



**Republika e Kosovës**  
**Republika Kosova-Republic of Kosovo**

*Qeveria-Vlada-Government*

*Ministria e Ekonomisë dhe Financave - Ministarstvo Privrede i Finansija -*  
*Ministry of Economy and Finance*

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**ADMINISTRATIVE INSTRUCTION N.10 / 2010**  
**FOR IMPLEMENTATION OF THE LAW NO.3/L-146 ON VALUE**  
**ADDED TAX**

**The Ministry of Economy and Finance**

According to Article 64 of the Law No.3/L-146  
“*On Value Added Tax*”, the Minister of Economy and Finance,

issues:

**ADMINISTRATIVE INSTRUCTION**  
**FOR IMPLEMENTATION OF THE LAW NO.03/L-146 ON VALUE ADDED**  
**TAX**

**Article 1**  
**Purpose**

The purpose of this Administrative Instruction is to establish the procedures and requirements for the implementation of the Law No 03/L-146, in the Republic of Kosovo.

**Article 2**  
**Persons Required to be Registered and Included in the VAT Registry**

1. A taxable person is any natural or legal person required to be registered for VAT. A person is required to be registered for VAT when such person independently conducts regular or irregular economic activity in the Republic of Kosovo, in conformity with the Article 4 of the Law, whose total turnover (including turnover of supplies exempt

from VAT) for the past 12 months exceeds the 50,000 EUR threshold. The month in which the threshold is exceeded counts for the twelve (12) months period calculation.

2. A taxable person shall have a fiscal number issued by KTA, which shall precede the registration for VAT. The economic activity, referred to in paragraph 1 shall specifically referred to continuous activity performed with the view of making supplies for consideration, irrespective of the purpose and result of this economic activity. TAK may ask the applicant to present evidence of his intent to conduct economic activity.

3. The taxable person required to be registered but who has not yet registered for VAT shall submit the application for registration to the Taxpayers Services Office in the appropriate region, within 15 calendar days after the person is deemed to be a taxable person.

4. The threshold referred to in paragraph 1 of this Article shall not apply to persons not established in Kosovo. Such persons are required to register for VAT in Kosovo if they are making supplies of goods or services which have their place of supply in Kosovo. They shall register before making supplies in Kosovo and appoint a tax representative. The taxable person shall be registered under his own name and the name of the tax representative before making supplies having their place of supply in Kosovo .

5. When the reverse charge procedure applies as referred to in sub-paragraphs 1.2, 1.3 and 1.4 of article 52 of the Law and the recipient therefore is liable for the payment of VAT, the supplier shall not be obliged to register in Kosovo or to appoint a tax representative as referred to in paragraph 4 of this Article.

### **Article 3 Exceeding the Threshold Retrospective View**

1. When calculating the threshold, the person shall consider the total amount of all supplies during the previous 12 month period. Supplies shall be deemed any supplies of any goods and services at any rate, including those exempt, with or without right to deduct. A person is considered a taxable person from the moment when the total amount of supplies made during the last 12 months exceeds the threshold of registration threshold set out under the Article 6, paragraph 1 of the Law.

#### **Example:**

The taxpayer performed supplies during the following periods:

Period		Turnover	Total turnover
December	2009	7000	<b>7000</b>
January	2010	10000	<b>17000</b>
February	2010	10000	<b>27000</b>
March	2010	1000	<b>28000</b>
April	2010	5000	<b>33000</b>
May	2010	5000	<b>38000</b>
June	2010	1000	<b>39000</b>
July	2010	1000	<b>40000</b>
August	2010	2000	<b>42000</b>
September	2010	2000	<b>44000</b>
October	2010	3000	<b>47000</b>
November	2010	4000	<b>51000</b>
December	2010	8000	<b>59000</b>

2. In the aforementioned example, the threshold for registration is exceeded in November 2010 because in November 2010 the turnover exceeds the amount of 50,000 Euro. Any supply made by the taxable person after the threshold is exceeded shall be subject to VAT. In this case, the taxable person is required to apply for VAT registration within 15 days after exceeding the threshold.

3. As of the date on which the Law came into force, the calculation of the threshold shall be based on a 12 month period as referred under the Article 6 paragraph 1 of the Law, not a calendar year as provided by the previous Law on VAT. If a taxable persons turnover, on the date of entry into force of the Law, exceeds 50,000 (within the last 12 months period), he/she shall be considered a taxable person as of the date of entry into force of the Law.

4. According to paragraph 1 of the Law, if a person during the last 12 months had a turnover of 49,000 EUR while the last supply was valued at 3,000 EUR, the taxable part of the last supply shall only be the part exceeding the total supplies of 50,000 EUR, which in this case is 2,000 EUR.

5. As referred to in Article 6 paragraph 5 of the Law, non-resident persons that carry out an economic activity in Kosovo, are not subject to the regulations and procedures related to the VAT registration threshold, and they shall be regarded as taxable persons from the moment of starting their economic activity in Kosovo and are required to register with a tax representative before making supplies in Kosovo, unless the recipient is liable for the payment of VAT on the supplies in accordance with subparagraphs 1.2, 1.3, 1.4 of article 52 of the Law.

#### **Article 4** **Voluntary Declaration**

1. Any person that meets the conditions referred to in Article 4 of the Law but is ineligible for registration under Article 6 of the Law shall have the right to register for

VAT as a taxable person. He should submit the request to Taxpayers Service in the appropriate regional office, for voluntary registration.

2. The TAK shall register such a person with effect from the date of receiving the request by the Taxpayers Services Office if the person making the request meets the conditions of Article 4 of this Law.

3. The taxpayers who register voluntarily shall be subject to the same rules in respect of change and cessation of activity as taxable persons registered in accordance with the article 6 of the Law.

**Example:**

If a taxpayer is registered voluntary for VAT, as his turnover is lower than the 50,000 EUR threshold, he is obliged to submit monthly tax returns starting from the period of voluntary registration, i.e. the taxpayer shall declare and pay the VAT for every supply performed after the date of registration.

4. If a taxable person has no supplies or purchases within a given period, the taxpayer shall issue a return with zero value, to show that the taxpayer is active but that there have been no activities for that period

**5. *Turnover to be included in the threshold.*** When determining whether the threshold limit of 50,000 Euro is exceeded or not, turnover of all the persons activities, carried out in the same place or in different places or whether carried out in the same line of business or in different lines of business, shall be taken into account. This applies in relation to both physical persons and legal persons..

**Article 5**  
**Registration of Persons for VAT**  
**by TAK at Applicant's Request**

1. Any person meeting the criteria of Article 6 of this Law and not registered for VAT shall be compulsory registered by the TAK with retroactive effect as of the date where such registration was required under the Article 7 of the Law and TAK shall issue the Certificate of VAT Registration. If the TAK discovers at later stages that the person subject to tax should have registered at an earlier date, he shall be required to pay VAT for supplies conducted since such earlier date.

**Article 6**  
**Certificate for VAT Registration**

1. A person applying for VAT registration shall personally or through an authorized person of the business submit all VAT registration form at the respective regional

office of TAK. VAT registration forms must be accompanied by a copy of business registration documents, Certificate of the Fiscal Number and an official identification photo (passport, identity card, etc.).

2. Upon obtaining the VAT Registration Form, the TAK shall make sure that information provided in the registration form is accurate and that the taxpayer met all his tax obligations. In addition, the TAK shall visit every business location listed by the taxpayer on his registration form to ensure the accuracy of data. TAK shall determine whether to issue the VAT Registration Certificate or not in the course of 10 days upon receiving the VAT Registration Application Form.

3. If the TAK determines that the person is entitled to VAT Certificate, he shall notify the applicant of its decision no later than the next following working day after making the decision. The person shall be given a chance to visit the services office or be delivered the certificate of VAT.

4. Each VAT certificate shall have a unique serial number in its page. Such serial number, which is the taxpayer's VAT Registration Number shall contain along with the taxpayer's fiscal number, all invoices issued by the taxpayer.

5. If the TAK finds that the taxpayer is not regular in payment of all tax charges or that information contained in the registration form is inaccurate, the TAK shall send a written notice to the taxpayer informing that the VAT certificate cannot be issued. The notice shall also inform the taxpayer of the reasons for rejecting the application for VAT certificate and shall remind the taxpayer of the sanctions applicable for engaging in VAT transactions without the VAT Certificate. The notice shall also provide the taxpayer information on the right to appeal. The TAK shall send the said notice in the course of 2 days after deciding that the VAT Certificate will not be issued.

6. The VAT certificate (or certified copies) shall be placed in all locations of the taxable person where he exercises his activities. The VAT certificate shall be placed conspicuously so as to allow the consumers to read or shall otherwise be liable to sanctions set out under the Law on Tax Administration and Procedures.

## **Article 7**

### **The Certificate of Import/Export**

1. Persons wishing to engage in import/export activities shall be required to obtain an import/export certificate before they undertake any activity if they:

- 1.1. import goods in Kosovo, if not already registered for VAT, or
- 1.2. export goods from Kosovo, if not already registered for VAT.

2. All import/export registration forms shall be handed in personally to regional TAK office responsible for taxation of business entities or by an authorized business representatives. The import/export registration forms shall be accompanied by a copy of business registration documents, fiscal number certificate and official identification document with picture (passport, identity card, etc).

