



REPUBLICA E KOSOVES / REPUBLIKA KOSOVA / REPUBLIC OF KOSOVO	
Qeveria e Kosovës / Vlada Kosova / Government of Kosovo	
Ministria e Financave / Ministarstvo za Finansije / Ministry of Finance	
Administrata Tatimore e Kosovës / Poreska Administracija Kosovo / Tax Administration of Kosovo	
Nr. i Faqëve Broj stranica No. pages Hyisno	Nr. Prot. Br. Prot. Prot. No.
2.0	09-06-340
Data Datum	24.01.19

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

PUBLIC EXPLANATORY DECISION No. 01/2019

ON TAX TREATMENT OF IMPORTS AND SUPPLIES WHEN FINANCED DIRECTLY BY THE EUROPEAN COMMISSION

PURPOSE

The purpose of this Public Explanatory Decision is to clarify the tax treatment for aspects of Value Added Tax (hereafter VAT) on imports and supplies when financed or co-financed directly by the European Commission.

SCOPE

This Public Disclosure Decision applies to persons who are exclusively involved in the importation of goods pursuant to sub-paragraph 2.1 of Article 30 of Law No. 05/L-037 on VAT when financed or co-funded directly by the European Commission, as well as domestic supplies exempted from VAT pursuant to paragraph 3.1 of Article 33 of Law No. 05/L-037 on VAT when financed or co-financed directly by the European Commission.

LEGAL BASIS

Article 19 of the Constitution of the Republic of Kosovo defines:

"1. International agreements ratified by the Republic of Kosovo become part of the internal legal system after their publication in the Official Gazette of the Republic of Kosovo.

They are directly applied except for cases when they are not self-applicable and the application requires the promulgation of a law.

2. Ratified international agreements and legally binding norms of international law have superiority over the laws of the Republic of Kosovo."

Article 28, paragraph 1, and paragraph 2, points a), b) and i) of the Framework Agreement between Kosovo* and the European Commission on the Arrangements for Implementation of Union Financial Assistance for Kosovo Under the Instrument for Pre-Accession Assistance - Membership (IPA II), dated 03.04.2015, defines:

1. *Except where otherwise provided for in a Sectorial Agreement or a Financing Agreement, taxes, customs and import duties and levies and/or charges having equivalent effect are not eligible under IPA II. This rule shall also apply to co-financing provided by the IPA II beneficiary and recipients of IPA II assistance.*
2. *The following provisions shall apply:*
 - a. *All imports by Union contractors shall be allowed to enter Kosovo without being subject to customs or import duties, Value Added Tax (VAT), excise duties and other special consumption taxes or to any other similar tax, duties or charges having equivalent effect. Such exemption shall only be applied to imports in connection with the goods supplied and/or services rendered and/or work executed by the Union contractors under a Union contract. Kosovo shall ensure that the imports concerned will be released from the point of entry for delivery to the Union contractors as required by the provisions of the contract and for immediate use as required for the normal implementation of the contract, without any delays or disputes over the settlement of the above mentioned duties, taxes or charges;*
 - b. *Union Contractors shall be exempted from VAT for any service rendered and/or goods supplied and/or works executed under the Union contract. Goods supplied or services rendered or works executed by a contractor to the Union contractor shall also be exempted from VAT in so far that they are connected with the objectives and activities under the Union contract;*
 - i. *The term "Union contract" means any contract or grant contract, including subgrant/loan contracts and delegation agreements under indirect management, through which an activity is financed under IPA II, including the co-financing by the IPA II beneficiary or recipients of IPA II assistance and which is signed by the European Commission or the IPA II beneficiary or a grant beneficiary. The term "Union contract" shall also cover provisions of assistance under TAIEX and participation in Union programmes including grants received under Union programmes and co-financing of such grants;*

Article 30, paragraph 2, sub-paragraph 2.1 of Law No. 05/L-037 on Value Added Tax, provides:
"2. *Special exemptions:*

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, sub-paragraph 3.1 of Law No. 05/L-037 on Value Added Tax, provides:
"3. *Special exemptions:*

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 40 of the Law No. 05/L-037 on Value Added Tax, respectively Article 59, paragraph 3 of Administrative Instruction No. 03/2015 for implementation of Law No. 05/L-037 on VAT, defines reimbursement requirements for contractors of European Commission, as cited:

"3. *Request for reimbursement for contractors of European Commission:*

3.1. Notwithstanding paragraph 2 of this Article, the taxable person has the right to apply for a refund of VAT on a monthly basis for VAT deduction related to the supplies directly funded by the European Commission, in accordance with sub-paragraph 3.1 of Article 33 of the Law, irrespective of the amount of VAT credit.

