



UNMIK/REG/2004/51
4 December 2004

REGULATION NO. 2004/51
ON CORPORATE INCOME TAX

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo,

Taking into account a communication from the President of the Assembly of Kosovo dated 16 September 2004, conveying the Provisional Institutions of Self-Government's proposed legislation on this matter and emphasizing the need for appropriate legislative action,

Recognizing that UNMIK Regulation No. 2002/3 of 20 February 2002 on Profit Taxes in Kosovo imposes a tax on the profit of large entities,

Recognizing that UNMIK Regulation No. 2000/29 of 20 May 2000, as amended, on the Establishment of a Presumptive Tax, imposes a tax on the presumed, rather than actual, profit of all other entities,

For the purpose of establishing a single income tax law for corporate organizations in Kosovo that imposes a tax consistent with international best practices and European standards,

Hereby promulgates the following:

CHAPTER I
GENERAL PROVISIONS

Section 1
Definitions

For the purposes of the present Regulation:

- (a) “Capital assets” means tangible property with a service life of one year or more;
- (b) “Dividend” means a distribution by a company to a shareholder:
 - (i) of cash or stock with respect to the shareholder’s equity interest in the company; and
 - (ii) of property other than cash or stock, unless the distribution is made as a result of liquidation;
- (c) “Economic activity” means an activity entered into for the purpose of earning income;
- (d) “Financial statements” means the general purpose financial statements prepared in accordance with UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations;
- (e) “Foreign source income” means gross income that is not Kosovo source income;
- (f) “Gross income” means all income received or accrued, including but not limited to, income from production, trade, financial, investment, professional or other economic activities;
- (g) “Intangible property” means patents, copyrights, licenses, franchises, and other property that consists of rights only, but has no physical form;
- (h) “Involuntary conversion” means property, in whole or in part, that is destroyed, stolen, seized, or condemned, or the taxpayer is otherwise forced to dispose of by reason of threat or imminence of any of the foregoing;
- (i) “Kosovo source income” means gross income that arises in Kosovo, which includes:

- (i) Income from business activity where such activity is located in Kosovo;
 - (ii) Income from the use of movable or immovable property located in Kosovo;
 - (iii) Income from the use of intangible property in Kosovo;
 - (iv) Interest on a debt obligation paid by a resident or a public authority;
 - (v) Dividends paid by a resident business organization;
 - (vi) Gain from the sale of immovable property located in Kosovo; and
 - (vii) Other income not covered by the above-mentioned subparagraphs arising from economic activity in Kosovo;
- (j) “Market value” means the price at which similar goods or services of like quality and quantity would be sold in an arm’s-length transaction;
- (k) “Non-resident ” means any person or group of persons that is not resident in Kosovo;
- (l) “Permanent establishment” means any workplace through which a non-resident person does business in Kosovo. This includes, but is not limited to: plants, branch offices, representative offices, factories, workshops and construction sites;
- (m) “Person” means a natural person or a legal person;
- (n) “Public authority” means a central, regional, municipal, or local authority, public body, ministry, department, or other authority that exercises public executive, legislative, regulatory, administrative or judicial power;
- (o) “Related person” means persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationship shall mean:
- (i) The persons are officers or directors of one another’s business;
 - (ii) The persons are partners in business;

- (iii) The persons are in an employer-employee relationship;
- (iv) One person holds or controls fifty percent (50%) or more of the shares or voting rights in the other person;
- (v) One person directly or indirectly controls the other person;
- (vi) Both persons are directly or indirectly controlled by a third person; or
- (vii) The persons are husband or wife, or relatives to the third degree inclusive, or in law to the second degree inclusive;
- (p) “Representation costs” means all costs related to promotion of the business or its products and includes costs for publicity, advertising, entertainment and representation;
- (q) “Resident” means a person or group of persons that is established in Kosovo or that has its place of effective management in Kosovo; and
- (r) “Tax period” means the calendar year.