3. Upon obtaining the Import/Export Registration Form, the TAK shall ensure that the information provided in the form is accurate and that the taxpayer paid his tax duties. If the TAK finds that the taxpayer is eligible to Import/Export Certificate, it shall print the certificate and issue it to the taxpayer. If the taxpayer is in default in submitting or paying his tax statements, the issuance of Import/Export Certificate shall be withheld until the taxpayer settles his tax duties or has reached an official settlement with respect to the payment of all unpaid taxes.

4. Every Import/Export Certificate shall have a unique serial number.

### **Article 8** **Deregistration of VAT by** **the Taxable Person**

1. Every taxable person registered for VAT either compulsory or voluntarily, may ask the TAK to be deregistered from VAT if in the last 12 months the turnover fell below the threshold set out under the paragraph 6 of the Law. The TAK shall make a decision on deregistration from VAT with effect 12 months after the request for deregistration

2. If in the course of 12 months after submitting the request for deregistration, the supplies of taxable person shall be above the threshold set out under the Article 6, paragraph 1 of the Law, such person shall be notified by TAK that request for deregistration has not been approved by the VAT.

3. If within 12 months following from the day of request for cancellation of registration, supplies of taxable person are below the prescribed threshold in article 6 paragraph 1 of Law, this taxable person will be notified by the TAK that request for cancellation of registration has been approved..

### **Article 9** **Taxable Person who Ceases his/her Economic Activity**

1. If a taxable person ceases his/her economic activity, is he/she obliged to submit a request for cancellation of registration for VAT, within 15 days after the cessation of the activity. When submitting the request for cancellation of registration, this person is also required to handover the VAT certificate (and all certified copies) to TAK.

2. If the taxable person still possesses goods in stock that are not supplied, or capital assets, where the VAT on those goods or assets or the component parts thereof was wholly or partly deductible, shall according to the Article 11 of the Law, be considered a supply for consideration and the taxable person is required to pay VAT on this supply. The taxable amount shall according to Article 24, subparagraph 7.1 of the Law, be the value of the goods and assets in question at the time where the taxable person cease to carry out the economic activity.

## **Article 10**

### **Application of Business Goods to Non-business Purposes**

1. Pursuant to article 11, paragraph 3 of the Law business samples and gifts of small value as referred to in Article 11, paragraph 2 shall be defined as follows:

1.1. Business samples as referred to in paragraph 2 of Article 11 shall be considered business samples directly related with the performance of the taxable persons activity, given to customers or potential customers in usual quantities for that purpose, provided they are not placed on sale by these customers or potential customers, or they are in a form which renders their sale impossible. Goods given as business samples must be marked as such and if they cannot be marked as business samples, they must be in a form and package different from the form and package of these goods when intended for sale.

1.2. Gifts of small value shall, within the meaning of paragraph 2 of Article 11 of the Law, be deemed to be goods, given for the purpose of furtherance of the business activity of the taxable person, of an individual market value lower than Euro 10.00 without VAT, which the taxable person occasionally gives to customers or potential customers without a legal obligation to do this.

## **Article 11**

### **Transfer of Business**

#### **1. *Supply of goods taking place in the event of a transfer of business***

1.1. According to article 13 no supply of goods takes place and no VAT shall be charged on such transfer, if those goods are disposed as being parts of a totality of assets or part thereof. Goods are legally transferred under the application of civil law provisions and one by one, such as real estate, movable property, assignment of claims and the transfer of intellectual property rights, such as patents and other commercial intellectual property rights. The transfer of a business as a whole is not legally possible according to civil law. The term “transfer of business” is to be understood in an economic sense and in the context of VAT principles. All single supplies directly connected to a business transfer are meant to be supplies of goods taking place in the event of a transfer of business.

1.2. A business transfer is generally based on a contract. A transfer of business based on legal successor ship, such as testament, contract of inheritance, and legal

succession in case of a death of the taxable person takes place outside the scope of the Law on VAT and article 13 does not apply in these cases.

## **2. *Transferor as taxable person***

2.1. The application of Article 13 requires that the transferor is a taxable person who is registered, or is required to be registered for VAT.

2.2. With the start of an economic activity by a personal business enterprise, a legal entity or a partnership these business organizations can apply to be treated as taxable persons according to Article 8 of the Law on VAT, if - confirmed by objective evidence – it is seriously intended to make taxable supplies. A business in the start-up period which is voluntary registered for VAT can be considered as a taxable person thus allowing the application of Article 13 of the Law on VAT.

2.3. The transferor does not immediately lose his status as taxable person with the transfer of his business. His status as taxable person ends with the final winding up or liquidation of the business. Supplies or the application of business assets for purposes other than those of his business, Article 11 of the Law on VAT, are still considered as taxable supplies in continuation of economic activities. The transferor is entitled to a deduction of VAT input tax under the general conditions of Article 36 of the VAT Law, where he receives invoices after the transfer or after the transfer as a contribution to a company.

## **3. *Transferee as taxable person***

3.1. The application of Article 13 is confined to business transfers to a transferee as taxable person acting as such. In all other cases VAT taxation is legally required to avoid non-taxed final consumption.

3.2. The transferee needs to be registered for VAT or required to be registered for VAT at the time of the transfer of the business or a part of it, in order for article 13 to apply.

3.3. The transfer of a business for private purposes or more generally for purposes other than those of his transferee's business is not regarded as a transfer of a totality of assets or part thereof. The transfer to a taxable person as such requires that the assets will have to be used in an already existing or in a newly started business of the transferee. This requires that the transferred assets are objectively used in order to facilitate the economic business activity of the transferee.

3.4. The transferee needs to intend to continue a business activity. All transfers under Article 13 are those in which the transferee intends to operate the business or the part of the undertaking transferred and does not simply intend to immediately liquidate the activity concerned and sell the stock, if any. It is not required that the transferee pursue prior to the transfer the same type of economic activity as the transferor. The purchased business can also be integrated into the existing business of the transferee or also be used for different economic activities. No transfers covered by article 13 of the VAT Law are those, where a taxable person purchases the business with the intention to immediately resell it or where a business is bought by a competitor in order to wind it up or to liquidate it.

3.5. Is the transferred totality of assets integrated into an already existing business of the transferee with the transferee's intention to continue using the assets for the intended economic activities and if it finally turns out that the planned activities cannot be implemented successfully no rectification of the application of Article 13 of the VAT Law will be required. The same applies, if the transferee starts his economic activity with the acquired assets and needs to terminate his activity because of circumstances, which arise after the acquisition or because of a lack of economic success.

3.6. Are assets which formed part of the transfer of a business later applied for private purposes or more generally for purposes other than those of his business, VAT can only be charged on the application of goods of the business for non-business needs, where the VAT on those goods or the component parts thereof were wholly or partly deductible by the transferor, Article 11 paragraph 1 of the VAT Law.

3.7. The transferor is not entitled in cases of application of the provision of Article 13 of the VAT Law to issue an invoice including VAT. If he does so, he will be liable for the invoiced VAT. The transferee does not have the right to deduct the invoiced VAT in such cases.

3.8. If various services acquired by the transferor in order to effect the transfer of a totality of assets or part thereof have a direct and immediate link with a clearly defined part of his economic activities, so that the costs of those services form part of the overheads of that part of the business, and all the transactions relating to that part are subject to VAT, the transferor may deduct all the VAT charged on his costs of acquiring those services. Even in the case of a transfer of a totality of assets, where the taxable person no longer effects transactions after using those services, their costs must be regarded as part of the economic activity of the business as a whole before the transfer, ECJ C-408/8.

#### **4. *Totality of assets***

4.1. A transfer of a totality of assets according to Article 13 of the Law on VAT requires that all essential assets of a business or of a separately organized business unit are transferred. Condition is that an organic whole consisting of goods and rights, tangible or intangible elements is transferred enabling the transferee to continue running that business without further extensive financial investments.

4.2. In the event of a transfer of a totality of assets or a separately organized business unit whether for consideration or not, no supply of single goods is made, if some not essentially required assets are not transferred. The no-supply rule of Article 13 also applies in cases of a transfer of a totality of business assets as a contribution to a company, even if single essentially required assets, such as business premises, are not legally transferred, but rented out or leased to the transferee and if a lasting and continuing operation of that business is ensured. A long term lease or rent out of business premises requires at least a 10 years contract period with an extension option.

4.3. A transfer of a totality of assets can be based on several successive contracts over the assets of a business, if they are concluded in a time context and are factually related to each other and if the transfer of a totality of assets of that business evidently and obviously leads to a termination of the transferors business or the termination of a separately organized business unit.

4.4. Which assets are substantially and essentially required is determined according to the factual situation at the time when the transfer of the ownership takes place. Even single premises can be essentially required assets. Business premises, stock, machinery and equipment used for production are usually the essentially required assets of a manufacturing business. Exclusive distribution rights, rights of use, the company name, regular customers, business connections and trademarks can be essential assets.

4.5. Where non-property rights, such as use and enjoyment rights of tangible and intangible property and business relations are part of the essential assets of a business, they must be transferred to the purchaser as far as they are required for the continuation of that business.

4.6. Even single assets can be regarded as a totality of assets, if the single asset can be regarded as a business unit. This is the case where a proprietor of premises sells the premises to another taxable person together with the transition and continuation of renting contracts. The premises and the rent contracts are regarded as essential assets.

4.7. A transfer of assets requires that the transferee becomes the legal or the economic owner of the assets. The transfer of the right to dispose of tangible property as owner must be interpreted as meaning the transfer of the right to dispose of tangible property as owner, even if there is no transfer of legal ownership of the property, ECJ C-320/88.