3.2. Requests for reimbursement of VAT under subparagraph 3.1 of this article, TAK is obliged to consider within 30 days of receipt.

3.3. The application is considered valid, provided that the conditions set out in paragraph 2, sub-paragraphs 2.2 and 2.4 of this article.

3.4. Taxable persons not established in Kosovo, but that are established in a Member State of the EU or in any country signatory to the IPA agreement (excluding Kosovo) is not required to be registered for business purposes in Kosovo, based Article 26, paragraph 2, section c, of the IPA Agreement for supplies that are directly funded by the European Commission (EC Contractor). However, if these persons by the Kosovo Tax legislation will be liable to pay other taxes, required to obtain identification number in order to have the opportunity of payment of taxes in Kosovo “

VAT EXEMPTIONS

According to Article 19 of the Constitution, ratified international agreements by the Republic of Kosovo have superiority over the laws of the Republic of Kosovo. Consequently, the Framework Agreement between Kosovo* and the European Commission on the Arrangements for Implementation of Union Financial Assistance to Kosovo under the Instrument for Pre-accession Assistance (IPA II), ratified by the President of Kosovo in 2015, falls within the scope of Article 19 of the Constitution. Thus, this agreement, in accordance with the Constitution, is an integral part of Kosovo's internal legal system and has superiority over Kosovo's laws.

Pursuant to Article 28, paragraph 2, point a) of the Framework Agreement IPA II, when importing goods, all goods imported from European Union contractor shall be exempted from VAT under the European Union Contract. Also, based on Article 28, paragraph 2, point b) of the Framework Agreement for IPA II, on the occasion of supply of goods/services within the country, all supplies (purchases) from European Union contractors shall be exempted from VAT under the Contract.

Also, based on Article 28, paragraph 2, point i) of the Framework Agreement IPA II, European Union contracts under the Framework Agreement IPA II shall be exempted from VAT whether fully financed or partially co-financed by the European Union, provided that this is not otherwise regulated by any sectorial agreement or financing agreement. Thus, the exemption applies equally to all projects arising from these contracts and shall be signed by the European Commission or the beneficiary of the IPA II (Kosovo) or by the IPA II beneficiary or recipients of IPA II assistance which may be: a public, governmental, non-governmental entity or a private person.

Import of goods as well as the purchase of goods/services within the country, made by European Union contractors under the European Union Contract, are exempt from VAT.

To be exempted from VAT, the importer/purchaser (European Commission contractor) must provide evidence through a financing/co-financing agreement or any other document that the imported goods or the goods/services purchased within the country are in accordance with the Union Contract.

In cases where the purchaser proves that the importation of the goods is being done with funds financed or co-financed under the contract with the European Union, Kosovo Customs will evaluate and allow importation without VAT. Also, in cases of purchase of goods/services within the country, when it is provided by the purchaser the evidence that the purchase of goods/services is being made as defined in the European Union Contract, the supply shall be made without VAT marking in the invoice the reference to Article 33, paragraph 3, subparagraph 3.1 of Law No. 05/L-037 on VAT.

In cases where the evidence from the importer/purchaser (European Commission contractor) that the importation of goods as well as the purchase of goods/services within the country is being made by funds financed or co-financed by the European Commission is not provided, then the import/supply will be done with VAT.

In cases where the European Commission contractor, for purchases foreseen under the European Union contract, is charged VAT both on imports or even on domestic purchases, European Commission contractor has the right to request VAT refund from TAK.

VAT REFUND

The person who is a contractor of the European Commission and who has been charged VAT for imports foreseen by the European Union Contract on imports from Kosovo Customs or even on domestic purchases by suppliers who are VAT declarants, is entitled on a monthly basis to ask for VAT Refunds from TAK.

In order to claim Refund of VAT charged in case of imports/purchases, the European Commission contractor must be previously registered for VAT.

