

Kosovo Tax Alert

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Administrative Instruction 03/2015 on implementing Law 05/L-037 on VAT

The new Law 05/L-037 on VAT includes several significant changes from the previous VAT law (Law 03/L-146 as amended by Law 03/L-197 and Law 04/L-108). Most notably, the standard VAT rate increased from 16% to 18%, certain goods and services are now subject to a reduced VAT rate of 8% and the VAT registration threshold has decreased from EUR 50,000 to EUR 30,000. Administrative Instruction 3/2015 on implementing the provisions of the new VAT law became effective on September 1st 2015.

Compared to the previous Administrative Instruction 10/2010, the current one provides a comprehensive interpretation of the respective provisions of the VAT law. VAT application procedures are elaborated in more detail, as a consequence, the VAT treatment for certain transactions that have been subject to dispute between taxpayers and the Tax Administration of Kosovo have now been resolved.

Additionally, Annex no. 1 of the Administrative Instruction provides the list of goods subject to the reduced VAT rate of 8%.

This Tax Alert provides a summary of the main additions and amendments covered by this Administrative Instruction.

AI 3/2015

Object of taxation

[Addition] In respect of the object of taxation, the required direct link between the supply and the consideration received is deemed to be established once the following two conditions are met:

- The client must benefit from the transaction;
- The price is related to the benefit received exists.

The price can also be paid by a third party and debt forgiveness is also treated as consideration received.

Taxable persons

[Addition] Being a taxable person for VAT purposes arises from independently carrying out economic activities. Persons who exercise their activity under their responsibility and enjoy complete freedom in organizing such activity are considered to be acting independently.

Persons that have any sort of relationship, which creates dependency on working conditions, payment modalities or the employer do not act independently.

Treatment of activities of the non-profit organizations

[Addition] In determining whether the activities of a non-profit organization are considered to be an object of taxation depends whether the supply directly benefits the receiver, and if the price is related to the benefit received by the client.

Public authorities

[Addition] Activities that compete directly with private businesses that supply goods or services of a similar nature are considered to distort

competition and are therefore taxable for VAT purposes. However, the supply of goods pursuant to the public auction procedures shall not be subject to VAT.

A taxable person who has ceased his activity

[Addition] Persons that cancel their VAT registration but still possess unsold stock, for which input VAT has been deducted, are required to treat such stocks as supplies in their final VAT declaration.

Whereas a person that possesses assets is required to adjust VAT deductions in accordance with their useful life.

Financial lease

[Addition] AI clarifies the VAT procedures to be implemented on financial lease agreements. The useful life of the leased goods against payments needs to be stipulated in the contract. The taxable value indicated in the invoice is the value of the periodic lease payment, except the applied interest.

Operating lease

[Addition] In case of a trader that provides property to his customer for maintaining or preserving the trader's supplies, if such customer pays a higher price than what is paid by a customer that simply buys such goods, then VAT is calculated on the price difference.

The difference is to be considered as property lease, and is therefore taxed at the standard rate of 18% regardless of the applicable rate for the goods stored in such property.

Transactions of intermediaries

[Addition] AI distinguishes between intermediaries that act on their own name, which according to the AI are considered to be supplying good and services, and intermediaries that represent their client but are not considered to be supplying goods or services.

The latter supply intermediary services against a commission, and the taxable amount is the commission invoiced to the person such intermediaries represent.

Distributors of TV or telecommunications prepaid packages do not charge VAT on the supplies to the final customer. Nevertheless, such distributors invoice the main operator a commission for their intermediary services which shall be subject to VAT.

Mixed supplies

[Addition] With respect to supplies with a mixed good or services character, the AI clarifies that neither the cost nor value is what determines whether a supply is a supply of goods or services.

Construction and maintenance works

[Addition] Construction and maintenance activities are treated as supply of services. The taxable amount for private or public construction work is determined analytically by the respective values of the items of elements within the works making up the stages of work performed.

Construction works that are not long term construction contracts are regarded as completed at the moment a certain construction stage is finalized.

The application of business goods and services for non-business needs

[Addition] If goods or services of a business are used for purposes other than for business and input VAT paid for such supplies is not deductible, then this self-supply is not taxable either.

Determining gifts of insignificant value and samples

[Amendment] Samples and gifts given free of charge are not to be treated as supplies made for consideration.

Samples are goods offered to clients but are not intended for sale. The exemption for gifts on the other hand is valid for goods with a market value up to EUR 15 (EUR 10 according to the previous AI), which are distributed for promotional purposes. This exemption is allowed to be applied only for one good for the same beneficiary and only once a year.

The application of business goods and services for business purposes

[Addition] AI clarifies that in case of self supply for business purposes, the taxable person shall issue an invoice for the supply as the supplier and at the same time as the purchaser.

Transfer of business

[Addition] The transferor and transferee are required to sign a written statement specifying the obligation for VAT correction (adjustment) for every capital good transferred.

Place of supply of goods

[Addition] When the point of departure or transport of goods is located outside Kosovo, the place of supply of goods depends on the person that makes the supply.

