EXCERPT FROM THE PERFORMANCE AUDIT REPORT
“EFFICIENCY OF COLLECTION OF TAX LIABILITIES FROM THE PROPERTY OF THE TAXPAYER”

Type of the audit: Performance Audit

Audited entity: Ministry of Finance, Tax Administration, Real Estate and Property Administration

Subject-matter of the audit: Activities carried out by the Ministry of Finance, Tax Administration, Management property and real estate, in order to effectively manage the process of collection of property tax liabilities of a taxpayer in accordance with the Regulation on the collection of tax receivables from the property of the taxpayers

Audit duration: 120 auditing days

Composition of the Auditing Board: Mr Branislav Radulović, PhD, member of the Senate – Head of the Auditing Board
Mr Nikola N. Kovačević, member of the Senate – Member of the Auditing Board
I GENERAL PART

1. LEGAL BASIS FOR PERFORMING THE AUDIT

Legal basis for performing the audit of the efficiency of collection of the tax liabilities from the property of a taxpayer is contained in the following:

- Constitution of Montenegro, Article 144 (“Official Gazette of MNE”, No. 01/07); Law on State Audit Institution, Article 4 (“Official Gazette of the Republic of Montenegro”, No. 28/04, 27/06, 78/06 and “Official Gazette of MNE”, No. 17/07, 73/10, 40/11 and 31/14);
- The State Audit Institution Annual Audit Plan issued by the Senate, dated 22 December 2015 (No. 4011-06-1998); and
- Decision on Conducting Audit passed by the Auditing Board composed of Mr Branislav Radulovic, PhD (Member of the Senate - Head of the Auditing Board) and Mr Nikola Kovacevic, (Member of the Senate - Member of the Auditing Board).

Audit has been conducted in line with the following:

- Rules of Procedure of the State Audit Institution (“Official Gazette of Montenegro”, No. 3/15);
- Instruction on Performance Audit Methodology; and
- International Standards for Supreme Audit Institutions (ISSAI-level III).

2. AUDITED ENTITIES

Audited entities were: Ministry of Finance, Tax Administration, Real Estate Administration and Property Administration,

The Tax Administration and Real Estate Administration are the authorities in the Ministry of Finance, but in the audit process will be considered as separate entities, in relation to their roles and responsibilities in the process of collection of tax receivables from the property of the taxpayer, Property Administration was also in the audited period the body within the Ministry of Finance.

In this part it was given an overview of the institutions and their organizational units which are responsible for dealing with the subject matter.

Pursuant to Article 37 paragraph 2 of the Law on State Administration, Regulations on the organization and functioning of public administration, the Regulation on the criteria for internal organization and systematization of jobs in the state administration, the Rules on internal organization and systematization of the Ministry of Finance, which establishes internal organization of the Ministry of Finance and authority within the Ministry, which among others consists of Tax administration and Real estate Administration.

2.1. The Ministry of Finance

The Ministry of Finance (MF) performs the administrative functions among others related to: preparation of the proposal of the current economic policy of Montenegro and monitoring its implementation; preparation, planning, preparation and execution of the budget of Montenegro; fiscal impact; Monitoring the realization of revenues and expenditures from the budget of Montenegro; testing and assessing the impact of economic and development measures and institutional changes; preparation of regular financial reports for the Government of Montenegro, public revenues (customs duties, taxes, contributions, fees, etc.) to finance public expenditures at the state level and at the level of local governments; preparation and implementation of regulations in the field of property-legal relations, state property, land survey and real estate cadastre, land expropriation, liens on the property, the second instance administrative procedure in the area of
property rights and first instance restitution procedures; ensuring the collection of internal debt, which make claims of the Government through regular, bankruptcy and court proceedings and activation of mortgages on this basis, to make proposals regarding the management and disposal of state assets, and other activities that are defined.

