



REPUBLIKA E KOSOVËS - REPUBLIKA KOSOVA - REPUBLIC OF KOSOVO
QEVERIA E KOSOVËS - VLADA KOSOVA - GOVERNMENT OF KOSOVO
MINISTRIA E EKONOMISË DHE FINANCËVE - MINISTARSTVO ZA PRIVREDU I FINANSIJE - MINISTRY OF ECONOMY AND FINANCE
ADMINISTRATA TATIMORE E KOSOVËS - PORESKA ADMINISTRACIJA KOSOVA - TAX ADMINISTRATION OF KOSOVO

KOSOVO TAX LEGISLATION

TAX ADMINISTRATION OF KOSOVO

KOSOVO TAX LEGISLATION

EDITION I
March, 2010 Prishtinë

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INTRODUCTION

“Every person is required to pay taxes and other contributions as provided by Law”. Constitution of the Republic of Kosovo, **Article 119**

It is the duty and obligation of every taxpayer to respect and implement the provisions of the Applicable Tax Legislation.

“Public Expenditure and the Collection of public revenue shall be based on the principle of accountability, effectiveness, efficiency and transparency”
Constitution of the Republic of Kosovo, **Article 120**

Respecting tax laws is an essential civil responsibility. In a modern country, that Kosovo intends to be, citizens are required to pay taxes and other obligations that finance government programs, public services and high standards of education, welfare, health, social support, defense, law enforcement and general infrastructure. All these can be provided and made possible only by proper tax collection.

It is the responsibility of the Tax Administration, as an executive agency with full autonomy, to manage the implementation of any type of tax applied to the Tax Legislation in the Republic of Kosovo.

The Tax Administration, in order to realize the responsibility it is given law, has focused all efforts on the Voluntary Fulfillment of Tax Liabilities by Taxpayers. Voluntary Fulfillment means declaration and payment of tax liability by taxpayers, while respecting the legal provisions regarding the amount of tax payable and respect the deadline of payment of this amount, without the intervention of TAK.

In order to achieve this objective, TAK is always in service of the taxpayer. TAK, in any case, tries to create more favorable conditions to the taxpayer and as easy and simple procedures to enable taxpayers to voluntarily meet his tax obligation. i.e., the mission of the TAK is to develop a higher level of voluntary fulfillment in accordance with laws and regulations in force as well as provision of professional, transparent and effective services for the community.

The Tax Administration has the obligation and duty established by law to ensure **Uniform application of Legal provisions for all taxpayers in the same way for similar situations.**

Therefore, TAK has published the first volume of this book, in order to notify the taxpayer with the applicable tax Legislation, with the rights and obligations which the Taxpayer has towards the Tax Administration and the rights and obligations that the Tax Administration has towards the Taxpayer.

Each Taxpayer is entitled to be informed, helped and listened on time. TAK will do its best efforts to treat you with courtesy and in normal circumstances we will try to offer you instructions, by issuing public and individual decisions to explain how to interpret and apply the provisions of tax legislation.

We request from the taxpayer to pay no more than the correct amount of tax. TAK, in this case, shall act with integrity and fairness in all cases when we deal with You, so You only pay the due tax, and to see that all credits, benefits, compensation and others, are applied properly.

It is the right of taxpayers and the duty of the tax administration to keep records of taxpayers with Reliability and confidentiality. A taxpayer may release TAK from the Confidentiality, and only then TAK has the right to make public the information of that taxpayer.

Based on the Tax Legislation, the TAK has the right to make assessments about your statements. But it is the right of every taxpayer to submit an appeal against such assessments. There exist comprehensive open procedures of discontent and complaints to all taxpayers, and we encourage you to use them if you are dissatisfied with an official determination and assessment issued by the tax administration or by an official decision issued by the Department of Complaints. We will also try to fully explain your rights on review, objection and appeal, if you are unsure about them, or if you need clarification.

Each taxpayer is obliged to keep records (*books, records, invoices, contracts, etc.*) as required by Tax Legislation and by provisions of those laws that that taxpayer is subject to. It is the duty of each taxpayer to be cooperative and honest, providing accurate and reliable details to TAK officials in procedures of control or verification of those documents. You are also required to provide these documents in the time required by the TAK in order to enable us to perform our verification at an as optimal as possible time.

We request from You to pay your taxes on time, because as a result of failure to pay on time, there shall follow penalties that are envisaged by specific legal provisions. On the other hand, TAK is not interested at all to fill the budget of Kosovo by penalties, but our primary goal is filling the budget of Kosovo by voluntary fulfillment of tax liabilities by taxpayers. But, if you do not meet your tax liabilities in the correct amount and on time, you should know that the Tax Legislation may provide sanctions, penalties and/or imposition of interest. Tax legislation has provided TAK with instruments to collect outstanding obligations towards TAK. Tax evasion and violations may implicate criminal offenses and in more serious cases there can be taken prosecution procedures under Legal Provisions.

Regarding everything stated above in relation to Procedures envisaged by the legislation you can find out more detailed in Laws and Instructions that are set out below, and the same can be found electronically on the official Web site of TAK.

www.atk-ks.org

Tax Administration of Kosovo,
Department of Performance

Law No. 2004/48 -
ON TAX ADMINISTRATION AND PROCEDURES



Law No.2004/48

ON TAX ADMINISTRATION AND PROCEDURES

The Assembly of Kosovo, Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, "On the Authority of the Interim Administration in Kosovo," Based on the authority granted to the Provisional Institutions of Self-Government by UNMIK Regulation No. 2001/9 of 15 May 2001, "On a Constitutional Framework of Self-Government," in particular Chapter 5.1(a), 5.1(b), 9.1.1, 9.1.11, and 9.1.26 (a) thereof, Recognizing that UNMIK Regulation No. 2000/20 of 12 April 2000 "On Tax Administration and Procedures" set out rules and procedures for administering taxes in Kosovo before UNMIK Regulation No. 2000/29 of 20 May 2000 "On the Establishment of a Presumptive Tax," UNMIK Regulation No. 2001/11 of 31 May 2001 "On Value Added Tax in Kosovo," UNMIK Regulation No. 2001/35 of 22 December 2001 "On Pensions in Kosovo," UNMIK Regulation No. 2002/3 of 20 February 2002 "On Profit Tax in Kosovo" and UNMIK Regulation No. 2002/4 of 20 February 2002 "On Personal Income Tax in Kosovo" were introduced, For the purpose of establishing a comprehensive set of rules and procedures for the administration of taxes and contributions imposed by legislation effective in Kosovo, which are consistent with international best practices and European standards, Adopt:

LAW ON TAX ADMINISTRATION AND PROCEDURES

Definitions

Article 1

1.1. For the purposes of the present law: "**Assessment**" means the determination of a taxpayer's liability for a specific tax and a specific tax period.