4.8. A transfer of a part of a totality of business assets is regarded as a no-supply of goods, where the transferred part is economically independent. This requires that the part of a business transferred forms for itself a viable economic unit, which was independently able from the other activities of the taxable person to carry out business activities. Whether a part of a business can be regarded as separate independent business unit depends on the general circumstances and facts of the transfer at the time of the transition of the assets. Indicators are such as different locations, organizational separation, own fixed assets, own staff, separate business records and own business clients. Each indicator may be of different significance depending on the type of businesses, e.g. service provider, manufacturer or trader.

4.9. Transferor and transferee are required to inform TAK 30 days ahead of the transfer of the economic activity. Such notice shall be done in the appropriate regional office 30 days before the transfer and shall include:

4.9.1. Information related to transferor and recipient of transfer

4.9.2. Contract specifying the terms of the business transfer

4.9.3. Specification, which shall include description, quantities and values of transferred assets

4.9.4. Location of transferred assets.

4.10. A statement specifying the obligation for correction for any capital goods shall be signed by both parties, i.e. the supplier and receiver and shall be sent to TAK no later than 8 days after the transfer has taken place.

4.11. The buyer is entitled to become acquainted with all outstanding obligations of the transferor so that the buyer is clear about the obligations inherent with the transfer of business. With respect to partial transfer of business, transfer of liabilities and the right to crediting have to be clearly specified by the transferor to recipient.

## **Article 12**

### **The place of Service Delivery**

1. The place of supply by a taxable person, who has established his business in a country outside of the Kosovo or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment has his permanent address or usually resides outside Kosovo and who provides:

1.1. a service of short term or long term hiring out of means of transport, or

1.2. a service as mentioned in Article 20 paragraph 3.2.9. 1 to 10 of the Law, to an authority of central and local level and other bodies governed by Law as far as these authorities are not regarded as taxable persons in respect of their activities, shall by derogation from paragraphs 3.1, 2.2.5, 3.2.6 and 3.2.9 of Article 20 of the Law, be the place of the recipient, if the effective use and enjoyment of the services takes place in Kosovo.

2. The place of supply by a taxable person, who has established his business in Kosovo or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment has his permanent address or usually resides inside Kosovo and who provides a service of hiring out a train vehicle, a bus or a road vehicle exclusively for the transport of goods to taxable person outside Kosovo shall be by derogation from Article 20 paragraph 2.2.5 of the Law, the place where the recipient of this service has established his business, or fixed establishment for which the services is provided if the effective use and enjoyment of the service takes place outside Kosovo.

### **Examples:**

#### **Case 1**

Municipality A in the capacity of being a public authority hires 10 passenger cars from a car rental in Tirana (Albania) for a period of 12 months and 8 other passenger cars for a period of 28 days. The cars are put at the disposal of Municipality A in Shkoder (Albania). Municipality A is not a taxable person according to the definition provided in subparagraph 1.1 of Article 20.

The place of supply of the 10 cars is according to subparagraph 3.1 of Article 20 of the Law on VAT the place of the supplier (Albania). The place of supply of the 8 cars is according to subparagraph 3.2.6 of Article 20 of Law on VAT in Albania (Shkoder) where the cars are put at the disposal of the customer.

With this sub-legal act the place of supply is changed to the place of the recipient when the effective use and enjoyment mainly takes places in Kosovo.

## **Case 2**

Municipality B in the capacity of being a public authority hire consulting company C from Germany to provide a proposal on which new IT system it will be most advantages for the municipality to purchase. Municipality B is not a taxable person according to the definition provided in subparagraph 1.1 of Article 20

Company C from Germany charges a total of Euros 16,000 for its service. It is considered a consultancy service as referred to in subparagraph 3.2.9.3 of Article 20.

The place of supply of the services provided by Company C is according to subparagraph 3.1 of Article 20 of Law on VAT the place of the supplier (Germany) because the recipient is not a taxable person.

With this sub-legal act is the place of supply changed to the place of the recipient when the effective use and enjoyment of the service takes place in Kosovo.

## **Case 3**

A non-taxable natural person from Mitrovica rents a passenger car in 6 months from a car rental in Skopje. The car is put at his disposal in Pristina.

The place of supply is in accordance with subparagraph 3.1 of Article 20 in Skopje which is the place of supplier.

With this sub-legal act the place of supply is changed to the place of the recipient when the effective use and enjoyment mainly takes places in Kosovo.

## **Case 4**

A truck rental company from Peje is renting out 10 trucks for a period of 3 weeks to a Croatian company that is going to use the trucks for transport between Rijeka and Sarajevo. The trucks are handed over the customer in Peje.

The place of supply for this service is according to subparagraph 2.2.5 of Article in Kosovo (Peje) where the equipment is handed over.

With this sub-legal act is the place of supply changed to the place of the recipient when the effective use and enjoyment of the service mainly takes place outside Kosovo.

### **Article 13** **The Place of Import of Goods**

1. The place of import of goods is the place where goods are located when they enter Kosovo.

2. The goods entering/imported in Kosovo are distinguished by their character or determined on the basis of the following custom regimes:

2.1. **Regular import** – meaning goods entering Kosovo for which customs duties have been paid, and such goods shall be considered goods of local status (i.e. Kosovo goods). Regime of this procedure IN SAD is IM4 – while the Customs Procedure Code is 40 00.

2.2. In addition to the procedure for entering the goods through the regular import, there is also entrance/import of goods through procedure of economic impact (other arrangements), such as:

3. **The import of goods through customs warehousing procedure** – this means entrance of goods in customs warehouse, in order to gain from delaying/prolonging the custom duties from their entry to the sale of these goods in the country. The customs duties are settled at the time of sale, and if re-exported they shall not be charged for any customs duties. To ensure the payment of custom duties, a bank guarantee shall ensure coverage. The amount of guarantee shall be equal to amount of duties for the goods. The customs regime under this procedure is IM7 – the procedures code 71 00. To effect the import under this procedure there needs to be a prior approval by customs.

4. **Temporary import** – means the entry of goods with the intention of staying in country for a specific duration and subsequent re-export. The customs regime is IM5 – while the procedure code is 53 00. Goods subject temporary import with partial discount are subject to customs duties of 3% per month for the entire duration of stay in the country. The import or entrance under the Inward Processing procedure implies entrance/import of raw materials or semi products in order to process them further in the country. This entrance is realized under two systems:

4.1. **The drawback system** – during the import, the business entity meets the customs duties and when such raw material is processed and re-exported as a readymade product or semi product, the entity claims the return of money paid at the entrance of such re-exported goods. The rest is considered as loss during processing or retained for sale at local market, and is the funds are not returned. The regime of this import is IM4, procedures code 41 00.

4.2. *Suspension system* – during the import of raw materials or semi products, the importer does not pay the customs duties on the premise that the product will leave the country after a specific period. To ensure payment of customs duties, a bank guarantee is provided against the value of customs duties. The customs regime for this kind of entrance is IM5, procedures code 51 00.

4. *Import under procedure of Processing under Customs Control* – covers entrance of specific parts of product in order to form the final product. Such cases may appear when the tariff rate for the raw materials is higher than the rate of readymade imported goods. The procedure is used to benefit from incentives.

6. All procedures of economic impact require the authorization of the Kosovo Customs.

#### **Article 14** **Chargeable Event and Chargeability of VAT in Respect of Supply of Goods and Services**

1. According to Article 22, paragraph 1 of the Law, the moment of incurring the obligation to be charged with VAT is the moment of delivery of goods or services. VAT is due depending on which of the three following events occur first:
  - 1.1. Supply of goods or services,
  - 1.2. Issuance of a invoice in respect of supply of goods or services, or
  - 1.3. Receipt of advance payment before the goods or services are supplied .

#### **Article 15** **The Amount Taxable for Supply of Goods and Services**

1. The amount taxable in respect of supply of supply of goods and services shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return of the supply.
2. If the supply was made for a consideration in money, its value shall be the amount equal to such consideration, otherwise the open market value shall be applied.
3. The taxable amount for a supply of goods or services shall include:
  - 3.1. taxes, charges and duties excluding VAT;
  - 3.2. incidental, non-recurring expenditure such as commissions, packaging, transport and insurance, charged by the supplier to the customer;
  - 3.3. for the purposes of paragraph 3.2 of this Article, non-recurring expenditures may be covered by a separate agreement.

4. As an exclusion to the above, when returnable packaging costs that are not included in the original taxable amount have not been recovered, such packaging costs shall be included in the taxable amount.

5. Returnable packaging is packaging of the type of container, glass, crates, gas container or liquid gas deposits or similar packaging of this nature. As a rule, returnable packaging is delivered together and simultaneously with the goods they contain. These types of packaging are provided by seller (supplier) to the buyer (customer); they are temporarily kept by the buyer and are later returned to the seller.

6. Packaging provided to the buyer shall be returned to the seller within a reasonable timeframe, depending on the type of activity being exercised.

7. This timeframe shall vary by the nature of product the packaging contains and shall be stated in a contract signed by the parties.

8. In order to exclude VAT on the value of packaging, the following two conditions must be met:

8.1. the amount related to the returnable packing shall not be included in the amount of the invoice issued by the seller.

8.2. a contract shall be signed between the two parties for supply and return of the packaging.

