



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



## **PUBLIC EXPLANATORY DECISION No. 03/2017**

### **APPLICATION OF THE REVERSE CHARGE FOR SERVICES PURCHASED OUTSIDE KOSOVO**

#### **PURPOSE**

The purpose of this Public Explanatory Decision is to clarify the tax treatment of VAT aspects for services purchased abroad when the application of the reverse charge for VAT. It is required, with special emphasis on the purpose of such treatment, taking into due account the decisions of the European Court of Justice on similar issues.

#### **LEGAL BASE**

Article 86 paragraph 3 of the Law No. 03/L-222 on Tax Administration and Procedures defines the temporary international measures, stating:

*“3. Where there are questions regarding interpretation of the Kosovo Law on Value Added Tax, the law shall be interpreted in line with the principles of the European Union VAT System Directives and the judgments of the European Court of Justice.”*

Article 22, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, defines the chargeable event occurrence of VAT, stating:

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

Article 36 of the Law No. 05/L-037 on Value Added Tax defines the right to deduct VAT;

Article 37, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, defines the exercise of the right of deduction, stating:

*“1. The right of deduction shall be born when the deductible tax becomes chargeable.”*

Article 38, paragraph 1 and 2 of the Law No. 05/L-037 on Value Added Tax, define the manner to exercise the right to deduct input VAT, stating:

*“1. Taxable persons shall effect the deduction by subtracting from the total amount of VAT due for a given tax period the total amount of VAT in respect of which, during the same period, the right to deduct was born in accordance with paragraph 1 and 2 of Article 37 of this Law.*

*2. If a taxable person does not deduct input VAT in this tax period, he may deduct this amount of input VAT at any time after this tax period, but not later than in the last tax period of the calendar year following the year in which he was entitled to deduct input VAT.”*

Article 45, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, defines the content of the issued invoices from the taxable person to the taxable person.

Article 52, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, defines persons liable for payment of VAT, stating:

*“1. Persons liable to pay VAT are:*

*1.2. any person who is registered for VAT purposes in Kosovo to whom goods and services are supplied by a taxable person not established in Kosovo, if the supply country is considered to be Kosovo.....”*

Article 53, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, defines tax period, stating:

*“1. Subject to the paragraphs 2 and 3 of this Article, the tax period of all taxable persons shall be each calendar month.”*

Article 54, paragraph 1 of the Law No. 05/L-037 on Value Added Tax, defines the deadline to submit the VAT declaration and payment, stating:

*1. A taxable person shall submit a tax declaration and remit the related payment not later than the 20th of the calendar month following the end of each tax period.....”*

Article 29, paragraph 3 of Administrative Instruction No. 03/2015 for implementing the Law on VAT, defines the time of VAT liability and chargeability in respect of supply of goods and services, stating:

*“3. For supplies of services for which the VAT is paid by the supplier according to Article 52, paragraph 1.2 of the Law, the VAT liability shall be born at the same tax period when the service is received..“*

Article 57, paragraph 4 of Administrative Instruction No. 03/2015 for implementing the Law on VAT, defines the exercise of the right to deduction, stating:

*“4. Taxable persons are conducting the deduction of VAT in the tax period in which the right was born for deduction in accordance with paragraph 1 of Article 37 of the Law. If for any reason, the taxable person does not deduct VAT deductible at the time when its right, under Article 38, paragraph 2 of the Law, the input VAT shall be entitled for deduction at any time after this tax period but not later than in the last period of the following year.*

*4.1. A taxpayer who has not deducted the input VAT in accordance with paragraph 4 of this Article, such supply will consider purchase of non-deductible VAT.”*

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Article 69, paragraph 3 of Administrative Instruction No. 03/2015 for implementing the Law on VAT, defines the obligation for the payment of VAT for the services supplied by a taxable person who is not established in Kosovo and the right to exercise the deductible VAT (adverse charge)", respectively, the tax obligation of the recipient registered for VAT in Kosovo, stating:

*"3. When the recipient is registered for VAT in Kosovo*

*3.1 VAT payment:*

*3.1.1 According to article 52 of the Law on VAT, the person obliged to pay VAT is the person who conducts taxable supplies. However, when a supply is made by a taxable person not established in Kosovo, to a person who is registered for VAT in Kosovo, the person obliged to pay VAT on that supply, is the recipient rather than the supplier.*

