



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

PUBLIC EXPLANATORY DECISION No. 04/2016
TREATMENT OF DONATIONS FOR TAX PURPOSES

PURPOSE

The purpose of this Public Explanatory Decision is to clarify tax treatment of donations regarding aspects of Value Added Tax (VAT), Corporate Income Tax (CIT) and Personal Income Tax (PIT).

DEFINITION

The donation is a voluntary help and is unconditioned with money, goods and services, which does not create a direct benefit to the donor nor obligation to return by the recipient of the donation and which can be given for the purposes of public interest or to support the activities of recipient.

LEGAL BASE

Article 30, paragraph 2, subparagraph 2.1 of the Law No. 05/L-037 on VAT, determines other special exemptions associated with import, citing:

“2.1. imports funded from the proceeds of donations made to the budget or through the budget of Kosovo or under the supervision of competent bodies or directly financed through contracts for the benefit of Ministries, local authorities and other bodies governed by law, from international inter-governmental organisations and their agencies, governments, government agencies, governmental or non-governmental organisations in support of humanitarian and reconstruction programs and other projects including European integration projects in Kosovo”.

Article 33, paragraph 3, subparagraph 3.1 of the Law No. 05/L-037 on VAT, determines exemptions related to specific transactions that are treated as exports, citing:

“3.1. the supply of goods or services funded from the proceeds of grants made to the budget or through the budget of Kosovo or under the supervision of competent bodies or directly financed by contracts for the benefit of Ministries, local authorities and other bodies governed by law, by

governments, governmental or non-governmental organizations in support of humanitarian and reconstruction programs including European integration projects in Kosovo”.

Article 5, paragraph 5, subparagraph 5.4 of Administrative Instruction No. 03/2015 for implementing the Law No. 05/L-037 on VAT, determines handling of activities for non-profit organizations, citing:

“5.4. If a non-profit organization makes both income from membership, income from funds, grants and donations offered by private or public, domestic or foreign entity, as well as income from economic activity and the assets owned by non-profit organization are used, then the organization shall declare and pay VAT only for supplies of goods and services from economic activity or the use of assets of the organization, if as a result of this economic activity, it makes an annual turnover exceeding the threshold for VAT registration”.

Article 53, paragraph 4, subparagraph 4.1 of Administrative Instruction No. 03/2015 for implementing the Law No. 05/L-037 on VAT, determines the exemptions regarding certain transactions treated as exports, citing:

“4. Based on the article 33, sub-paragraph 3.5 of the Law, the supply of goods and services co-financed by the proceeds of grants from foreign governments and the Kosovo Budget for projects to benefit public shall be treated as exports, exempted with the right landing, only if:

4.1. The release is provided by agreement between the parties, or

4.2. The participation of Kosovo's budget is no larger than 20%.

Article 4, paragraph 1 of the Law No. 05/L-037 on VAT, determines the taxable persons, citing:

“1. A taxable person is any person who is or is required to be registered for VAT and who independently carries out any economic activity in a regular or non-regular manner, regardless of the purpose or outcome of that economic activity. Any activity of manufacturers, traders or persons supplying goods and services, including mining and agricultural activities of the professions, shall be regarded as an “Economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining incomes on a regular basis shall be particularly regarded as an economic activity”.

Article 4, paragraph 3 of the Law No. 05/L-037 on VAT, determines that, citing:

“3. Pursuant to this article, any non-profit organisation for payments deriving from membership, if they have such or funds, grants, donations received for the purpose of their non-profit activity shall not be considered a taxable person, in accordance with relevant Law on non-profit organisations, unless the organisation receives payments as a result of an economic activity”.

Article 7, paragraph 1, subparagraph 1.1 of the Law No. 05/L-029 on CIT, determines the exempted incomes, citing:

“1. The following income shall be exempt from corporate income tax:

1.1. Except cases foreseen in Article 34 of this Law, the income of organizations registered under legislation on the Registration and Operation of Non-Governmental Organizations that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes”.

Article 7, paragraph 1, subparagraph 1.7 of the Law No. 05/L-029 on CIT, determines the exempted incomes, citing:

“Incomes earned from grants, subsidies and donations, in compliance with the regulations and earning criteria.”

Article 8, paragraph 1, subparagraph 1.25 of the Law No. 05/L-028 on PIT, determines the exempted incomes, citing:

“Income received from grants, subsidies and donations in accordance with the terms and conditions of their benefit.”

TREATMENT OF DONATIONS FOR VAT PURPOSES

Imported goods financed with the proceeds of donations, according to Article 30, paragraph 2, subparagraph 2.1. of the Law No. 05 / L-037 on VAT, are exempt from VAT when importing.

During the import procedures, for the purpose of exemption from VAT for purchased goods financed with the proceeds of donations, the importer must present to the customs authority the documents proving the exemption.

Projects funded from the proceeds of donations, according to Article 33, paragraph 3, subparagraph 3.1 of the Law No. 05 / L-037 on VAT shall be treated as export transactions, for which the supplier of goods / services will invoice it without VAT with the right to deduction of deductible VAT.

Implementer of the project, for all purchases of goods/services foreseen by the project, is directly exempt from VAT on purchases, if such purchases are done from the proceeds of donations.

The person who receives donations from governments, government agencies, government and non-government organizations to support the humanitarian and reconstruction programs and projects, including projects of European Integration in Kosovo, are not required to be registered for VAT, since the income earned from donations are not subject to taxation with VAT.

Taxable person - declarer of VAT, the monetary assets which it receives on behalf of the donation and that does not represent consideration for the supply of goods / services, does not include them in the tax return of VAT. Acceptance of donation is not subject of VAT taxation because there is no supply of goods or services, meaning that the taxable event did not arise pursuant to Article 3, paragraph 1 of the Law No. 05 / L-037 on VAT.

Supplier of goods/services, while preparing the invoice, where is presented the evidence from the buyer that the purchased goods / services are financed from the proceeds of donations, that invoice will be prepared without VAT, by marking on the invoice the reference to Article 33, paragraph 3, subparagraph 3.1 of the Law no. 05 / L-037 on VAT.

Supplier, regarding all sales made under Article 33, paragraph 3, subparagraph 3.1 of the Law No. 05 / L-037 on VAT, enjoys the full right of deduction of VAT.

Note:

Also the supplies that are directly financed by the European Commission, are treated in the same manner, as determined with this Public Explanatory Decision.

TREATMENT OF DONATIONS FOR PURPOSES OF PIT AND CIT

Incomes earned from grants, subsidies and donations are excluded incomes, if they are in accordance with the terms and conditions of benefit stipulated in the agreement between the donor and the beneficiary of the donation.

Business natural person or legal person that is taxed on the basis of real income shall present such income in financial statements in accordance with Kosovo Accounting Standards.

Non-business natural person, business natural person or legal person that is not taxed on the basis of real income shall treat such income as exempted income and shall not include them in the tax return for the period. Therefore, such incomes are not included in declared turnover in quarterly tax statement.

ENTRY INTO FORCE

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

Date: 09/08/2016


Sakip Imeri
Director General of TAK