9. The contract shall also state the timeframe for return of packaging from the buyer to the seller. The packaging that the buyer fails to return to the seller shall be deemed sold and shall therefore be subject to VAT for their value.

10. Pursuant to Article 24, paragraph 9 the following proof is required when excluding amounts as referred to Article 24, subparagraph 6.3 from the taxable amount:

10.1. The invoice for the expenditure is issued in the name and on behalf of the customer.

10.2. The taxable person may not deduct VAT charged on the invoice. Any right of deduction can only be carried out by the customer in whose name the invoice is issued.

10.3. The amount of expenditure shall be entered into a suspense account in the taxable persons bookkeeping.

11. The taxable amount of imported goods is determined based on provisions of the customs law, irrespective of whether or not the imported goods are subject to or exempted from customs duties.

12. The taxable value of the imported goods shall also include:

12.1. transport and insurance costs as well as other costs related to the import of goods and their transport up to the first place of destination in the territory of the Republic of Kosovo as well as those resulting from transport to another place of

destination within Kosovo if that other place is known when the chargeable event occurs.

12.2. taxes, duties, fees and other charges due outside Kosovo, and those due by reason of importation, excluding the VAT to be levied.

## **Article 16**

### **Exemptions for Activities Related to Public Interest**

1. ***Hospital and medical care services.*** Shall refer to services regarding protection, maintenance or restoration, of health. The exemption shall also refer to the accommodation, care and nutrition of patients.

2. Hospital and medical care services are only exempt when the service is carried out by a person or establishment authorized to carry out health and medical services in Kosovo.

3. When supplied by other than bodies governed by Kosovo Law it is a condition that the prices charged by such supplier are comparable with the prices charged by bodies governed by Kosovo Law. As comparable prices will normally be regarded prices not exceeding the prices charged by bodies governed by Kosovo Law with no more than 30 percent.

4. Where the principally purpose is not aimed at the protection, maintenance or restoration of health of the person concerned, the supply is not exempt, as example cosmetic services.

5. Where the principal purpose of the service is to provide a third party with a necessary element for taking a decision, the supply is not subject to exemption.

6. ***Welfare and social security services.*** The tax exemption referred to in Article 27, subparagraph 1.6 of the Law shall refer to services related to welfare and social security work such as supplies made by nurseries, day care centres, shelters, old people's homes and similar when supplied by competent bodies of Kosovo or by other bodies recognised by the competent Authority of Kosovo.

7. When supplied by other than competent bodies of Kosovo, it is a condition that the prices charged by such supplier are comparable with the prices charged by competent bodies of Kosovo. As comparable prices will normally be regarded prices not exceeding the prices charged by bodies governed by Kosovo Law with no more than 30 percent.

8. The supply of goods and services that is directly connected with the services referred to in paragraph 1 of this Article such as delivery of food, drinks, medicaments and similar shall also be exempt when supplied by the supplier of the exempt service.

9. **Educational services.** The VAT exemption for educational services shall refer to the following:

9.1. children's or young people's education, school or university education, vocational training or retraining, when supplied by bodies governed by Kosovo Law;

9.2. supply of the services mentioned in paragraph 1 is also exempt when supplied by other organisations recognized by the competent Authority of Kosovo as having similar objects when the price charged are comparable with the prices charged by bodies govern by Kosovo Law. As comparable prices will normally be regarded prices not exceeding the prices charged by bodies governed by Kosovo Law with no more than 30 percent;

9.3. accommodation and nutrition of pupils and students in boarding schools and pupil and student's homes or similar institutions are also exempt from VAT when supplied by the provider of the exempt educational services. Exempt are also other supplies of goods or services closely related to the supply of exempt educational services when supplied by the provider of the exempt educational services.

## **Article 17** **Exemptions of Other Activities**

1. Religious organization that receive exempted supplies or make exempted imports, are required to maintain books and records, submission of annual statements in compliance with the Law on Tax Administration and Procedures 2004/48 supplemented with amendments of the Law 03/ L – 071. All the supplies for goods and services made to the Eligible Religions shall be proved that the supply for these Religions has taken place.

2. If goods are imported by an Eligible Religion, this import shall clearly specify that the goods imported by the eligible religion shall be exclusively used for the purposes of the eligible religion as provided by Article 30, paragraph 3 of the Law.

3. The taxable person that makes an exempted supply in accordance with Article 28 paragraph 3, to a religious organization, he/she shall obtain a written confirmation from the religious organization which confirms that such goods or services are ought to be used for exemption purposes in accordance with Article 28 subparagraph 3.1 and 3.4.

## **Article 18**

## Other Import-Related Exemptions

1. Any consignment made of goods of minor value, shipped directly from a place outside Kosovo to a recipient inside Kosovo shall be exempt from paying the import duties.

2. Goods of minor value are goods the overall value of which does not exceed 22 EUR for every consignment.

3. The exemption shall not apply to:

- 3.1. alcoholic beverages
- 3.2. perfumes and eau du toilettes
- 3.3. tobacco and tobacco products

3. According to Article 30, subparagraph 1.7 of the Law, goods sent by a physical person outside of Kosovo to a person living inside Kosovo are exempt from paying the import fees, provided that such goods are of non-commercial nature.

4.1. Non-commercial goods shall mean:

4.1.1. goods exclusively used for personal use of the recipient or his family, which by their nature or quantity exclude any commercial use, and

4.1.2. is shipped to the recipient free of charge.

4.2. the said exemption shall apply to consignments the amount of which shall not exceed 45 EUR, including goods whose quantity is limited:

4.2.1. tobacco products:

50 cigarettes

25 cigars (thin small cigar of maximum 3 gram weight)

10 cigars pure

50 gram smoking tobacco

4.2.2. A proportional selection of these various products

4.2.2.1. Alcohol and alcoholic beverages:

4.2.2.2. Distilled alcoholic beverages and alcohol of 22% content; ethyl alcohol of 80% volume or more, 1 litre or distilled alcoholic beverages and alcohol, as well as aperitif based on wine or alcohol. Tafia, sake or similar alcoholic beverages of alcohol content of 22%; foam wines, liquor wines: 1 litre or proportional mixture of various products and still

4.2.2.3. wine – two litres

4.2.3. Perfume – 50 grams, or eau du toilette: 0.25 litre.

5. When the total value of the consignment does not exceed the value above but is separated in two or more articles, the exemption shall be allowed as if these articles were imported separately, taking into account that the value of one single item cannot be split.

**Article 19**  
**The Right to Deduct VAT**

1. A taxable person may deduct from his VAT liability the VAT due or paid in respect of purchases of goods or services or import of goods provided he used or will use the purchases or imports for the purpose of taxable transaction or exempt transactions that entitle to deduction.

2. If a taxable person used or will use purchases of goods or services or imported goods for making supplies exempt in accordance with Article 27 and 28 of the Law, the taxable person is not entitled to deduct the input VAT paid or due in respect of such purchases or imports. Where the supplies received by a taxable person, either when making domestic purchases or by importing, which are not intended to carry out an economic activity, pursuant to Article 2 paragraph 1.10 “an economic activity”, he/she is not entitled to deduct input VAT paid for such purchases or imports.

3. If a taxable person used or plans to use the acquisition of goods and services or imported goods and services for both transactions which entitle him to deduction and transactions that do not, the VAT for only the first transaction shall be deducted. The proportion of such deductions shall be determined in conformity with the Article 39, paragraph 2 of the Law.

4. In order to deduct VAT in regard of passenger vehicles, the taxpayer shall present the following documentation:

5. The documentation to produce is the following: proof of purchase of vehicle, (invoice, SAD), evidence for all related expenses, travel book (indicating the exact mileage from departure to arrival, purpose of travel), any other relevant document to justify the incurred costs.

6. Pursuant to Article 36 paragraph 5.2 the purchase costs and current expenditures as regards cars used for both private and business purposes, the right to deduct input VAT is only allowed to a maximum of fifty percent (50%) of the VAT paid or due in regard of such costs

7. Pursuant to Article 36 paragraph 5.3 a taxable person can not deduct input VAT on following costs:

7.1.costs for entertainment and amusement during business or social contacts

7.2.food costs including drinks

7.3.accommodation costs.

8. This rule provides exception events when such costs are directly related to business activities and personnel charged with supply of goods and services which includes the

employees, agents, and other representatives responsible for the business. The deduction is allowed only when incurred costs, result in a taxable supply of goods or services.

## **Article 20**

### **Exercise of the Right to Deduction**

1. According to Article 37, subparagraph 3.1 of this Law, the taxable person may exercise his right to deduction based on Article 36, paragraph 2.3 of the Law as follows:

1.1. For application of goods that according to Article 11 and 12 of the Law shall be treated as a supply of goods for consideration and for the supply of services that according to Article 15 and 16 of the Law shall be considered as a supply of services for consideration, shall the taxable person issue an internal sales invoice. The internal sales invoice shall include all prescribed applicable elements of an invoice as described in Article 44 of the Law and it shall in relation to bookkeeping, storage etc. be treated as an invoice.