The refund request is considered valid if the conditions are met, as follows:

- All applicable customs and VAT provisions have been met
- All VAT declarations and other tax declarations have been submitted for all past periods;
- Possess sufficient documentation to validate the VAT refund claim, and
- The request for reimbursement has been filed within the legal deadline.

TAK is obliged to review requests for VAT refund for European Commission contractors within 30 days from the date of their receipt.

The taxable person with respect to the VAT refund request must possess the following evidence:

- All purchases receipts;
- All sales receipts;
- All customs documentation as well as accompanying purchases invoices;
- Tax statements for all types of taxes required;
- Any investment project;
- Any other relevant document.

THE RIGHT TO DEDUCT INPUT VAT

Article 36, paragraph 3, sub-paragraph 3.2 of Law No. 05/L-037 on VAT foresees the right to deduct input VAT while these goods and services are used for the purposes of transactions exempted pursuant to Chapter XII.

REGISTRATION PROCEDURES FOR VAT AND INCOME TAX

Taxable persons not established in Kosovo but established in a Member State of the EU or another country eligible under IPA (excluding Kosovo) are not required to be registered for business purposes in Kosovo pursuant to Article 28, paragraph 2, point d) of IPA Agreement for supplies that are directly financed by the EC (EC Contractor). However, if these persons under the Kosovo Tax Legislation are obliged to pay other taxes, they are required to be equipped with the Fiscal Number from TAK which enables them to pay the tax in Kosovo. Additionally they need to be equipped with Fiscal Number in order to implement the special schemes for monthly refund regardless of VAT Credit amount. Other taxable person will be subject to all procedures of business registration as determined in accordance with applicable Laws in Kosovo.

ISSUANCE OF INVOICES BY A TAXABLE PERSON MAKING EXEMPT SUPPLIES

A taxable person making an exempt supply in accordance with Article 33, paragraph 3 of Law No: 05/L-037 on VAT shall issue an invoice in accordance with the normal rules for issuance of invoices.

The taxable person, not charging VAT on these invoices, is obliged to indicate the reason of exemption. Therefore, when the invoice is issued, the supplier shall mention in the invoice the following text: "The supply is exempted under (mention the relevant provision of the law)". A reference shall be made to the contract or similar under which the supply is made.

CONTRACTORS AND SUBCONTRACTORS

Contractors:

The European Commission contractor shall be a natural non-business person, a natural business person, a legal person or other organization that has concluded a financing or co-financing contract directly by the European Commission.

The European Commission contractor, to be exempted from VAT, shall prove through a financing agreement or any other document that the imported goods or goods/services purchased within the country are in conformity with the European Union Contract.

Subcontractors:

For the purpose of this Public Explanatory Decision, a "Subcontractor" or a supplier of the contractor shall be considered any person who is not a Contractor of the European Commission and his contractor.

European Contractor Subcontractor shall be a natural non-business person, a natural business person, a legal entity or other organization providing goods/services to the European Commission contractor.

Suppliers or subcontractors of the contractor (declarant for VAT) who carry out exempted supplies to the European Commission contractor shall not be subject to special exemptions but apply the regular VAT scheme. The purchases they make shall be charged with VAT if the purchases are made by the taxable person - declarant for VAT, and whether the goods/service is a taxable supply.

Supplies (sales by subcontractors) to be made to the European Commission contractor, where it is provided evidence by the buyer that the purchase of goods/services is being made as defined in the European Union Contract, the supply shall be made without VAT marking in the invoice the reference to Article 33, paragraph 3, sub-paragraph 3.1 of Law No. 05/L-037 on VAT.

In accordance with the general rules, European Commission subcontractors, shall make the deduction of input VAT and for the amount of remaining VAT credit shall have the right to claim Refund if they meet the criteria set out in Article 40 of the Law on VAT, as well as the criteria set out in Article 59, paragraph 1 and 2 of Administrative Instruction No. 03/2015 for the implementation of the Law on VAT.

ENTRY INTO FORCE

This Public Explanatory enters into force on the signing date by the TAK Director General and as such suppresses the Public Ruling No. 03/2013 of the date 04.11.2013.

Date: 24 / 01 / 2019
Prishtina,


TAK Director General

