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

PUBLIC RULING NO. 03/2019

OBLIGATION TO PAY VAT ON THE SUPPLY OF CONSTRUCTION SERVICES - APPLYING THE REVERSE CHARGE

PURPOSE

The purpose of this Public Ruling is to clarify the tax treatment for VAT aspects of the supply of services in the field of construction, namely the application of Reverse Charge for VAT, domestically.

LEGAL BASIS

Article 52, paragraph 1, sub-paragraph 1.4 of Law No. 05/L-037 on Value Added Tax determines the persons liable to pay VAT, as follows:

“1.4. The Minister of Finance may issue a sub-legal 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 70, paragraph 1 of Administrative Instruction No. 03/2015 on the implementation of Law No. 05/L-037 on Value Added Tax, stipulates that:

“In accordance with Article 52, paragraph 1, sub-paragraphs 1.4.1 and 1.4.2 of the Law, the person liable to pay VAT is the taxable person for whom any of the following supplies are made:

1.1. Supply of construction works, including repairs, cleaning, maintenance, alteration services and demolition relating to the immovable property;
1.2. Supply if the staff is engaged in the above-mentioned activities”.

Page 1 of 9
Article 6 of the Administrative Instruction MF - No. 06/2016 amending the Administrative Instruction No. 03/2015 on the Implementation of Law No. 05/L-037 on Value Added Tax, we quote:

1. The text in Article 70, paragraph 2 of Administrative Instruction No. 03/2015, shall be deleted and replaced as follows:
   2. Persons in special construction scheme are taxable persons who provide services in the field of construction to other taxable persons.

2. Article 70, Paragraph 3, Subparagraph 3.1 of the Administrative Instruction No. 03/2015, is deleted and the text of subparagraph 3.2 will be carried over to paragraph 3.

3. Article 70, Paragraph 11 of the Administrative Instruction No. 03/2015, is reformulated as follows:
   11. Based on the above explanations, all construction services (identified by subparagraph 10.1 up to subparagraph 10.11 of paragraph 10 of this Article), provided by a taxable person to a taxable person, from the date of entry into force of this Administrative Instruction, is subject to the application of the reverse charge within the country, regardless of the date of conclusion of the contract or annex-contract.

DEFINITIONS
The terms and expressions used in this Public Ruling have the same meaning as set forth in Law No. 05/L-037 on Value Added Tax, and Administrative Instructions No. 03/2015 and No. 06/2016 on the implementation of the Law on VAT.

PERSONS IN THE SPECIAL SCHEME OF CONSTRUCTION
Persons in the special construction scheme are taxable persons who provide services in the field of construction to other taxable persons. Therefore, a taxable person for the purposes of this Public Ruling is considered the person who is registered for VAT purposes in Kosovo - VAT Filer.

APPLICATION OF REVERSE CHARGE FOR VAT IN THE FIELD OF CONSTRUCTION
Application of reverse charge in construction only applies to taxable persons who are part of the transaction (supplier and recipient of service). Therefore, the supplier and the recipient of the service must be VAT Filers in Kosovo.

Apart from this, invoicing which is done by the main contractor to the investor is treated as taxable supply under normal VAT rules. Therefore, in these cases, the invoice which is issued by the contractor who is VAT filer is issued with VAT included.
The reverse charge applies only to the supply of construction services. In the case of mixed supplies (supply of goods and services), the separation between goods and services should be clearly specified, i.e. VAT is applied regarding the goods and reverse charge is applied regarding the services. On the contrary, if for any reason this division cannot be clearly specified, the normal VAT rules apply irrespective of the proportion between them, i.e. the invoice is issued with VAT included.

The transaction shall not be subject to the application of the reverse charge where:

1. We are dealing with supply of goods as well as mixed supplies (in cases where the separation between goods and services cannot be clearly specified);
2. One of the parties to the transaction (service provider or recipient) is not a taxable person - VAT filer;
3. Invoicing is done for the investor, whether the investment is for resale or for use by the investor himself/herself.

**VAT REVERSE CHARGE**

According to the reverse charge scheme (hereinafter referred to as the special scheme), for the supply of services related to the field of construction, the VAT payment obligation is transferred to the taxable person registered for VAT in Kosovo, for which supplies were made (excluding the investor).

The special scheme relates to construction work on the construction of new facilities, as well as renovation, extension and maintenance works on the existing facilities.

**PAYMENT OF VAT**

According to Article 52, subparagraph 1.4 of the Law, the person liable to pay VAT is the taxable person who has been supplied with the construction work (service recipient, excluding the investor), including repair, cleaning, maintenance, modification and demolition services in relation to immovable property.

**INVOICING**

The content of invoices issued by a taxable person to a taxable person shall be in accordance with Article 45 of Law No. 05/L-037 on VAT.