1.2. If the taxable person is applying goods or using a service, that according to Article 12, paragraph 1 or Article 16, paragraph 1 of the Law shall be considered a supply for consideration, for an activity for which the taxable person is entitled to a partial right of deduction, the taxable person is entitled to exercise the partial right of deduction on the basis of the internal sales invoice issued in accordance with paragraph 1 of this Article. The internal sales invoice shall be considered as an invoice as referred to paragraph 2 of Article 37 of the Law

#### **Example:**

Company A is engaged in supplying exempt financial services and taxable consultancy services. The partial right of deduction provisional applied in 2011 is 14 percent. In 2011 company A hire 8 construction workers to renovate a part of the domicile building of the company. The building is used for making both taxable and exempt supplies. This is according to Article 16, paragraph 1 of the Law to be considered as a supply of services for consideration because the VAT on such a service would not be wholly deductible if supplied by another taxable person. The renovation starts in February 2011 and is completed in August 2011

The taxable amount for this supply shall in accordance with Article 24, subparagraph 7.3 be calculated as the open market value. Which according to Article 24, paragraph 2 shall mean the price normally charged for such a supply.

The price normally charged by a construction company for the services carried out by the 8 construction workers are estimated to 18,000 Euro in total.

Company A shall issue an internal sales invoice on which it shall declare output VAT of 18,000 Euro. The VAT amount of 2,880 Euro shall be reported as output tax in the VAT return to be submitted for the tax period of August 2011.

In the tax return for August 2011 is company A at the same time entitled to deduct 14 percent of the output VAT as deductible input VAT. The internal sales invoice shall be considered as an invoice as referred to in Article 37, subparagraph 2.1 of the Law.

Amounts related to the construction work to be reported in the VAT return for August X2:

Output VAT	16 % of 18,000	2,880 Euro	
	Input VAT	14 % of 2,880	403 Euro
VAT amount due			2,477 Euro

In the VAT return to be submitted for January 2012 company B will have to adjust the deduction of input VAT in accordance with the final calculation of the partial right of deduction on the basis of the actual turnover amounts for 2011

2. The right to exercise deductible VAT as per Article 37, paragraph 3.2 and Article 36, paragraph 2.2 of the Law requires the following documentation:

- 2.1. customs declarations subject to custom duties when the goods are released into the free circulation, such as:
- 2.2. customs declaration: IM4 – 40 00, is a regular import subject to customs duties based on tariff rates at the time of entry of goods.
- 2.3. customs declaration: IM4 – 40 71, is the goods for which customs duties are paid in the customs warehouse
- 2.4. customs declaration: IM4 – 40 51, is the goods for which the customs duties are paid under the internal processing procedure – system of suspension.
- 2.5. customs declaration: IM4 – 40 53, is the goods for which customs duties are paid under the temporary import provisions
- 2.6. customs statement: IM6 – 61 21, is the part of goods for which customs duties are paid at the entry of the country, while temporary staying abroad for processing purposes, and subject to duties only for the repaired or processed portion.

3. The right to exercise deductible VAT as per Article 37, paragraph 3.2 and Article 36 paragraph 2.1 of the Law shall be subject to the following documentation:

- 3.1. tax invoice issued by taxable person registered for VAT, which also contains all the elements required under Article 45 of the Law;
- 3.2. the debit note issued in accordance with Article 47 of the Law ;
- 3.3. in addition to the documents set out in the paragraph above, the following documents shall also be produced in order to exercise the right to deduct VAT;
- 3.4. contract on purchase and sale, if there have been concluded a contract between the parties;

3.5. an evidence in respect to the payment if the payable amount exceeds 500 euros, pursuant to Article 40 of the Law 2004/48 supplemented with the Law 03/L – 071, Article 24 paragraph 3, and Article 11 of the Instruction 16/2009;

3.6. in case of investments, documents required under Article 7, paragraph 11 of the Administrative Instruction 16/2009, date 01/12/2009 on the implementation of the Law No 204/48, “Tax Administration and Procedures”, as amended by Law No. 03/L-071, “on amendment to the Law no. 2004/48 on tax administration and procedures”;

3.7. any other necessary document relevant to the transaction.

4. The right to exercise the deduction of input VAT pursuant to Article 37, paragraph 3.3 and with respect to transactions referred to in Article 31, sub-paragraphs 1.1, 1.2 and 1.4 of the Law is subject to this documentation:

4.1. customs document – on export for return of VAT.

4.2. customs document: EX1 – 10 00, means the regular export, when the local goods are exported abroad.

4.3. customs document: EX2 – 21 00, means a temporary export with the view of repair and processing abroad.

4.4. customs document: EX3 means re-export of goods. There are several types of this kind of customs regime

4.4.1. EX3 – 31 41 – means that a goods sent on processing exited the country. This regime means that the goods and the time of entrance paid customs duties, and on exit under this regime, he is entitled to claim reimbursement by the customs for the portion of goods that was sent abroad (re-exported);

4.4.2. EX3 – 31 51, means re-export of goods under the internal processing procedure – system of suspension;

4.4.3. EX3 – 31 53 – means re-export of goods under the temporary import procedure;

4.4.4. EX3 – 31 71 – means re-export of goods under customs warehouse procedure.

5. Taxable persons shall deduct in the tax period in which the right of deduction arises in accordance with the paragraph 1 of Article 37 of the Law. If for any reason, the taxable person deducts the input VAT later than the period when he/she had the right to deduct it as such, the taxable person shall notify the Manager of Regional Office in relation to the case, by providing documents and proves any other necessary justification explaining the reason why input VAT was not deducted in the period when the right of deduction arose. The approval of Regional Office Manger is not required, but he/she shall keep such evidences provided by the taxable person in the event of subsequent audit conducted towards that taxable person.

6. However, the taxable person is not entitled to deduct input VAT, after the last tax period in the following year. and such supply shall be considered a purchase with non-deductible VAT.

## Article 21 VAT Refund Claim

### 1. *Reimbursement of Value Added Tax*

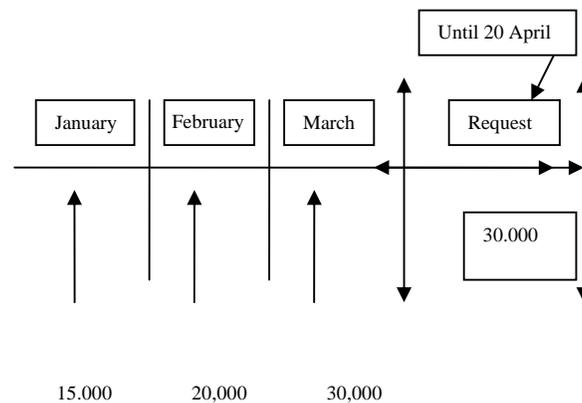
1.1. With respect to Article 40, paragraph 1 of the Law, if the amount of deductible tax at any tax period (e.g. a month) is higher than the amount of the assessed tax due for the same tax period, the taxpayer shall have the right to carry over the VAT credit to the next tax period. Taxpayer shall use this tax credit as payment of tax for the next tax period.

1.2. Based on Article 24 of the Law 2004/48 of the Law on tax administration and procedures, as amended by the Law 03/L-071, and based on Article 40, paragraph 2 of the Law, the taxable person is entitled to request reimbursement.

1.3. According to Article 40, paragraph 2.1 of the Law, the taxable person may request the VAT reimbursement at the end of each calendar quarter if the amount of VAT credit exceeds the amount of 5,000 EUR and provided that such taxable person was in credit situation at the end of each VAT tax period. The person is, furthermore, required to submit all VAT statements and other tax statements for all previous tax period, since the time of commencing its economic activity.

1.4. The outstanding balance of the credit shall make the excess tax credit, remaining at the end of subsequent quarter, which could not be used against the new VAT obligations incurred during such subsequent reporting period (quarter). This outstanding balance at the end of the third month must exceed 5,000 EUR to be eligible for reimbursement.

### *Example:*



*Reimbursement is possible to an amount of 30.000 EUR.  
For exporters, this condition shall not apply.*

1.5. Taxpayer is entitled to seek reimbursement until the 20<sup>th</sup> following the calendar quarter, which matches the period of VAT declaration, provided that the following requirements have been met:

1.5.1. the amount of deductible tax for any tax period of the quarter is higher than the amount of tax calculated at the same tax period of the quarter;

1.5.2. the amount of VAT credit has exceeded the amount of 5,000 EUR in the last period of the calendar quarter;

1.5.3. taxpayer submitted all VAT declarations and declarations of other taxes for all previous tax periods.

1.6. The request above shall be submitted to Taxpayers Services Office in the appropriate Regional Office, along with the declaration of the previous quarter.

1.6.1. The request for VAT reimbursement shall end in the course of 60 days upon receipt of request for reimbursement submitted to the Taxpayers Service Office of the appropriate Regional TAK Office. After this date, if there are no reasons for delay, an interest shall be calculated since the 61 day as set out under the TAK legislation. If the reasons for delay are justified due to taxpayer's failure to comply with the timeframes set out under the legislation, the TAK shall not calculate any interest for delays.

1.6.2. The person conducting only exempted business activities, as stated under the Law on VAT 03/L-146, Article 27, without the right to deductible VAT is not entitled to seek VAT reimbursement.

1.6.3. Persons who cease their activity but are in credit, e.g. the crediting of the taxpayer is 3,000 EUR for various reasons, the taxpayer is entitled to reimbursement although crediting of the taxpayer is under the foreseen threshold as per paragraph 40.2 of the Law on VAT. In this case, the requirement that the taxpayer should have 5,000 EUR shall not apply.