"**Delivery**" means the service of a relevant document on a taxpayer by:

- a) handing the document to the taxpayer, the taxpayer representative, a member of the taxpayer's household, or an officer, director or employee of the taxpayer (such action is deemed complete whether the person agrees to take the document or not); leaving the document at the taxpayer's dwelling
- b) or usual place of business; or
- c) sending the document by mail to the taxpayer's last known address.

"**Director**" means the Director of the Tax Administration of Kosovo.

"**Employee**" means a physical person who performs work for wages under the direction and control of an employer, regardless of whether the work is performed under a contract, some other commercial agreement, or whether there is a written or an unwritten agreement. An employee includes all public officials and members of executive, representative and judicial bodies.

"**Employer**" means any person who pays wages and includes:

- a) a public authority;
- b) a business organization;
- c) a permanent establishment of a non-resident;
- d) a non-governmental organization;
- e) an international organization, except for those exempt from taxes under the applicable law;
- f) a government of an external area; and
- g) a physical person who pays wages in the course of carrying on business in Kosovo.

“**Entity**” means a corporation or other business organization that has the status of a legal person under UNMIK Regulation No. 2001/6 of 8 February 2001 “On Business Organizations”, a business organization operating with public and socially owned assets, a non-governmental organization registered under UNMIK Regulation No. 1999/22 of 15 November 1999 “On the Registration and Operation of Non-Governmental Organizations in Kosovo,” and a permanent establishment of a non-resident. The term entity does not include a personal business enterprise or a partnership.

“**Independent Review Board**” means the Board established under the present law to hear tax appeals from taxpayers.

“**Information statement**” means:

- a) personal income tax annual reconciliation statement;
- b) a quarterly statement of pension contributions withheld and paid; and
- c) any form designated by the Director for the purpose of persons applying for tax identification numbers and being registered for tax.

“**Intangible property**” means patents, copyrights, licenses, franchises, and other property that consists of rights only, but has no physical form.

“**Legal person**” means a corporation or other business organization that has the status of a legal person under UNMIK Regulation No. 2001/6 of 8 February 2001 “On Business Organizations” and other legislation applicable in Kosovo.

“**Levy**” means the seizure or other taking of property for the payment of any tax due to the Tax Administration of Kosovo.

“**Lien**” means the right of the Tax Administration of Kosovo to take and hold property of the taxpayer as security for payment of any tax and the right to sell such property and apply the proceeds of the sale to that tax.

“**Market value**” means the price at which similar goods or services of like quality and quantity would be sold in an arms-length transaction.

“**Non-resident**” means any person who is not a resident.

“**Partnership**” means a general partnership, a limited partnership or similar pass-through arrangement that is not a legal person under UNMIK Regulation No. 2001/6 of 8 February 2001 “On Business Organizations”, and that proportionately shares items of capital, income, profit and loss among its partners.

“**Permanent establishment**” means a workplace through which a non-resident does business in Kosovo, including plants, branch offices, representative offices, factories, workshops and construction sites.

“**Person**” means a physical person or an entity.

“Personal business enterprise” means a physical person engaged in business who is not an agent or employee of another business.

“Physical person” means an individual or natural person.

“Public authority” means a central, regional, municipal, or local authority, public body, ministry, department, or other authority that exercises public executive, legislative, regulatory, administrative or judicial power.

“Related persons” means persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationships include:

- a) the persons are officers or directors of one another’s business;
- b) the persons are partners in business;
- c) the persons are in an employer-employee relationship;
- d) one person holds or controls 50% or more of the shares or voting rights in the other legal person;
- e) one person directly or indirectly controls the other person;
- f) both persons are directly or indirectly controlled by a third person; or
- g) both persons are members of the same extended family, including a spouse, ancestor or descendant, sister or brother, nephew or niece, spouse of a sister or brother, a sister or brother of a parent or parents-in law and a brother or sister-in-law.

“Resident” means:

- a) a physical person who has a principal residence in Kosovo or is physically present in Kosovo for 183 days or more in any tax period; or
- b) an entity which is established in Kosovo or has its place of effective management in Kosovo.

“Self-employed person” means any physical person who works for personal gain, in cash or in kind, who is not covered by the definition of an employee under the present law. A self-employed person includes a personal business enterprise and a partner engaged in a business.

“TAK” means the Tax Administration of Kosovo.

“Tax” includes any tax, contribution or fee payable to TAK under legislation applicable in Kosovo.

“Taxable person” has the same meaning as that term is defined under Article 1.25 of UNMIK Regulation No. 2001/11 of 31 May 2001 “On Value Added Tax in Kosovo”. **“Tax advisor”** means a person who provides tax advice to a taxpayer in the course of a tax procedure.

“Tax declaration” means:

- a) a personal income tax declaration;
- b) a profit tax declaration;
- c) a presumptive tax declaration;
- d) a VAT declaration;
- e) a hotel, food and beverage service tax declaration;
- f) a pension contribution declaration; and
- g) a corporate income tax declaration.

“Taxpayer” means any person who is required to pay any tax under legislation applicable in Kosovo, and includes a taxable person.

“Taxpayer representative” means any person that represents a taxpayer in the course of a tax procedure within the terms of a written authorization.

“Tax period” means the period of time to which a specific tax liability relates established under legislation applicable in Kosovo.

“Wages” means any amount paid by an employer, in cash or in kind, as compensation for service rendered by an employee in the course of employment, whether or not under a written contract of hire. Wages includes salary, emolument, bonus, commission, or any other payment relating to employment.

1.2. In this law, unless the context otherwise requires, the singular includes the plural and the plural includes the singular.

1.3. References to Parts and Articles in this law are references to those in this law, unless otherwise expressly stated.