According to the special scheme, the supplier, although not obliged to pay VAT, is obliged to issue a tax invoice.

The supplier shall indicate on the invoice that the recipient of the service is obliged to pay VAT by affixing the reference to Article 52, paragraph 1, subparagraph 1.4 of the Law or any other reference indicating that the supply is subject to the reverse charge procedure. The following text will be considered as appropriate: “Reverse charge, subparagraph 1.4.1 or 1.4.2 of Article 52 of the Law on VAT in Kosovo”.
In cases where we are dealing with mixed supplies (supply of goods and services), invoicing should be done separately, respectively separate invoicing for goods (invoicing is done with VAT included) and separate invoicing for services (invoicing is subject to reverse charge).

**CALCULATION OF VAT**

The recipient of the supply must calculate VAT on the data of the invoice received by the supplier.

**CHARGEABLE EVENT AND CHARGEABILITY OF VAT**

Chargeable event and chargeability of VAT is set out in Article 22 of the Law on VAT, as follows:

1. The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.

2. Regardless of paragraph 1 of this Article, specific rules in the case of successive statements of accounts or successive payments are the following:
   
   2.1. When we have successive statements of accounts or successive payments, the supply with goods, other than consisting in renting of goods for a certain period or sale of goods on deferred terms, as referred to subparagraph 2.2 of paragraph 2 of Article 10 of this Law, or the supply of services shall be regarded as being completed on expiry of the periods to which such statements of accounts or payments relate;
   
   2.2. The continuous supply of goods and services over a period of time shall be regarded as being completed at intervals of one (1) month;
   
   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 be raised the obligation to charge VAT based on the real measurement of the works done.

3. Payments received or invoices issued are regulated as follows:

   3.1. When payment is due or has been made on account before the goods or services are supplied, VAT shall become chargeable on receipt of payment and on the amount received;
   
   3.2. When the invoice is issued before the goods or services are supplied, VAT shall become chargeable when the invoice is issued.
THE RIGHT OF VAT DEDUCTION

Taxable person, the subject to this Public Ruling, may deduct from its VAT obligations, the VAT obligation or the VAT paid in connection with purchases of goods or services, provided that he used or he/she will use, those goods or services for purposes of his taxable transactions.

For goods and services used or to be used by a taxable person, for which VAT may be deducted and transactions for which VAT should not be deducted, only the VAT amount attributed to taxable transaction is deducted. Part of the input VAT shall be determined in accordance with Article 39 of Law no. 05L-037 on VAT.

VAT DECLARATION

Recipient of the service shall include on VAT form the output VAT on top of purchases of services in the area of construction subject to the reverse charge, provided by the supplier.

SERVICES IN THE AREA OF CONSTRUCTION SUBJECT TO VAT REVERSE CHARGE

Services in the area of construction, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property under Article 70 of the Administrative Instruction Nr. 03/2015 for implementing of Law no. 05 IL-037 on VAT stand for:

a. Project services and other works related to the construction;
b. Preparatory Works in construction sites, works for the demolition of the building or its parts;
c. Construction of buildings and their parts;
d. Installation works;
e. Final construction works;
f. Maintenance, renovation and repair of buildings or their parts, including cleaning, putting tiles, wallpaper, and parquets (floor) works;
g. Provision of oversight services;
h. Installation or fitting the equipment or machinery which after the installation and fitting become immovable property;
i. Leasing out tools and equipment for construction or demolition, with their user;
j. All other services which include the supply of movability and their inclusion in under construction so that the movability creates quality of immovability;
k. Staff engagement, if the staff conducts construction services.
Based on the explanations provided above, all construction works (identified from point "a" to point "k"), provided by the taxable person for the taxable person (excluding the investor), from the date of the entry into force of this Public Ruling, shall be subject to the application of reverse charge within the country.

For more details on services in the field of construction, the Code - Classification of Economic Activities (NACE Rev.2), Sector F – Construction can be used.

REGULATIONS IN THE CASE WHEN THE REVERSE CHARGE HAS NOT BEEN APPLIED

In all supplies where the reverse charge has not been applied under this Public Ruling, the necessary regulations shall be made. Where reverse charge is required to be applied for services in the field of construction, yet it was not been applied by the supplier, for VAT purposes it is required for the invoice to be corrected during the supply period. The service provider must correct the invoice and apply the reverse charge, for which he/she must notify the recipient of the service. Moreover, the recipient of the service should make the necessary corrections in the relevant period by regulating the deductible VAT.

If such cases are identified by TAK, appropriate regulations will be required and penalties will be applied as set forth in the Tax Legislation. If these regulations are not made by the taxpayer himself, TAK will assess the period based on Article 19 of Law No. 03/L-222 on Tax Administration and Procedures.