***2. Applications for VAT reimbursements on monthly basis, such as reimbursements for exports: sub-paragraph 2.2 of paragraph 2, Article 40 of the Law on VAT***

2.1. Taxpayers whose primary business or businesses is export of goods usually of higher deductible than calculable tax due to the 0% export rate. Requests for exports reimbursements, which in successful VAT compensation exceed the deductible tax, shall be paid after each tax period, provided that the following conditions are met:

2.2.1. export transactions account for at least 25% of total transactions with the right to VAT deductions; and the value of VAT credit exceeds 5,000 EUR at the end of taxation period;

2.2.2. the taxable person shall meet all the applicable customs and VAT provisions;

2.2.3. the taxable person shall submit VAT declarations and other tax declarations for all the other periods;

2.2.4. the taxpayer shall possess sufficient documentation to prove the VAT reimbursement claim.

3. Evidence to be in possession of the taxable person with respect to VAT reimbursement claim:

3.1.all purchase receipts for the past three months before the month of claimed crediting, purchase receipts for the month in which the claimed credit was established as well as receipt of purchases for subsequent months before the month of VAT reimbursement claim;

3.2. All sale receipts for three months before the month in which the claimed credit was established as well as sale receipts for subsequent months before the month of VAT reimbursement claim;

3.3. all customs documentation along with accompanying receipts of purchases for all imports in Kosovo during the three months before the month in which the claimed credit was established;

3.4. reimbursement shall not be issued until taxpayer shall have submitted all required tax declaration. A taxpayer's application failing to submit all declarations shall be deemed invalid. Any request for reimbursement submitted without all the required declarations shall be rejected;

3.5. business declaration regarding the reasons for overpayment or VAT credit balance, such as investments, unusually large purchases, etc;

3.6. any long-term or short-term investment project, investment project, other documents showing investment in a building, base assets, etc.

4. TAK shall not make the reimbursement if the taxable person has no evidence or documents, or if there are indications that the data reported in the VAT declaration reporting the VAT reimbursement and previous VAT declarations are inaccurate. Such indications shall be documented in an official report – minutes of the TAK official or Customs Officer. Such a tax report provides evidence until the taxable person proves otherwise. TAK shall, at a properly justified decision, notify the taxable person on reasons to withhold the reimbursement.

**5. *Claim/application form for VAT reimbursement in Kosovo***

5.1. Regional Tax Office shall reach a decision on compensation based on taxpayer's application. Application shall supplement the monthly tax return, as per Article 54.1 of the Law on VAT, if the application is submitted on 20 of the month subsequent to the claim month as described in the VAT Instruction.

5.2. This VAT reimbursement application is a free form and shall, in the least, contain the following information:

5.2.1.applicant's name (taxpayer)

5.2.2. taxpayer's fiscal number

- 5.2.3. taxpayer's address, place
- 5.2.4. bank account number
- 5.2.5. contact person, name, contact address and his/her telephone number
- 5.2.6. tax period
- 5.2.7. type of tax
- 5.2.8. the amount of reimbursement for the period.

### 5.3. Description of issues and basis

- 5.3.1. why the applicant's deductible tax exceeds the calculated tax, or
- 5.3.2. if there were any previous errors, as an example
- 5.3.3. calculated tax may have been charged wrongly due to insufficient knowledge on legislation or calculation errors
- 5.3.4. date
- 5.3.5. signature (signature of authorized or responsible person).

## **Article 22 Deduction Adjustments**

1. The initial deduction of input tax shall be corrected when the use of the capital goods subsequently changes with the effect that the taxable person is entitled to deduct a lower or a higher amount. The annual correction shall be made only in respect of one-twentieth for immovable property and one-fifth for other kinds of capital goods of the VAT charged on the capital goods. The correction shall be made on basis of the variations in the deduction entitlement in subsequent years in relation to that for the year where the capital goods were acquired. The taxable person is not required to correct the deduction if the difference is less than 20 Euro. The correction for each calendar year shall be made at latest via the tax return for January in the following calendar year.

2. If the capital goods are supplied during the correction period shall the following apply:

2.1. if the supply is taxed, the capital goods shall be considered to be used for fully taxable purpose for the rest of the correction period. If the taxpayer was not entitled to a fully deduction of the input tax the correction can be carried out for the rest of the correction period in the tax period where the capital goods is supplied. The correction can not exceed 16 % of the sales price exclusive VAT;

2.2. if the supply is not taxed, the capital goods shall be considered to be used for not taxable purpose for the rest of the correction period. If the taxpayer was entitled to a fully or partial deduction of the input tax the correction shall be carried out for the rest of the correction period in the tax period where the capital goods is supplied;

- 2.3. if the supply, according to article 13 of the Law, shall not be considered a supply of goods for consideration, the correction obligation for the capital goods in question is transferred to recipient. A statement, with a specification of the correction obligation for each capital good, signed by both the supplier and the recipient shall be submitted to the TAK at latest 8 days after the transfer of the assets. However, if the statement is not submitted within the 8 days, the correction obligation shall become due immediately for the rest of the correction period and the recipient and the supplier shall be jointly liable. The TAK can decide that a special form shall be used for the statement.
3. If a building or equipment becomes unusable before the expiration of the period for correction of input tax, there reasons for correction of input tax shall cease.
4. If a subsequent investment does not substantially change the lifetime of the use of the building or equipment, then the correction of input tax for that investment shall be made in the period of making the correction of input tax for the capital goods in question.
5. If it is a subsequent investment which substantially changes the lifetime of use or represents a separate unity such as is e.g. annex to an already existing building, a new (separate) period of input tax correction shall be determined for this investment.”

### **Example 1**

#### *Adjustments to deductible VAT for capital assets*

Company A is making both supplies liable to VAT and exempt supplies.

After the end of each year A have calculated that its turnover is divided between liable supplies and exempt supplies, as follows:

Year	VAT taxable supplies	Exempt supplies	Total turnover	Right to partial deduction
2009	160	150	310	52
2010	140	150	290	49
2011	170	140	310	55
2012	130	50	180	73
2013	210	680	890	24
2014	300	80	380	79
2015	150	150	300	50
2016	260	300	560	47
2017	150	150	300	50
2018	0	250	250	0
2019	0	50	50	0
2020	0	300	300	0
2021	150	150	300	50

2022	170	140	310	55
2023	130	50	180	73
2024	210	680	890	24
2025	300	80	380	79
2026	150	150	300	50
2027	260	300	560	47
2028	150	150	300	50
2029	0	250	250	0

The partial right of deduction shall in accordance with Article 39, paragraph 4 of the Law be rounded up to a whole number.

Company A purchases a commercial building in September 2010. The purchase is levied with a VAT amount of 250,000 Euro. Company A receives the invoice regarding the purchase of the building in September 2010 and starts to use the building also in September 2010. Company A will use the building for making both VAT liable and exempt supplies.

How much can A deduct in September 2009?

Calculate the amount that can be deducted by Company A and the yearly corrections of deduction of input VAT to be made by the company.

### **Solution**

In September 2010 can company A deduct 130,000 Euro. The reason is that the partial right of deduction to be applied preliminary throughout 2010 is 52 percent which is the partial deduction rate calculated for 2009.

In the tax return to be submitted for January 2010 the company will have to correct this preliminary deduction in accordance with the actual partial deduction rate calculated on the basis of the turnover amounts for 2010 which is calculated to 49 percent. Therefore, the company will have to reduce its input VAT deduction with 7,500 Euro which is the difference between the preliminary right of partial deduction and the actual right of partial deduction for 2010.

Below is listed the corrections to be made for each year.

Year	Possible annual deduction	Previous early year deductions	Right to deduction	Annual adjustment
2010	12,500	6,125	6,125	0
2011	12,500	6,125	6,875	750
2012	12,500	6,125	9,125	3,000
2013	12,500	6,125	3,000	-3,125
2014	12,500	6,125	9,875	3,750
2015	12,500	6,125	6,250	125
2016	12,500	6,125	5,875	-250
2017	12,500	6,125	6,250	125
2018	12,500	6,125	0	-6,125
2019	12,500	6,125	0	-6,125
2020	12,500	6,125	0	-6,125
2021	12,500	6,125	6,250	125
2022	12,500	6,125	6,875	750
2023	12,500	6,125	9,125	3,000
2024	12,500	6,125	3,000	-3,125
2025	12,500	6,125	9,875	3,750
2026	12,500	6,125	6,250	125
2027	12,500	6,125	5,875	-250
2028	12,500	6,125	6,250	125
2029	12,500	6,125	0	-6,125

Each correction shall be made in the tax return to be submitted for January in the following year.

### **Example 2**

Company B is running a pharmacy and a supermarket. Company B is not registered for VAT because its turnover does not exceed the threshold as referred to in Article 6 of Law. In 2010 the company purchase a small truck. The truck is mainly used in connection with the supermarket but is also used in connection with the pharmacy. The price of the truck is 21,000 Euro. The company receive an invoice from the supplier, who is registered for VAT, on which VAT is charged with 3,360 Euro.

In 2010 when the company purchase the truck no VAT is deducted due to the fact that the company is not registered for VAT.

In May 2012 the companies' turnover exceeds the threshold for compulsory registration and the company therefore submit a registration application with the effect that the company becomes a registered taxable person as of the 10<sup>th</sup> of June 2010.

In 2013 the brother of the owner of the company is moving to Athens. The owner uses the truck to move the brother's belongings to Athens. He is not charging the brother for this service.

After the end of each year taxpayer A have calculated that his turnover is divided, as follows:

Year	Supermarket before registration	Supermarket after registration	Pharmacy	Total turnover	Right to partial deduction
2010	150	0	150	300	0 (No reg.)
2011	170	0	140	310	0 (No reg.)
2012	150	160	240	550	30 %
2013		450	400	850	53 %
2014		500	600	1,100	46 %

The partial right of deduction shall be rounded up to a whole number in accordance with Article 39, paragraph 4 of the Law.

