



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

## **PUBLIC EXPLANATORY DECISION No. 3/2016 ON CUSTOMS ASSESSMENTS AND REASSESSMENTS**

### **PURPOSE**

The purpose of this Public Explanatory Decision is to clarify tax liabilities, respectively the way of declaration and payments of Value Added Tax, Personal Income Tax and Corporate Income Tax for the taxpayers for which their activity is related to import of goods/equipments in cases when these imports are subject to customs assessments or reassessments.

### **DEFINITION**

For the purpose of this public Explanatory Decision, the following definition has this meaning:

**Single Administrative Document** – *document that has the form determined with Customs Legislation, which is used within structure of goods trade with the third states including Customs Procedures related with this trade.*

### **LEGAL BASE**

Article 13, paragraphs 3 and 5 of the Law No. 03/L-222 on Tax Administration and Procedures, determine how to create and retain records. Citation:

*“3... Books and records for businesses with annual turnovers over fifty thousand (50.000) euro shall be kept in conformity with generally accepted accounting principles of Kosovo as supplemented by International Financial Reporting Standards.*

*5. Goods in possession of a taxpayer must be documented as to origin.”*

Article 19, paragraph 8 of the Law no. 03/L-222 on Tax Administration and Procedures, determines the reductions allowance to determine taxable income. Citation:

*“8. For determination of taxable income, the taxpayer is allowed a reduction from gross income for costs paid in or outside the country, if these costs in full or in part are in connection with economic activity performed during that tax period and if those costs are supported by evidence to prove the costs incurred and the payments made.”*

Section 17, paragraph 4 of the Administrative Instruction No. 15/2010 on implementation of the Law on Tax Administration and Procedures, determines the requests of books and records. Citation:

*“4. Businesses with annual gross turnover of more than €50,000, and those who opt to determine their tax obligation based on maintenance of adequate books and records, must maintain books and records in accordance with the requirements of the accounting standards of Kosovo. Books and*

*records maintained must be sufficiently adequate to allow for complete and accurate accounting of all income and expense items applicable to a tax period... ”*

Section 19, paragraph 1 of Administrative Instruction No. 15/2010 on implementation of the Law on Tax Administration and Procedures, determines the origin of goods. Citation:

*“1. .... Paragraph 5 of Article 13 of the Law provides that goods in possession of a taxpayer be documented as to origin. This means that a taxpayer must be able to provide supporting documentation which justifies the origin of both the goods at the location, or locations, of the taxpayer and goods of the taxpayer in circulation (outside the location(s) of the taxpayer). Taxpayers must be able to document all goods from the time of receipt (whether by way of import, purchase, or exchange or other means) until they have been sold or otherwise disposed, including the documentation of the sale or other disposition. Included in the possible documentation that must be retained are:*

*... A key document for TAK purposes is the SAD which is acceptable evidence that the goods have passed through the border and have undergone customs procedures.*

Article 23, paragraph 1 of the Administrative Instruction No. 15/2010 2010 on implementation of the Law on Tax Administration and Procedures, determines the allowance of reductions. Citation:

*“1. As provided for in the relevant tax legislation, the taxpayer is allowed to deduct from gross income the expenses paid or incurred during the tax period related to economic activity in that period if these costs are fully or partially in accordance with economic activity performed during the tax period. Similarly, a taxpayer is allowed a credit in a tax declaration in accordance with the VAT legislation in force.... ”*

Article 25, paragraph 1, sub-paragraph 1.1 of the Law No. 05/L-037 on Value Added Tax, determine taxable amount on imports of goods, citation:

*“1.1. Regarding the importing of goods, the taxable amount shall be the value for customs purposes, determined in accordance with the Customs legislation in force in Kosovo. ”*

Article 36, paragraph 2 of the Law No. 05/L-037 on Value Added Tax, determines the right to deduct VAT. Citation:

*2. “Unless otherwise stipulated by this Law, a taxable person may deduct from his VAT liability, the VAT due of VAT paid in respect of purchases of goods or services – hereinafter indicated as input VAT – provided he used or will use such goods or services for the purpose of his taxable transactions.”*

Article 53, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, determine the tax period on VAT. Citation:

*“1. .... the tax period of all taxable persons shall be each calendar month.”*

Article 15, paragraph 1 of the Law No. 05/L-028 on Personal Income Tax determine general provisions of expenses. Citation:

*“1. Subject to the provisions of this Article, a deduction shall be allowed from gross income generated from intangible property, rents or business activities those expenses paid or incurred during the tax period are fully, exclusively and directly related to such income generating activities, including premiums for health insurance paid on behalf of an employee and those dependents eligible to be included in the insurance policy of the employee.”*