Within the MF, it is organized a Directorate for Property and Legal Affairs and within it the Directorate for State Property and legislative affairs and the Directorate for inspection of state assets. The Directorate for Property and Legal Affairs performs the activities related to: the implementation of the Law on Property Relations, the Law on State Property, the Law on State Survey and Cadastre, the Public Procurement Law, the Law on Expropriation, the Law on Restitution of Property Rights and Compensation, the Law on administering temporarily and permanently seized assets in criminal and other proceedings or activities in connection with: disposing of property, using the property, supervision and management of state property of Montenegro; restitution of property rights and other property rights and compensation to former owners of confiscated property and rights; improving the management of state property and property rights; planning transactions with state property (sale, privatization, conversions, and other fiduciaries, and instruments for the provision of loan); resolving property relations in investment and development projects of importance for Montenegro; drafting of regulations in the area of ownership rights; drafting legislation in the field of public procurement; preparing and participating in drafting regulations in cooperation with other sectors; preparation of general acts of the Ministry, treaties and agreements that the Ministry concluded with other agencies, organizations and others; preparation of legal opinions on the information and suggestions when it comes to capturing the views and opinions of the legal jurisdiction of the Sector and the pursuit of business and taking appropriate legal actions relating to the settlement of alimony claims of Montenegrin citizens abroad.

2.2. Tax Administration

Tax Administration performs tasks related to: registration of taxpayers and keeping uniform register of taxpayers; establishing individual tax liabilities for all physical and legal entities; tax control; regular and enforced collection of taxes and ancillary tax levies; developing of uniform tax information system in cooperation with the government authority competent for the information structure; keeping tax accounting; application of international conventions and treaties on avoidance of double taxation; prevention and detection of criminal offenses against payment transactions and business operations; keeping a central register of taxpayers and the insured entities; keeping a register of business entities for taxation purposes; reception and processing of financial statements of legal entities; reception and processing of all tax returns of taxpayers; reception and processing of reports on paid withholding tax; keeping records on incomes of legal and physical entities; provision of data for social security funds on the basis of which the insured entities exercise their rights to social insurance; as well as other activities within its competency,

The Tax Administration's operating authority within the Ministry of Finance, In its work, it follows the guidelines and policies of the Government of Montenegro, and conducts business assessment, collection and audit of taxes introduced by Montenegro, As part of the Tax Administration, there are formed six departments (6), eight regional units (8) and thirteen branches (13). The Tax Administration is headquartered in Podgorica, Tax Administration is managed by the Director of the Tax Administration in cooperation with five assistants and one Advisor, There have been formed at the headquarters of the Tax Administration of Montenegro the following: Department for services and registration, Department for processing of tax returns and payments, Department for Plan and Analysis, Department for monitoring of tax regulations and audits, Department for tax police and Department for information technology in the field of tax system.

The Department for processing of tax returns and payments carries out the tasks relating to: the registration and processing of tax returns and tax accounting; conducting of collection that includes: identification and actions to collect the tax debt; identification of persons who have not filed a tax
return and procedures of ensuring thereof; adoption of annual, quarterly and monthly work programs and reports; development of procedures for office and field activities of collection; providing advice and guidance to regional units; preparation of reports necessary for ensuring the execution plan of collection of delinquent debt; analysis of the work of regional units; activities on risk assessment for the purposes of collection; processing and analysis of data in order to ensure compliance with tax policy, legal regulations and procedures; ensuring the measures and activities for full collection of budget revenues that are the responsibility of the Tax Administration.

The Tax Administration has systemized 611 jobs for state employees and civil servants and 68 jobs for state employees and civil servants who perform administrative duties at the Ministry of Finance, out of which 532 jobs were occupied as of 31 December 2015.

2.3. Real Property Administration

Real Property Administration shall perform affairs related to: initiating arrangement of property-legal relations over the real estate; preparation of standards of geodetic works in the field of surveying, cadastral of real estate and underground installations; conducting administrative proceedings in the field of property-legal relations and cadastral and ensuring application and enforcement of law and property regulations in Montenegro; assessing the value of real estate; planning, design, analysis and evaluation of the accuracy of the mapping survey, real estate cadastral and mapmaking; photogrammetric aerial survey, research and publishing activity and other geodetic surveys and preparation of originals and replicas of plans and maps; creation and maintenance of geodetic networks of all ranks; creation, renewal, amendment and control of the state survey, real estate cadastral and registration of property rights; execution and supervision of the construction and maintenance of water cadastral and underground facilities; cadastral classification and land quality evaluation; proposing establishing of bases for assessment of tax on agricultural activities; geodetic and agronomic activities on land consolidation; production, maintenance and development of Geographical Information Systems (GIS) in cooperation with the competent government authority for the information society; National Spatial Data Infrastructure (NSDI); maintenance and development of software for preparation of digital geodetic plans and alpha-numerical data of the cadastral documentation and control of these operations; monitoring and determining the changes in the area, and the implementation of identified changes in plans and the cadastral; registration of
changes in the law on real estate; keeping archives of technical documentation of state terrain surveying, plans, maps and other technical documentation; issuing licenses for carrying out geodetic works and producing of technical documentation; and other activities that are within its jurisdiction.

