



Pursuant to the provisions of Article 9 of the Law No. 03/L-222 on the Tax Administration and Procedures, the Director of Tax Administration issues:

**PUBLIC EXPLANATORY DECISION NO. 4/2014
ON
CUSTOMS ASSESSMENTS AND REASSESSMENTS**

PURPOSE

The purpose of this Public Explanatory Decision is to clarify tax liabilities, respectively the way of declaration and payments of VAT, Personal Income Tax and Corporate Income Tax for the taxpayers for which their activity is related to imports of goods/equipments in cases when these imports are subject to customs assessments or reassessments.

DEFINITIONS

For the purpose of this Public Explanatory Decision, the following definition has this meaning:

Single Administrative Document – document that has form determined with Customs Legislation that is used within structure of goods trade with the third states including Customs Procedures related with this trade.

LEGAL BASE

Article 13, paragraph 3 and 5 of the Law No. 03/L-222 on Tax Administration and Procedures, determine how to create and keep registers, citation:

“Books and records for businesses with annual turnover over fifty thousand (50.000) euro shall be kept in conformity with generally accepted accounting principles of Kosovo as supplemented by International Financial Reporting Standards”.

“Goods in possession of a taxpayer must be documented as to origin”.

Article 17, paragraph 4 of the Administrative Instruction No. 15/2010 on Tax Administration and Procedures determine the requests on books and records, citation:

“Businesses with annual gross turnover of more than €50,000, and those who opt to determine their tax obligation based on maintenance of adequate books and records, must maintain books and records in accordance with the requirements of the accounting standards of Kosovo. Books and records maintained must be sufficiently adequate to allow for complete and accurate accounting of all income and expense items applicable to a tax period”.

Article 19, paragraph 1 of Administrative Instruction No. 15/2010 on Tax Administration and Procedures determine the origin of goods, citation:

“...Paragraph 5 of Article 13 of the Law provides that goods in possession of a taxpayer be documented as to origin. This means that a taxpayer must be able to provide supporting documentation which justifies the origin of both the goods at the location, or locations, of the taxpayer and goods of the taxpayer in circulation (outside the location(s) of the taxpayer). Taxpayers must be able to document all goods from the time of receipt (whether by way of import, purchase, or exchange or other means) until they have been sold or otherwise disposed, including the documentation of the sale or other disposition. Included in the possible documentation that must be retained are: ... A key document for TAK purposes is the SAD which is acceptable evidence that the goods have passed through the border and have undergone customs procedures”.

Article 25, paragraph 1 of the Law No. 03/L-146 on VAT, determine taxable amount on imports of goods, citation:

“.....in respect of the importation of goods, the taxable amount shall be the value for customs purposes, determined in accordance with the Customs legislation in force in Kosovo”.

Article 36, paragraph 2 of the Law No. 03/L-146 on VAT determine a right to deduct VAT, citation:

“Unless otherwise stipulated by this Law, a taxable person may deduct from his VAT liability, the VAT due or VAT paid in respect of purchases of goods or services - hereinafter indicated as input VAT - provided he used or will use such goods or services for the purposes of his taxable transactions”.

Article 53, paragraph 1 of the Law No. 03/L-146 on VAT, determine tax period on VAT, citation:

“The tax period of all taxable persons shall be each calendar month”.

Article 15, paragraph 1 of the Law No. 03/L-161 on Personal Income Tax determine general provisions of expenses, citation:

“Subject to the provisions of this Article, there shall be allowed as a deduction from gross income generated from intangible property, rents or business activities those expenses paid or incurred during the tax period that are wholly, exclusively and directly related to such income generating activities, including premiums for health insurance paid in behalf of an employee and those dependents eligible to be included on the insurance policy of the employee”.

Article 9, paragraph 1 of the Law No. 03/L-162 on Corporate Income Tax determine allowable expenses, citation:

“Subject to the limitations in the present Law, in determining taxable income, a taxpayer shall be allowed as a deduction from gross income expenses paid or incurred during the tax period wholly and exclusively in connection with its economic activities, including premiums paid on the health insurance in behalf of an employee and those dependents eligible to be included in the policy of the employee”.