Section 2
Taxpayers

The following persons shall be taxpayers under the present Regulation:

- (a) A corporation or other business organization that has the status of a legal person under the law applicable in Kosovo;
- (b) A business organization operating with public or socially owned assets;
- (c) An organization registered with UNMIK as a non-governmental organization under UNMIK Regulation No. 1999/22 of 15 November 1999 on the Registration and Operation of Non-Governmental Organizations in Kosovo; and
- (d) In the case of a non-resident person, a permanent establishment in Kosovo.

Section 3
Object of Taxation

3.1 The object of taxation for a resident taxpayer shall be taxable income from Kosovo source income and foreign source income.

3.2 The object of taxation for a non-resident taxpayer shall be taxable income from Kosovo source income.

Section 4
Taxable Income

4.1 A taxpayer with annual gross income of 50.001 euro or greater shall calculate taxable income by preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in the present Regulation.

4.2 A taxpayer with annual gross income of 50.000 euro or less shall calculate taxable income:

(a) In accordance with section 31.2(a) and 31.2(b); or

(b) By preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in the present Regulation.

4.3 Taxpayers who opt to calculate taxable income and prepare financial statements pursuant to section 4.2(b) in any tax period shall be required to calculate taxable income and prepare financial statements in that manner for each subsequent tax period.

4.4 As an exception to the subsections above, taxpayers whose principal activity is the insurance or reinsurance of life, property, or other risks shall calculate taxable income and pay income tax in accordance with section 28.

Section 5
Tax Rate

For the tax period 2005 and subsequent tax periods, the corporate income tax rate shall be twenty percent (20%) of taxable income.

CHAPTER II INCOME EXEMPT FROM TAX

Section 6 Exempt Income

The following income shall be exempt from corporate income tax:

- (a) Without prejudice to section 29, the income of organizations registered under UNMIK Regulation No. 1999/22 as non-governmental organizations that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes;
- (b) Income of the Banking and Payments Authority of Kosovo, and of entitled and duly authorized international inter-governmental financial institutions operating in Kosovo;
- (c) Dividends received by a resident taxpayer from a resident company that paid Kosovo corporate income tax; and
- (d) Income from a contractor, other than a local contractor, generated from contracts for the supply of goods and services to the United Nations (including UNMIK), the Specialized Agencies of the United Nations and the International Atomic Energy Agency.

CHAPTER III EXPENDITURES

Section 7 Allowable Expenses

7.1 Subject to the limitations in the present Regulation, 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.

7.2 No deduction shall be allowed for any expense unless it is documented in the manner required by an Administrative Instruction to be issued by the Ministry of Finance and Economy.

Section 8 Disallowed Expenses

In determining taxable income, the following are disallowed as expenses:

- (a) Cost of acquisition and improvement of land;
- (b) Cost of acquisition, improvement, renewal and reconstruction of assets that are depreciated or amortized under the provisions of the present Regulation;
- (c) Fines and penalties;
- (d) Income tax; and
- (e) Value added tax for which the taxpayer claims a rebate or credit for input tax under UNMIK Regulation No. 2001/11 of 31 May 2001, as amended, on Value Added Tax in Kosovo.

Section 9 Allowable Deductions

9.1 Contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under the present Regulation up to a maximum of five percent (5%) of taxable income computed before the expenditures are deducted.

9.2 An allowable contribution under section 9.1 must be made to:

(a) An organization registered under UNMIK Regulation No. 1999/22 as a non-governmental organization that has received and maintained public benefit status;

(b) Any other non-commercial organizations that directly perform activities in the public interest and not for profit, such as:

- (i) Medical institutions;
- (ii) Educational institutions;
- (iii) Organizations to protect the environment;
- (iv) Religious institutions;
- (v) Institutions that care for disabled or elderly persons;
- (vi) Orphanages; and
- (vii) Institutions that promote science, culture, sports or arts.

9.3 An allowable deduction shall not include a contribution that directly benefits related persons of the donor.

9.4 Any taxpayer who claims an allowable deduction must file an annual tax declaration in accordance with section 30.2 and submit a receipt in respect of such deduction to the Tax Administration.

