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

PUBLIC EXPLANATORY DECISION NO. 02/2019 ON TAX TREATMENT OF LONG-TERM CONSTRUCTION CONTRACTS

PURPOSE
The purpose of this Public Explanatory Decision is to clarify tax treatment for aspects of Value Added Tax (hereinafter: "VAT"), Personal Income Tax (hereinafter: "PIT") and Corporate Income Tax (hereinafter: "CIT") in respect of long-term construction contracts.

SCOPE
This Public Explanatory Decision shall apply to persons engaged in construction activities, i.e. taxpayers involved in long-term construction projects and contracts.

DEFINITIONS
For purposes of this Public Explanatory Decision, the definitions herein shall have the following meaning:

- **Long-term construction projects and contracts** – construction projects and contracts extended over two or more tax periods;
- **"Contractor"** – the person implementing the construction work, whether directly or through subcontractors, who is paid by the investor progressively for such construction work through a combination of advance payments, progressive payments and final payments;
- **"Investor"** – entity financing the works of the construction contract and paying the contractor for the implemented work.
- **"Investor-contractor"** – entity both financing and implementing the construction work.
- **Barter transaction** – a transaction involving two parties where one party provides the other party with goods, services or means other than cash in exchange for goods, services or means other than cash.
LEGAL BASIS

Law No. 03/L-222 on Tax Administration and Procedures and Administrative Instruction No. 15/2010

Article 13 of the Law provides for the creation and retaining of records, as quoted below:
“1. Taxpayers are obliged to keep books and registers compatible with the tax legislation.”

Article 47, paragraphs 1 and 2, of the Law addresses the barter transactions, as quoted below:
“1. Barter transactions shall be considered as a sale of goods or the result of work or services at market values.
2. Tax invoices must be issued for barter transactions in the same manner as they are issued for cash transactions. If the value of a barter transaction indicated in a tax invoice is a reduced value, the Director General may adjust the value of the transaction to reflect market values.

Article 17, paragraph 13, of the Administrative Instruction provides for the creation and retaining of records, as quoted below:
“13. Additional special requirements for activities related to long-term contracts, in addition to the other registration requirements set out in this Article, companies engaged in long-term contracts, such as construction or installation projects lasting for 12 consecutive months or more, shall keep separate accounting for each contract. If there are multiple contracts in the project, there should be separate accounting for each contract within the project. For each contract, there should be separate accounting for all expenditures and inflows (advance payments, quota payments, etc.).”

Law No. 05/L-037 on VAT and Administrative Instruction No. 03/2015

Article 10, paragraph 4, of the Law foresees that the handing over of certain construction Works as a supply with goods is regulated in a sublegal act, as quoted below:
“4. Handing over of certain construction works as a supply with goods shall be regulated in a sublegal act issued by the Minister of Finance.”

Article 16, paragraph 2, of the Law regulates the use of self-supplied services for business needs, as quoted below:
“2. Construction repair work with respect of immovable property used or to be used for existing or future economic activity and rendered for free by a taxable person or his staff to himself, shall be treated as a supply of services for consideration.”

Article 20, paragraph 2, sub-paragraph 2.1, and paragraph 4, sub-paragraph 4.1, of the Law defines the venue of supply with service related to immovable property, as quoted below:
“2. Regardless of paragraph 1 of this Article:
  2.1. Service supply venue, related to the immovable property including services of experts and real estate agents, providing accommodation in hotels sector or in sectors of similar functions, such as resting camps or places created to be used as camping sites, granting the right to use immovable property and services for preparation and coordination of construction work, such as architects services and firms (enterprises) providing supervision of the place, shall be the venue where the immovable property is placed.
4. Regardless of paragraph 3 of this Article:
4.1. the venue of supply with services when it comes to immovable property, including the services of experts and real estate agents, providing accommodation in the hotels sector or in sectors of a similar function, such as resting camps or places created to be used as camping sites, granting the rights to use immovable property and services for preparation and coordination of construction work, such as services of architects and businesses providing on-site supervision, shall be the place where the immovable property is located...”

Article 22, paragraph 2, sub-paragraph 2.3, items 2.3.1, 2.3.2, and 2.3.3, of the Law, determines Chargeable event and chargeability of VAT for supply of goods and services in relation to long-term contracts, as quoted below:

“2. Regardless of paragraph 1 of this Article, specific rules in the case of successive statements of accounts or successive payments are the following:

2.3. long-term contracts including long-term construction contracts and long-term installation contracts shall be regarded as completed

2.3.1. in the month of issuance of Interim Payment Certificate, but not longer than one (1) month after the issuance of Interim Payment Certificate in cases when the technical receipt of works is done later;

2.3.2. in cases when during the year there have been issued one or more Interim Payment Certificates, at the end of the year there is required that there should be issued an Interim Payment Certificate which will be based on real measurement of the works done; or

2.3.3. if during the year there is issued no Interim Payment Certificate, then at the end of the year there shall arise the obligation to charge VAT based on the real measurement of the works done.”