CUSTOMS ASSESSMENT/REASSESSMENT

Customs assessment is done in case of goods import while customs reassessment is done after has occurred goods clearance.

For VAT purpose, ***Single Administrative Document – SAD is a base for calculating input VAT (VAT that is paid in case of imports of goods).***

For all cases that Customs undertake assessment/reassessment actions of the **goods or equipments**, by changing customs base, the taxpayer should make the necessary adjustments for tax purposes.

Effects of customs assessment/reassessment as well as decisions of competent Bodies for reviewing appeals (Kosovo Customs, Independent Review Board or Court) are reflected through following examples:

Example No. 1:

The taxpayer "X" on April 12, 2013 makes the import of **goods** in amount of 3,000€. In case of goods clearance the Customs makes customs assessment by raising customs base for 1,500€. Therefore total assessment from the customs is done as following:

Invoice	3,000.00€
Increase of customs base	1,500.00€
Customs base	4,500.00€
Customs fee 10%	450.00€
Taxable amount	4,950.00€
Liability for VAT (16%)	792.00€
Total liability	1,242.00€

Registration for VAT

For VAT purposes, the VAT declaration form for April/2013 should be done on columns as following:

[27] Taxable imports	4,950.00€	[28] 792.00€
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Customs assessment has been appealed and the decision for the taxpayer results positive. The decision from competent Body has been issued on 27th of May 2014 that result as following:

Customs fee 10%	150.00€
VAT 16%	264.00€
Total	414.00€

After decision making from competent Body, for tax purposes should be done adjustments in declaration form of VAT for the period of May/2014, as following:

[18] Adjustments to increase VAT for payment	1,650.00€	[19] 264.00€
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Registration for PIT/CIT

Customs clearance in amount of 1,650€ (1,500€ + 150€) done in case of goods clearance, the company that has recognized it as a cost should make the necessary correction and the same amount to treat as a revenue in a period of decision from Customs.

Example No. 2:

The taxpayer "X" on March 8, 2013 makes the import of **goods** in amount of 5,000€. In case of goods clearance the Customs makes customs assessment that is same with commercial invoice 5,000€. Therefore assessment from Customs is done as following:

Invoice	5,000.00€
Increase of customs base	0.00€
Customs base	5,000.00€
Customs fee 10%	500.00€
Taxable amount	5,500.00€
Liability for VAT (16%)	880.00€
Total liability	1,380.00€

Registration for VAT

For VAT purposes, the VAT declaration form for March/2013 should be done on columns as following:

[27] Taxable imports	5,500.00€	[28] 880.00€
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Kosovo Customs – After-Importing Control Sector, on February 28, 2014 makes customs reassessment for import based on example 2 by increasing customs base for 3,000€ and issues this decision for the taxpayer:

Customs reassessment	3,000.00€
Customs fee 10%	300.00€
Base for VAT	3,300.00€
VAT 16%	528.00€
Total	828.00€

After reassessment from Kosovo Customs, for tax purposes should be done adjustments in declaration form of VAT for the period of February/2014, as following:

[39] Adjustments to decrease VAT for payment	3,300.00€	[40] 528.00€
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Registration for PIT/CIT

Customs reassessment in amount of 3,300€ (3,000€ + 300€), done by After-Importing Control Sector, the taxpayer has the right to recognize as a cost in reassessment period from Kosovo Customs.