Section 10 Representation Costs

Representation costs are allowed as expenses under this Regulation up to a maximum of two percent (2%) of total gross income.

Section 11 Bad Debts

11.1 A bad debt shall be considered an expense if it meets all of the following three (3) conditions:

(a) The amount that corresponds to the debt has previously been included in income;

(b) The debt is written off in the taxpayer's books as worthless; and

(c) There is adequate evidence of substantial unsuccessful attempts made by the taxpayer to collect the debt.

11.2 Bad debts that are deducted as expenses and then collected later shall be included as income at the time of collection.

Section 12 Reserve Funds

12.1 Except as otherwise provided in this Regulation, contributions to reserve funds are not allowable as an expense.

12.2 Banks are entitled to an expense for the creation of a special reserve fund for the bank's doubtful assets, of an amount not to exceed the maximum amount allowable by the Banking and Payments Authority of Kosovo.

12.3 Subsequent to the creation of the special reserve fund, any amount withdrawn from the fund shall be included in income and any amount placed

back into the fund, to replenish it to the allowable amount, shall be allowed as a deduction.

Section 13
Payments to Related Persons

13.1 Compensation or emoluments paid to a related person shall be allowed as an expense in an amount equal to the lesser of the actual payment or the market value.

13.2 Interest, rent, and other expenses paid to a related person shall be allowed as an expense in an amount equal to the lesser of the actual payment or the market value.

Section 14
Depreciation

14.1 Expenditures on tangible property, other than expenditures for land, works of art, and other property which are not subject to wear, owned by the taxpayer and used for the taxpayer's economic activity, shall be recovered over time by depreciation deductions in the manner prescribed by the present section.

14.2 Expenditures on improvements to leaseholds used for the taxpayer's economic activity shall be recovered through depreciation deductions calculated using the straight-line method with a period equal to the life of the leasehold.

14.3 All tangible property of the taxpayer that is subject to depreciation under subsection 14.1 shall be placed in one of the following categories:

(a) Category 1: Buildings and other construction structures;

(b) Category 2: Automobiles and light trucks, computers, peripherals, and other data processing equipment, office furniture and office equipment, instruments, sundries and other accessories; and

(c) Category 3: Plant and machinery, heavy transport vehicles, earth moving equipment, other heavy vehicles, rolling stock and locomotives used for rail transport, airplanes, ships and all other tangible assets.

14.4 Property in each category shall be treated as follows:

(a) Category 1: property shall be accounted for in segregated asset accounts;

(b) Category 2: property shall be placed in one pool and have a consolidated capital account; and

(c) Category 3: property shall be placed in one pool and have a consolidated capital account.

14.5 The amount allowed as a depreciation deduction for the tax period shall be determined by applying the following percentages to the capital account for such category under the reducing balance method at the close of the tax period:

(a) Category 1: five percent (5%);

(b) Category 2: twenty percent (20%); and

(c) Category 3: fifteen percent (15%).

14.6 An asset shall first be taken into account for the purpose of the present section when it is first placed into service.

14.7 The initial addition to the capital account for any asset acquired during the year shall be its cost plus insurance and freight. The initial addition to capital account for any property constructed by the taxpayer shall include the taxes, duties, and interest attributable to such property for the periods before the property is placed into service.

14.8 Expenditure on an asset belonging to Category 2 or Category 3 that is less than 1.000 euro shall be allowed as a current expense.

Section 15 Special Allowance for New Assets

15.1 If a taxpayer purchases any asset belonging to Category 3 for the purpose of the taxpayer's economic activity between 1 January 2005 and 31 December 2008, a special deduction of ten percent (10%) of the cost of acquisition of the asset shall be allowed in the year in which the asset has been first placed into service. This deduction shall be in addition to the normal allowable depreciation deduction. The deduction shall be allowed only if the asset is new or is placed into service in Kosovo for the first time. A deduction shall not be allowed if the asset is transferred from an existing or a former business in Kosovo.

