



Pursuant to article 9 of the Basic Law No. 03/L-222 on Tax Administration and Procedures, as amended and supplemented by Law No. 04/L-102 and Law No. 04/L-223, the Director General of Tax Administration of Kosovo, issues:

PUBLIC EXPLANATORY DECISION No. 05/2016

OBLIGATION TO PAY VAT FOR THE SERVICES SUPPLIED IN THE AREA OF CONSTRUCTION- APPLICATION OF REVERSE CHARGE

PURPOSE

The purpose of this Public Explanatory Decision is to clarify the tax treatment of VAT aspects on the supply of services in the area of construction, namely application of the reverse charge on VAT domestically.

LEGAL BASIS

Article 52, paragraph 1, subparagraph 1.4 of the Law No. 05/L-037 on the Value Added Tax defines that Person liable to pay VAT are:

"1.4. the Minister of Finance may issue a sublegal act to provide the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:

1.4.1. the supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property;

1.4.2. the supply if staff is engaged in activities covered by sub-paragraph 1.4.1 of this paragraph"

Article 70, paragraph 1 of the Administrative Instruction No.03/2015 for implementing the Law No.05/L-037 on the Value Added Tax defines that:

"Pursuant to Article 52, paragraph 1, subparagraph 1.4.1 and 1.4.2 of the Law. The person obliged to pay VAT is the taxable person to whom the following supplier were made to:

1.1. supply of construction works, including repairs, cleaning, maintenance, alteration services and demolition relating to the immovable property;

1.2. supply if the staff is engaged in the above-mentioned activities".

Article 6 of the Administrative Instruction MF – No. 06/2016 on amending and supplementing the Administrative Instruction No. 03/2015 on implementation of Law No. 05/L-037 on Value Added Tax, we cite:

1. *Text in article 70, paragraph 2 of the Administrative Instruction No. 03/2015 is deleted and replaced as follows:*
 2. *Persons in the special construction scheme are the taxable persons which offer services in construction area for other taxable persons.*
2. *Article 70, paragraph 3, and subparagraph 3.1. of the Administrative Instruction No. 03/2015, is deleted and the text of subparagraph 3.2 is transferred in paragraph 3.*
3. *Article 70, paragraph 11 of the Administrative Instruction No. 03/2015, is reformulated as follows:*
 11. *On the basis of the afore explanations, all construction services (recorded from subparagraph 10.1 until subparagraph 10.11 of paragraph 10 of this article), offered by taxable person for a taxable person, from the date of entry into force of this Administrative Decision, are subject of implementation of the reverse charge domestically, regardless of the date of contract or annex contract conclusion.*

DEFINITIONS

Terms and expressions used in this public explanation have the same meaning as defined by the Law nr. 05/ L-037 on Value Added Tax and Administrative Instruction No. 03/2015 and No. 06/2016 on implementing the Law on VAT.

PERSONS IN THE SPECIAL CONSTRUCTION SCHEME

Persons in the special construction scheme are the taxable persons that offer services in construction area for the other taxable persons. Hence, taxable person for the need of this Public Explanatory Decision is considered person who is registered for VAT purposes in Kosovo – VAT declarer.

APPLICATION OF REVERSE CHARGE FOR VAT IN THE AREA OF CONSTRUCTION

The application of the reverse charge in the construction applies only to taxable persons who are part of the transaction (the supplier and recipient of the service). Hence, the supplier and the recipient of the service should be registered for VAT in Kosovo.

Reverse charge is applied to the supply of construction services. Also, the reverse charge applies in cases of mixed supply, when services and goods are supplied in the same transaction, regardless of the ratio between them.

The transaction is not subject to the application of the reverse charge, in cases when:

1. Supply of goods is not associated with supply of services;
2. One of the parties to the transaction (supplier or recipient of the service provider) is not a taxable person - Declarer of VAT;

VAT REVERSE CHARGE

Under the reverse charge scheme (hereinafter Special scheme) for the supply of services relating to the construction area, the obligation to pay VAT is transferred to the taxable person registered for VAT in Kosovo, to whom the supplies are carried out for.

PAYMENT OF VAT

Pursuant to Article 52, sub-paragraph 1.4 of the Law, the person liable to pay VAT is the taxable person to whom the construction works were supplied (the recipient of the service), including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property.

INVOICING

Content of invoices issued by taxable persons to taxable persons have to be in compliance with

Article 45 of the Law No.05/L-037 on VAT.

Under the special scheme, the supplier, although he/she is not obliged to pay the VAT, he/she is obliged to issue a tax invoice.

The supplier shall specify on the invoice that the recipient of the service is liable to pay the VAT in placing reference to Article 52, paragraph 1, sub-paragraph 1.4 of the Law or any other reference indicating that the supply is subject to the reverse charge procedure. The following text will be considered as appropriate: *"Reverse charge, subparagraph 1.4.1 or 1.4.2 of Article 52 of the Law on VAT in Kosovo"*.

CALCULATION OF VAT

The recipient of the supply shall calculate VAT on the basis of the invoice received from the supplier.