The Tax Administration of Kosovo

Article 2

2.1. The Tax Administration of Kosovo (hereinafter “TAK”), as established, shall have the status of an Executive Agency, which shall function with full operational autonomy within the Ministry of Finance and Economy.

2.2. TAK shall be responsible for applying the provisions of the present law and any other legislation applicable in Kosovo that requires it to administer any tax.

2.3. In meeting its responsibility under article 2.2 it shall be the duty of TAK to collect over time the highest revenue that is practicable within the law having regard to:

- a) The resources available to TAK;
- b) The importance of promoting compliance, especially voluntary compliance, by all taxpayers with Kosovo’s tax legislation; and
- c) The compliance costs incurred by taxpayers;

Director of TAK

Article 3

3.1. TAK shall be headed by a Director who shall be appointed by the SRSG based on a recommendation submitted by the Minister of Finance and Economy through the Government.

3.2. The Director may be removed by the SRSG in consultation with the Government solely on grounds of professional incompetence or misconduct or after having been convicted of a criminal offence and sentenced to serve a prison term of six months or more.

3.3. The Director shall have:

- a) the duty to enforce the provisions of the present law;
- b) the duty to collect all taxes levied under legislation applicable in Kosovo that authorizes TAK to administer such tax;
- c) the duty to prepare advertisements, notices, and other communications to ensure that all persons understand their obligations and rights under the present law;

- d) the duty to ensure the uniform application of the tax laws in Kosovo;
- e) the power to appoint such persons as may be required to carry out the provisions of the present law in conformity with the Kosovo Civil Service rules; and
- f) the power to establish an organizational structure within TAK appropriate for its functions.

Deputy Directors **Article 4**

- 4.1. The Director shall be assisted by Deputy Directors. The Deputy Directors shall be proposed by a selection panel formed in accordance with UNMIK Regulation 2001/36 of 22 December 2001 "On the Kosovo Civil Service" and chaired by the Director. The Director shall make the final decision on the appointment of the Deputy Directors based on the results of interviews and the Kosovo Civil Service appointment process.
- 4.2. The Deputy Directors shall be responsible for the functions that are assigned to them and will assist the Director with these functions.
- 4.3. The Deputy Directors may be removed only on the ground of corruption, malfeasance or incompetence. In order to remove a Deputy Director, a proposal for removal must be presented to a disciplinary committee nominated by the Director. The Director shall make the final decision on removal with the Kosovo Civil Service removal process.

Senior Managers **Article 5**

- 5.1. Headquarters and Regional Managers shall be nominated by a panel formed in accordance with UNMIK Regulation 2001/36 of 22 December 2001 "On the Kosovo Civil Service." The Director shall make the final decision on the appointment of the Headquarters and Regional Managers.
- 5.2. Headquarters and Regional Managers shall be responsible for the functions that are assigned to them and will assist the Director and Deputy Directors with these functions.
- 5.3. Headquarters and Regional Managers may be removed only on the grounds of corruption, malfeasance or incompetence. In order to remove a Headquarters or Regional Manager, a proposal for removal must be presented to a disciplinary committee nominated by the Director. The Director shall make the final decision on removal.

Tax Officials **Article 6**

Within the rules established by UNMIK Regulation No. 2001/36 of 22 December 2001 "On the Kosovo Civil Service," the Director shall:

- a) have the authority to employ such persons as may be reasonably required, taking into account the budgetary limits of TAK;
- b) develop procedures pursuant to which tax officials will be promoted solely on the basis of meritorious service and ability to perform the work of the position to which they are being promoted;
- c) develop procedures to dismiss tax officials who do not perform their work at a necessary standard or other improper execution of duties;
- d) develop procedures for tax officials to seek redress for grievances concerning promotions, dismissals, and related matters;
- e) require tax officials to wear or carry an official TAK identification card while conducting business and to produce the card upon request.

Delegation Power

Article 7

- 7.1. The Director may delegate to any officer of TAK any power or duty conferred or imposed on the Director by the present law other than this power of delegation.
- 7.2. The Director may revoke any power or duty delegated under Article 7.1 at any time.

Reporting

Article 8

- 8.1. The Director shall furnish periodic reports of TAK's operations and performance to the Minister of Finance and Economy.
- 8.2. The Director shall produce an annual report on the operations of TAK and deliver the report to the Minister of Finance and Economy, the Government of Kosovo, the Assembly, and the SRSG within three months after the end of each calendar year.
- 8.3. The annual report of TAK shall include:
 - a) details of the budget of TAK;
 - b) details of the number and level of staff of TAK;
 - c) details of the revenues collected by TAK showing details of the amount of revenue from each type of tax and each district and such other details as may be requested by the Minister of Finance and Economy;
 - d) estimates of the cost of collection for each type of tax revenue collected;
 - e) details of all tax liabilities cancelled under Article 36, including the names of the persons whose liability has been cancelled and the amount cancelled;
 - f) details of all prosecutions for tax offences, including the name of each person who has been convicted and the amounts of tax involved; and
 - g) information on the use of the powers authorized by Article 13, including the number and nature of any complaints about the use of those powers, but not including the names of the persons involved.

Public Rulings

Article 9

- 9.1. The Director may issue public rulings to explain how TAK shall interpret and apply the provisions of the legislation that it administers in order to provide guidance to persons required to pay tax or to withhold tax.
- 9.2. Public rulings shall be made available to the public and brought to the attention of persons affected by the rulings.
- 9.3. A public ruling issued under this Article is binding on the Director for any tax liability arising in a tax period prior to the time such ruling is revoked by TAK.
- 9.4. A public ruling is not binding on a person liable to pay tax under the legislation applicable in Kosovo.

Individual Rulings

Article 10

- 10.1. The Director may issue a ruling to a particular person explaining how TAK shall interpret and apply the provisions of the present regulation as it applies to a particular transaction or arrangement planned by the person seeking the ruling.
- 10.2. If the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling, and the transaction proceeds in all material respects as described in the taxpayer's application for the ruling, the ruling shall be binding on TAK and the taxpayer with respect to the application of the law as it stood at the time of the ruling.