15.2 Other special allowances may only be granted if so provided by specific Regulation.

Section 16
Repairs and Improvements

In the case of any segregated asset account and any pooled asset account:

(a) To the extent that the amounts expended during the tax period to repair, maintain or improve the property do not exceed five percent (5%) of the balance in the account at the beginning of the year, such amounts shall be allowed as a deduction for such year; and

(b) To the extent that such amounts exceed five percent (5%), such excess shall be treated as improvements and added to the applicable segregated asset or pooled account.

Section 17
Amortization

17.1 Expenditures on intangible assets that have a limited useful life including patents, copyrights, licenses for drawings and models, contracts and franchises are deductible in the form of amortization charges.

17.2 The method of amortization shall be the straight-line method and the allowance shall be based on the useful life of the asset as determined by the legal agreement governing the acquisition and use of the intangible asset.

Section 18
Exploration and Development Costs

18.1 All exploration and development costs in respect of a natural deposit of minerals and other natural resources and interest attributable thereto shall be added to a capital account and amortized under the present section.

18.2 The amount allowed as an amortization deduction with respect to exploration and development costs referred to in section 18.1 for the tax period shall be determined by multiplying the balance in the capital account by a fraction of:

(a) the numerator of which is the units extracted from the natural deposit during the year; and

(b) the denominator of which is the estimated total units to be extracted from the natural deposit over the life of the asset.

18.3 The estimated total units to be extracted referred to in section 18.2 (b) shall be determined in accordance with instructions concerning such estimates to be set out in an Administrative Instruction issued by the Ministry of Finance and Economy.

CHAPTER IV CAPITAL GAINS AND LOSSES, BUSINESS LOSSES

Section 19 Capital Gains and Losses

19.1 Capital gain means income that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.

19.2 The amount of capital gain is the positive difference between the sales price of the capital asset and the cost of the capital asset as determined under section 19.7.

19.3 Capital loss means a loss that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.

19.4 The amount of capital loss is the negative difference between the sales price of the capital asset and the cost of the capital asset as determined under section 19.7.

19.5 The sales price of a capital asset shall be the sum of any money received plus the market value of any property other than money received as consideration for the sale.

19.6 If the parties are related persons and the sales price is less than the market value, then, for purposes of the present section, the sales price shall be the market value.

19.7 The cost of the capital asset is the amount that the taxpayer paid for the acquisition of the capital asset, increased by the cost of improvements, and reduced by depreciation and other expenditures allowable under this Regulation.

19.8 The present section does not apply to capital assets subject to depreciation as pooled assets.

19.9 Capital gains shall be recognized as business income and capital losses as business losses.

Section 20
Involuntary Conversions

A capital gain shall not be recognized on the involuntary conversion of property to the extent that the consideration received from the conversion consists of either property of the same character or nature or money that is invested in property of the same character or nature within a replacement period of two (2) years.

Section 21
Business Losses

21.1 A business loss is the negative difference between the taxpayer's income and expenses arising from economic activity.

21.2 The amount of the business loss determined under the present section may be carried forward for up to five (5) successive tax periods and shall be available as a deduction against any income in those years.

21.3 The amount of the carry forward taken into account for any tax period after the year of the business loss shall be the entire amount of the loss, reduced by the aggregate amount previously allowed as a deduction.

21.4 If a taxpayer has a business loss in more than one (1) year, the present section shall be applied to the losses in the order in which they arose.

CHAPTER V
LIQUIDATION AND REORGANIZATION

Section 22
Distribution of Property

22.1 A company that distributes property other than stock to a shareholder with respect to the shareholder's interest shall recognize a gain or a loss as if such property had been sold to such shareholder at its market value.

22.2 The property distributed to the shareholder shall be valued at the market value of the property.

22.3 In the case of a distribution of stock dividends that does not change the share of participation of the recipient, the company shall not recognize a gain or a loss and the shareholder shall not realize income.

Section 23 Liquidation

23.1 In the case of a liquidation of a company, the company shall take into account any gain or loss as if it had sold the property distributed in the liquidation at its market value.