Article 30, paragraph 1, sub-paragraph 1.14 of the Law No. 05/L-028 on Personal Income Tax determine that no deduction shall be allowed for:

*“1.14. Expenses not documented according to requirements set out in a sub-legal act issued by the Minister shall be considered as unallowable expenses.”*

Article 32, paragraph 1 sub-paragraph 1.16 of the Administrative Instruction No. 01/2016 for implementing the Law on Personal Income Tax determine that the following expenses are considered unallowable expenses. Citation:

*“1.6. Undocumented expenses and expenses which does not meet the criteria stipulated by the Law on Tax Administration and Procedures.”*

Article 9, paragraph 1 of the Law No. 05/L-029 on Corporate Income Tax determine allowable expenses. Citation:

*“1. Subject to the limitations in this Law, in determining taxable income, a taxpayer shall be allowed as a deduction from gross income expenses paid or incurred during the tax period wholly and exclusively in connection with its economic activities, including premiums for health insurance paid on the interest of the employee and the dependent ones which are included in the employee’s policy.”*

Article 9, paragraph 7 of the Law No. 05/L-029 on Corporate Income Tax, determine that no deduction shall be allowed for, citation:

*“7. No deduction shall be allowed for expenses, other than the expenses documented in the manner required under the sub-legal act issued by the Minister.”*

Article 13, paragraph 6 of Administrative Instruction No. 02/2016 on implementing the Law on Corporate Income Tax determine criteria on recognizing deductible expenses. Citation:

*“6. In order to be allowed as deductible, expenses must be fully documented and be available for inspection upon request from Tax Administration. Documentation requirements are stipulated in the Law on Tax Administration and Procedures.”*

## **CUSTOMS ASSESSMENT/REASSESSMENT**

Customs assessment is done in case of goods import while customs reassessment is done after the goods clearance has occurred.

For VAT purpose, Single Administrative Document - SAD is a base for calculating input VAT (VAT that is paid in case of import of goods).

For all cases that Customs undertake assessment/reassessment actions for the goods of equipments, by changing customs base, the taxpayer should make the necessary adjustments for tax purposes.

Effects of customs assessments/reassessments, as well as decisions of competent Bodies for reviewing appeals (Kosovo Customs, Court, etc.) are reflected through following examples:

### **Example no.1:**

- On 02 June 2016, the taxpayer "X" imports goods in the amount of €3,000. In case of goods clearance, the Customs makes customs assessment by raising customs base for €1.500. Therefore, total assessment from the Customs is done as follows:

Invoice	3,000.00€
Increase of Customs base	1,500.00€
Customs base	4,500.00€
Customs fee 10%	450.00€
Taxable amount	4,950.00€
Liability for VAT (18%)	891.00€

### **Registration for VAT**

For VAT purposes, the VAT declaration form for the month of June 2016 should be done on columns as follow:

[35] Imports with 18% rate	4,950.00€	[36]	891.00€
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### **Registration for PIT/CIT**

For purposes of PIT/CIT, Cost of Goods Sold – CGS will be:

Invoice	3,000.00€
Customs fee 10%	450.00€
Total	3,450.00€

- Customs assessment has been appealed and the decision for the taxpayer results positive. The decision from competent Body has been issued on 19 November 2016, which results as follows:

Customs fee 10%	150.00€
VAT18%	297.00€
Total	447.00€

After decision making from competent body, adjustments in VAT declaration form for the period of November 2016 should be done for tax purposes, as follows:

[24] Adjustments to increase VAT with 18% rate	1,650.00€	[25]	297.00€
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### **Registration for PIT/CIT**

If customs assessment in the amount of €1.650 (€1.500 + €150), made on the occasion of customs clearance, €150 - custom fee has been recognized by the taxpayer as Cost of Goods Sold - CGS during the registration in the accounting, then, based in the aforementioned decision, the taxpayer is obliged to make the necessary corrections and must be aware that during the preparation of the annual Statement for 2016, an amount of €150 cannot be recognized as Cost of Goods Sold - CGS.