Article 39, paragraphs 1 to 7, of the Law, define Calculation of the part of input VAT allowed as deductible, as quoted below:

“1. In the case of goods and services used by a taxable person both for realizing transactions in respect of which VAT is deductible for the used goods and services, and for realizing transactions in respect of which VAT is not deductible for the used goods and services, only such proportion of the VAT is deductible as is attributable to those transactions in respect of which VAT is deductible. The taxable person may be authorised by TAK to make the deduction on basis of the real use made if he provides in his accounting records, data on the input VAT for which he is entitled and is not entitled to deduct input VAT for all used goods and services.

2. The deductible proportion shall be made up of a fraction comprising the following amounts:

   2.1. as a numerator: the total amount, exclusive of VAT, of annual turnover attributable to transactions on which the taxable person has the right to deduct input VAT;
   2.2. as a denominator: the amount included in the numerator and the amount of total annual turnover on which the taxable person does not have the right to deduct VAT, including subsidies other than those directly linked to the price of supplies of goods and services as referred to in paragraph 1 of Article 24 of this Law.

3. The calculation of the deductible proportion shall not include:

   3.1. the amount of turnover attributable to supplies of capital goods used by the taxable person for the purposes of his business;
   3.2. the amount of supply of financial services as referred to in paragraph 1 of Article 28 of this Law, if they are performed incidentally.

4. The deductible proportion of VAT shall be determined on an annual basis as a percentage, and shall be rounded up to the next whole number.

5. Provisional deductible proportion and actual deductible proportion:

   5.1. the deductible proportion for the current year shall be determined provisionally on the basis of the data on transactions of the preceding year as provisional deductible proportion.
In the absence of data on transactions in the preceding year, or where they were insignificant in amount, the provisional deductible proportion shall be determined by the taxable person on the basis of his own forecasts, regarding which the taxable person should notify TAK;

5.2. the deductible proportion shall be finally fixed when the actual volume of transactions in the year for which the deductible proportion is being determined as actual deductible proportion is known;

5.3. if it is established that the deduction of input VAT on the basis of the provisional deductible proportion was higher or lower than it should have been with respect to the actual data on volume of transactions, the input VAT deduction shall be adjusted accordingly in the tax return of the tax period of January of the following year, being the year in which the actual deductible proportion is established.

6. Notwithstanding paragraph 2 of this Article, a taxable person may determine the deductible proportion for each individual area of his activity separately, provided that he maintains separate accounts for each individual area of his activity and provided that he notifies TAK on the method of defining the deductible proportion. If TAK receives the notification at least fifteen (15) days before the start of the new tax period, the taxable person may start to calculate the deductible proportion pursuant to this paragraph in the first tax period following the tax period in which he informed the TAK about his decision, otherwise with the beginning of the next tax period. The taxable person should calculate the deductible proportion, selected according to this paragraph for at least twelve (12) months. If a taxable person wishes to change the method of calculating the deductible proportion again, he must notify again this change to TAK fifteen (15) days before the start of the tax period in which the new method is going to be used.

7. TAK may:

7.1. following the notification made in accordance in paragraph 6 of this Article, prohibit the taxable person from using the chosen method for determining a deductible proportion if the chosen method does not allow TAK to control adequately the deduction of input VAT;

7.2. authorise or require from the taxable person to make deductions based on the real use made for all or part of goods and services.”

Article 52, paragraph 1, sub-paragraph 1.4, items 1.4.1 and 1.4.2, of the Law, determines the persons liable for payment of VAT on supply of services related to immovable property, as quoted below:

“1. Persons liable to pay VAT are:

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

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

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

Article 17 of the Administrative Instruction addresses construction and maintenance works for VAT purposes, as quoted below:

“1. Works on immovable property

Construction activities, the performance of the construction process, as well as maintenance, are supply service within the meaning of the Law on VAT. The supply of construction services, the performance of the construction process, construction works and maintenance are taxable supplies for VAT."
Construction is defined as an operation that is a result of total or partial completion of a new or substantially changed building. Maintenance is defined as an operation performed on land or in the building, to prevent degradation or damage; and keep the land and buildings with good views and in order, including cleaning.

1.1. Works related to the construction process, but not limited to, are:
1.1.1. The works of constructing buildings and other construction works;
1.1.2. The works on equipping buildings that have the effect of including eventually setting installed devices or materials;
1.1.3. works of restoration and repair of buildings and installations with immovable character.

