



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. 5/2014 TAX TREATMENT OF BENEFITS IN NATURE/MEALS FOR THE EMPLOYEES

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 that give benefits in nature – meals for their employees.

DEFINITIONS

For purpose of this Public Explanatory Decision, the following definitions have this meaning:

VAT – Tax on Added Value includes application of overall tax in consumption for goods and services that is exactly proportional with the cost of goods and services. VAT is calculated in this cost according to the applicable norm, it is loaded in different phases of the production, delivery and living cycle of the trade with goods and services and in the end it is carried forward from the last consumer.

Employer - any person who pays wages and includes:

- A public authority;
- A business organization;
- A permanent establishment of a non-resident as defined in the Corporate Income Tax legislation;
- A non-governmental organization;
- An international organization;
- A foreign government; and
- A physical person who pays wages in the course of carrying on business in Kosovo.

Employee – natural person who performs work for wages under the direction and control of an employer, regardless of whether the work is performed under a contract or any other form of agreement, whether in writing or not.

Taxable supply – any supply of goods or services made in the furtherance of any economic activity developed in Kosovo, other than an exempt supply.

Exempted supply – any supply of goods or services made in furtherance of any economic activity carried on in Kosovo, for which the taxable person – supplier is not entitled to charge VAT to the customer.

Wages – financial and other kind of compensation, including goods, bonuses, favors, services or barter paid in connection with employment in Kosovo.

Taxable wages – wages paid by discounting those amounts excluded from gross income from wages.

Benefits in nature (also known as Benefits in things) – various compensations not given with wage of the employees, except their normal wage. Given into goods, items or services than in cash.

LEGAL BASE

Article 19, paragraph 8, of the Law No. 03/L-222 on Tax Administration and Procedures, citation:

“For determination of taxable income, the taxpayer is allowed a reduction from gross income for costs paid in or outside the country, if these costs in full or in part are in connection with economic activity performed during that tax period and if those costs are supported by evidence to prove the costs incurred and the payments made”.

Article 23, paragraph 1 of Administrative Instruction No. 15/2010 on Tax Administration and Procedures, citation:

“As provided in relevant tax legislation, the taxpayer is allowed a reduction from gross income for those costs paid or accrued during the tax period related to economic activity in that tax period, if these costs in full or in part are in connection with economic activity performed during that tax period. Similarly, a taxpayer is allowed a credit on a VAT declaration in accordance with VAT legislation in force. To be allowed, such expenses/credits must be supported by evidence, including, but not limited to the following:

- 1.1 Invoices on which the fiscal number of the seller/provider must appear
- 1.2 Contracts
 - 1.3 Customs declarations, if accompanied by documentation proving the cost and ownership of the item(s) imported
- 1.4 Receipts on which the fiscal number of the seller/provider must appear
- 1.5 Payment documents
- 1.6 Bank documents
- 1.7 Payroll records
- 1.8 Tickets
- 1.9 Vouchers
- 1.10. Transfer orders
- 1.11 Other relevant documents

Article 36, paragraph 2, of the Law No. 03/L-146 on 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 15, paragraph 1 of the Law No. 03/L-161 on Personal Income Tax, 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 30, paragraph 1 of the Law No. 03/L-161 on Personal Income Tax, citation:

“1. No deduction shall be allowed for:

- 1.1. Cost of land acquisition;
- 1.2. Fines and penalties, and related costs and interest for any violation of law or administrative procedure;
- 1.3. Income taxes paid or accrued (does not include taxes withheld from employees);
- 1.4. Value Added Tax for which the taxpayer claims a rebate or credit for deductible tax under the legislation on Value Added Tax;
- 1.5. Personal, living, or family expenses;
- 1.6. Any loss from the sale or exchange of property between related persons; and
- 1.7. Amusement or recreation expenses, unless they are incurred in connection with the taxpayer's business of providing amusement or recreation activities.
- 1.8. Expenses not documented per requirements set out in a sub-legal act issued by the Minister shall be considered as unallowable expenses.”

Article 9, paragraph 1 of the Law No. 03/L-162 on Corporate Income Tax, 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”.