CHARGEABLE EVENT AND CHARGEABILITY OF VAT

Chargeable event and chargeability of VAT is defined by Article 22 of the Law on VAT, as follows:

1. The chargeable event shall occur and VAT shall become chargeable when the goods and services are supplied.
2. Regardless of paragraph 1 of this Article, specific rules in the case of successive statements of accounts or successive payments are the following:
 - 2.1. When we have successive statements of accounts or successive payments, the supply with goods, other than consisting in renting of goods for a certain period or sale of goods on referred terms, as referred to sub-paragraph 2.2 of paragraph 2 of Article 10 of the Law No. 05/L-037 on VAT, or the supply of services shall be regarded as being completed on expiry of the periods to which the statements of accounts or payments relate;
 - 2.2. The continuous supply of goods and services over a period of time shall be regarded as being completed at intervals of one (1) month;
 - 2.3. Long-term contracts including long-term construction contracts and long-term installation contracts shall be regarded as completed;
 - 2.3.1. In the month of issuance of Interim Payment Certificate, but no longer than one (1) month after the issuance of Interim Payment Certificate in cases when the technical receipt of works is done later;
 - 2.3.2. In cases when during the year there have been issued one or more situations, at the end of the year there is required that there should be issued one situation which will be based on real measurement of the works done; or;
 - 2.3.3. if during the year there is no situation issued, than at the end of the year shall arise the obligation to charge VAT based on the real measurement of the works done.
3. Payments received or invoices issued are regulated as follows:
 - 3.1. When payment is due or has been made on account before the goods or services are supplied, VAT shall become chargeable on receipt of payment and on the amount received;
 - 3.2. When the invoice is issued before the goods or services are supplied, VAT shall become chargeable when the invoice is issued.

THE RIGHT OF VAT DEDUCTION

Taxable person, the subject to this explanatory decision, may deduct from its VAT obligations, the VAT obligation or the VAT paid in connection with purchases of goods or services, provided that he used or he/she will use, those goods or services for purposes of his taxable transactions.

For goods and services used or to be used by a taxable person, for transactions which VAT may be deducted and transactions for which VAT shall be deducted, only the VAT amount attributed to taxable transaction is deducted. Part of deductible VAT shall be determined in accordance with Article 39 of Law no. 05/ L-037 on VAT.

VAT DECLARATION

Recipient of the service, shall include in the form of VAT the VAT calculated on purchases of services in the area of construction subject to the reverse charge, provided by the supplier.

SERVICES IN THE AREA OF CHARGE CONSTRUCTION SUBJECT TO VAT REVERSE CHARGE

Services in the area of construction, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property under Article 70 of the Administrative Instruction Nr. 03/2015 for implementing of Law no. 05 /L-037 on VAT, stand for:

- a. Projection services and other works related to the construction;
- b. Preparatory works in construction sites, works for the demolition of the parts;
- c. Construction of buildings and its parts;
- d. Installation works;
- e. Final construction works;
- f. Maintenance, renovation and repair of buildings or its parts, including, cleaning, putting, tiles, wallpaper and parquets (floor) works;
- g. Provision of oversight works;
- h. Installation or the fitting of equipment of machinery which after the installation or fitting become immovable property;
- i. Leasing out tools and equipment for construction or demolition, with their user;
- j. All other services which include the supply of movability and their inclusion in under construction, so that the movability creates quality of immovability;
- k. Staff engagement, if the staff conducts construction services.

Based on the explanations provided above, all construction works (identified from point „a“ to point „k“) provided by the taxable person for the taxable person, from the date of entry into force of this Administrative Instruction No. 06/2016, shall be subjected to application of reverse charges within the year, regardless of the date of contract or annex contract conclusion.

For more in relation to services in the construction area, can be sued the Code – Classification of Economy Activities (NACE Rev.2), Sector F – Construction.

EXAMPLE No. 1:

Company „A“ (investor) a taxable person in Kosovo, on 10 December 2016, engages company „B“ (contractor) a taxable person in Kosovo for carrying out the final construction of the building finance by him, in amount of 177,000 € (taxable supply = 150,000 € and 18 % VAT = 27,000 €).

Contractor „B“, for completion of this Works engages company „C“ (sub-contractor) in amount of 118,000 € (taxable supply = 100,000 € and 18 % VAT = 18,000 €) which, for completed works issues an invoice to the contractor „B“.

After completion of works, Company „A“ (investor) sells taxable object in taxable amount of 200,000 €.

VAT TAX TREATMENT- THROUGH REVERSE CHARGE:

A. Declarations by the Company "C" (Subcontractor):

Under the provisions of Article 52, sub-paragraph 1.4. of the Law Nr. 05 /L-037 on VAT, the Company „C“ will not calculate the VAT on this service because the obligation for payment of VAT is transferred to the recipient of the service, namely the company „B“.

Registration in the declaration form and payment of VAT:

No.	Name	Sales
[10]	Exempted sales with the right to credit	100,000.00€

While purchases for which is entitled to the right to deduct VAT are recorded in the relevant section of purchase.