2. The taxable amount for construction Works

The taxable value of construction works should include everything that constitutes the value corresponding to the service provider of construction works taking or to be taking from the buyer in exchange for supply. The corresponding value is the market value and it is the total amount in order for the buyer to get his benefits of the construction service, at the same stage of trading in which the supply is carried out, must pay with equal conditions of competition of service suppliers, which operates as an independent. This taxable value of construction works is determined analytically by the respective values of the items of elements within the works making up the stages of work performed or related services and adding each element included in the taxable value of a supply under Article 24 of the Law. These values are reflected in the stages of the works carried out, the total value of which is reflected in VAT tax invoice, which is attached to the existing stage to justify every item of work performed.

3. Modalities and method of implementation of VAT in construction

3.1. VAT in construction is applied:
3.1.1. When a taxable person carries out construction work of any kind of public or private works, works in which the value of work except including the value of the materials used, the reconstruction works, the restoration of a building or constructing new facility (building) or performs works related to public works (roads, regulation of terrain, etc.) is obliged pursuant to Article 22, paragraph 2.3 of the Law, Construction works on long-term contracts should be considered as concluded:
   i. In the month of finalizing a stage, but no later than one month after finalizing a stage where technical acceptance of works is done later;
   ii. Where during a year, one or more stages are finalized, in the end of the year it is required to look into stage work which will be based on actual measurements of the work done, or
   iii. If no stage work is done during the year, then at the end of the year VAT will arise based on real measurement of the work.
3.2. However, if the abovementioned works are not considered long-term contracts, it should be considered as concluded at the time when stages are finalized.
3.3. Every stage of work performed must be attached to the tax invoice.
3.4. At the time when the taxes arise, the following do not affect: the term of payment, possibility of deferred payment or credit.”

Article 25, paragraph 5, sub-paragraph 5.2, of the Administrative Instruction defines the venue of supply with services related to immovable property, as quoted below:

“5. Other services not related to the place where the supplier or recipient of the service is located, but the place where the service is carried out effectively.
5.2. The place of supply of services related to immovable property, including the services of experts and real estate agents, provision of accommodation in the hotel sector or in sectors with similar functions, such as holiday camps or places created to be used as camping, granting the right to use immovable property and services for preparation and coordination of construction work, as the services of architects and companies providing on-site supervision, it is the place where immovable property is located.”
Article 26, paragraph 1, of the Administrative Instruction defines the place of supply of services related to immoveable property, as quoted below:

"1. Based on Article 20 of the Law, the supply of services related to immoveable property, including real estate expert and agent services, supply of accommodation in the hotelier sector or in sectors of similar function, such as camping sites, provision of rights of use of immoveable property, and services for preparation and coordination of construction works, such as architecture services and undertakings supervising construction works, shall be taxable in Kosovo, if such immoveable property is located in Kosovo."

Article 70 of the Administrative Instruction foresees the obligation to pay VAT for the services supplied in the area of construction, namely the application of adverse charge on VAT for services related to construction.

**Law. 05/L-028 on PIT and Administrative Instruction No. 01/2016**

Article 10, paragraph 6, of the Law lays down the income from business activities, namely provides for reporting on taxable income from long-term contracts and projects, as quoted below:

"6. Taxpayers engaged in contracts and long-term construction projects shall report the taxable income from those contracts and long-term projects as described in a sublegal act issued by the Minister."

Article 16, paragraphs 1 to 9, of the Administrative Instruction define income from long-term construction projects and contracts, as quoted below:

"1. Taxable income specified in Article 10, paragraph 6 of the law shall be handled under the provisions of this Article of the Instruction."

1.1. Long-term construction contracts and projects include:

1.1.1. construction of buildings, bridges, dams, pipelines, tunnels and other civil engineering projects,
1.1.2. related activities such as demolition, dredging, heavy earth moving projects;
1.1.3. construction of major plant items including ships and transport vessels, and;
1.1.4. similar contracts in associated fields e.g. heating and air conditioning contracts, electrical rewiring refurbishment of premises, etc.

2. Constructor is required to use the "percentage of work completion" method to determine the gross income for the period:

2.1. "Percentage of work completion" method is based on the ratio between the costs incurred during the tax period compared with total planned project costs
2.2. The ratio obtained under paragraph 2, sub-paragraph 2.1, of this article is used to determine the taxable income of the tax period from the total value of the project.

3. The investor and investors/constructor shall comply with the following provisions to determine the gross income of the period:

3.1. When advance payments are received during tax period, income is recognised based on the advances received;
3.2. During the tax period when there is an entitlement to receive advance payments based on contract but no funds were collected, income is recognized based on that entitlement;
3.3. During the tax period when there is a sales contract in place, however, no income is received under sub-paragraphs 3.1 and 3.2 of this paragraph, income is recognised on the accrual basis; 3.4. During the tax period when the criteria for recognizing income under sub-paragraphs 3.1, 3.2 and 3.3 of this paragraph are not met, then no income shall be reported and such investments handled as on-going investments.