### Example no.2:

02 June 2016, taxpayer "X" imports goods in the amount of € 3,000. In case of goods clearance, the Customs makes customs assessment by increasing customs base for € 1.500. Therefore, the overall assessment from Customs is done as follows:

Invoice	3,000.00€
Increase of customs base	1,500.00€
Customs base	4,500.00€
Customs fee 10%	450.00€
Taxable amount	4,950.00€
Liability for VAT (18%)	891.00€

### Registration for VAT

For VAT purposes, the presentation in the VAT declaration form for June 2016 should be done on columns, as follows:

[35] Imports with 18% rate	4,950.00€	[36]	891.00€
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Customs assessment has been appealed and the decision for the tax payer results positive. The decision from the competent body has been issued on 10 June 2017, which results as follows:

Customs fee 10%	150.00€
VAT 18%	297.00€
Total	447.00€

After decision making from competent body, adjustments in VAT declaration form for the period June 2017 should be done for tax purposes, as follows:

[24] Adjustments to increase VAT with 18% rate	1,650.00€	[25]	297.00€
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### Registration for PIT/CIT

If customs assessment in the amount of €1.650 (€1.500 + € 150), made on the occasion of customs clearance, €150 - custom fee has been recognized by the taxpayer as Cost of Goods Sold – CGS (during the tax period 2016), then, based on the abovementioned decision, the taxpayer is obliged to treat the same amount as income in 2017.

### Example no. 3:

On 08 March 2016, the taxpayer "X" imports goods in the amount of €5,000. In case of goods clearance, the Customs makes customs assessment that is the same with commercial invoice €5,000. Therefore, the assessment from customs is done as follows:

Invoice	5,000.00€
Increase of customs base	0.00€
Customs base	5,000.00€
Customs fee 10%	500.00€
Taxable amount	5,500.00€
Liability for VAT (18%)	990.00€

### Registration for VAT

For VAT purposes, the VAT declaration form for March 2016 should be done on columns, as follows:

[35] Imports with 18% rate	5,500.00€	[36] 990.00€
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Kosovo Customs – After-Importing Control Sector, on 28 September 2016, makes customs reassessment of import according to the example no.3 by increasing customs base for € 3,000 and for the taxpayer issues this decision:

Customs fee 10%	300.00€
VAT 18%	594.00€
Total	894.00€

After receiving the reassessment from Kosovo Customs, adjustments in VAT declaration form for the period September 2016 should be done for tax purposes, as follows:

[61] Adjustments to reduce the VAT with 18% rate	3,300.00€	[62] 594.00€
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### Registration for PIT/CIT

Customs reassessment in the amount of €3,300 (€3,000 + €300) carried out by After-Importing Control Sector, the taxpayer has the right to recognize as an expense of the period (during tax period 2016), only the amount paid on behalf of the customs fee €300, unless the taxpayer proves that has paid the supplier for the estimated part by Kosovo Customs (€3,000).

#### **Example no.4:**

On 02 June 2016, the taxpayer "X" imports equipments (Category II) in the amount of €10,000. In case of goods clearance, the Customs makes customs assessment by increasing customs base for €2,000. Therefore, general assessment from customs is done as follows:

Invoice	10,000.00€
Increase of customs base	2,000.00€
Customs base	12,000.00€
Customs fee 10%	1,200.00€
Taxable amount	13,200.00€
Liability for VAT (18%)	2,376.00€

#### **Registration for VAT**

For VAT purposes, the VAT declaration form for June 2016 should be done on columns, as follows:

[39] Investment imports with 18% rate	13,200.00€	[40] 2,376.00€
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Customs assessment has been appealed and the decision for the taxpayer results positive. The decision from competent body has been issued on 26 December 2016, which results as follows:

Customs fee 10%	200.00€
VAT 18%	396.00€
Total	596.00€

After decision making from competent body, adjustments in VAT declaration form for the period of December 2016 should be done for tax purposes, as follows:

[24] Adjustment to increase VAT with 18% rate	2,200.00€	[25] 396.00€
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#### **Registration for PIT/CIT**

If customs assessment in the amount of €2,200 (€2,000 + €200), done in case of goods clearance, €200 - the customs fee is recognized from the taxpayer as a base for equipment's depreciation during the accounting records, then based on the above-mentioned decision, the taxpayer is obliged to make the necessary adjustments and should consider that when preparing the Annual Statement for 2016 cannot recognize the amount of €200 as a base for equipment's depreciation.

