

Tax & Legal Alert

In this issue:

- I. Public Explanatory Decision No. 5/2014 on Tax Treatment of Benefits in Nature/Meals for the Employees
- II. Public Explanatory Decision No. 4/2014 on Customs Assessments and Reassessments



I. Public Explanatory Decision No. 5/2014 on Tax Treatment of Benefits in Nature/Meals for the Employees

The purpose of this Public Explanatory Decision is to clarify tax liabilities, respectively the way of declaration and payments of VAT, Personal Income Tax and Corporate Income Tax for the taxpayers that give benefits in nature - meals for their employees.

Prior to the introduction of this public ruling, taxpayers were unclear with regards to their right to deduct staff meal expenses for VAT and CIT purposes.

The Explanatory Decision first provides definitions for what constitutes an employer, employee, wages and taxable wages, taxable and exempt supply and benefits in nature.

Benefits in nature consist of various compensations not given with the wage of employees, except their normal wage. They are given in the form of goods, items or services other than in cash.

Value Added Tax

The Public Explanatory Decision provides the legal basis for the right to deduct VAT. Article 36, paragraph 2 of Law No. 03/L-146 on VAT states that a taxable person may deduct from his VAT liability, the VAT due or VAT paid in respect

of purchases of goods or services, provided he uses such goods or services for the purposes of his taxable transactions. Therefore, based on the abovementioned legal provision, a taxpayer may deduct from his VAT liability, the VAT paid in providing benefits in nature, such as meals for the employees directly involved in realizing taxable supplies.

The right to deduct input VAT does not apply to meals provided to employees who are involved in realizing exempt supplies. Similarly, if employees are involved in both exempt and taxable supplies, input VAT will be deductible proportionally to taxable supplies in relation to all supplies.

However, the right to deduct input VAT does not include reimbursements for meals employees choose to have independently.

PIT and CIT

Article 9, paragraph 2.4 of Law No. 03/L-161 determines that gross income from wages shall not include benefits in nature in form of meals provided by the employer, except for when compensation is in monetary form.

Paragraph 2.7 on the other hand provides that reimbursements from the company with regards to meals employees have independently, will not be recognized as expenses.

The Public Explanatory Decision then clarifies that a taxpayer has the right to deduct all expenses, including meals, provided that they have incurred with the aim of exercising an economic activity and that the meals are a result of an internal business policy.

II. Public Explanatory Decision No. 04/2014 on Customs Assessments and Reassessments

The purpose of this Public Explanatory Decision is to clarify tax liabilities, respectively, the declaration and payment of VAT, Personal Income Tax and Corporate Income Tax with regards to imports of goods/equipment in cases

when these imports are subject to customs assessments or reassessments.

Prior to the publication of this ruling, there was inconsistent application among taxpayers of customs assessments and reassessments for VAT and CIT purposes.

The Public Explanatory Decision provides that for tax purposes, the Single Administrative Document is the base for calculating input VAT, and necessary adjustments to the custom base should be made for the assessment/reassessment of goods or equipment that Customs undertakes.

VAT

In case of a custom base increase as a result of an assessment made by the Customs for the clearance of goods or equipment, the VAT declaration for that month includes the assessed custom base and the resulting custom duty as the taxable amount.

If such Customs assessment has been appealed and the decision for the taxpayer results positive, the adjustment in the VAT declaration form should be made in the month the decision has been issued and the adjusted amount should be declared as taxable supply.

In another case where Customs make an assessment that is the same with the incoming invoice, the taxable amount for this period is the invoice and the custom base.

However, if following this initial assessment, Customs reassesses the value of the imports by increasing the customs base, the adjusted amount is recognized as cost for the month the reassessment was done, and deductible VAT amount is increased as a result

PIT/CIT

For PIT/CIT purposes, in case an initial increase in the custom base due to the assessment by the customs has been revoked or reduced by an appeal resulting in favor of the taxpayer, the adjusted amount should be treated as revenue

in the period the decision for the appeal was issued.

In case of a reassessment of imported goods, which result in increasing the customs base, the taxpayer shall recognize the reassessed amount and the resulting additional customs fee as a cost/expense for the period the reassessment from Kosovo Customs was issued.

For PIT/CIT purposes, the additional amount resulting from the assessment of the custom base for imported equipment, the taxpayer recognizes the additional amount as a base for the depreciation of the equipment for the period of reassessment.

If the reassessment is revoked due to the appeal, the difference between the depreciated amount resulting from the initial assessment and the depreciated amount resulting from the decision of the appeal is recognized as revenue for the period.

If the custom base for the imported equipment was reassessed, and the reassessment resulted in raising the custom base, and as a result the customs duty, the taxpayer should add the reassessed amount to the depreciation base of the equipment.

Deloitte Contacts:

Olindo Shehu, CPA

Partner | Tax & Legal
Deloitte Albania & Kosovo
Rr. Ali Hadri nn., 10000
Prishtina, Republic of Kosovo
Cell: +355 68 6033116 – Albania
Cell: +386 (0)49 780 731 – Kosovo
Email: oshehu@deloittece.com

Afrore Rudi

Director | Tax & Legal
Deloitte Kosova
Rr. Ali Hadri nn., 10000
Prishtina, Republic of Kosovo
Cell: +386 (0)49 590 807
Email: arudi@deloittece.com

Ruzhdi Zenelaj

Manager | Tax & Legal
Deloitte Kosova
Rr. Ali Hadri nn., 10000
Prishtina, Republic of Kosovo
Cell: +386 (0)49 283 105
Email: rozenelaj@deloittece.com

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