4. To determine the taxable income under paragraph 3, sub-paragraphs 3.1 and 3.2 of this Article, cost of the period is recognised based on the estimated total cost of the project, as follows:
   4.1. Estimated total project cost breakdown per units;
   4.2. The cost of goods sold is a result of the volume of units sold and cost price per unit. The proportion between cash received and the value of sales under contract, serves as a basis to determine the proportion for recognising the cost of goods sold for that tax period.

5. Reconciliation of estimated costs with real costs is made in the last periodof project conclusion including eventual deviation reflected in that period.

6. Upon completion of a construction contract, investor and investor-constructor shall record the unsold parts as inventory stock.

7. Percentages of completion are correctly reflected at or near the end of each stage. If no stage is billed till the tax period is not, then at least the works should be billed at the end of the tax period.

8. When long-term construction contract contains a provision for retention payments, as a percentage of the contract price, until period specified in the contract has elapsed, such payments:
   8.1. Will not form part of taxable income until the contractor either receives them or becomes entitled to receive them.
   8.2. When paid to the contractor before they are actually due, are handled as taxable at the moment they are received.
   8.3. Where they are paid in a separate account and not available for disbursement or general use by the contractor until the construction works are completed, it will not be treated as taxable income until the contractor is entitled to withdraw or use them.

9. Where there are barter transactions as part of a long-term construction contract, such transactions shall be recognized as income or expense at market values at the time barter transaction occurs, in accordance with the Law on Tax Administration and Procedures."

Article 33, paragraphs 2, 3 and 4, of the Administrative Instruction defines the cost of capital assets, and the reporting of capital gains or losses, as quoted below:

"2. For the purposes of paragraph 5 of Article 31 of The Law, the cost of capital asset for the taxpayer shall be:
   2.1. If proven by documentation, the purchase or construction price
   2.2. If not proven by documentation, it will be 80% of the sales.
3. In cases when sale of capital assets involves instalment agreements which span more than one tax period, capital gains shall be reported on a straight-line basis over the duration of the instalment arrangement.
4. 4. Capital loss reported in the tax period in which the transaction took place."

Law No. 05/1-029 on CIT and Administrative Instruction No. 02/2016

Article 5, paragraphs 2 and 3, of the Law define income from long-term construction contract, whose reporting is regulated by a sublegal act issued by the Minister, as quoted below:

"2. An exemption from paragraph 1 of this Article:
   2.2. taxable income from long-term construction projects and contracts;
3. The reporting mode of taxable income according to sub-paragraphs 2.2 and 2.3 of this Article shall be regulated by a sublegal act issued by the Minister."
Article 8, paragraphs 1 to 9, of the Administrative Instruction defines income from long-term construction projects and contracts, as quoted below:

"1. The taxable income set forth in Article 5, 2, sub-paragraph 2.2 of the Law shall be handled in accordance with this article of the Administrative Instruction.

1.1. Long-term construction projects and contracts shall include:

1.1.1. Construction of buildings, bridges, dams, laying of pipes, tunnels and other projects of civil engineering;
1.1.2. Related activities such as demolition, erosion, soil removal projects;
1.1.3. Construction of buildings, factories, including ships and steamship carriers;
1.1.4. Similar contracts in the related fields such as cooling and heating contracts, contracts for the setting and resetting of power network, buildings renovations, etc.

2. In order to determine the gross income for the period, the contract shall be obliged to use the percentage-of-completion method.

2.1. The percentage-of-completion method is based on the ratio of the expenditures incurred during the tax period compared to the total of project’s planned expenditures;
2.2. The ratio gained according to paragraph 2, sub-paragraphs 2.1, of this Article, is used to determine the taxable income of the tax period from the project’s total value.

3. In order to determine the gross income for the period, the investor and investor-contractor shall comply with the following provisions:

3.1. During the tax period when advance payments are received, incomes shall be recognised based on the received advance payments;
3.2. During the tax period when there is a right to receive advance payments based on the contract but there are no collected funds, incomes shall be recognized on the basis of this right;
3.3. During the tax period when there is a sale contract in place but the incomes under sub-paragraphs 3.1 and 3.2. of this paragraph are not received, the incomes shall be recognized based on the accrual principle;
3.4. During the tax period when the criteria for recognizing incomes under sub-paragraphs 3.1, 3.2 and 3.3 of this paragraph are not met, there are no incomes to report thus such investments shall be handled as on-going investments.