*3.2. Invoicing:*

*3.2.1. Although the supplier is not obliged to pay VAT, he/she is obliged to issue a tax invoice.*

*3.2.2. The supplier should mention in the invoice that the client is obliged to pay VAT, thereby putting the reference to article 52, paragraph 1, subparagraph 1.2 of the Law on VAT or some other reference indicating that the supply will be subject to the adverse charge procedures. The following text shall be considered as appropriate: "the adverse charge, subparagraph 1.2 of article 52 of the Law on VAT in Kosovo"."*

*3.3. VAT calculation:*

*3.3.1. The supply recipient should calculate VAT on the data of the invoice received by the supplier. Nonetheless, the recipient should ensure that the tax basis is calculated in line with article 24 of Law on VAT. Consequently, the recipient should ensure that the tax basis includes everything containing the consideration earned or to be earned by the supplier, in return of the supply.*

*3.3.2. The liability of the recipient for the payment of VAT is not conditioned by the supply invoice. Therefore, if the recipient does not receive the supply invoice then again he/she should declare this amount in the VAT declaration for the relevant tax period and should pay VAT.*

*3.4. Chargeability of liability in the tax period:*

*3.4.1. Chargeability of liability for VAT is set forth in article 22 of Law on VAT.*

*3.5. VAT declaration:*

*3.5.1. The recipient should include the calculated taxation of obligatory VAT for the supplies of services by the supplier not established in Kosovo.*

*3.5.2. The recipient in the same VAT declaration is entitled to deduct the VAT amount declared as calculated VAT in compliance with Chapter XIII of the Law on VAT.*

*3.6. If the recipient has not received any invoice from the supplier, the condition referred to in article 37, paragraph 2, subparagraph 2.1 of Law relating to the deduction allowance allowing for this, only if the taxpayer is in possession of the supply invoice, is not applicable to the calculated VAT deduction on the supplies accepted by the supplier not established in Kosovo."*

## **DEFINITIONS**

The terms and expressions used in this Public Explanatory Decision have the same meaning as defined by Law no. 05/ L-037 on Value Added Tax, as well as the Administrative Instructions No. 03/2015 and No. 06/2016 for implementing the Law on VAT.

## **APPLICATION OF THE REVERSE CHARGE FOR VAT**

The application of a VAT reverse charge for services purchased abroad applies only to taxable persons who are part of the transaction (service supplier and recipient). Thus, in order to apply the reverse charge for VAT, the service recipient should be VAT declarer in Kosovo.

The reverse charge applies to the supply of services purchased by a taxable person outside Kosovo and who is not established in Kosovo, for which the country of supply of services, according to Article 20 of Law No. 05/L-037 on VAT, is considered to be Kosovo.

## **THE REVERSE CHARGE OF VAT**

Under the reverse charge scheme, for the supply of services which are purchased by a taxable person outside Kosovo and who is not established in Kosovo, the obligation to pay the VAT from the supplier is transferred to the taxable person (registered for VAT in Kosovo) for whom the supplies were made.

Thus, where the supply is made by a taxable person who is not established in Kosovo to a person who is registered for VAT in Kosovo, the person liable to pay VAT on that supply is the recipient of the service.

## **PAYMENT OF VAT**

The person liable to pay the VAT is the taxable person to whom the services are supplied by a taxable person who is not established in Kosovo.

## **INVOICING**

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

The supplier must indicate in the invoice that the service recipient is liable to pay VAT by stating there the reference to Article 52, paragraph 1, subparagraph 1.2 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: "*The reverse charge, subparagraph 1.2 of Article 52 of the Law on VAT in Kosovo*".

## **VAT CALCULATION**

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

The recipient must ensure that the tax base is calculated in accordance with Article 24 of the Law on VAT. Also, the recipient should ensure that the tax base includes everything that contains consideration gained or that will be earned by the supplier in return for the supply.

The recipient's obligation to pay the VAT is not subject to the supply invoice. Therefore, if the recipient does not accept the supply invoice, yet he/she must declare this amount in the VAT Declaration for the relevant tax period and pay VAT.

## **THE MOMENT THE LIABILITY TO CHARGE VAT ARISES**

The moment the liability to charge VAT arises is when the supply of goods or services occurs. VAT becomes chargeable, depending on which of the three moments happens first:

- a. Supply of goods or services,
- b. Issuance of a invoice relating to the supply of goods or services, or
- c. Acceptance of advance payment/advances before the supply of goods or services occurs.