Taxpayer Identification Number

Article 11

- 11.1. All persons who are subject to any tax administered by TAK under legislation applicable in Kosovo shall obtain a taxpayer identification number to secure proper identification of such person.
- 11.2. The taxpayer identification number for corporations, partnerships, and personal business enterprises shall be the business registration number assigned by the Ministry of Trade and Industry.
- 11.3. The taxpayer identification number for individuals shall be the personal identification number they receive from UNMIK. If an individual is unable or ineligible or neglects or refuses to obtain a personal identification number from UNMIK, he or she shall apply for a taxpayer identification number from TAK. The Director shall designate procedures to be followed for application for a taxpayer identification number, which shall include the type of information and documentation or proof required.
- 11.4. The taxpayer identification number for budget organizations shall be the number they receive from TAK.

- 11.5. The taxpayer identification number for non-governmental organizations shall be the number they received from the UNMIK or any successor authority designated to perform non-governmental organization liaison functions.
- 11.6. The Director may require each taxpayer to include their taxpayer identification number on any form, notice, declaration, payment document or any other document used for purposes of the present law or other applicable legislation.
- 11.7. The Director shall ensure that any identification numbers assigned to taxpayers are made available to the Custom Service as defined in UNMIK Regulation No. 2004/1 of 30 January 2004 "On the Customs Code of Kosovo".

Creating and Retaining Records

Article 12

- 12.1. A person who is liable to pay or withhold tax shall create records of account in written or electronic form which determine their liability to pay or withhold tax. The specific books and records required to be prepared and retained shall be those set out in the relevant legislation and administrative instructions. TAK may require a taxpayer to translate any records that are not in one of the official languages of Kosovo.
- 12.2. Notwithstanding the recordkeeping requirements set out in other tax legislation and administrative instructions:
- 2.1. A person required to create records under the present law shall retain those records for a period of at least six years after the end of the tax period in which the tax liability to which they relate arose;
 - 2.2. TAK may allow taxpayers, who so request, to store original records on microfilm or another storage medium and such records shall be treated as being originals subject to any conditions specified by TAK;
 - 2.3. The records required to be created and retained under this Article shall relate to the tax periods specified in applicable legislation in Kosovo. The Director may allow taxpayers to keep records for different tax periods where he or she believes it is necessary for their efficient operation to do so, and in such case he or she shall specify how those laws are to be applied in those cases to ensure that neither TAK nor the Kosovo Pensions Savings Trust is adversely affected.
- 12.3. Books and records for businesses with annual turnovers over 50.000 euro shall be kept in conformity with generally accepted accounting principles as defined in Article 2.1 of UNMIK Regulation No. 2004/1 of 30 January 2004 On the Customs Code of Kosovo."

Access to books, records, computers and similar record storage devices

Article 13

- 13.1. Subject to the limitations in this Article, the Director or any officer authorized by the Director in writing for this specific purpose shall have, at all times and with prior notice, unless in the opinion of the Director exceptional

circumstances warrant otherwise, full and free access to any premises where a business is conducted, book, record, computer or similar record storage device where there are reasonable grounds for concluding that access may provide the Director with materials relevant to any tax obligation.

13.2. The information referred to in Article 13.1 shall be accessible whether it belongs to the taxpayer, a person who had financial dealings with the taxpayer, an employer, employee, self-employed person, or any other person who has information that may lead to verification of the taxpayer's liability.

13.3. The Director or officer authorized by the Director in writing under this Article may:

3.1. make an extract or copy from any book, record, computer or similar record storage device information to which access is obtained;

3.2. require transfer of possession of any book or record that, in the opinion of the Director or the authorized officer, affords evidence which may be material in determining the liability of a person under the tax legislation of Kosovo;

3.3. retain any such book or record for as long as it may be required for determining a person's liability or for any proceeding under the present law;

3.4. require the provision of any password protecting information on a computer or similar record storage device;

3.5. where a hard copy, computer disk or similar record storage device, of information is not provided, require transfer of possession of and retain the computer or similar record storage device for as long as necessary to copy the information required;

3.6. make checks on a person's assets and liabilities where such checks, in the opinion of the Director or the authorized officer, afford evidence which may be material in determining the liability of a person under the tax legislation of Kosovo;

13.4. The powers under this Article shall be exercised only during a taxpayer's ordinary business hours, unless the Director determines that collection of tax is in jeopardy and that such powers must be operated outside those ordinary business hours in order to protect the collection of tax.

13.5. An officer who attempts to exercise a power under this Article shall not be entitled to enter or remain on any premises, if after a request from the occupier, the officer does not produce an authorization in writing from the Director showing that the officer is authorized to operate such power under this Article.

13.6. Subject to the right to retain a document as evidence of a criminal offence, the Director or an authorized officer who removes and retains records under this Article shall make a copy of the record and return the original in the shortest time practicable.

13.7. At the time of obtaining possession of a document or item under subparagraphs (b) and (e) of this article, TAK shall, at the request of the taxpayer concerned, issue a receipt which shall specify the document or item, the date on which the document or item was taken into possession and the officer of TAK to whom it was handed over.

Collection of Information or Evidence

Article 14

- 14.1. Subject to Article 14.3, the Director may, by notice in writing, require a person, whether that person is liable to pay tax or not, to:
- a) produce certain documents required by the notice within seven days of the delivery of the notice;
 - b) attend at the time and place designated in the notice (which must be at least 48 hours after the delivery of the notice) for being examined on oath before the Director or any officer authorized by the Director for this purpose, concerning the tax liability of that person or any other person or any book, record, computer stored information in the control of that person.
- 14.2. Where the notice requires the production of documents or other records, such documents or records must be described with reasonable certainty
- 14.3. This Article shall not apply to information contained in communications that may be privileged under applicable law.

Tax Declarations

Article 15

- 15.1. Each person subject to any tax under legislation applicable in Kosovo shall submit to TAK or its agent a completed tax declaration required by such legislation.
- 15.2. The tax declaration shall be filed on a form developed by TAK, which must not be unduly burdensome to the taxpayer and which is accompanied by adequate instructions.
- 15.3. The tax declaration shall include the taxpayer's identification number, a computation of the tax due, and all other information required by the applicable legislation or administrative instructions issued pursuant to such legislation.
- 15.4. The tax declaration shall be signed by the taxpayer or taxpayer representative under the penalty of criminal liability for providing false information therein. If the tax declaration is prepared by a tax advisor, the tax advisor shall also sign the declaration and provide their taxpayer identification number.
- 15.5. The date for submitting a tax declaration shall be prescribed in the legislation imposing the tax.
- 15.6. If the filing date prescribed in legislation is not a business day in Kosovo, the filing date shall be the first business day thereafter.