4. In order to determine the taxable incomes under paragraph 3, sub-paragraphs 3.1 and 3.2 of this Article, the period cost shall be recognized based on the total planned cost of the project, as follows:

4.1. The total planned cost of the project broken down to units is planned;
4.2. The cost of goods sold is a result of the volume of units sold and unit cost price. The ratio between the received cash and the sales value under the contract shall serve as a basis to determine the ratio for the recognition of the cost of goods sold for that tax period.

5. In the last period of contract termination, the planned cost is harmonised with the real cost and the eventual deviation reflected in that period.

6. Once the construction contract terminates, the investor and the investor-contractor records the unsold parts as inventory – stock.

7. The percentage-of-completion for the construction works shall be reflected for each stage. If no stage has been invoiced during the tax period, then the invoicing for the executed works should be made at least by the end of the tax period.

8. When the long-term construction contracts includes the provision for the payments withheld as a percentage of the contract value until the period foreseen in the contract in the contract is due, such payments:

8.1. Shall not be part of the taxable incomes until the contractor receives them or has the right to receive them;
8.2. When paid to the contract prior to become a liability, shall be handled as taxable incomes upon receipt;
8.3. When paid to the contractor into the special account and are not available for general use by the contractor until the construction works are completed, shall not be handled as taxable incomes until the contractor has the right to withdraw or use them.

9. When there is a barter as a part of the long-term construction contract, this transaction shall be recognized as income or spending, in the market value, at the time the barter transaction occurs in accordance with the Law on Tax Administration and Procedures."

TAX TREATMENT OF LONG-TERM PROJECTS AND CONTACTS FOR VAT PURPOSES

Calculation of VAT from investors and investors-contractors

In cases of transactions involving both VAT deductible and non-deductible supplies, only such proportion of VAT is deductible as is attributable to those transactions in respect of which VAT is deductible.

The supply of houses, apartments or other buildings used for residential purposes, including garages and cellars, shall exempt from VAT, without being VAT deductible.

Thus, the deductible proportion of VAT should be calculated in cases where investors and investors-contractors provide mixed supplies (VAT deductible and non-deductible supplies).

The Law on VAT sets out three methods for calculating the provisional deductible proportion, as presented below.

1. Provisional deductible proportion of VAT based on current use

The deductible proportion according to this method is calculated on the basis of volume/unit per m², i.e. it is determined how many project units participate in taxable supplies and in exempt, VAT non-deductible supplies:

\[
\text{Provisional deductible proportion (PDP)} = \left( \frac{\text{Taxable supplies (m²)}}{\text{Taxable supplies (m²) + Exempt supplies (m²)}} \right) \times 100
\]

The deductible proportion of VAT shall be determined on an annual basis as a percentage, and shall be rounded up to the next whole number.

Example: If a project has 13,000 m², of which 3,000 m² under taxable supplies and 10,000 m² under VAT exempt supplies, the provisional deductible proportion will be:

\[
\text{Provisional deductible proportion (PDP)} = \left( \frac{3,000 \text{ m}^2}{3,000 \text{ m}^2 + 10,000 \text{ m}^2} \right) \times 100 = \left( \frac{3,000}{13,000} \right) \times 100 = 23.08 \approx 24%
\]
The percentage obtained on the basis of the above formula (24%) relates to purchases that will be used for mixed supplies, i.e. both VAT deductible and non-deductible supplies.

Note:
In cases where there are several projects in a business, the coefficient/proportion should be calculated for each project. For declaration purposes, a summary of all transactions pertaining to each project should be made using the deductible proportion/crediting coefficient as obtained for each project. However, a simple average cannot be used in such cases.

The method for calculating provisional deductible proportion of VAT shall not change except where a project includes annexes or undergoes a change of usage (from business to residential premises and vice versa).

The method for calculating the provisional deductible proportion of VAT is based on:
- a) for existing businesses – data on transactions of the preceding year; or
- b) for new businesses - the taxable person's projections – current year.

Provisional deductible proportion (PDP) =
(Taxable supplies (in value) / Taxable supplies (in value) + Exempt supplies (in value) x 100

Note:
When calculating the provisional deductible proportion of VAT, the turnover attributable to the sale of capital assets and the amount of the provision of financial services should not be included if carried out on an irregular basis.

The deduction of deductible VAT should be adjusted according to the tax declaration of the tax period of January of the following year. No adjustment to the deduction of deductible VAT is required if the difference to the actual deductible ratio, i.e. the tax credit coefficient, is less than three percent (3%) of the deductible VAT value.

3. Provisional deductible proportion of VAT by individual activity area

A taxable person may determine the deductible proportion for each individual area of his activity separately, provided that he maintains separate accounts for each individual area of his activity and provided that he notifies TAK on the method of defining the deductible proportion.