2.4. Property Administration

Pursuant to Article 33c of the Regulation, Property Administration is an independent body that performs tasks related to: keeping unique record of state property in accordance with international accounting standards; keeping the register of state property; ensuring the purposeful use of state property; care of the property, which by law become state property; management of confiscated assets, which include: ensuring the execution of provisional measures, in accordance with the law governing the confiscation of proceeds derived from criminal activity, or the law governing criminal procedure; execute decisions on temporary seizure of movable property and Confiscation of property gained through criminal activity; executing decisions on confiscation of proceeds of crime, the object of the offense and objects temporarily seized in criminal and misdemeanour proceedings and decisions on the assets given as pledge; estimate the value of confiscated assets for the purpose of managing material gain; leasing of confiscated assets or entrusting the management, in accordance with the law governing the confiscation of proceeds derived from criminal activity; Giving confiscated assets for use free of charge; preservation, storage, sale and return of confiscated assets; disposal of seized funds and funds obtained from the sale of confiscated assets, in accordance with the law; destruction of confiscated assets, in accordance with the law; keeping records on the seized material gain and judicial proceedings in which it is seized, as well as the temporary security measures; investment and current maintenance of the buildings of state bodies, representative buildings of state authorities and the diplomatic - consular missions of Montenegro abroad; application and monitoring tasks registry entries relating to subdivision, demarcation and exchange of state property; preparation of draft contracts and monitoring their implementation; performing lease payment; providing conditions for the protection of state property; harmonization of data from its records with data from the real estate cadastre; inventory of property of former socio-political organizations and ensuring its registration in the real estate; aging on registration of property owned by Montenegro in the real estate; keeping records of concluded contracts on acquisition and disposal of immovable and movable property and other goods of greater value in state ownership; submission of reports to the state administration in charge of Finance in electronic form within the time limits prescribed by law; performing auxiliary tasks necessary for the functioning and work of state bodies; and other activities that are within its jurisdiction.

The Directorate for Property is organized a Sector to manage and protect state property within which are the following departments: Department of management, protection and proper use of state property, management of business premises and official apartments; Department for management of seized and confiscated assets, the Department for the preparation of the contracts, payment of the lease, keeping records of concluded contracts on acquisition and disposal of immovable and movable property and other goods of greater value in state ownership; submission of reports to the state administration in charge of Finance in electronic form within the time limits prescribed by law; performing auxiliary tasks necessary for the functioning and work of state bodies; and other activities that are within its jurisdiction.

The Department for control and protection of state property shall carry out activities related to: the management and protection of state property; care of the property, which by law become state property; ensuring the purposeful use of state property; investment and current maintenance of the buildings of state bodies, representative buildings of state authorities and of diplomatic and consular missions of Montenegro abroad; assessment of the value of confiscated property, storage, preservation, recovery and sale of seized property; depositing funds obtained from the sale of seized property; recording the resulting changes to update and adequately record keeping of state property; legal and economic management and use of business premises registered as the state property; maintenance of official housing registered as the state property; equipping service apartments; performing lease payment; maintenance and equipping of housing funds from the quota of official apartments Montenegro.
In the Department for the preparation of the contracts, collection of the lease, keeping records of concluded contracts on acquisition and disposal of immovable and movable property and other goods of greater value in state property and registration of assets owned by the Government of Montenegro in the real estate cadastre the activities related to the following are being carried out: keeping records of concluded contracts on acquisition and disposal of immovable and movable property and other goods of greater value in state property, and the fixed and movable assets whose individual value exceeds €3,000; performing lease payments; providing technical assistance to authorities in terms of preparing the conclusion of contracts on acquisition and disposal of immovable and movable property and other goods of greater value in state property and other tasks related to the implementation of these contracts, as well as tasks related to the registration of assets owned by the Government of Montenegro in the real estate cadastre.

