



**Director General of Tax Administration of Kosovo,**

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

## **PUBLIC EXPLANATORY DECISION No. 01/2022**

**ON**

### **PROCEDURES FOR LEGAL INHERITANCE OF INDIVIDUAL BUSINESS AFTER THE DEATH OF THE OWNER**

#### **PURPOSE**

The purpose of this Public Explanatory Decision is to explain procedures from the tax aspect relating Inheritance of Individual Business after the death of the owner.

#### **SCOPE**

This Explanatory Public Decision is intended for all taxpayers who have the status of natural business person (Individual Business), as well as for all officials of the Tax Administration of Kosovo who are engaged in reviewing taxpayers' requests, inspections and conducting tax audits.

#### **LEGAL BASIS**

- Article 6, paragraph 6 of the Law No. 05/L-037 on Value Added Tax;
- Administrative Instruction No. 03/2015 for Implementing the Law No. 05/L-037 on Value Added Tax;
- Article 8, paragraph 1 of the Law No. 05/L-028 on Personal Income Tax;

## PROCEDURES FOR LEGAL INHERITANCE OF INDIVIDUAL BUSINESS AFTER THE DEATH OF THE OWNER

For tax purposes, the handling of legal business inheritance cases after the death of the owner to one or more legal heirs is as follows:

1. Article 6, paragraph 6 of the Law No. 05/L-037 on Value Added Tax (hereinafter the Law on VAT), determines that the person who continues to carry out economic activity of the taxable person who has died, is treated as if he were registered for VAT purposes, we quote:

*“TAK shall treat any person carrying out an economic activity of a taxable person who dies or becomes bankrupt or is not capable to develop an economic activity as if he were registered for VAT purposes from the date when the taxable person died or became bankrupt or incapacitated until the other person is registered.”*

2. Article 23, paragraph 1, sub-paragraph 1.2 of the Administrative Instruction No. 03/2015, determines the difference between the transfer of business and the legal inheritance of the business, as well as the manner of legal inheritance, we quote:

*“Business transfer is generally based on a notarized contract between transferor and transferee. A business transfer based on legal heritage, such as wills, legal inheritance and legacy contracts in case of death of the taxable person that occur outside the scope of the Law on VAT, under Article 13 of the Law do not apply to these cases.”*

3. The transfer of property rights from the taxable person to one or more successors in case of continuation of economic activity is not considered a supply with goods, and is not a taxable supply. This means that it is not subject to taxation according to Article 3 of the Law on VAT, because there is a lack of supply of goods, consideration and action as a taxable person. In such cases the inherited assets should be used for the economic activity of the legal successor, and should be aimed at continuing the business.
4. The retention of goods for non-business purposes after the cessation of economic activity or after the deregistration of the business of the deceased (taxable person), where VAT on those goods has been fully or partially deductible, should be treated as a supply with goods for consideration under Article 12.3 of the Law on VAT, we quote:

*“With the exception of the cases referred to in Article 13 of this Law, the retention of goods by a taxable person, or by his successors, when he ceases to carry out a taxable economic activity, where the VAT on such goods becomes fully or partly deductible upon their acquisition or upon their use in line with paragraph 1 of this Article shall also considered as a supply with goods for consideration.”*

This means that if the successor of the business uses the inherited properties for private purposes and not for business purposes, it is considered as a supply with goods for consideration, and are taxable supplies.

5. The business successors shall be responsible for the debts that burden the inheritance, including the responsibility for tax liabilities of the testator in proportion to their share that they have inherited in accordance with the relevant Law on Inheritance in Kosovo.
6. In case of death, as well as in case of loss of business capacity of the entrepreneur (through the Decision of the competent Court), the successor, who in this case as a natural person has the capacity to act as a businessman, may continue to carry out economic activities if is provided for by a decision from the competent Court on the inheritance and the agreement between them (successors) certified by the Notary, for the continuation of the economic activity, as a legal representative of the property which is signed by all successors.
7. The successor, as a legal representative of the property, shall be obliged that within thirty (30) days from the date of death of the owner, to notify the Tax Administration of Kosovo, for the continuation of economic activity.
8. In case of death of the owner, the remaining tax liabilities shall be transferred to the legal successors. Tax liabilities will only be transferred if they arose before the death of the owner.
9. For the period from the moment of death of the owner until the acceptance of the inheritance with obligations, the legal representative of the property shall be responsible to meet tax obligations.
10. If all the legal conditions provided for these cases of business legal inheritance are met, the relevant Regional Operational Directorate/Department of Large Taxpayers will deregister and cancel all documents issued to this deceased person, such as:
  - VAT certificate,
  - Fiscal Number certificate (if any), etc.These documents shall be withdrawn and considered invalid from the date of approval of the application for legal succession of the business.
11. The legal successor of the business, within thirty (30) days from the date of issuance of the Decision on Inheritance by the competent Court, must notify in writing the relevant Regional Operational Directorate/Department of Large Taxpayers, for the legal business inheritance.

The notice must contain the following basic information:

- Date of notice;
- The legal tax basis established for these cases;
- Names of businesses, name and surname of the testator and successor;

- Unique Identification Numbers of both businesses;
- VAT certificate numbers as taxable persons (testator and successor);
- Death certificate of the testator;
- Type of business inheritance: full or partial (when independent business units from the composite enterprise are operational);
- Certified copy of the Decision of the competent body on legal inheritance;
- Business activity exercised with those inherited business assets;
- Value of goods/assets inherited in total and by beneficiaries (attach the goods/assets specification);
- VAT tax period when proceeding the legal inheritance;
- The remained credit balance for this tax period;
- Total tax debts (liabilities, obligations);
- Signature of successors or their representative based on the Decision of the competent body.

12. All the above mentioned procedures shall apply even in cases when the Individual Business is not a Declarer of VAT.

### ENTRY INTO FORCE

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

Date: 24/01 / 2022

 Ilir Murtezaj  
Director General of TAAK