Self-Assessment

Article 16

- 16.1. Where a person submits a tax declaration required under the applicable legislation, the tax stated as due, if any, on the tax form shall be treated as the taxpayer's self-assessment of tax payable and properly due.

- 16.2. A taxpayer may submit an amended tax declaration if he or she subsequently discovers an error in a tax declaration that has already been submitted. The deadline for submitting an amended declaration is five years after the date the declaration was submitted.
- 16.3. The amended tax declaration must be accompanied by any additional tax due or, if applicable, a request for credit against another liability (current or future), or a refund of the excess tax paid.
- 16.4. For the purposes of determining sanctions under Part I of the present law, no amended tax declarations for a tax period will have any effect after the Director or officer authorized by the Director has exercised any power under Article 13 or 14 of this law and has commenced a tax investigation with respect to that tax period.

Director's Assessment of Tax

Article 17

- 17.1. Where the Director believes that the information provided by a person on a tax declaration does not correctly disclose their tax liability, or where a taxpayer has not submitted a declaration required by the present law, the Director may make an assessment of their tax liability.
- 17.2. The Director's assessment shall be made to his or her best judgment and shall be based on all the evidence available to him or her, including:
- 17.3. books, records, receipts, invoices, or other relevant information of the taxpayer;
- 17.4. books, records, receipts, invoices, or other relevant information of third persons;
- 17.5. information from persons who can verify the accuracy of the taxpayer's declarations books and records;
- 17.6. other objective information about a taxpayer's income or transactions relevant to its liability.
- 17.7. If a taxpayer's books or records have been lost or destroyed or other circumstances exist that make a determination of a tax liability impossible, the Director shall make an assessment based on an estimate. The estimate must be based on assets, turnover, production costs, comparative costs, and other direct and indirect methods that are relevant for calculating the tax liability.
- 17.8. If the records of an employer or self-employed person are lost or destroyed or other circumstances exist that make a determination of the amount of required pension contribution impossible, the Director may make an assessment of pension contributions equal to the level of contributions due for the previous monthly or quarterly period.
- 17.9. An assessment for withholding taxes shall be made in the same manner and subject to the same provisions and limitations that are applicable to taxes that are not withheld at the source.

- 17.10. The burden of proving that the making of any assessment by the Director is erroneous and the burden of proving that the amount of any such assessment is incorrect shall be on the taxpayer.

Time limits for assessment

Article 18

- 18.1. Subject to Article 18.2, all taxes must be assessed within six years of the date the tax declaration to which the assessment relates was due.
- 18.2. The Director may make an assessment at any time where:
- a. a person, with the intent of evading tax, has failed to deliver a tax declaration;
 - b. a person, with the intent of evading tax, has delivered a tax form which the Director determines to be incorrect;
 - c. fraud has been committed by or on behalf of a person in relation to a tax liability.

Jeopardy Assessments

Article 19

The Director may make a jeopardy assessment of tax where the Director considers that the collection of tax that will become due is in jeopardy because a person is about to evade taxation by fleeing Kosovo, transferring assets, ceasing business or taking other actions that will jeopardize collection of the tax unless a jeopardy assessment is made. An assessment under this provision may be appealed directly to the Independent Review Board.

Assessment Notice

Article 20

- 20.1. If the Director makes an assessment of tax, or the self-assessment by the taxpayer is not accompanied by the full amount of tax due, the Director shall deliver an Assessment Notice to the person liable for the tax.
- 20.2. The Assessment Notice shall contain the following information:
- a) the name of the taxpayer;
 - b) the taxpayer identification number;
 - c) the date of the notice;
 - d) the matter and tax period or periods to which the notice relates;
 - e) the amount of assessed tax, sanctions, and interest;
 - f) a brief explanation of the assessment;
 - g) a demand for payment of the amount due;
 - h) the place and manner of payment of the amount due;
 - i) and i. the appeal procedures.

- 20.3. The taxpayer shall, within 10 days after the notice is delivered, pay the amount due at the place stated in the notice. The amount payable shall include the tax, sanctions, and accrued interest up to and including the date of payment.
- 20.4. In the event of a jeopardy assessment under Article 19, the Director may demand immediate payment of tax and take enforced collection immediately to secure the payment of taxes due.

Payments

Article 21

- 21.1. Any tax that is due and payable to TAK is a debt due to TAK.
- 21.2. Any person required to pay any tax to TAK under the legislation applicable in Kosovo shall, without notice or demand from TAK, pay such tax at the time and place specified in such legislation or implementing rules.
- 21.3. Any person who is made responsible to withhold, account for and pay over any tax on behalf of another person under the legislation applicable in Kosovo shall, without notice or demand from TAK, pay such tax at the time and place specified in such legislation or implementing rules.
- 21.4. Each employer who is required to make pension contributions on behalf of its employees and to withhold pension contributions from its employees pursuant to UNMIK Regulation No. 2001/35 of 22 December 2001 "On Pensions in Kosovo" shall pay such contributions at the time specified in such legislation or implementing rules.
- 21.5. Self-employed persons who are required to make pension contributions pursuant to UNMIK Regulation No. 2001/35 of 22 December 2001 "On Pensions in Kosovo" shall pay both the employer contribution and the employee contribution on their behalf at the time specified in such legislation or implementing rules.
- 21.6. Unless otherwise specified in administrative instruction, all taxes shall be paid to a bank licensed by the Banking and Payments Authority of Kosovo (BPK) authorized by TAK.
- 21.7. Notwithstanding any other provision in this Article or in the present law, where the amount of tax payable under a tax declaration is 3 Euro or less, or such other small amount as determined by the Director, TAK shall treat the tax payable as zero.
- 21.8. Unless designated to do so in writing by the Director, tax officials are prohibited from receiving any payment in respect of any tax.

Interest

Article 22

- 22.1. If any amount of any tax administered by TAK under legislation applicable in Kosovo is not paid by the last date prescribed for payment, the taxpayer shall be liable for interest.
- 22.2. Interest shall be calculated monthly for each month or part of a month from the date the tax is due up to and including the date the tax is paid.

