



PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT
INSTITUCIONET E PËRKOQSHME TË VETËQEVERISJES
PRIVREMENE INSTITUCIJE SAMOUPRAVLJANJA

MINISTRY OF ECONOMY AND FINANCE/TAX ADMINISTRATION OF KOSOVO
MINISTRIA PËR EKONOMI DHE FINANCA/ADMINISTRATA TATIMORE E KOSOVËS
MINISTARSTVO ZA PRIVREDU I FINANSIJE/PORESKA ADMINISTRACIJA KOSOVA



ADMINISTRATIVE INSTRUCTION

No. 03/2005, Date .02.2005

IMPLEMENTING UNMIK REGULATIONS No. 2002/3 ON PROFIT TAX & 2004/51 ON CORPORATE INCOME TAX

The Minister of Finance and Economy,

Based on the authority given to him under section 23.4 of UNMIK Regulation No. 2002/3 On Profit Tax and section 24.4 of UNMIK Regulation No. 2004/51 On Corporate Income Tax;

Recognizing the need for certainty as regarding tax liabilities for Socially Owned Enterprises that are in the process of privatization,

Taking into consideration UNMIK Regulation No. 2002/12 On the Establishment of the Kosovo Trust Agency and in particular the powers given to that organization in respect of Socially Owned Enterprises under section 6 of that Regulation,

Hereby gives the following Administrative Instruction:

Section 1 Definitions

‘Disqualified reorganization’ means any reorganization that has not been granted approval from the Tax Administration of Kosovo. Such a disqualified reorganization shall be treated as a normal sale of entity or its assets.

‘KTA’ means the Kosovo Trust Agency established under UNMIK Regulation No. 2002/12.

‘NewCo’ means a newly established company formed as a wholly owned subsidiary of an SOE pursuant to Section 6.2.a of UNMIK Regulation No. 2002/12.

‘Qualified reorganization’ means a reorganization of an SOE included in the process of privatization according to the rules stipulated by KTA, pursuant to a written plan of reorganization for business, economic and financial purposes and which does not have as its purpose avoidance of tax by any parties or shareholders. A qualified reorganization is approved in writing by the Tax Administration of Kosovo.

'Reorganization' includes the following:

- (a) A change in the form of an entity, or in its name or place of organization;
- (b) A recapitalization of an entity;
- (c) A combination of two or more entities into one, whether by fusion, absorption, or otherwise;
- (d) A division of an entity into two or more entities, whether by split up, split off, spin off or otherwise that (immediately after the division) are under the control of the divided entity, its shareholders or both;
- (e) The acquisition of control of an entity in exchange solely for voting interest in the acquiring entity;
- (f) The acquisition of substantially all assets of an entity in exchange solely for voting interest in the acquiring entity; and
- (g) The transfer of some or all of the assets of an SOE to one or more NewCos pursuant to Section 8.1 of UNMIK Regulation No. 2002/12.

'SOE' means a Socially Owned Enterprise as defined in UNMIK Regulation No. 2002/12.

Section 2

Tax treatment of rights and liabilities in case of a KTA SOE privatization spin off procedure

In the case of a qualified reorganization of a SOE, where the SOE establishes one or more NewCos, the tax position of the SOE is not transferred to the NewCo(s) but remains with the SOE. For the purpose of the previous sentence, 'tax position' means any tax due, any tax loss or any tax credit for each of the applicable taxes in Kosovo but without prejudice to the right of the KTA to assign responsibility to the NewCo(s) for settlement of such tax liabilities as may be agreed from time to time between the KTA and the Ministry of Finance and Economy or as may be determined by applicable law.

Section 3

Obtaining written approval from Tax Administration

A SOE which is reorganized shall seek written approval from the Tax Administration of Kosovo that the reorganization is a qualified reorganization. Each SOE applying for a qualified reorganization status shall submit a written request to the Tax Administration explaining the reasons why the reorganization is taking place, outlining the reorganization mechanism and summarizing the assets and liabilities (if any) to be transferred. The Tax Administration before granting the approval reserves the right to audit the books and records of the SOE.

Section 4

Entry into effect

This Administrative Instruction enters into effect on February 2005 and applies in respect of the 2004 and future tax years.

Haki Shatri 
Minister of Finance & Economy