The moment the tax liability arises shall not be affected by the term of payment, as well as the by the possibility of postponing payment or credit.

For the supply of services for which VAT is paid by the recipient of the supply, i.e. in cases where the reverse charge for VAT is applied by the recipient of the service, the moment the liability to charge VAT arises is in the same tax period in which the service is received.

## **THE RIGHT TO VAT DISCOUNT**

A taxable person may deduct from his VAT obligations, the VAT due or VAT paid in relation to purchases of goods/services provided that he/she has used or will use those goods/services for the purposes of his/her taxable transactions.

For the goods/services used or to be used by a taxable person for which VAT may be deducted, and for transactions for which VAT may not be deducted, only that part of the VAT attributable to the taxable transaction is deducted. The part of the deductible VAT must be determined in accordance with Article 39 of Law No. 05/L-037 on VAT.

The recipient of the service, in the same declaration of VAT, has the right to deduct the amount of VAT declared as VAT calculated in accordance with Chapter XIII of the Law on VAT.



If the recipient of the service has not received a invoice from the supplier, the condition set out in Article 37, paragraph 2, subparagraph 2.1 of the Law (the right to deduct VAT only if the taxpayer has the supply invoice) does not apply in respect of the deduction of VAT calculated for supplies received by a supplier who is not established in Kosovo.

### **THE RIGHT TO DEDUCT THE VAT IF THE VAT REVERSE CHARGE FOR SERVICES PURCHASED OUTSIDE KOSOVO HAS NOT BEEN APPLIED**

Pursuant to Article 86, paragraph 3 of the Law No. 03/L-222 on Tax Administration and Procedures, the EU VAT System Directives and the decisions of the European Court of Justice on tax matters, it is necessary to make distinctions in cases:

- a. When a taxpayer does not apply the VAT reverse charge for services purchased abroad, while the tax invoice is registered in books/accounting, and
- b. When the taxpayer does not apply the VAT reverse charge for services purchased abroad, while the tax invoice is NOT registered in books/accounting;

The above cases for tax matters are dealt as follows:

1. In the case when the taxpayer (service recipient in Kosovo) registers the service invoice received by a taxable person outside Kosovo (who is not established in Kosovo) in the books/accounting but does not apply the VAT reverse charge for this invoice (service) (because it would have no tax effect if it had applied, since the calculated VAT will be deducted with deductible VAT, meaning the case when it is the full right of deductible VAT), the calculated VAT is then applied, as well as recognition of full VAT deduction. A taxpayer who fails to apply the VAT reverse charge application mechanism but registers the service invoice in books/accounting has the right to deduct VAT on the same tax period, without being limited on the time period defined in Article 38, paragraph 2 of Law No. 05/L-037 on VAT.

In such cases, for non-application of the reverse charge, the Tax Administration will apply the penalties prescribed by the Law on Tax Administration and Procedures.

2. In the case when the taxpayer (service recipient in Kosovo) DOES NOT register service invoice accepted by a taxable person outside Kosovo (not established in Kosovo) in the books/accounting, and for this invoice (service) does not apply the VAT reverse charge (because it would have no tax effect if it had applied, since the calculated VAT will be deducted with deductible VAT, meaning the case when it is the full right of deductible VAT), the calculated VAT is then applied, as well as recognition of full VAT deduction.



A taxpayer who fails to apply the VAT reverse charge application mechanism and DOES NOT register the service invoice in books/accounting has his/her right of the VAT deduction limited, as defined in Article 38, paragraph 2 of the Law No. 05/L-037 on VAT.

Thus, as described above, in the case when the taxpayer fails to apply the VAT reverse charge and does not register the invoice in books/accounting, it is concluded that this taxpayer has not accurately declared even the declaration of Personal Income Tax or Corporate Income Tax.

In such cases, for non-application of VAT reverse charge and for failure to register the invoice, the Tax Administration will apply the penalties set out in the Law on Tax Administration and Procedures.

## VAT DECLARATION

The recipient of the service should include on the VAT Form the calculated VAT on purchases of services by a taxable person outside Kosovo and who is not established in Kosovo.

Date: 22/08 /2017