- If the import or supply is performed by the importer, the place of supply is in Kosovo;
- If the purchaser of the good is a different person from the importer, the place of supply is not considered to be Kosovo.

The place of supply for natural gas, electricity, heating and cooling and water supplied through distribution systems is considered to be in Kosovo if consumed or its effective use is in Kosovo.

If such goods are not consumed or effectively used in Kosovo, evidence is required to prove that such goods were exported. The required documentation includes industry specific permissions and requirements, contracts and

invoices, information on the buyer, confirmation from the authorities of the destination country.

Place of supply of services

[Addition] In order to provide sufficient evidence that the place of supply of a service for a taxable person is outside Kosovo, the taxable person in Kosovo is required to provide sufficient evidence including contracts and invoices with information on the receiver as well as a confirmation from the respective tax authorities, confirming that the receiver is a taxable person for VAT purposes in their respective country of residence.

In case the supplier (taxable person in Kosovo) is not able to provide the above required evidence, then the supply is considered taxable in Kosovo.

Place of supply of services – immovable property

[Addition] Immovable property services include services closely related to immovable property. This includes services that legally modify a property, such as drafting of property acts, leasing contracts etc.

Chargeable event

[Amendment] In case of reverse charge procedures, VAT payment becomes liable at the same tax period the service is received.

Taxable amount in respect of supply of goods and services

[Addition] Subsidies are not included in the taxable amount if no direct relation to the price of supply exists. This includes subsidies granted by public authorities where the benefit is not consideration received for a supply.

Elements included in the taxable amount

[Addition] Incidental expenses are not included in the taxable amount if separately invoiced to

the client, or if such expenses are carried out by the client himself.

In case taxable supplies are invoiced with no VAT, VAT will be considered included in the total value of the supply. Nonetheless, in case a taxable person has received such an invoice, the supplier needs to issue a corrected invoice which shows VAT and the taxable amount separately.

Rates

[Amendment] The supply of pharmaceutical products, medical and surgical instruments and equipment are subject to a reduced VAT rate of 8% (prior to the new fiscal package, such supplies were exempted from VAT without the right of deduction).

Nevertheless, pharmaceutical products listed in “Part D” of Law Nr. 04/L-163 are treated as exempt supplies without the right of deducting input VAT.

Hospital services and medical care

[Addition] Healthcare services and closely related activities, supplied directly to the patient by public or private healthcare institutions are treated as exempt supplies. Emergency vehicle services are exempt supplies as well.

On the other hand, services not directly related to the prevention, maintenance or cure of health issues, such as medical equipment leases or aesthetic and cosmetic interventions are not exempted from VAT.

Education services

[Amendment] The exemption for educational services does not include training or qualification classes, through which a continuous education for the participants and a valid diploma (e.g. Bachelor’s Degree) is not issued upon its completion.

Newspapers, periodic publications, and media services

[Addition] The supply of newspapers and periodic publications, as well as the supply of services from electronic media, radio and television is exempted from VAT. However, the supply of materials in a non-traditional form that can be read through devices, including electronic ones, shall not be deemed exempted from VAT.

Exemption from VAT of insurance and reinsurance supplies

[Addition] All health insurance products, supplied by CBK licensed insurance companies are exempt supplies for VAT purposes. The exemption excludes damage evaluation services.

Exemption from VAT for financial services

[Addition] The exemption for financial services is applied only for financial institutions that are licensed by competent authorities and are allowed to perform such transactions by the respective legislation.

Supply of land, buildings, and renting of immovable properties

[Addition] Only the rental of immovable property that is used for residential purpose is exempted from VAT.

Exemption from VAT when importing raw material

[Addition] The exemption is granted only to businesses that are mainly involved in production activities. In order to benefit from this exemption, businesses need to fulfill the administrative requirements listed in the AI.

Exemption from VAT when importing IT equipment

[Addition] The exemption is granted only to businesses that carry out activities in the IT sector and import new equipment for resale purposes.

The exemption is valid for IT equipment falling in tariff codes: 8471; 8473 30; 8517 6200 and 8542.

To benefit from this exemption, IT businesses need to submit a request to tax authorities and fulfill the administrative requirements.

Exemption in export

[Addition] The supply of internal processing services from the exporter of non-Kosovo goods, destined to be re-exported (in accordance with the internal processing procedures as provided in the Customs Code), are exempt supplies with the right of deduction of input VAT. If however, such supplies are made by the subcontractor of the exporting company then the supplies are not exempted.

The subcontractor is required to keep separate registers for each activity of the internal processing procedure detailing the specific requirements as outlined in this AI.

Refund procedures for goods in travelers' personal luggage

[Addition] Starting from 01.01.2017, travelers can refund VAT paid on goods which they carry on their personal luggage once leaving Kosovo, provided that the total value of the supply including VAT is greater than EUR 175.

Such goods need to be transferred out of Kosovo no later than 90 calendar days from the date of the original purchase according to the purchase invoice.

The traveler is also required to provide sufficient evidence that his permanent or usual residence is outside of Kosovo.

International transport of goods

[Addition] If the transport is considered directly related to export and is therefore treated as an exempt supply for VAT purposes, the transporter is required to provide sufficient evidence that the transport is actually carried to the destination outside of Kosovo.