- 22.3. The rate of interest shall be based on, but marginally higher than, the commercial bank interest rate on lending in Kosovo, shall be determined by the Ministry of Finance and Economy at least once per calendar year and shall be published by TAK.
- 22.4. Any interest due and payable may be collected in the same manner and with the same measures of enforcement as the tax on which it is based.

Order of Payments

Article 23

- 23.1. The amount of any tax paid pursuant to this law shall be distributed in the following order:
- a) collection costs
 - b) sanctions and fines;
 - c) interest; and
 - d) the amount of any tax due.
- 23.2. If the taxpayer does not designate the specific tax and specific tax period to which the payment relates, the payment shall be distributed to the earliest liability first, and where necessary, in the order specified in Article 23.1.

Credits and Refunds

Article 24

- 24.1. Any amount of any tax paid in excess of the amount due shall be applied to the taxpayer's current liability for any other tax due to TAK, if any. TAK shall deliver to the taxpayer notice in writing where such excess has been applied to another liability.
- 24.2. Where a taxpayer has no other current liabilities to TAK or where there remains an amount of tax overpaid after applying the excess referred to in Article 24.1 to other tax liabilities, the taxpayer may claim a refund of the amount remaining overpaid from TAK.
- 24.3. Where a taxpayer has no other current liabilities to TAK and where the taxpayer has not claimed a refund from TAK under Article 24.2, the excess payment shall be retained by TAK as a credit in the taxpayer's account to meet future liabilities to TAK.
- 24.4. Claims for credit or refund of an overpayment of any tax shall be filed by the taxpayer within six years from the date such tax was paid. The location and procedures for applying for a refund of tax and determining whether such refund is properly due shall be specified in an administrative instruction.
- 24.5. TAK shall action all claims for refunds by taxpayers under Article 24.2 within 60 days of the date TAK received the claim for a refund from the taxpayer, by ensuring that details of the amount to be refunded are forwarded to the Ministry of Finance and Economy or, in case of pension contributions, to the Kosovo Pension Savings Trust, for payment within that time.
- 24.6. Where a taxpayer has claimed a refund under Article 24.2 and that claim has not been actioned within the time provided in Article 24.5, TAK shall pay to

the taxpayer, in addition to the amount to be properly refunded, interest at a rate prescribed by the Ministry of Finance and Economy in respect of each whole calendar month that occurs after that period and before details of the amount to be refunded have been forwarded to the Ministry of Finance and Economy, or to the Kosovo Pension Savings Trust for payment.

Use of Banks

Article 25

- 25.1. With the approval of the Ministry of Finance & Economy Treasury division TAK may enter into agreements with BPK and other licensed banks by BPK for the banks to receive tax declarations and tax payments.
- 25.2. Under such agreements, the banks shall be obliged:
- a) to send payments of tax to the BPK within a specified period of time;
 - b) to send tax declarations and other documents to TAK within a specified period of time;
 - c) to group the documents in batches with a summary showing for each batch the number of documents it contains and the amount of revenue collected;
 - d) to balance the daily collections with a balance control document.

Tax that is Due and Payable

Article 26

- 26.1. Tax that has not been paid when it is due and payable, may be sued for and recovered in a court of competent jurisdiction by the Director in his or her official name.
- 26.2. In any proceedings under this Article, production of a certificate signed by the Director giving the name and address of the defendant and the amount of tax, and sanctions and interest, if any, due shall be sufficient evidence of that amount of tax, sanctions and interest for the court to give judgment for that amount.

Liens

Article 27

- 27.1. If a person who is liable to pay any tax to TAK under legislation applicable in Kosovo neglects or refuses to pay within 10 days after delivery of an assessment notice, a lien shall arise on all property belonging to that person (whether movable, immovable, tangible or intangible) in an amount equal to the unpaid tax, plus interest, sanctions, and the costs of collection.
- 27.2. The lien described in Article 27.1 shall arise at 5 p.m. on the date the tax is due and shall continue until the liability is satisfied or becomes unenforceable.
- 27.3. The lien described in Article 27.1 must be registered with the municipal cadastre office of the Kosovo Cadastre Agency and any other office responsible for registering property in Kosovo in order for the lien to have priority against all subsequently filed liens or security interests with respect to such property.

- 27.4. A person may appeal to TAK for release of a lien alleging an error in filing such lien. If TAK determines that the filing of the lien was erroneous, it shall promptly issue a certificate of release of such lien.
- 27.5. The Director may file a civil action in a court of competent jurisdiction to enforce any lien imposed by this Article.
- 27.6. In the event of payment of the debt to TAK, the lien shall be released.

Levies

Article 28

- 28.1. If a person who is liable to pay any tax neglects or refuses to pay within 10 days after delivery of an assessment notice, it shall be lawful for the Director or officer authorized in writing by the Director, to collect such amount (and such further amount as shall be sufficient to cover the expenses of the levy) by levy on property belonging to such person (whether in the physical possession of the taxpayer or a third person).
- 28.2. In order to levy on property, an authorized officer shall deliver a notice of seizure to any person (including employers, banks, other financial institutions) in control or possession of property belonging to the taxpayer (whether movable, immovable, tangible or intangible) or who has an obligation to the taxpayer at the time the levy is made.
- 28.3. In the case of property consisting of accrued salary or wages, the authorized officer shall deliver a notice of seizure to an officer or employee who has the duty of paying the salary or wages.
- 28.4. The seizure notice shall state:
- a) the taxpayer whose property is being seized;
 - b) the location of the property;
 - c) the type of liability;
 - d) the tax period for which the liability arose;
 - e) and the amount of tax assessed.
- 28.5. Subject to Articles 57.2 and 57.3, any property subject to a notice of seizure can be seized by an authorized officer or the rights to which that property can be used by any person can thereafter be restricted (such that that person may use the property under the supervision of TAK, but cannot dispose of the property), provided that in either case such property cannot (except where the property is perishable) be sold or disposed of within 60 days of the notice of seizure.
- 28.6. If an authorized officer makes a determination that the collection of tax is in jeopardy, notice and demand for the immediate payment of tax may be made by such officer and, on the failure or refusal to pay the tax, collection thereof by levy shall be lawful without regard to the 10 day period in Article 28.1, the 60 day period in Article 28.5 and the timeframes specified in Articles 57.2 and 57.3.
- 28.7. A levy on salary or wages payable to or received by a taxpayer shall be continuous and extend from the date such levy is first made until the liability out of which such levy arose is satisfied or becomes unenforceable.
- 28.8. Whenever any property on which the levy has been made is not sufficient to satisfy the claim for which levy is made, an authorized officer may, thereafter,

and so often as may be necessary, proceed to levy other property liable to levy until the amount due from such person, together with all expenses, is fully paid.