3. AUDIT TYPE, SUBJECT-MATTER AND OBJECTIVE

The State Audit Institution (SAI) conducted the performance audit.

Subject-matter of the audit focused on the activities carried out by the Ministry of Finance, Tax Administration, Property Administration and Real Estate Administration, in order to effectively manage the process of collection of property tax liabilities of the taxpayers in accordance with the Regulation on the collection of property tax receivables from the taxpayers. Subject of the audit includes all decisions, actions, and rules for the administration, accounting and development of financial and material resources.

An audit includes information and activities of the Ministry of Finance and the Tax Administration, as well as cooperation with other bodies (Real Property Administration and Property Administration) in the process of collection of tax receivables from the property of the taxpayer. Stages in the process of collection of tax debt from the property of the taxpayer were observed over a period of three years, but have not been analysed reasons for the emergence of debt of the taxpayers.

In the process of the audit, there was reviewed the documentation at the disposal of the Tax Administration, Ministry of Finance, Property Administration and Real Estate Administration, referring to the implementation of the tax debt collection from the property of the taxpayer, as well as handling the properties, within a period of three years.

In addition, there were inspected the individual analytical accounts of taxpayers who have concluded contracts in accordance with the Regulation on the procedure of collection of tax receivables from the property of the taxpayers.

4. OBJECTIVE OF THE AUDIT

The audit objective was the assessment of whether the competent authority shall take the necessary actions that should ensure efficient collection of tax liabilities from the property of the taxpayer, and assessment of existing institutional and normative framework.

In order to achieve the set objective of the audit, it was necessary to give an answer to the main question of the audit:

Did the Ministry of Finance, Tax Administration and Property Administration undertake the necessary activities for the efficient collection of tax receivables from the property of the taxpayer?

The sub-questions that have been developed through the matrix of the audit enabled the conclusion whether through the established institutional and regulatory framework can be implemented an efficient collection and whether the acquired assets can be appropriately utilized.
5. **TIME OF PERFORMANCE OF AUDIT**

The relate audit was carried out in the period from January 18 through July 25 of 2016.

6. **METHODS OF THE AUDIT**

For the purposes of the audit, the following methods were used:

- Examination of studies, which were performed by expert institutions;
- Study of relevant documents necessary for the subject of the audit, professional literature, strategic and master plans, reports, available statistics;
- Examination of international studies and practices.

In order to obtain answers to audit questions (in addition to the above methods), during the audit were used the following methods and techniques: assessment based on insight into 100% of concluded contracts, documentation analysis, statistical methods, descriptive methods, conducting interviews, and the combination of some methodological approaches.

7. **AUDIT CRITERIA**

As criteria for the evaluation of the implementation process of debt collection from the property of the taxpayer, there was used the Regulation on the procedure of collection of tax receivables from the property of the taxpayer, the Law on State Property, by-laws which regulate the area of state property, contracts of the Ministry of Finance and taxpayers, requirements, decisions, decrees and other acts that are necessary to allow the right to inscribe the registration of the acquired real estate in the register of state property at the Property Administration.

In assessing the ways of managing the acquired assets, there were used the planning documents, contracts with the taxpayers and good practices in the field of asset management, which is owned by the state - Public Asset Management.

8. **INFORMATION SOURCES**

The primary source of information during the audit was the documentation to the Tax Administration and the Ministry of Finance - Directorate for property and legal affairs, as well as documentation of the Real Estate and Property Administration relating to the subject matter. For additional information, there were used the reports of international institutions (IMF, World Bank and European Commission) on the state of the tax system and the Tax Administration of Montenegro (the project TADAT), technical literature, as well as good practice in the management of state assets (Public Asset Management) positive practice of OECD countries in the reform of the tax system and laws and subordinate legislation.
II CONCLUSION

Appreciating the economic situation and the lack of liquidity in Montenegro, in order to avoid account suspension and allow business performance of the taxpayers, and to achieve a more efficient collection of taxes which are a significant part of budget revenues, in 2013 the decision was based on Article 15 of the Budget Law for 2013, the Regulation on the procedure of collection of tax debt from the property of the taxpayers. In this way, conditions are created thus that taxpayers in a neater manner settle future tax liabilities and to relieve them from the tax debt, which stops the basis for the calculation of interest due to previous tax arrears. The intention of the Ministry of Finance was to use the acquired assets for the accommodation of state authorities, which will have an effect in the form of budget savings, given that in some cases enormously high rental costs are being paid. Ministry of Finance - Directorate for Property Affairs has not analysed the assessment of the impact of the related Regulation (RIA).