EXAMPLE

Company “A” (investor) in Kosovo, on 10 January 2020 engages the Company “B” (contractor) a taxable person in Kosovo for carrying out the final construction works of the building being financed by him, in the amount of € 1,770,000 (taxable supply = € 1,500,000 and 18% VAT = € 270,000).

Contractor “B”, for completing these works engages the company “C” (subcontractor) a taxable person in Kosovo, in the amount of € 1,180,000 (taxable supply = € 1,000,000 and 18% VAT = € 180,000), which for the completed works issues an invoice to the contractor “B”.

Page 6 of 9
VAT TAX TREATMENT – THROUGH REVERSE CHARGE:

A. DECLARATIONS BY THE COMPANY “C” (SUBCONTRACTOR):

Pursuant to the provisions of Article 53, subparagraph 1.4 of the Law no. 05/L-037 on VAT, the company „C“ will not calculate the VAT on this service because the obligation for payment of VAT is transferred to the recipient of the service, namely the company „B“.

Registration in the declaration form and payment of VAT:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>[10]</td>
<td>Exempted sales with the right to credit</td>
<td>1,000,000.00€</td>
</tr>
</tbody>
</table>

While purchases for which is entitled to the right to deduct VAT are recorded in the relevant section of purchase.

B. DECLARATION BY THE COMPANY “B” (MAIN CONTRACTOR):

Under the new provisions, the company „B“ will calculate VAT on this service because the obligation to pay VAT is transferred to the recipient of the service, i.e., the company „B“.

Registrations in the form of declaration and payment of VAT:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Sales</th>
<th>Output VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>[12]</td>
<td>Sales taxable at the rate of 18%</td>
<td>1,500,000.00€</td>
<td>270,000.00€</td>
</tr>
<tr>
<td>[28]</td>
<td>Purchases subject to the reverse charge at an 18% rate</td>
<td>1,000,000.00€</td>
<td>[29] 180,000.00€</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Purchases</th>
<th>Input VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>[65]</td>
<td>The right to VAT credit in connection with the reverse charge at an 18% rate</td>
<td>1,000,000.00€</td>
<td>[66] 180,000.00€</td>
</tr>
<tr>
<td>[72]</td>
<td>VAT to be paid</td>
<td>270,000.00€</td>
<td></td>
</tr>
</tbody>
</table>
C. DECLARATION OF COMPANY “A” (INVESTOR):

a) If the investor provides only taxable supplies
   (the right of VAT deduction of 100%)

Registration in the form of declaration and payment of VAT:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Sales</th>
<th>Output VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>[12]</td>
<td>Sales taxable at the rate of 18%</td>
<td>2,000,000.00€</td>
<td>[13] 360,000.00€</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Purchases</th>
<th>Input VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>[43]</td>
<td>Domestic purchases at the rate of 18%</td>
<td>1,500,000.00€</td>
<td>[44] 270,000.00€</td>
</tr>
<tr>
<td>[72]</td>
<td>VAT to be paid</td>
<td>90,000.00€</td>
<td></td>
</tr>
</tbody>
</table>

b) If the investor provides taxable supplies and exempted supplies
   (60% taxable supplies, while 40% of exempt supplies without the right to deduct VAT).

Registration in the form of declaration and payment of VAT:

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Sales</th>
<th>Output VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>[9]</td>
<td>Exempt sales with no right to credit</td>
<td>800,000.00€</td>
<td></td>
</tr>
<tr>
<td>[12]</td>
<td>Sales taxable at the rate of 18%</td>
<td>1,200,000.00€</td>
<td>[13] 216,000.00€</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Purchases</th>
<th>Input VAT</th>
</tr>
</thead>
<tbody>
<tr>
<td>[33]</td>
<td>Purchases, imports with non-deductible VAT</td>
<td>708,000.00€</td>
<td></td>
</tr>
<tr>
<td>[43]</td>
<td>Domestic purchases at the rate of 18%</td>
<td>900,000.00€</td>
<td>[44] 162,000.00€</td>
</tr>
<tr>
<td>[72]</td>
<td>VAT to be paid</td>
<td>54,000.00€</td>
<td></td>
</tr>
</tbody>
</table>
c. If the investor exclusively provides exempted supplies with no right to VAT credit

**Registration in the form of declaration and payment of VAT:**

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Sales</th>
</tr>
</thead>
<tbody>
<tr>
<td>[9]</td>
<td>Exempted sales with no right to credit</td>
<td>2,000,000.00€</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Purchases</th>
</tr>
</thead>
<tbody>
<tr>
<td>[33]</td>
<td>Purchases, imports with non-deductible VAT</td>
<td>1,770,000.00€</td>
</tr>
</tbody>
</table>

**ENTRY INTO FORCE**

This Public Ruling shall enter into force from 01 January 2020 and the same shall repeal the Public Ruling no. 05/2016 of 21 December 2016.

Date: 17/12/2019

Illir Murtezaj
Director General of Tax

[Stamp]