Calculate VAT amounts that can be detected by company A in the period 2010-2014.

### **Solution**

As turnover that will entitle him to deduction can only be included turnover generated as of 10th June 2010 where the company becomes a registered taxable person.

The moving of the brothers belongings to Athens shall according to Article 15, paragraph 2 of the Law is treated as a supply for consideration. The taxable amount for this service shall in accordance with Article 24, subparagraph 7.2 of the Law be the full cost of providing the service. For this service company B shall issue an internal sales invoice on which the output VAT is charged. The taxable amount for this service is included in the turnover for the supermarket. The private use of the truck shall not have any impact on the deduction of VAT regarding the truck. Instead shall private use etc. be treated as supplies for consideration in accordance with Article 15 of the Law.

Year	Possible reduction per year	Previous reduction per year	Right of reduction	Annual adjustment
2010	672	0	0	0
2011	672	0	0	0
2012	672	0	201	202
2013	672	0	356	356
2014	672	0	309	309

Company B is entitled to deduct the following amounts as input VAT in the VAT returns for:

January 2013: 202 Euro  
January 2014: 356 Euro  
January 2015: 309 Euro

### **Article 23**

#### **Deduction of input VAT on Commencement of Economic activity as VAT Registered Taxable Person.**

1. As is foreseen by Article 42 of paragraph 1 of the Law, when a person becomes a taxable person be that by exceeding the threshold foreseen by Article 6 of paragraph 1 of the Law or if he is registered as volunteer pursuant to Article 8 of the Law, this taxable person shall acquire the right that in the first taxable period when he becomes a registered taxable person, to recognize a deduction of input VAT for goods which he has in stock on the day before such registration becomes valid. The conditions to be met to exercise this right are as follows:

1.1. that the goods will be used for making supplies that entitles to deduction;

1.2. the taxable person shall possess available list of inventory specified in amount and date of entry of the inventory on the day before becoming taxable person;

1.3. shall possess invoices as provided under chapter 15 of the Law;

1.4. shall prove evidences on records (entries) in compliance with the tax legislation.

2. As is foreseen by Article 42 paragraph 2 of the Law, a person becoming a taxable person, may have the right to deduct input VAT in the first taxable period when registration has become valid.

3. If the taxable person deducted VAT on goods in stock, and later such inventory are used for making supplies exempt without the right of deduction of input VAT Article 12, paragraph 2 of the Law shall apply, with the effect that output VAT shall be paid by the taxable person., in the tax period when the goods are used for supplies exempt without the right of deduction. An internal sales invoice shall be issued in such case.

4. If a taxable person has a VAT credit at the end of the quarter due to that the taxable person deducted VAT on goods in stock, then this person shall not be entitled to claim the refund, in relation to the credit which is the result of deduction of VAT on goods in stocks when he/she became a taxable person.

## **Article 24 Special Provisions**

1. According to requirements of Article 51, paragraph 3, every taxable person shall have and maintain documents as prescribed in chapter 15 of the Law. He is also obliged to have and maintain other documents as follows:

1.1. transport document/consignment note – as is prescribed in Article 9 paragraph 1.2 of the Instruction No. 16/2009 for the implementation of Law on Tax Administration and procedures;

1.2. document on receiving deliveries – has to be a document proving the acceptance of the goods by authorised person for that issue. The document, inter alia, should include in detail the description of goods and amounts of the received goods;

1.3. relevant evidences should be offered for registration and detailed notes regarding the work on process about the amount of goods to be displaced commencing from raw material, half product and all the way to the final product;

1.4. movement of goods should be evidenced by relevant documentation in the residence or other premises of a taxpayer if there is more than one place where he exercises his activity of business. The document inter alia has to include in detail the description of type and the amount of the goods that were moved;

1.5. in case of giving goods on consignment then as a relevant document proving that goods were given in consignment shall be the Contract that specifies all conditions of the agreement of consignment and the documentation for the movement of goods, which inter alia has to include in detail description of type and the amount of goods that were moved.

## **Article 25 Persons Liable for Payment of VAT**

### **1. *Fixed assets – postponement of VAT***

1.1. Pursuant to article 52.3 of the Law, postponement of the deadline of VAT for fixed assets will be allowed for businesses on importation of machinery and equipment that fall under Chapters 84 and 87 of the Harmonisation Nomenclature.. Machinery and equipment may be new or second-hand and will be used for production of goods and other services.

1.2. In order to benefit from this postponement, businesses will address Tax Administration by filing an application. The applicant has to attach to the application the copy of business plan, copy of contract with the vendor of machinery or equipment, bank account to cover the VAT part, a factory plan, permit for construction granted by authorised agencies.

1.3. Tax Administration will review requests and will grant postponement of deadlines to the applicants who meet the confidentiality conditions. Approval or refusal done in writing shall be issued to the applicant by Tax Administration and a copy will be delivered to Customs Service prior to the importation. The business shall inform preliminary the Customs Service about the date anticipated and the place through which goods will enter Kosovo. At the time of importation, Customs service shall ask from the owner of goods the approval letter issued by Tax Administration and shall verify it if it corresponds to the approval letter sent to the Customs by Tax Administration. Customs Service shall calculate the postponed amount of VAT for the fixed asset and shall write "Postponed" next to VAT amount in the Customs Statement. Customs Service shall notify Tax Administration for the postponement of the deadline at the time of its arrival.

1.4. Taxable person has six months to compensate the VAT towards the calculated tax. If during a six-month period the taxable person commences with the supply taxable goods and services, then the taxable person shall prepare a tax invoice with the value of the fixed asset on it and the relevant value added tax. Data in the tax invoice shall correspond to the data in the customs statement. Data of the tax invoice shall be registered in both registers, the vending and the purchase register, making VAT zero for the fixed asset and the calculated VAT that was charged and collected from purchasers shall be paid to the Kosovo Consolidated Budget (after deduction of any potential input of VAT for other purchases).

1.5. If by the end of the six-month period value added tax was not paid, Tax Administration shall ask the Bank to cover the modification of the guarantee. There will be no input tax credit allowed as long as the beneficiary of the postponement of the deadline commences with the supply of taxable goods and services.

## **Article 26** **Reverse Charge**

### ***1. Reverse charge - Obligation to pay VAT on goods and services supplied from a taxable person not established in Kosovo.***

1.1. Article 19 of the Law regulates the place of supply of goods. Article 20 of the Law on VAT regulates the place of supply of services. In the following it is described in detail who is the person liable to pay the VAT and other obligations in relation to supplies of goods and services having their place of supply in Kosovo but supplied by a taxable person not established in Kosovo.

1.2. This Administrative Instruction does not explain when a service shall be considered having its place of supply in Kosovo.

### ***2. When the recipient is registered for VAT in Kosovo***

2.1. Person liable to pay

2.1.1 According to Article 52 of the Law on VAT the person liable to pay VAT is the taxable person carrying out a taxable supply. However, when the supply is

made by a taxable person not established in Kosovo to a person who is registered for VAT in Kosovo, the person liable to pay the VAT on the supply, is the recipient and not supplier.

## 2.2. Invoicing

2.2.1. Even though that the supplier is not liable of paying the VAT he is still obliged to issue an invoice in accordance with article 45 of the VAT Law.

2.2.2. The supplier shall state on the invoice that the customer is liable of paying the VAT by making a reference to article 52, paragraph 2 of the VAT Law or any other reference indicating that the supply is subject to the reverse charge procedure. The following text would be considered appropriate: *“Reverse charge, subparagraph 1.2 of Article 52 of the Law on VAT in Kosovo”*.

## 2.3. Calculation of VAT

2.3.1. The recipient of the supply shall calculate the VAT on the basis of the invoice received from the supplier. However, the recipient shall ensure that the tax base is calculated in accordance with Article 24 of the Law on VAT. Consequently, the recipient shall ensure that the tax base include everything which constitutes consideration obtained or to be obtained by the supplier, in return of the supply.

2.3.2. The recipients' obligation to pay the VAT is not conditioned by the receipt of the invoice on the supply. Therefore, if the recipient does not receive an invoice for the supply he will still have to report the amount in his VAT return for the relevant tax period and to pay the VAT.

## 2.4. Liability arising in the tax period

2.4.1. It is described in Article 22 of the Law on VAT when the VAT becomes due.

2.4.2. It follows from this provision that the VAT become due at the moment when one of the following activities is performed, whichever is the earliest:

2.4.3. the performance of the services;

2.4.4. issuing of an invoice payment or part-payment made before an invoice is issued;

2.4.5. The continuous supply of services over a period of time is to be regarded as being completed at least at intervals of one month.

## 2.5. Inclusion of chargeable VAT in the VAT return

2.5.1. The recipient shall include as output tax the VAT due on the supplies of services from a supplier not established in Kosovo

## 2.6. Deduction

2.6.1. The recipient are in the same VAT return entitled to deduct the VAT amount reported as output tax in accordance with chapter XIII of the Law on VAT.

2.6.2. If the taxpayer did not receive an invoice from the supplier the condition referred to Article 36, paragraph 1 regarding the deduction being allowed only if the taxpayer poses an invoice for the supply, shall not apply in regard of deduction of output tax calculated on supplies received from a supplier not established in Kosovo.