Enforcement of Levy

Article 29

- 29.1. Any person in possession of (or obligated with respect to) property subject to levy on which a levy has been made shall, on demand of an authorized officer, surrender such property (or discharge such obligation) to the authorized officer, except such part of the property as is, at the time of such demand, subject to execution under any judicial process.
- 29.2. Any person who fails or refuses to surrender any property subject to levy on demand of the designated officer shall be personally liable to the government in a sum equal to the value of the property not surrendered, but not exceeding the amount of tax for the collection of which levy has been made (together with interest, sanctions, and costs), as if it were an understatement of tax.
- 29.3. In addition to the personal liability imposed in Article 29.2, if the failure or refusal to surrender is without reasonable cause, such person shall be liable for a sanction under Article 47.3.

Sale at Public Auction

Article 30

TAK may sell at public auction any property seized pursuant to this law.

Limitations on Enforced Collection

Article 31

- 31.1. Only that property necessary and sufficient to meet the taxpayer's current tax obligations may be subject to enforced collection action.
- 31.2. The following forms of a taxpayer's property shall be exempt from levies and seizures:
- a) child support and social assistance payments;
 - b) essential clothing;
 - c) basic food;
 - d) basic furniture;
 - e) basic personal effects, excluding luxury items; and
 - f) any other property specified in an administrative instruction.
- 31.3. Actions to enforce collection of tax must be commenced within six (6) years after the assessment of the tax. Commencement of a court proceeding for collection of tax shall suspend the limitation period indefinitely.

Recovery of tax from partners and members of unincorporated associations

Article 32

- 32.1. The Director may recover from any of the partners of a partnership any tax (together with interest, sanctions and costs) due from the partnership.
- 32.2. The Director may recover from any member, manager or director of an unincorporated association or organization any tax (together with interest, sanctions and costs) due from the association or organization.
- 32.3. A member of an unincorporated association or organization shall be liable to pay tax due under Article 32.2 only to the extent that the member knew or reasonably should have known of the tax liability of the association or organization.

Jeopardy Orders

Article 33

- 33.1. Where the Director considers that payment of tax that will become due is at risk because a person is about to depart Kosovo, to cease business or to transfer property, or is in jeopardy for other reasons, the Director may notify any person:
 - a. owing money to the person who will be liable to pay tax;
 - b. holding money for the person who will be liable to pay tax;
 - c. having the authority from some other person to pay money to the person who will be liable to pay tax;to set aside the money until such time as the Director issues a notice under Article 19 or withdraws the notice issued under this Article.
- 33.2. Any person who fails to set aside money as required under Article 33.1 shall be liable to a sanction under Article 47.4.

Embargo on imports and exports

Article 34

- 34.1. In any case where a person who is liable to pay any tax neglects or refuses to pay within 10 days after delivery of an assessment notice or where the Director considers that payment of tax is in jeopardy under Article 33, it shall be lawful for the Director or an officer authorized in writing by the Director, to request in writing from the Director General of the Customs Service that an embargo be placed on the release of any imports or exports by that person in compliance with the Memorandum of Understanding between TAK and the UNMIK Customs Service”.
- 34.2. Any request made to the Director General of the Customs Service under Article shall remain valid until the Director advises the Director General in writing of a decision to terminate the request.”

Departure prohibitions

Article 35

- 35.1. If the Director of TAK informs the Head of the Border Police in writing that a person liable for tax due under the present regulation has failed to pay the tax, the Border Police shall take such steps as it can to prevent such person from leaving Kosovo for a period of 72 hours from the issuance of the letter unless during that period the person:
- a) makes payment in full;
 - b) makes an arrangement satisfactory to the Director of TAK for the payment of the tax.
- 35.2. Upon application by the Director, a court of competent jurisdiction may extend the 72 -hour period referred to in Article 35.1. The Head of the Border Police shall continue to take the steps referred to in Article 35.1 whenever he or she is notified in writing of that extension.

Cancellation of tax that cannot be collected

Article 36

- 36.1. Where TAK considers that it will be impossible to collect any tax due under the present law and that the liability of the taxpayer should be cancelled, TAK may recommend to the Minister of Finance and Economy that the liability be cancelled. Each case must be reviewed by a committee of three employees of TAK including the Director and a Deputy Director.
- 36.2. If the Minister of Finance and Economy accepts in writing a recommendation from TAK made under Article 36.1, TAK shall treat the liability as cancelled and the tax shall no longer be due or payable. TAK shall notify the taxpayer of the cancellation of his or her liability.
- 36.3. TAK may reinstate a liability cancelled under Article 36.2 where it believes it has become possible to collect the tax due provided that either:
- a) such reinstatement is done within six years of the date the tax liability became due; or
 - b) the circumstances of Article 18.2 apply.

Illegal Income

Article 37

Income shall be subject to taxation in cases where the receipt of income is considered illegal under UNMIK Regulation No. 2003/25 of 6 July 2003 “On the Provisional Criminal Code of Kosovo” or any other law.

Director may re-characterize arrangements

Article 38

- 38.1. For the purposes of determining tax liability under the tax legislation applicable in Kosovo, the Director may:

- a) disregard a transaction that does not have substantial economic effect;
 - b) re-characterize a transaction where the form of the transaction does not reflect its economic substance;
 - c) re-characterize an element of a transaction that was entered into as part of a scheme to avoid a tax liability.
- 38.2. The Director shall notify the taxpayer of any disregard or re-characterization under Article 38.1.

Transactions between Related Persons

Article 39

- 39.2. In any transaction between related persons, the Director may allocate income or deductions between such persons as is necessary to reflect the taxable income that would have resulted from the transaction if the persons had not been related.
- 39.3. In commercial or financial transactions between related persons, the Director may adjust the sales price between such persons to reflect the market value that would have occurred if the persons had not been related.

