



Tax & Legal Highlights

Kosovo

Issue of Public Explanatory Decision on the Application of Reverse Charge for Purchased Services Outside of Kosovo

The Tax Administration has issued the Public Explanatory Decision No. 03/2017 to clarify the tax treatment of VAT for services purchased abroad when the application of reverse charge is required, but was not applied by taxable persons, taking into account decisions of the European Court of Justice.

The basic Law No. 05/L-037 on Value Added Tax, stipulates that the taxable person to whom services are being supplied from abroad by a taxable person who is not established in Kosovo for VAT purposes, is liable to declare and pay the VAT due on those services through the Reverse Charge Mechanism.

The basic Law further foresees the right to deduct input VAT for the taxable person who applies Reverse Charge under Article 38, paragraph 2, where the time limit set for deducting input VAT is the last taxable period (month) of the following calendar year.

In this respect, in its efforts to harmonize Kosovo's VAT legislation and application with the EU VAT Directive, the Tax Administrations has issued Public Explanatory Decision No. 03/2017 with respect to the deductibility of

input VAT in cases where taxable persons have failed to apply Reverse Charge as per legislation. Accordingly, the Tax Administration has taken into account decisions of the European Court of Justice in similar cases for this issue.

As per the Public Explanatory Decision, there are two possible scenarios depending on whether the taxable person, who is liable to apply Reverse Charge, has evidenced the purchases on its purchase books or not.

- 1) If the purchases were registered in the taxable person's VAT books, and if the application of Reverse Charge wouldn't have produced a tax effect (i.e. the person had the full right of deducting input VAT), it follows that the taxable person will have the right to deduct input VAT regardless of the time limit set out in the Law on VAT. Nevertheless, the taxable person may still be subject to administrative penalties for failing to apply Reverse Charge.
- 2) In case that the purchases were not evidenced on the taxable person's VAT books, in addition to the administrative penalties as specified in the first case scenario, the taxable person's right to deduct input VAT will be limited to the statutory limit as set out by Article 38, paragraph 2 of the Law on VAT, as described above.

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