## 2.7. VAT registration and tax representative

2.7.1. When the reverse charge procedure applies and the recipient therefore is liable for the payment of VAT, the supplier shall not be obliged to register in Kosovo or to appoint a tax representative.

## 3. *When recipient is not registered for VAT*

3.1. When a taxable person not established in Kosovo makes a supply that is deemed having its place of supply in Kosovo, to a recipient who is not registered for VAT in Kosovo, the supplier is obliged to register for VAT in Kosovo, before he makes the supply in Kosovo.

3.2. The supplier not established in Kosovo shall appoint a tax representative. The supplier shall be registered under his own name and the name of the tax representative within five days after the appointment as tax representative and prior to the starting of economic activity in Kosovo.

3.3. The tax representative shall be liable for the payment of VAT on the supplies in Kosovo that the taxable person he is representing make to persons not registered for VAT in Kosovo.

## **Examples 1**

A lawyer from Austria is hired by X Bank in Pristina to represent the bank in a court case, where the bank is indicted for an unlawful sale on an auction of a building that was put up as collateral for a credit, where the instalments was not paid on the dates agreed in the credit agreement.

The bank is registered for VAT purposes for the following activities:

1. Management and safekeeping of securities
2. Hiring out of safes
3. Leasing out movable items and immovable property

The Austrian lawyer charge X Bank a total fee of Euros 7,500 for his services.

Describe the VAT treatment of the amount charged by the lawyer for assisting the bank in the court case related to the banks supply of VAT exempt credit transactions.

## **Solution**

Firstly, it is necessary to determine the place of supply of the services supplied by the lawyer. The bank is a taxable person according to the special definition provided for in subparagraph 1.1 of Article 20. The place of supply of the service is therefore in Kosovo according to subparagraph 2.2 of Article 20.

Secondly, it is necessary to determine whether the lawyer is established in Kosovo. Representing a company in a court case does not have the effect that the lawyer shall be considered established in Kosovo.

The person liable to pay the VAT is therefore according to subparagraph 1.2 of Article 52 X Bank. The reason is that the bank is registered for VAT. It makes no difference in this context, that the reason for the bank to be registered for VAT is another kind of supplies than the kind of supplies to which the lawyer's services are connected to.

X Bank can not deduct the VAT amount as input VAT unless the recipient of the credit is established outside Kosovo, cf. subparagraph 3.3 of Article 36.

## **Examples 2**

An architect from Italy is hired by hotel company X in Prizren to draw a new hotel building to be constructed on a specific piece of building land in Prizren. The architect is furthermore hired to supervise the construction of the building. The architect spends 14 weeks in total in Kosovo. He stays in an apartment put at his disposal by the hotel company. The hotel company is not registered for VAT in Kosovo because its turnover has not yet exceeded 50.000 Euros in a 12 months period.

The architect charges the hotel company a total of 12.000 Euros for his services.

Describe the VAT treatment of the amount charged by the architect

## **Solution**

Firstly, it is necessary to determine whether the service is having its place of supply in Kosovo. It can be assumed that the hotel company shall be regarded as a taxable person according to the special definition provided for in subparagraph 1.1.2 of Article 20. The place of supply is therefore in Kosovo in accordance with subparagraph 2.1 of Article 20.

Furthermore, the place of supply is also Kosovo in accordance with subparagraph 2.2.1 of Article 20 because the services are related to a specific immovable property. It should be noted that services from an architect that are not related to a specific immovable property or a specific piece of land or area, are not covered by subparagraph 2.2.1 of Article 20

The architect can not be considered established in Kosovo because he is working 14 works on a specific assignment from an apartment in Kosovo put at his disposal by the client.

Since Hotel Company X is not registered for VAT the architect is in accordance with subparagraph 1.1 of Article 52 liable to pay the VAT. The architect shall in accordance with paragraph 5 of Article 6, register for VAT in Kosovo and shall in accordance with paragraph 5 of Article 52 appoint a tax representative as the person liable for the payment of the VAT.

### **Examples 3**

Company B from Macedonia is advising private person on how to establish a successful business and how to earn at least a million Euros within the first five years as a businessman. Company B charge 5.000 Euros for a “package” comprising of 10 hours meeting with a consultant from the company and a set of a written recommendations provided on the basis of the meetings. It is up to the customer to decide how and when the meetings shall take place and the format and way that the company shall deliver the recommendations.

Describe the VAT treatment of the fee charged by company B

### **Solution**

The recipient can not be regarded as a taxable person according to the definition provided for in subparagraph 1.1 of Article 20 under the assumption that the person has not yet started to make supplies in the capacity of being a taxable person as referred to in Article 4.

The described services can not be categorised as electronic services as referred to in Annex II of the Law.

According to subparagraph 3.1 of Article 20 the place of supply shall be the place where the supplier has established his business. Due to the fact that there is no information about the Macedonian company having a fixed establishment or similar in Kosovo from which the supply is made, the place of supply is not in Kosovo. Therefore, Kosovo can not charge the supply with VAT.

### **Article 27 Tax Period**

1. Pursuant to Article 53, paragraph 1 of the Law, a tax period for VAT shall be a calendar month period which starts on the first day of the month and ends at the last day of the same month.

2. Pursuant to Article 53, paragraph 2.1 of the Law, for the person who becomes a taxable person for the first time in accordance with Article 6 paragraph 1 of the Law and who has registered in accordance with the requirements under Article 7 and 8 of

the Law, tax period for VAT shall be the period which starts on the day of registration for VAT (implying the date when the threshold for registration has been exceeded or when it applied for volunteer registration) and shall end at the last day of that month.

3. Pursuant to Article 53, paragraph 2.1 of the Law, the Tax period for VAT shall start on the first day of the month and shall end at the date of the same month when the approval from TAK has been received for registration for VAT, for the taxable person who wants to deregister from VAT in accordance with Article 9 of the Law.

4. Pursuant to Article 53, paragraph 3.1 of the Law, the Tax Period shall start on the day when a procedure of liquidation of bankruptcy has been initiated to the day when a decision has been taken on the completion of the procedure of liquidation or bankruptcy, for the person for whom a procedure of liquidation or bankruptcy has been initiated for different reasons. In these cases, if the taxable person who is in the procedure of liquidation or bankruptcy does not conduct economic activity during this process, this taxable person will be required to submit a statement until the 20<sup>th</sup> day of the month following the month in which a decision has been taken on completion of the procedure of liquidation or bankruptcy, notwithstanding how long such a procedure takes.

5. Pursuant to Article 53, paragraph 3.2 of the Law, for the person against which a procedure of liquidation or bankruptcy has been initiated and the Liquidator conducts a business activity, the person who is under a procedure of liquidation or bankruptcy shall be required to submit a VAT statement every month until the 20<sup>th</sup> day of the month following the month of its declaration.

#### **Article 28**

##### **VAT Return, Submission and Payment**

1. Every taxable person is obliged to submit to TAK the VAT return by the 20<sup>th</sup> day of the month following the tax period which is declared.

2. If the 20<sup>th</sup> day is Saturday, Sunday or a public holiday day in the Republic of Kosovo, then the last day for declaration shall be the first working day following the weekend or public holiday.

3. The VAT return shall be submitted in the place and the way which as determined by TAK, physically or electronically.

4. The form of the return and the information to be provided in the return shall be defined by TAK and the taxable person will be offered an instruction detailing specifically all items to be filled in.

5. Every taxable person until the 20<sup>th</sup> day of the month after the period shall submit a VAT return and if the period is due for payment has to be paid until this day, each delay of payment shall be punishable pursuant to tax legislation of TAK.

#### **Article 29**

##### **Keeping and Safeguarding VAT Registers, Notes and other Documentation**

1. *Purchase register*

1.1. Purchase register is obligatory to be kept by all taxable persons. The register should show in the front page, the identification number and the person's name. All pages should have a serial number. Register is filled in every day if there are transactions. Every transaction is registered in it, supply and the data of invoice presented in the transaction.

1.2. This register records the date of issuance of the invoice, serial number of invoice, data of the import statement (No. of SAD), name of vendor and his identification tax number.

1.3. Purchases are registered in the total value which includes VAT too (if there is any) as broken down in purchases with VAT and in purchases without VAT. Purchases with VAT are recorded as separate in imports and purchases within the country.

1.4. For every purchase with VAT, the person records the taxable value and VAT corresponding to this purchase.

## **2. Supply register**

2.1. Supply register is obligatory to be kept by all taxable persons. The register should show in the front page, the identification number and the taxable person's name. All pages should have a serial number. Register is filled in every day if there are transactions. The client is registered for every transaction and the data of invoice presented in the transaction.

2.2. This register records the date of issuance of the invoice, serial number of invoice, and date and number of customs statement when goods are exported (No. of SAD) name of client and his identification number.

2.3. The total transaction value including VAT (if there is any) is registered in it.

2.4. Sales are recorded separately in the exempted, sales with the right of deduction, exports and taxable sales.

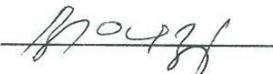
2.5. The taxable value and VAT are registered for each taxable sale.

2.6. The period of keeping of registers and registrations and other original documentations shall be six years, as is foreseen by tax legislation of TAK.

## **Article 30 Entry into Force**

This Administrative Instruction enters into force on the day of its signature by the Minister of Economy and Finances.

**Bedri HAMZA**



**Deputy Minister**

**Date, 30.07.2010**