The taxable person should calculate the deductible proportion, selected according to this criterion for at least twelve (12) months. If a taxable person wishes to change the method of calculating the deductible proportion again, he must notify again this change to TAK fifteen (15) days before the start of the tax period in which the new method is going to be used.

Construction of business buildings both for business needs and for further sale under a long-term contract project
With regards to the construction of business buildings (with both apartments and business premises), which partly will be used for business needs, the deductible proportion of VAT will be calculated for VAT purposes, whereas the part of the business building to be used for business needs shall be determined upon completion of the project after the real costs of the entire building are calculated as the building includes many common areas serving the entire building. Upon completion of the building construction, the space to be used for business purposes shall be introduced as stock, depending on record keeping, i.e. implied at a real cost. Stock will be closed and the building for business purposes will be established with space and real cost and such asset shall be subject to depreciation under the applicable legislation.

**Record keeping in GROSS m² or NET m²**

Record keeping in GROSS m² or NET m² depends on how supplies (sales) are kept and whether a common area in the supply contract/invoice is included, as follows:

- If common space is included in the sales contract/invoice, records shall be kept in GROSS m²;
- If common space is not included in sale contract/invoice, records shall be kept in NET m².

**Calculation of common area if records are kept in GROSS m²**

**Example:** A building of three floors and an attic has the surface areas shown below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Surface area in m²</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st floor, ground floor</td>
<td></td>
</tr>
<tr>
<td>Shops</td>
<td>100 m²</td>
</tr>
<tr>
<td>Apartment</td>
<td>100 m²</td>
</tr>
<tr>
<td>2nd floor</td>
<td></td>
</tr>
<tr>
<td>Apartment</td>
<td>100 m²</td>
</tr>
<tr>
<td>3rd floor</td>
<td></td>
</tr>
<tr>
<td>Apartment</td>
<td>50 m²</td>
</tr>
<tr>
<td>Attic</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>350 m²</td>
</tr>
</tbody>
</table>

Common areas such as entrance, corridor, stairs, and elevator have a total of 40 m².

**Access:**

The total area in NET m² without specific surface areas (common space) is calculated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Surface area in m²</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st floor, ground floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shops</td>
<td>100 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td>Apartment</td>
<td>100 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td>2nd floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apartment</td>
<td>100 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td>3rd floor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Apartment</td>
<td>50 m²</td>
<td>14.29%</td>
</tr>
<tr>
<td>Attic</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>350 m²</td>
<td>100.00%</td>
</tr>
</tbody>
</table>

The surface area of 40 m² used as common area is added to the surface area of each unit, otherwise referred to as specific areas.
The percentage of the common area is added to the normal surfaces according to their real use (both in business and residential premises). This type of division is applied to common areas as well (e.g., outdoor facilities or greenery areas).

If there is no difference between the floors in the project, but the common area is shown against the net area, the percentage of such area can be found as a total considering only the division: residential premises, business premises, garage, and parking area.

Based on the table above, the following cases may arise:

- If the sale contract/invoice stipulates e.g. only 100 m² x 500€ (1/m²), the records whether for VAT purposes (deductible proportion) or for cost determination shall be kept in NET m².

- If the sale contract/invoice stipulates e.g. 100 m² as well as the percentage of the common area which is 11.43 m² x 500€ (1/m²), the records whether for VAT purposes (deductible proportion) or for cost determination shall be kept in GROSS m².

<table>
<thead>
<tr>
<th>Description</th>
<th>Surface m²</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st floor, ground floor</td>
<td>Shops 100 + 11.43 = 111.43 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td></td>
<td>Apartment 100 + 11.43 = 111.43 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td>2nd floor</td>
<td>Shop 100 + 11.43 = 111.43 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td></td>
<td>Apartment 50 + 5.71 = 55.71 m²</td>
<td>14.23%</td>
</tr>
<tr>
<td>3rd floor, attic</td>
<td>Shop 100 + 11.43 = 111.43 m²</td>
<td>28.57%</td>
</tr>
<tr>
<td></td>
<td>Apartment 50 + 5.71 = 55.71 m²</td>
<td>14.23%</td>
</tr>
<tr>
<td>Total</td>
<td>350 + 40 = 390 m²</td>
<td>100.00%</td>
</tr>
</tbody>
</table>
TAX TREATMENT OF LONG-TERM PROJECTS AND CONTRACTS CONCERNING PIT AND CIT MATTERS

Recognition of income and cost

For PIT and CIT purposes, income and costs for long-term projects and contracts shall be recognized as follows:

- "Contractor" is obliged to use the "percentage of work completion" method to determine the gross income of the period.

The "percentage of work completion" method is based on the proportion between the costs incurred during the tax period and the total planned project costs.

The calculated proportion between costs incurred during the tax period and the total planned project costs shall be used to determine the taxable income of the tax period from the total value of the project.