23.2 Except as otherwise provided in this Regulation, the recipients of property distributed in a liquidation shall be treated as if they exchanged their equity interest in the liquidated company for an amount equal to the market value of such property.

23.3 In the case of a liquidation of a subsidiary where the property of the subsidiary is distributed to a parent, the parent shall not recognize any gain or loss.

Section 24 Reorganization

24.1 Transfers of property pursuant to a written plan for a reorganization of a taxpayer, whether due to bankruptcy, merger, acquisition or otherwise, which is approved by the Tax Administration, shall not be taxed under this Regulation.

24.2 In the case of a reorganization, the book value of the property held by the reorganized taxpayer shall be determined by reference to the book value of such property immediately before the reorganization.

24.3 In the course of a reorganization, a distribution to a shareholder in respect of the shareholder's equity interest shall not constitute taxable income to the shareholder.

24.4 Except as otherwise established in an Administrative Instruction issued by the Ministry of Finance and Economy, the acquiring taxpayer shall succeed to and take the place of the acquired taxpayer with respect to inventories, loss carry forwards, dividend accounts, and all other such items.

CHAPTER VI
TRANSFER PRICES, AVOIDANCE OF DOUBLE TAXATION

Section 25
Transfer Prices

25.1 The price used in conjunction with asset transactions or contract obligations between related persons shall be considered the transfer price.

25.2 The price expected to be received in conjunction with asset transactions or contract obligations between parties that had been dealing at arm's-length shall be considered the arm's-length price.

25.3 The arm's-length price shall be determined under the comparable uncontrolled price method and, when this is not possible, the resale price method or the cost-plus method.

25.4 The difference between the arm's-length price and the transfer price shall be included in taxable income.

Section 26
Avoidance of Double Taxation

26.1 A resident taxpayer who receives income from business activities outside of Kosovo through a permanent establishment outside of Kosovo, and who pays tax on that income to any State, shall be allowed a tax credit under this Regulation in an amount equal to the amount of tax paid to such State.

26.2 Any tax credit under the present section is limited to the amount of tax that would be paid under this Regulation on the income made in such State.

26.3 Any applicable bilateral agreement on avoidance of double taxation shall supersede the provisions of the present section.

CHAPTER VII
WITHHOLDING TAX

Section 27
Withholding Tax on Dividends, Interest, Royalties and Rents

27.1 Except where a taxpayer has paid Kosovo income tax on dividends distributed to a resident, each taxpayer who pays dividends, interest or royalties to resident or non-resident persons shall withhold tax at the rate of

twenty percent (20%) at the time of payment or credit and remit the tax withheld to an account designated by the Tax Administration in a bank licensed by the Banking and Payments Authority of Kosovo.

27.2 Except in the case of rent paid by natural persons, each taxpayer who pays rent to resident or non-resident persons shall withhold tax at the rate of sixteen percent (16%) at the time of payment or credit and remit the tax withheld to an account designated by the Tax Administration in a bank licensed by the Banking and Payments Authority of Kosovo.

27.3 Each taxpayer who pays dividends, interest, royalties or rent and who withholds tax under this section during a tax period shall, upon request, provide by 1 March of the year following the tax period a certificate of tax withholding in the form specified by the Tax Administration.

CHAPTER VIII SPECIAL PROVISIONS

Section 28

Treatment of Insurance Companies

In the case of any entity whose principal activity is the insurance or reinsurance of life, property, or other risks, the tax imposed by this Regulation shall be an amount equal to seven percent (7%) of the gross premiums accrued during the tax period.

Section 29

Treatment of Commercial Income of Non-Governmental Organizations

A non-governmental organization that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of twenty percent (20%) on income derived from such unrelated business activity, reduced by any deductions that are directly related to the carrying on of such business and which are allowed by the Tax Administration.