B. Declaration of Company „B“ (The contractor):

Under the provisions of Article 52, sub-paragraph 1.4. No. 05/L-037 on VAT, company „B“ will not include VAT on this service because the obligation to pay VAT is transferred to the recipient of the service, so the company „A“.

Registrations in the form of declaration and payment of VAT:

No.	Name	Sales		Calculated VAT
[10]	Exempted sales with the right to credit	150,000.00 €		
[28]	Purchases subject to the reverse charge rate 18 %	100,000.00 €	[29]	18,000.00 €

No.	Name	Purchase		Deductible VAT
[65]	Crediting VAT right in connection with the reverse charge at 18 %	100,000.00 €	[66]	18,000.00 €
[72]	VAT to be paid	0.00 €		

C. Declaration of Company „A“ (Investor):

**a) If investor provides only taxable supplies
(right of VAT deduction of 100 %)**

Registration in the form of declaration and payment of VAT:

No.	Name	Sales		Calculated VAT
[12]	Taxable sales with rate of 18 %	200,000.00 €	[13]	36,000.00 €
[28]	Purchases subject to the reverse charge rate 18 %	150,000.00 €	[29]	27,000.00 €

No.	Name	Purchase		Deductible VAT
[65]	Crediting VAT right in connection with the reverse charge at 18 %	150,000.00 €	[66]	27,000.00 €
[72]	VAT to be paid	36,000.00 €		

b. If the investor supplies taxable supplies and exempt supplies (70 % taxable supplies, while 30 % of exempt supplies without the right to deduct VAT).

Registration in form of declaration and payment of VAT:

No.	Name	Sales		
[9]	Sales of credit exempt without the creditation right	60,000.00 €		Calculated VAT
[12]	Taxable sales with rate of 18 %	140,000.00 €	[13]	25,200.00 €
[28]	Purchases subject to the reverse charge rate 18 %	150,000.00 €	[29]	27,000.00 €

No.	Name	Purchase		
[33]	Purchase, imports with non deductible VAT	53,100.00 €		Deductible VAT
[65]	Crediting VAT right in connection with the reverse charge at 18 %	105,000.00 €	[66]	18,900.00 €
[72]	VAT to be paid	33,300.00 €		

c. If the investor supplies only exempted supplies without the right of VAT crediting:

Registrations in the form of declaration and payment of VAT:

No.	Name	Sales		
[9]	Exempted sales with the right to credit	200,000.00 €		Calculated VAT
[28]	Purchases subject to the reverse charge rate 18 %	150,000.00 €	[29]	27,000.00 €

No.	Name	Purchase
[33]	Sales, imports with non deductible VAT	177,000.00 €
[72]	VAT to be paid	27,000.00 €

EXAMPLE No. 2

Investor engages contractor for construction of warehouse and has received a bill from the supplier (contractor) in amount of 100,000 € and instead of VAT was written: „Reverse charge, sub-paragraph 1.4 of article 52 of the Law on VAT in Kosovo“.

a. If the investor supplies only taxable supplies (Warehouse uses for 100 % taxable supplies)

Registrations in form of declaration and payment of VAT:

No.	Name	Sales		Calculated VAT
[28]	Purchases subject to the reverse charge rate 18 %	100,000.00 €	[29]	18,000.00 €

No.	Name	Purchase		Deductible VAT
[32]	Purchase and investment imports without VAT	100,000.00 €		
[65]	Crediting VAT right in connection with the reverse charge at 18 %	100,000.00 €	[66]	18,900.00 €
[72]	VAT to be paid	0.00 €		

b. If the investor supplies taxable supplies and exempt supplies (Mixed supplies e.g. 70 % with VAT, 30 % exempted from VAT)

No.	Name	Sales		Calculated VAT
[28]	Purchases subject to the reverse charge rate 18 %	100,000.00 €	[29]	18,000.00 €

No.	Name	Purchase		Deductible VAT
[32]	Purchase and investment imports without VAT	70,000.00 €		
[34]	Purchase and investment imports with non deductible VAT	35,400.00 €		
[65]	Crediting VAT right in connection with the reverse charge at 18 %	70,000.00 €	[66]	12,600.00 €
[72]	VAT to be paid	5,400.00 €		

**c. If investor supplies only supplies exempted from VAT without the right to exempt VAT
(Warehouse is used only for supplies exempted from VAT)**

No.	Name	Sales	Calculated VAT
[28]	Purchases subject to the reverse charge rate 18 %	100,000.00 €	[29] 18,000.00 €

No.	Name	Purchase
[34]	Sales, imports with non deductible VAT	118,000.00 €
[72]	VAT to be paid	18,000.00 €

ENTRY INTO FORCE

This Public Explanatory Decision is implemented from the date of entry into force of the Administrative Instruction MF – No. 06/2016 on amending and supplementing the Administrative Instruction No. 03/2015 on implementation the Law no. 05/L-037 on Value Added Tax and hence it repeals the Public Explanatory Decision No. 01/2016 of 24 February 2016.

Date 21/12/2016