Based on the conducted audit, it was found that the activities conducted by the competent authorities are not fully in line with the Regulation on the procedure of collection of tax debt from the property of the taxpayers. Application of Article 15 of the Budget Law for 2013 and the Regulation on the procedure of collection of tax receivables from the property of the taxpayers did not give expected results.

In order to achieve an efficient system of the management of the process of collection of tax debt from the property of the taxpayer, in accordance with the Regulation, it is necessary to further improve the following areas:

a) accounting records of tax receivables;

b) conducting the collection of tax receivables from the property of taxpayers;

c) records of state property acquired by the collection of the tax receivables;

d) records of the state property acquired by the collection of tax receivables.

a) Accounting records of tax receivables

Article 2 of the Regulation provides that the tax debt is considered to be liabilities as at the date of application for payment of the tax debt from the property, Article 4 of the Regulation provides that the Tax Administration determines the status of the tax debt of the taxpayer. TA, in the letters sent to the Ministry of Finance, stated that the balance of the debt stated as of 31 December 2012, and noted that the data on the debt was established on the basis of data available from the IT sector. The audit has shown (by checking the individual analytical accounts of taxpayers subject) that the said debt relates to the period up to completion of the final tax return, and in certain cases even thereafter.

b) Conducting the collection of tax receivables from the property of taxpayers

The audit of the contracts and insight into the chronology of the real estate transactions concluded that the 5 properties that were the subject of the contract were bought by the taxpayers for and amount decreased by €894,273.48 in comparison to the amount defined in the related contracts. There were found the irregularities in the valuation of land and buildings, and office space. It was noted an inconsistency in the assessment report with data from immovable property (calculation of non-residential space as well as residential, within the estimate that included the land and although it was in the property list clearly stated that the present taxpayer did not own the land, the area was estimated with its furniture and the like,). In this connection, SAI refers to the use of national standards of assessment.

The audit identified a violation of Article 1 of Regulation ("tax receivables that were past due by 31 December 2012 may be paid from the property of the taxpayer according to the procedure laid down in this Regulation"), because it was determined that the contracts with individual taxpayers
were entered a provision that the parties agree that the difference between the estimated value of business premises and land of the determined debt used for determination of the debt payment of future tax liabilities. Although the application of the Regulation should ensure that the acquired assets are used for the accommodation of state authorities which means that in terms of quality offices, the audit found that the taken over areas were suitable for retail and catering facilities, basement rooms, garages, unfinished spaces, spaces that do not have a use permit.

It was found that, among other matters, it was taken over the object for which the Property Administration, after the conclusion of the contract, concluded that it is in very poor condition and on the verge of devastation, noting that it is very likely that the most economical would be its demolition.

The Ministry of Finance (Department of Property and Legal Affairs) was obliged to check the fulfilment of all applicable elements specified by the Regulation, prior to submission to the Commission for the collection of tax receivables from the property of the taxpayer, which has not been adequately done in all cases (referred to the higher amount of tax long before the letter noted the Tax administration). The Ministry of Finance has concluded a contract in the amount greater than the one approved by the Conclusion of the Government, and within the same imprecisely stated the pieces of real estate that were the subject of the contract.

c) The records of state property acquired by collection of tax receivables

Assets acquired through collection of tax receivables were not recorded in the register of state property with the Property Administration. Property Administration does not possess all contracts for the payment of tax debt from the property of taxpayers. Agreements for the collection of tax receivables from the property of the taxpayers are not registered with the Administration’s accounting records. The contracts that were submitted in 2013, 2014 and 2015 must have been accounted by the Property Administration and calculated depreciation in accordance with International Accounting Standard (IAS) 16 and the Regulations on the classification of fixed assets by groups and methods for determination of depreciation.