CHAPTER IX
ADMINISTRATIVE PROVISIONS

Section 30
Tax Declarations

30.1 A taxpayer that is required or opts to calculate taxable income by adjusting the income and expenses in its financial statements is required to submit to the Tax Administration an annual tax declaration on or before 1 April of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Regulation. Such taxpayers are also required to submit, together with the tax declaration, the financial statements prepared in accordance with UNMIK Regulation No. 2001/30.

30.2 A taxpayer that claims an allowable deduction pursuant to section 9 is required to submit to the Tax Administration an annual tax declaration on or before 1 April of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Regulation.

Section 31
Tax Payments

31.1 Each taxpayer under the present Regulation shall make quarterly advance payments of tax to an account designated by the Tax Administration in a bank licensed by the Banking and Payments Authority of Kosovo on or before 15 April, 15 July, 15 October, and 15 January with respect to the calendar quarter immediately preceding these dates.

31.2 The amount of each quarterly advance payment shall be as follows:

(a) Taxpayers with annual gross income of 5.000 euro or less: 37.5 euro per quarter;

(b) Taxpayers with annual gross income between 5.001 and 50.000 euro inclusive who are not required to, or do not opt to, prepare financial statements shall make the following payments per quarter:

(i) Three percent (3%) of gross income for the quarter from trade, transport, agricultural and similar commercial activities;

(ii) Five percent (5%) of gross income for the quarter from services, professional, vocational, entertainment and similar activities;

(iii) Sixteen percent (16%) of gross income for the quarter from rental activities, reduced by any amount withheld during that quarter pursuant to section 27.2 of the present Regulation;

(c) Taxpayers with annual gross income in excess of 50.000 euro and taxpayers who are required to, or opt to, prepare financial statements shall make the following payments per quarter:

(i) One-fourth (1/4) of the total tax liability for the current tax period based on estimated taxable income reduced by any amount withheld during the quarter pursuant to section 27; or

(ii) For the second and subsequent tax periods that a taxpayer makes payment under this subsection, one-fourth (1/4) of one hundred and ten percent (110%) of the total tax liability for the tax period immediately preceding the current tax period reduced by any amount withheld during the quarter pursuant to section 27.

31.3 A taxpayer who makes quarterly advance payments pursuant to section 31.2 (c) shall perform a final settlement of tax and pay the final amount due on or before 1 April of the year following the tax period.

31.4 The amount due for the final settlement shall be the total tax due for the tax period determined in accordance with this Regulation, less the amounts withheld pursuant to section 27 and paid to the Tax Administration and less the amounts paid in the quarterly instalments and the foreign tax credit allowable under this Regulation.

31.5 If the amounts paid in the quarterly instalments, plus the foreign tax credit and plus any amounts withheld pursuant to section 27 and paid to the Tax Administration is greater than the total tax due determined in accordance with this Regulation, the taxpayer shall be entitled to a refund of the excess tax paid.

31.6 If payments for the quarterly instalments have been made on or before the due dates and a final settlement has been made as required by section 31.3 of the present Regulation, no interest or penalty shall be charged for insufficient payment if:

(a) The difference between the amount due in each instalment and the amount paid in each instalment is not greater than ten percent (10%) of the amount due; or

(b) After the taxpayer's first tax period, the amount paid in each instalment is ten percent (10%) higher than one-fourth (1/4) of the tax assessed by the Tax Administration for the preceding tax period.

CHAPTER X FINAL PROVISIONS

Section 32 Implementation

The SRSG may issue Administrative Directions for the implementation of the present Regulation.

Section 33 Applicable Law

The present Regulation shall, subject to section 34, supersede UNMIK Regulations No. 2000/29, as amended, and 2002/3, as well as any provision in the applicable law, which is inconsistent with it.

Section 34 Transitional

The Tax Administration shall continue to apply UNMIK Regulations No. 2000/29, as amended, and 2002/3 when considering any tax issues related to tax periods up to and including the 2004 tax period that might arise on or after the entry into force of the present Regulation.

Section 35 Entry into Force

The present Regulation shall enter into force on 1 January 2005.

Søren Jessen-Petersen
Special Representative of the Secretary-General