- "Investors" and "Investors-contractors" are required to use the "income taxed as accrued" method where income is reported on the basis of payments accrued, while costs are proportionately allowed on a similar basis.

In order to determine the gross income for the period, the "investor" and "investor-contractor" shall comply with the following criteria:

a) When advance payments are received, incomes shall be recognized based on the received advance payments;
b) When there is a right to receive advance payments based on the contract but there are no collected funds, incomes shall be recognized on the basis of this right;
c) When there is a sale contract in place but the incomes under criterion a) and b) are not received, the incomes shall be recognized based on the accrual principle;
d) When the criteria for recognizing incomes are not met, there are no e) Incomes to report thus such investments shall be handled as on-going investments.

Regarding the subdivision in point c), income is recognized based on the accrual principle in three cases:

- Upon project completion;
- When the project is partly completed. When the part is separated from the whole and by evidence as defined by Law (e.g. if a part of the residential building has been sold and utilized or may be utilized by owners), the accrual principle can be applied for income recognition in respect of such part, despite the fact that investment in the business premises or garages/basements can still be expected;
- If the taxpayer opts to sign a sale contract on an accrual principle for income recognition purposes, such practice shall be considered eligible for tax purpose.

In cases where no income is received, there is no project cost. Upon project completion, the stock shall be created and records must be kept regarding the remaining stock, as in every other industry.
Project cost

Project cost includes but is not limited to:

a) costs directly related to the concerned project;
b) costs attributed to the activity in general and which may be included under the building’s cost; and
c) other costs.

a. Costs directly related to a contract include:
   ▶ work costs related to the building, including work supervision;
   ▶ costs of construction material used;
   ▶ depreciation of used construction equipment and machinery;
   ▶ costs of moving equipment, machinery and materials from a building to another building;
   ▶ cost of renting equipment and machinery;
   ▶ costs of design and technical assistance directly related to the project.

These costs may be reduced by an unexpected income not included in contract income, e.g. income from the sale of surplus materials, equipment and machinery at the end of the contract.

b. Costs that may be incurred by contracting activity in general and allocated into specific contracts, include:
   ▶ insurances;
   ▶ cost of design and technical assistance not directly related to a specific contract;
   ▶ general expenses of the contract.

Such costs shall be allocated by using systematic rational methods applied in continuity to all other in-kind costs. The allocation is based on a normal level of contracting activity. The general construction expenses include costs such as preparation and processing of the payroll of construction personnel. Costs that may be incurred from the contracting activity in general and allocated to specific contracts, including credit interest and loans costs.

c. Other costs specifically to be charged under the terms of the contract, may include certain general administrative expenses and cost of extension, reimbursement of which is specifically set out in the contract.

Costs that cannot be attributed to the project are sale costs and depreciation of inactive equipment and machinery not used in a specific contract.
Land treatment as a cost for natural business persons (individual businesses)

The project land cost in long-term contracts may be derived from the following transactions:

1. As purchased property on behalf of the business;
2. As purchased property on behalf of the owner;
3. As inherited property;
4. As an asset from an barter transaction.

1. Land purchase on behalf of the business

For land purchase on behalf of the business to be recognized as cost, it must be fully documented and such documentation must be available for inspection when required by the Tax Administration. Requirements for documentation are foreseen in the Law on Tax Administration and Procedures.

2. Land purchase on behalf of the owner

Based on Law on Business Organizations, a person who is the owner of an Individual business, registered or unregistered, shall have unlimited personal liability for all debts and other obligations incurred or imposed by Law or a contract, on the Individual business. This liability is unlimited and extends to all property and assets of any type directly or indirectly owned by this person, regardless of whether such property/assets are used for business purposes or for personal or household purposes.

For land purchase on behalf of the owner to be recognized as cost, the taxpayer must possess:
- possession sheet;
- document proving land purchase;
- document proving that the property is transferred on behalf of the business;
- any other document proving land ownership.

In such cases the purchase value on purchase date shall be recognized as the land cost.

3. Inherited property transferred to an individual business

The inherited land cost, which is transferred from the owner (individual) to an individual business shall be the open market value of the land on the day of transfer to an individual business.
Treatment of land as cost for a Legal Person

The project land cost under long-term contracts can derive from transactions with the legal person, as follows:

1. As an asset purchased on behalf of a legal person;
2. As an asset purchased on behalf of the shareholder, which is then transferred to the company;
3. As an asset from an barter transaction.

Land purchased on behalf of the legal person is treated the same as in respect of individual businesses. Different treatment is foreseen if the property is registered in the shareholder's name and then transferred to the company. In such cases, the shareholder is obliged to transfer this land to the name of the company, which increases the shareholder's share of equity percentage. The increase of the shareholder's participation percentage in equity is made through amendment of the Statute and the Company Agreement.