Property Administration did not make bookkeeping entries of the assets acquired in collection of the tax debt from the property of the taxpayer. The Administration stated that an untimely delivery of contracts signed by the competent authority (Decision of the Ministry of Finance) resulted in the omission of inserting those assets in books and records. Some of the properties were booked at the Ministry of Finance, which is contrary to the Law on State Property. When drafting decisions of the Real Estate Administration, there were carried out the changes of registration of rights to real estate in the cadastral being registered as property rights on the real estate of the Government - Ministry of Finance, although Article 6 of the Law on state property stipulates that the Government making the property rights and powers of state assets which Montenegro has, decides on the terms of granting the use of real estate used for insurance activities of state bodies (Article 25 of the Act) in the manner and procedure prescribed by this Law, but such a use shall not be entered in the real estate cadastre.

Having examined the minutes of the meeting of the Commission for the collection of tax receivables from the property of the taxpayer, it was identified that the Commission held 11 meetings in 2013 and 2 in 2014. The Minutes of Commission meetings are not verified, they do not contain the serial number, the name of the Chairman, the names of persons who participated in the work of the Commission and are very deficient in details.

d) Management of property acquired by the collection of tax receivables

Pursuant to a Conclusion, the Government has commissioned the Ministry of Finance to prepare a plan for the sale of assets that the state takes from collection of the tax debt, define deadlines and
specific agreement provide that if the property is sold at a price lower than estimated, the price difference is the liability of the taxpayer.

Directorate for Property Affairs has not implemented the above conclusion; the managing person was not familiar with the above conclusion.

Management of the property during the period of performing field audits has no information whether the property acquired on the basis of signed thirteen contracts with taxpayers are given for use, or whether the real estate is leased or sold. Records of business premises that are currently unused (empty), maintained by the Property Administration, does not contain information for business premises taken upon collection of the tax claims, which are not given for use of bodies.

For real estate acquired by the six contract, it was not required an opinion of the Property Administration whether the offered real estate were adequate for accommodation of state authorities, or for which purpose they can be utilized.

The Ministry of Finance (Directorate for Property Affairs and the Property Administration) did not adequately monitor the implementation of the concluded contracts and does not have the information whether the taxpayers who contracted to bring the unfinished real estate to a purpose within a specified period or the contract will be otherwise deemed terminated the contract, implemented a contractual obligation.

During 2013 and 2014, the Directorate for inspection of state property has not carried out inspections within its jurisdiction, while in 2015 control was executed in only one case. The control plan was not performed annually and neither the report on the work of the Directorate for inspection at the Directorate for Property Affairs.

The audit has found that the Commission for Housing Affairs of Montenegro on the basis of the Decision on exchange of apartments authorized the Management Board for the property to conclude a contract on exchange of real estate from two individuals. Two apartments were ceded (to civil servants) to a value that is lower than the value (€234,300.00) which is determined by appraisal when paying from the property, for an amount of €134,900.00.

Disposal of state property that is not registered in the registry, or property for which have not been fully collected the legal, physical, financial and economic data, is an example of inefficient asset management. Only when they set out the defining features of each type of assets and their related liabilities, it may be decided on what can and should be done with state assets and obligations associated therewith.

Despite the differences, most countries have been identified as general prerequisites for the effective management of state assets, which are:

- establishment of a register of state property,
- classification of state property,
- recognition and Measurement of state property,
- formation of a portfolio of state property,
- institutionalization and professional management of state property, and
- administration costs and results (effects).

### III OPINION AND RECOMMENDATIONS

Based on the conducted audit, established facts and the submissions of the statements of the audited entities, in accordance with Article 44 of the Law on State Audit Institutions and Article 45 of the Rules of Procedure of the State Audit Institution, the competent Board of SAI with its members: Mr Branišlav Radulović, PhD (member of the Senate - Head of the Auditing Board) and Mr Nikola N. Kovačević (member of the Senate - Member of the Auditing Board) at its meeting held on October 17, 2016 adopted the following:
FINAL REPORT
on the performance audit
of the efficiency of collection of tax liabilities from the property of the taxpayer

OPINION

The State Audit Institution (SAI) is in the process of performance audit of the "The efficiency of collection of tax liabilities from the property of the taxpayer", based on the analysis of concluded contracts on payment of part of property tax debt of the taxpayer and the competent authorities with respect thereto, found that the measures and activities that are conducted by the Ministry of Finance, Tax administration and the Property Administration did not, sufficiently, provide that the application of the Regulation on the procedure of collection of tax receivables from the property of taxpayers result in the expected effects.