### **Example no.5:**

On 02 June 2016, the taxpayer "X" imports equipments (Category II) in the amount of €10,000. In case of goods clearance, the Customs makes customs assessment by increasing customs base for €2,000. Therefore, general assessment from customs is done as follows:

Invoice	10,000.00€
Increase of customs base	2,000.00€
Customs base	12,000.00€
Customs fee 10%	1,200.00€
Taxable amount	13,200.00€
Liability for VAT (18%)	2,376.00€

### **Registration for VAT**

For VAT purposes, the presentation in the VAT declaration form for June 2016 should be done on columns as follows:

[39] Investment imports with 18% rate	13,200.00€	[40] 2,376.00€
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Customs assessment has been appealed and the decision for the taxpayer results positive. The decision from competent body has been issued on 25 March 2017, which results as follows:

Customs fee 10%	200.00€
VAT 18%	396.00€
Total	596.00€

After decision making from competent body, adjustments in VAT declaration form for the period March 2017 should be done for tax purposes, as follows:

[24] Adjustment to increase VAT with 18% rate	2,200.00€	[25] 396.00€
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### **Registration for PIT/CIT**

If customs assessment in the amount of €2,200 (€2,000 + €200), done in case of goods clearance, 200€ - the customs fee is recognized from the taxpayer as a base for equipment's depreciation (during tax period 2016), then based on the above-mentioned decision, the taxpayer is obliged to make the necessary adjustments in 2017:

Description	Value
The asset assessed by Customs: 10,000€ + 1,200€	11,200.00 €
Accumulated depreciation over a year: $11,200/5 = 2,240 \times 1$	2,240.00 €
The value of the asset based on the decision 10,000€ + 1,000€	11,000.00 €
Depreciation for the period $11,000 / 5 = 2,200€ \times 1$	2,200 €
Adjustment: The amount that should be recognized as revenue for the period $(2,240€ - 2,200€ = 40€)$	40 €
The base for further depreciation (for the next four years)	11,000.00 €



### **Example no. 6:**

On 02 June 2016, the taxpayer "X" imports equipments (Category II) in the amount of €8,000. In case of goods clearance, the Customs makes customs assessment that is the same with commercial invoice €8,000. Therefore, the assessment from customs is done as follows:

Invoice	8,000.00€
Increase of customs base	0.00€
Customs base	8,000.00€
Customs fee 10%	800.00€
Taxable amount	8,800.00€
Liability for VAT (18%)	1,584.00€

### **Registration for VAT**

For VAT purposes, the presentation in VAT declaration form for June 2016 should be done on columns, as follows:

[39] Investment imports with 18% rate	8,800.00€	[40] 1,584.00€
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Kosovo customs - After-Importing Control Sector, on 05 June 2017 makes customs reassessment of import according to the example no.6 by increasing customs base for €2,500 and for the taxpayer issues this decision:

Customs fee 10%	250.00€
VAT 18%	495.00€
Total	745.00€

After reassessment from Kosovo Customs, adjustments in VAT declaration form for the period of June 2017 should be done for tax purposes, as follows:

[61] Adjustments to decrease VAT with 18% rate	2,750.00€	[62] 495.00€
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### **Registration for PIT/CIT**

Customs reassessment in the amount of €2,750 (€2,500 + €250) carried out by After-Importing Control Sector, the taxpayer is entitled to increase the value of the asset only for the amount paid on behalf of the customs fee of €250, unless the taxpayer proves that has paid the supplier for the assessed part by Kosovo Customs (€2,500).

Description	Value
The asset assessed from Customs: €8,000 + €800	8,800.00 €
Accumulated depreciation over a year: $8,800/5 = 1,760 \times 1$	1,760.00 €
Residual value of the asset after the first year: $8,800 - 1,760$	7,040.00 €
The value of the asset on the basis of customs reassessment has increased €2,750 (2,500 + 250)	
Adjustment after reassessment:	
Residual value of the asset after the first year: $8,800 - 1,760$	7,040.00 €
Customs reassessment	250.00 €
New base for depreciation: $7,040 + 250$	7,290.00 €
Depreciation for period: $€7,290 / 5$	1,458.00 €

## ADJUSTMENTS

Treatment of the cost of goods or value of imported equipments until the date of this Explanatory Decision, which is conducted by the taxpayers, will be acceptable regardless of the invoice value or customs assessment.

In all cases when customs decisions have been appealed and had changes, the taxpayer should do necessary adjustments in accordance with relevant decisions.

Adjustments for tax purposes should be done in the Decision period by incorporating effects.

All adjustments should be based on calculations done in a specific way by reflecting events chronology.

## CONCLUSION

Following the entry into force of this Public Explanatory Decision, Cost of Goods Sold – CGS and the value of imported assets will be treated according to the International Accounting Standards or International Financial Reporting Standards.

## ENTRY INTO FORCE

This Public Explanatory Decision shall enter into force on the date of signature by the Director of TAK and the same repeals the Public Explanatory Decision no. 04/2014 for Customs Assessments and Reassessments, dated 25 November 2014.

Date: 02/06 2016

Prishtina

Mr. Sakip Imeri  
Director General of TAK