Example No. 3:

The taxpayer "X", on January 9, 2012 makes the import of **equipments** (second category) in amount of 10,000€. In case of goods clearance, the Customs makes customs assessment by increasing customs base for 2,000€. Therefore general assessment from customs is done as following:

Invoice	10,000.00€
Increase of customs base	2,000.00€
Customs base	12,000.00€
Customs fee 10%	1,200.00€
Taxable amount	13,200.00€
Liability for VAT (16%)	2,112.00€
Total liability	3,312.00€

Registration for VAT

For VAT purposes, the VAT declaration form for January/2013 should be done on columns as following:

[29] Taxable investment imports	13,200.00€	[30] 2,112.00€
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Customs assessment has been appealed and the decision for the taxpayer results positive. The decision from competent Body has been issued on 25th of March 2014 that result as following:

Customs fee 10%	200.00€
VAT 16%	352.00€
Total	552.00€

After decision making from competent Body, for tax purposes should be done adjustments in declaration form of VAT for the period of March/2014, as following:

[18] Adjustments to increase VAT for payment	2,200.00€	[19] 352.00€
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Registration for PIT/CIT

If customs clearance in amount of 2,200€ (2,000€ + 200€) done in case of goods clearance, it is recognized from the taxpayer as a base for equipment's depreciation (during tax period 2012), then based on above-mentioned decision the taxpayer is obliged to make the necessary adjustments in 2014:

The asset assessed from Customs $12,000€ + 1,200€ = 13,200€$

Depreciation accumulated during two years: $13,200/5 = 2,640 \times 2 = 5,280€$

The amount of asset based on decision $10,000€ + 1,000€ = 11,000€$

Depreciation for the period $11,000 / 5 = 2,200€ \times 2 = 4,400€$

Adjustment: $5,280€ - 4,400€ = 880€$. This amount should be recognized as revenue of period.

The base for further depreciation (for the next three years) will be 11,000€.

Example No. 4:

The taxpayer "X", on February 10, 2012 makes the import of **equipments** (second category) in amount of 8,000€. In case of goods clearance, the Customs makes customs assessment that is the same with commercial invoice 8,000€. Therefore the assessment from Customs is done as following:

Invoice	8,000.00€
Increase of customs base	0.00€
Customs base	8,000.00€
Customs fee 10%	800.00€
Taxable amount	8,800.00€
Liability for VAT (16%)	1,408.00€
Total liability	2,208.00€

Registration for VAT

For VAT aspects, the VAT declaration form for February/2012 should be done on columns as following:

[29] Taxable investment imports	8,800.00€	[30] 1,408.00€
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Kosovo Customs – After-Importing Control Sector, on June 5, 2014 makes customs reassessment for import based on example 4 by increasing customs base for 2,500€ and issues this decision for the taxpayer:

Customs fee 10%	250.00€
VAT 16%	440.00€
Total	690.00€

After reassessment from Kosovo Customs, for tax purposes should be done adjustments in declaration form of VAT for the period of June/2014, as following:

[39] Adjustments to decrease VAT for payment	2,750.00€	[40] 440.00€
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Registration for PIT/CIT

Customs reassessment in amount of 2,750€ (2,500€ + 250€), done by After-Importing Control Sector, the taxpayer should do the necessary corrections for the base issues for depreciations. The correction should be done in amount of 2,750€ (2,500€+250€) in the tax period in which the reassessment was done. New base will be depreciated during three next years.

The asset assessed from Customs $8,000€ + 800€ = 8,800€$

Depreciation accumulated during two years: $8,800/5 = 1,760 \times 2 = 3,520€$

The asset's amount remained after second year = $8,800 - 3,520 = 5,280€$

The amount of asset based on customs reassessment was increased for 2,750€

Adjustment after reassessment:

Initial amount = 8,880€

Customs reassessment = 2,750€

New base for depreciation = 11,550€

Depreciation for period = $11,550€ / 5 = 2,310€$

Adjustment: $3,520€ - 4,620€ = -1,100€$. This amount should be recognized as the period expense.

The base for further depreciation (for three next years) will be 11,550€.

ADJUSTMENTS

In all cases when Customs decisions have been appealed and had changes, the taxpayer should do necessary adjustments in accordance with relevant decisions.

Adjustments for tax purposes should be done in the Decision period by incorporating effects.

All adjustments should be based on calculations done in a specific way by reflecting chronology of events.

CONCLUSION

Costs of goods and assets imported shall be treated based on Single Administrative Document - SAD

ENTRY INTO FORCE

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

Date: 25/11/2014

General Director, TAK

(Behxhet Haliti)