The application of the Regulation on the procedure of collection of tax receivables from the property of the taxpayers:

− Did not to a significant extent contribute to more efficient tax collection and reducing tax debt;
− Did not significantly affect the budget savings in terms of reducing costs of leasing premises for the needs of state bodies,
− Did not, in all cases, provide that taxpayers who have paid from the property the tax debt to neater settle the tax liability and to reduce the tax debt.

The country has in a number of cases received basement, garages, unfinished business premises and facilities in poor condition.

The Regulation was adopted to avoid account suspension and allow business taxpayers to perform their business, while the result of the application of the same is that the taxpayers (in four cases) before concluding the contract, were buying the real estate and then at a higher price one offered those to the stated. Taxpayers in these cases had the funds on disposal, so that the enforced collection through the blocked account would not prevent their business. Also, there have been concluded contracts with legal entities which are large tax payers and were solvent during the period of application for payment of the tax debt from the property.

The present performance audit was found that:

- collection practices were not fully implemented in accordance with the Regulation on the collection of tax receivables from the property of taxpayers;
- property acquired through collection of tax receivables is not fully utilized (utilization of business premises on the day of completion of the field audit is 51.02%);
- giving for use the property acquired in collection of tax receivables, costs for rental of premises for the needs of government agencies were reduced by €113,402.16 or 3.17% compared to the cost of the lease for 2015;
- the total amount of tax due from entities with which there were concluded the contracts on collection of tax debts of the property amounted to €23,356,885.87, which represents 3.98% of the tax debt that amounted as of 31 December 2015 to €587,688,851.18;
- the application of the Regulation resulted in collection of the tax debt from taxpayers and legal entities that were not owned by the state, for a total of €10,128,373.60.
- out of 10 legal entities with which an agreement was concluded on the payment of the tax debt from the property, 5 were blacklist by the Tax Administration from July 2016, with a total tax debt of €6,112,422.38.
RECOMMENDATIONS

Pursuant to the conducted audit, it was found that there is a potential of improvements in all areas that are audited, and in order to improve those, SAI provides the following recommendations:

The Government of Montenegro

1. Bearing in mind that the law has already established mechanisms for the collection of property tax debt of the taxpayer as well as the unsatisfactory effects of the application of Article 15 of the Law on Budget of Montenegro and the Regulation on the procedure of collection of tax receivables from the property of the taxpayers, SAI recommends the Government to consider the viability of this decision.

Ministry of Finance

1. The Ministry of Finance should adopt the Rulebook on the manner and conditions for payment of the tax liability by compensation.

2. It is necessary to carry out a timely analysis of the expected impact of new and modified existing laws before they are adopted, in order to avoid diversion of law in practice and significantly improve the assessment of the economic impact of regulations - RIA.

3. It is necessary to bring the asset management plan which is part of the responsibility of the Ministry of Finance as well as a plan to sell assets that the state takes on the basis of a contract pursuant to which the collection of tax debt will be performed from the property of the taxpayer.

4. It is necessary that the Directorate for Property and Legal Affairs and Property Administration implement control of the implementation of all the contractual provisions of the concluded contracts with the timeliness of adapting unfinished business premises.

5. The Ministry of Finance shall carry out the activities envisaged by the Action Plan for the establishment of a single register of state property, the Government adopted a conclusion number 08-426/4 dated 06 March 2014.

6. It is necessary, in all cases, to ask the Property Administration for information if there is a demand for real estate offered by the taxpayer, seek the opinion of the said from the Administration, and if it is determined that it is appropriate, carry out an analysis which would define to which organ the real estate would be handed over, how much would be saved from the budget, how much funds need to be allocated for the property to put it to its purpose and along with the Information on collection of tax receivables submit it to the Government for approval.