Besides the possibility of increasing the shareholder's equity participation in a company, the shareholder has the possibility to create other transactions, such as: in the form of a barter transaction or a regular purchase between the shareholder and a legal person.

In cases when the shareholder has a land and transfers it to the company, the value of land is recognized as a cost for the company.
TREATMENT OF BARTER TRANSACTIONS FOR VAT PURPOSES

The manner of determining the chargeable event and chargeability of VAT for the supply of goods and services also applies to barter transactions, such as when land is exchanged with a construction building/goods.

In case of barter transactions, the value of the land transferred from its owner as a non-business natural person to a natural business person or a legal person (Investor) is equal (the same) with the metered units (m²) obtained as defined by the contract.

For tax purposes, the price in the contract for such transactions should be based on the open market value.

In cases of barter transactions, tax invoices must be issued in the same manner as if they were issued for cash transactions.

Note:
Regarding barter transactions related to long-term projects and contracts between the landowner and the investor, respectively for the landowner's part of the building (which includes flats, business premises and garages, etc.), invoicing is mandatory when determining the market value of supplies sales incurred within the building. If it is not possible to determine the market value during the subsequent investments, then invoicing should be made at latest at the end of the project (when the flat/business premises/garage is available for the buyer) based on the real value.
TREATMENT OF BARTER TRANSACTIONS AS A COST AND INCOME FOR PIT AND CIT PURPOSES

Land exchanged with a construction building/goods

In cases of barter transactions, the value of the land transferred from its owner as a non-business natural person to a natural business person or a legal person (Investor) is equal (the same) with the metered units (m²) obtained as defined by the contract.

For tax purposes, the price in the contract for such transactions should be based on the open market value.

In cases of barter transactions, tax invoices must be issued in the same manner as if they were issued for cash transactions.

In cases of barter transactions under long-term construction contracts, such transaction is recognized as an income or expense at market value at the time when the barter transaction occurs.

Note:

Regarding barter transactions related to long-term projects and contracts between the landowner and the investor, respectively for the landowner's part of the building (which includes flats, business premises and garages etc.), invoicing is mandatory when determining the market value of supplies/sales incurred within the building. If it is not possible to determine the market value during the subsequent investments, then invoicing should be made at latest at the end of the project (when the flat/business premise/garage is available for the buyer) based on the real value.

Services/goods exchanged with construction buildings

The provider of services/goods as an contractor is obliged to make the recognition of the barter exchange income and income according to the accrual principle, i.e. proportionally based on the percentage of the performed works, where such transactions are attributed to the investor. In this case, the investor should make the entire invoicing (for the final product) as contracted for the construction part of the object, without dividing the building into parts.

CO-INVESTOR

For the purposes of this Public Explanatory Decision, persons who enter into an agreement for barter transactions are not considered co-investors. Co-Investment means a joint investment, profit/loss sharing.
CREATING AND RETAINING RECORDS FOR LONG-TERM CONSTRUCTION CONTRACTS

Taxpayers engaged in long-term construction contracts activities must keep separate accounting for each project. If there are multiple contracts in the project, there should be a separate accounting for each contract within the project. For each contract, there should be a separate accounting for all expenses and income (per measurement unit such as sales, payments, advance payments, etc.).

A person liable to establish records according to the Tax Legislation is required to keep those records for a period of at least six (6) years after the completion of the tax period when such a tax liability has incurred. Excluded from this, records related to assets that are depreciable over a period of more than six (6) years should be kept during the asset's depreciable life expectancy, plus an additional year. Property-related records that require setting of the basis for treating the capital profits or setting the profit by selling them must be held until such assets have been sold or exhibited with an additional six (6) years.

Books and records should be kept in an orderly manner to enable their compilation in summary reports and to facilitate review and examination by TAK.

Note:
Based on the tax legislation, the taxpayer engaged in long-term construction contracts activities is obliged to keep books and records by project with plus six (6) years from the end of the project. This is required in order to verify the real cost and harmonize the recognition of the planned cost, the recognition of income based on the accrual principle by comparing it with the received advanced payments, verification of the project size, etc.
RETAINED PAYMENTS
If any long-term construction contract includes the provision for retained payments (retaining the contract price percentage until the due period envisaged in the contract), such payments will not be, for PIT and CIT purposes, a part of taxable income until the contractor accepts them or is entitled to receive them from the client.

When such retained money is paid to the contractor before they are due, provided that the contractor improves any defect before the construction work is handed over to the client, they will be treated as a taxable income for the period when the money is received for PIT and CIT purposes.

ENTRY INTO FORCE
This Public Explanatory Decision shall enter into force on the date of signature by the Director General of TAK.

Date: 19/04/2019
Prishtina,