If the transportation company cannot provide sufficient evidence, then the invoice for the transportation service supply should be inclusive of VAT and the paying customer has the right to deduct input VAT.

Supply of goods in and within the free zones, customs and certain warehouses

[Addition] If a taxable person receives goods for internal processing from another taxable person who carries out business in free economic zones, and such goods are returned to the taxable person in the free zone, then the transaction is VAT exempt.

This AI further elaborates on customs procedures in free economic zones.

Exercising the right of deduction

[Addition] A certified copy of purchase invoices will be considered valid for VAT deduction purposes (even if the original invoice is lost) provided that the supplier has maintained his copy of the invoice and has declared it as well.

VAT reimbursement request

[Addition] The right to VAT reimbursement on a monthly basis as foreseen for export supplies will not be applicable for supplies which are treated as exports, such as the supply of goods or services under diplomatic arrangements, or the supply of goods or services for international organizations.

Rules and procedures for decommissioning of goods

[Addition] VAT adjustment is not allowed for goods that are out of use due to having become obsolete or having expired, as well as for damages resulting from unforeseen natural events. If the taxable person receives any sort of insurance compensation, the received amount is subject to VAT.

In case a taxable person provides evidence for missing goods in accordance with the applicable procedures, such goods will not be considered as supplied for consideration. With respect to goods that have become obsolete, the taxable person is required to keep a register for such goods as well as submit written notice to TAK once such goods become obsolete.

However, in case of intentional destruction or damage of goods, VAT adjustment is required.

Theft or loss of property

[Addition] VAT adjustment is allowed in case of property lost as a result of theft. Even if the taxpayer is insured for theft and receives compensation from the insurance company, such compensation will not be VAT taxable.

Bad debt for VAT purposes

[Addition] In accordance with Law 05/L-029 on CIT, a bad debt will not be recognized if transactions with the same debtors continue even after a bad debt is already recognized. The above condition does not apply for entities carrying out activities in the public interest.

VAT deferral

[Addition] A VAT payment deferral will be allowed for businesses that import machinery and equipment included in Chapters 84 and 87 of the Harmonized Nomenclature of the System of Goods (TARIK).

In order to benefit from the right to defer the VAT payment, businesses need to fulfill all the

administrative requirements detailed in this AI. The requirement includes a bank lien/guarantee on the amount of VAT to be deferred. Additionally, the deferral is applicable only if the taxable amount of the imported goods exceeds EUR 30,000.

Reverse charge procedures for construction services

[Addition] A special reverse charge scheme shall be applicable for the supply of construction works, as well as supplies where personnel is engaged in construction activities.

Alike the standard reverse charge mechanism, the person liable to pay the VAT on the supply is the recipient of the construction services. The reverse charge scheme for construction works is applicable only if the transaction (contract) exceeds EUR 5,000.

Special regime for travel agencies

[Addition] Activities carried out by travel agencies on their own and for the direct benefit of a client, for whom it uses third party supplies, are treated as a single service and is subject to this regime.

The taxable amount for such a supply is the profit margin of the travel agency, which is calculated as the difference between the total price paid by the client and the actual value paid by the travel agency for the supplies invoiced by other taxable persons (only if that client directly benefits the supply from the third persons).

VAT according to this regime is not stated and identified separately in the issued invoice. The travel agency has no right to deduct input VAT from the supplies made by third parties that directly benefit the client. However, the travel agency has the right to deduct VAT for its administrative expenses not directly related to a single supply.

Profit margin regime procedures

The profit margin regime, the application of which is explained for the first time in this AI, foresees charging VAT on the margin of supplies by:

- a) Re-sellers that are also taxable person;
- b) Auction organizers.

This regime is valid for second hand goods, works of art, collector's items and antiques.

Second hand goods for the purposes of this regime (excluding industrial remains) can undergo repair, unless the repair results in a substantial transformation of the original good.

A taxable reseller applies VAT according to the profit margin regime in the supply of second hand goods, works of art, collectibles and antiques that are supplied to him by:

1. A taxable person that does not apply VAT or a non-taxable person;
2. Another taxable reseller if the supply of such goods is also subject to this regime
3. A taxable person that is not registered for VAT and supplies capital goods incidentally

A taxable reseller can choose to apply the margin regime if he supplies second hand goods within the country, imported on his behalf or that of a third party.

On the other hand, a taxable reseller of works of art, collectibles and antiques, has the right to apply the margin for supplies of:

- a) Works of art, collector's items and antiquities imported by himself;
- b) The supply of items which are supplied to him from the author or from persons that have the rights over such items.

If the margin scheme is applied, the taxable person is required to continue applying the scheme at least for the next 3 years.

The taxable amount of the resale transaction is the realized margin, less VAT related to the margin. VAT on the margin is equal to the difference between the selling and purchase price; by reducing the difference in VAT included in the prices then calculating output VAT on the margin.

The application of the flat rate for agricultural products supplied by farmers

[Amendment] This article is amended to reflect the new flat rate of 8% on agricultural products supplied by agricultural producers.

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