transparency in introducing parafiscalities, greater inclusion of entrepreneurs in the decision-making process, and one of the models for this is to promote the work of local social councils;
5. Ensuring a unique and non-selective application of regulations for all business entities;
6. Improving communication between economy and state and local authorities competent for
7. economy and finance.
8. Improving collection of existing parafiscal charges rather than introducing new ones for the sake of filling the gaps in the budget.

CONCLUSIONS AND RECOMMENDATIONS

Based on the presented results of all three research segments, the following may be concluded:

1. Legal system is abundant with a large number of fees along with, very often, overlapping ones.
2. Fees are introduced in an uncontrolled manner as they seem wholesome for “any sector or state authority”, without taking into account the reality of social and economic situation in which companies do their business, thereby making additional burden for them.
3. Parafiscalities are introduced and their amount determined not only by law, but also by subordinate legislation of the state authorities, by enactments of the local self-government and other bodies exercising public authorities. Such an arrangement raises a question of the legality of introducing and governing fees, which can be very controversial from the constitutional and legal aspects and authorities of the state administration as well as of other public law entities, such as public agencies.
4. Fees are settled according to material laws and subordinate legislation, as well as by areas of social life, i.e. administrative areas, which is a problem for payers’ orientation.
5. Concepts of “fees” are unclear, even different, they are not unified, which brings a confusion about their legal nature as a type of parafiscality, being frequently equalized with administrative tax, (import) duties, procedural costs or revenues, which additionally complicate their clarity and legal nature.
6. The issue of taxes are much better defined, and therefore, easier to understand and apply,
7. The system of parafiscalities differs in each of the local self-government units and each of the units has certain characteristics on this issue. This, in fact, shows heterogeneity of the system and large differences within the system as regards this issue.
8. System of parafiscalities in the self-government units is a constant, having in mind that in last couple of years, the mentioned revenues have not changed to a significant extent, either in number or in the level or amount.
9. Local self-government has still not made prerequisites for the implementation of the Law on Municipal Activities or started to apply this law in terms of municipal and other fees. The issue is raised about how provisions of this law will be reflected towards the obligation of business entities.
10. From local self-government point of view, parafiscalities do not significantly impact financial stability of the local self-government budgets.
11. Most of the local self-governments believe it is necessary to reform the system of financing local self-government and therefore parafiscalities.
12. Business people still show dissatisfaction with their participation in the decision making process and think that the process is not sufficiently transparent.
13. Business people have recognized increase of the parafiscal incentives in the previous period and expressed their concern about their possible future increase.
14. A large number of business people think that the very high parafiscal charges force them to perform certain part of their business in the gray zone.
15. Business people do not have the capacity to monitor all changes in regulations at local level and have expressed the need for local self-governments to raise the awareness of the economy itself.
16. Business people believe there is a need to make a list of all parafiscal and fiscal levies at local and national level.

RECOMMENDATIONS

Based on conducted analysis and conclusions we recommend:

1. To revisit parafiscal burden of legal, but also natural entities with enormously large number of parafiscalities impeding and threatening normal functioning of business environment, particularly of small and medium sized enterprises.
2. To ensure parafiscality is introduced and its amount determined only by laws, and not by subordinate legislation of the government, public authorities, agencies or other public entities.
3. To address serious problem related to the separation of concept of parafiscalities in order to avoid their overlapping and uncertainties in their application.
4. In order to establish system for monitoring of local parafiscalities, to consider the need to obtain the opinion of the Council for competitiveness and prior consent of the government, on adopting or amending decisions of local self-government.
5. It is necessary to solve the problem of inconsistencies of general enactments governing parafiscalities in order to avoid inappropriate grouping, and also "hiding" of charges and other taxes.
6. Governing of the state levies as parafiscal and fiscal duties of legal and natural entities should be coded, as the case is with administrative taxes, so that the legislation would be more clear and accessible to the payers, and implementation of legislation for both payers and authorities in charge for the definition and control of parafiscalities would be simplified.
7. To align legislation in terms of the concepts of parafiscalities and clearly define what they are and which of them belong to the state budget and budget of local self-government, thus eliminating from the legislation existing different and very often unclear terms such as for example: tax, revenue and the like, lacking their clear legal nature.
8. To apply, at earliest convenience, the new Law on Municipal Activities which codifies municipal fees.
9. To improve participation of employers in the decision making process particularly at the local level and therefore improve the work of local social councils in all local self-governments.
10. To improve transparency of the communication between economy and local self-governments in order to provide timely information about inevitable changes in relation to the introduction of the parafiscalities.
11. To revisit and develop detailed analysis of all parafiscal burdens in order to avoid double payment of the same fees by the business people, which is now present in some cases.
12. Consider justification and amount of certain charges for business entities, taking into account type of the activity and the area in which they perform this activity (e.g. membership contribution to the tourist organization).