7. It is necessary after the conclusion of the contract with the taxpayer to deliver it to the Property Administration and, if the contract with the taxpayer provided that it should take certain contractual obligations, inform the Administration about the existence of a contractual obligation of the taxpayer. After the deadline for implementation of contractual obligations, the Management Board shall inform the Ministry of Finance of the same, and in the case of non-compliance with contractual obligations within the agreed period, to terminate the contract with the taxpayer and deliver a notice of termination.
8. It is necessary that the minutes of the meetings of the Commission for the collection of tax debt from the property of the taxpayer are properly made and verified (to contain the number of the session, the Chairman’s name, the names of persons who upon call participated in the work of the Commission, the management and preservation of the minutes shall be done by a person who is thereof assigned by a decision).

9. It is necessary to take all necessary actions so that the Directorate for inspection supervision over state assets could perform duties within its jurisdiction, enacts the control plans and makes an annual report on the controls carried out.

Tax Administration

1. Tax Administration should, in accordance with Article 2 of the Regulation, submit to the Ministry of Finance the balance of the tax debt of taxpayers as of the date of submission of the request for payment of the tax debt from the property.

Real Property Administration

1. When making the decision to execute the change of registration of rights to real estate in the cadastral in some cases there are wrongly registered the property rights, and it is necessary to bring new decision for the real estate which is charged a tax debt, according to Art. 4 and 29 of the Law on State Property, or to enter Montenegro as the holder of property rights (to the extent the rights of 1/1, Corporate ID 020 210 666), and as a holder of the right to dispose the Government of Montenegro (Corporate ID 02010658).

2. It is necessary that the Real Property Administration and Property Administration establish cooperation in taking of data from the IT system of the Real Estate Administration for importing the data on immovable property which are owned by Montenegro in the ARS system of the Property Administration (the register of state property).

3. It is necessary to make corrections of the property lists which do not comply with the law not only in the base of the right but also in the part of inscription of the holder of the right and demarcation of state and local government property, all in accordance with Articles 29, 66 and 71 of the Law on State Property.

Property Administration

1. It is necessary to take actions in order to accurately and comprehensively identify all real estate owned by the state and timely register these assets in the real estate cadastre with titleholder having ownership rights and authorizations in accordance with the law.

2. It is necessary to raise the legal, physical, financial and economic data on state property, and then classify it, to measure the state property, form a portfolio of state property.

3. It is necessary to create a database of state bodies, local authorities and public services established by Montenegro or municipality, which according to the Law on State Property required submitting data on movable and immovable property, Based on the created base, there should follow the submission of data and in cases of failure to take legal measures to ensure the same.

4. It is necessary to draft a plan for training of ARS application users, in order to implement the same in a short period of time and thereby establish the record keeping of movable
and immovable property by applying the ARS application. Data on the fixed and movable assets shall be recorded (imported) in the ARS to determine the exact condition of the property which is owned by the State.

5. It is necessary to adjust internal rules and procedures to the Instructions for preparing and description of internal rules and procedures issued by the Ministry of Finance, and develop an internal policy/procedure on the treatment of employees after a delivery of contracts (of any kind) to the Administration and to introduce the employees therewith.

6. It is necessary to record all the contracts for collection of tax receivables from the property of taxpayers in the accounting system in accordance with International Accounting Standards and applicable legal regulations.

7. It is necessary, after the receipt of the contract on the collection of tax receivables from the property of the taxpayers in all cases, submit to the REA application for registration of property rights and make the taxpayers record of the transfer of the property.

8. If the property is transferred to a use purpose, the user should make a record of the handover of the property or if the property is given to the use of a body without the participation of the Property Administration, to make a record of the condition of the property.

9. The property that is transferred into the state ownership pursuant to the collection of tax receivables from the property of the taxpayers shall be registered in the Register of Real Estate (ARS).

10. It is necessary to maintain accurate and timely records of business premises that are not used, make analyses and assess whether they can be used for the accommodation of a body which pays the rental costs.

11. It is necessary to prepare and submit to the Government a Strategy for management and disposal of assets, and the annual plan of asset management.

Audited entities shall, in accordance with Article 15 of the Law on State Audit Institution, within 6 months from the date of receipt of the final audit report of SAI submit a report on the actions taken by the prepared and submitted recommendations. SAI will, upon the final audit report, introduce the Government and the competent committee of the Parliament with the irregularities identified.