Article 8, paragraph 1 of the Law No. 03/L-162 on Corporate Income Tax, citation:

“1. In determining taxable income, the following are disallowed as expenses:

- 1.1. Cost of acquisition and improvement of land;*
- 1.2. Cost of acquisition, improvement, renewal and reconstruction of assets that are capitalized, depreciated or amortized under the provisions of the present Law;*
- 1.3. Fines, penalties, costs and interest related to them;*
- 1.4. Income taxes paid or accrued for the current or previous tax period and any interest or late penalty incurred for late payment of it;*
- 1.5. Value added tax for which the taxpayer claims a rebate or credit for input tax under legislation on Value Added Tax in Kosovo; and*
- 1.6. Any loss from the sale or exchange of property between related persons.*
- 1.7. Pension contributions above the maximum amount allowed by the Kosovo pension Law.”*

TREATMENT OF MEALS FOR THE EMPLOYEES FOR VALUE ADDED TAX - VAT

The right to deduct VAT is regulated through Article 36, paragraph 2 of the Law No. 03/L-146 on VAT. With this paragraph there are determined terms for realizing the right to deduct input VAT, as following:

“... 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...”

Therefore, based on above-mentioned legal provision, in case of giving benefits in nature (meals for the employees), if they will be provided for the employees that are related directly in realizing taxable supplies, it will be allowed the right to deduct input VAT.

Also the right to deduct VAT when from the business are provided supply of mixed goods/services, so also taxable supplies and exempted supplies is regulated through Article 36, paragraph 4 of the same Law, as following:

“As regards goods and services used or to be used by a taxable person both for transactions covered by the paragraphs 2 and 3 of Article 36 of this law which VAT may be deducted, and for transactions, for which VAT shall not be deducted, only such a proportion of the VAT may be deducted as is attributable to the first transactions”.

Therefore, based on above-mentioned legal provision, in case of giving benefits in nature (meals for the employees), if they will be provided for the employees that are related directly in realizing mixed supplies, it will be allowed the right to deduct input VAT only when it concerns taxable supplies.

Also it should be understood that in cases of giving benefits in nature (meals for employees), if they are provided for the employees that are directly related with realizing exempted supplies, it will not be allowable the right to deduct input VAT.

Based on above-mentioned clarifications, taxpayer is allowed to use input VAT for all purchases regarding to goods or services if they are in function of taxable sales.

Therefore, when organizing meals for employees within business it is completely in the function of business that aims to enable taxable supplies, VAT due and VAT paid in purchases that are related with providing meals for employees within business, is allowable as input VAT.

If employees choose to have meals outside of company and ask from employer to refund meals invoices then providing meals in these cases is treated as a personal benefit of employee. In these cases it is not recognized VAT crediting for meals provided to those employees.

MEAL TREATMENT FOR THE EMPLOYEES FOR PIT AND CIT

Tax treatment of meals for the employees is regulated with Article 9, paragraph 2.4. of the Law No. 03/L-161 on PIT.

Gross income from wages shall **not** include:

“Gains in kind in form of meal provided by the employer to employee, exempting the compensation in money”.

The above Provision determine that benefit in nature in form of meals provided from the employer for the benefiter (the employee), is not considered income from wage.

Paragraph 2.7 of the same article, emphasize that:

“Such reimbursement or giving of the benefits in nature shall not be considered as business deducted expenses by any donator of such reimbursement or benefits in nature, an even they will not be deducted as expense of any kind”.

Based on above paragraph, when employees have meals outside of company as independent and provide to the employer meals invoices for reimbursement, such invoices will not be recognized as expenses of company if they are reimbursed.

Subject to limitations of the Law on Personal Income Tax and Law on Corporate Income Tax, in determining taxable incomes, the taxpayers have the right to deduct all expenses created with an aim of exercising economic activity including meals that are determined with business policies.

CONCLUSION

The right to deduct input VAT will be allowable only in case of giving benefits in nature (meals for the employees), whether provided through canteen within business or purchases of meals from any business that provides ready meals, if they are provided for the employees that are related directly with realizing taxable supplies.

Also for issues of direct taxes (PIT and CIT), taxpayers has the right to recognize as expense meals provided for employees, that are created in function of exercising economic activity.

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

Pristina

General Director, TAK



(Behxhet Haliti)

Zyra Qendrore