Barter Transactions

Article 40

- 40.1. Barter transactions shall be considered as a sale of goods or the result of work or services at market values.
- 40.2. Tax invoices must be issued for barter transactions in the same manner as they are issued for cash transactions. If the value of a barter transaction indicated in a tax invoice is a reduced value, the Director may adjust the value of the transaction to reflect market values.

Understatements of Income and Diverted Receipts

Article 41

- 41.1. Where an individual declares an amount of income that is insufficient to support his or her expenses incurred for personal consumption, TAK may recalculate the income of the individual on the basis of expenses incurred by the individual, taking into account income of previous periods.
- 41.2. A person shall be treated as having received any amount that is:
- a) reinvested or accumulated for the person's benefit
 - b) dealt with on the person's behalf or as the person directs.

Sanctions for Non-Compliance

Article 42

Any sanction imposed under this law shall be considered as tax due to TAK, and collectable as tax.

Failure to submit a tax declaration

Article 43

Where a person who is required to submit a tax declaration under legislation applicable in Kosovo fails to do so by the due date, such person shall be liable to a sanction of five percent (5%) of the tax owed for each month or part of a month that it is late, with a maximum sanction payable of twenty-five percent (25%) of the tax due.

Failure to pay

Article 44

Where a person who is required to pay any tax under legislation applicable in Kosovo fails to pay all or part of such tax by the due date, such person shall be liable for a sanction of two percent (2%) of the tax due for each month or part of a month that the payment is late, up to a maximum of twelve months.

Understatements of Tax and Overstatements of Tax Refunds

Article 45

- 45.1. Where a person who is required to complete a tax declaration under legislation applicable in Kosovo understates the correct amount of tax due, or overstates the correct amount of a tax refund to which they are entitled, such person shall be liable to a sanction of:
- a) twenty-five percent (25%) of the difference between the correct amount of tax required to be declared and the amount of tax actually declared where such understatement or, as the case may be, overstatement was due to the negligence or gross carelessness of that person; or
 - b) one hundred percent (100%) of the difference between the correct amount of tax required to be declared and the amount of tax actually declared where such understatement or, as the case may be, overstatement was due to a deliberate and willful attempt by that person to conceal the correct amount of tax required to be declared so as to avoid payment of, or claim a refund of, that difference.
- 45.2. For the purposes of Article 45.1, where a taxpayer who is required to complete a tax declaration for a tax period has failed to submit such declaration, that taxpayer shall be deemed to have declared that the amount of tax due from him or her for that tax period was zero.

Failure to File, Create or Provide Records

Article 46

- 46.1. Any person who is required to file an information statement with TAK and who fails to do so by the due date or who files an inaccurate or incomplete

statement shall be liable to a sanction of 125 Euro for each failure to file and each inaccurate or incomplete statement.

46.2. Any person who is required to create or retain records under the legislation applicable in Kosovo and who fails to do so shall be liable to a fine of 125 euro.

In addition, the person shall be liable to a sanction of:

- a. twenty-five percent (25%) of the tax assessed to which the records relate if the failure to do so was due to the gross carelessness on the part of the person; and
- b. one hundred percent (100%) of the tax assessed to which the records relate if the failure to do so was due to a deliberate attempt to avoid payment of tax.

46.1. Any person who is required to provide access to books or records or otherwise comply with Articles 13 and 14 and who fails to do so shall be liable to a sanction of 100 Euro for each day of default following the date of request by TAK. In such cases, TAK may also request a warrant from a judge authorizing the entry or access sought under Articles 13 or 14.

Failure to withhold, pay or remit taxes and other amounts

Article 47

47.1. Any person responsible for withholding, collecting or paying over tax who willfully fails to withhold, collect, or pay over that tax, shall be liable to a sanction equal to the amount of the tax not withheld, collected or not paid over.

47.2. Any employer responsible for withholding and paying to the Kosovo Pension Savings Trust any pension contributions on behalf of themselves or their employees who willfully fails to withhold any such contributions or who willfully fails to pay any withheld contributions shall be liable to a sanction equal to the amount of the contribution not withheld or not paid over to the Trust.

47.3. Any person who fails or refuses to surrender any property subject to levy without reasonable cause under Article 29.3, such person shall be liable for a sanction equal to 50 percent of the amount recoverable under Article 29.2.

47.4. Any person who fails to set aside money as required under Article 33.1 shall be liable to a sanction equal to that amount of money.

Errors by Taxpayer Representatives and Tax Advisors

Article 48

Any taxpayer representative or tax advisor who signs a tax declaration on behalf of another person, who makes an error on such declaration shall pay a sanction of 125 Euro where the error was due to carelessness or an unrealistic interpretation of the tax laws, or 250 Euro where the error was due to reckless or intentional disregard of the tax laws and regulations.

VAT Violations

Article 49

- 49.1. A taxable person who is required to register for VAT and who makes supplies without being registered for VAT after the time limit allowed for such registration shall be liable for the VAT due on those supplies plus a sanction of:
- a) twenty-five percent (25%) of the VAT due on those supplies where the failure to register was due to the negligence or gross carelessness of the taxable person; or
 - b) one hundred percent (100%) of the VAT due on those supplies where the failure to register was due to a deliberate and willful attempt by the taxable person to not pay VAT on those supplies.
- 49.2. A taxable person who fails to issue a VAT invoice or who issues an incorrect invoice that results in an apparent decrease in the amount of VAT due or an apparent increase in the amount of credit claimable shall be liable for that decrease in amount due or that increase in the amount of credit claimable in respect of the invoice or transaction, plus a sanction of:
- a) twenty-five percent (25%) of the apparent decrease or increase in the amount of VAT due where the failure to issue a VAT invoice or the issue of an incorrect invoice was due to the negligence or gross carelessness of the taxable person; or
 - b) one hundred percent (100%) of the apparent decrease or increase in the amount of VAT due where the failure to issue a VAT invoice or the issue of an incorrect invoice was due to a deliberate and willful attempt by the taxable person to either not issue a VAT invoice or to issue a false invoice.
- 49.3. A taxable person who commits any of the following violations with respect to VAT shall be liable to a sanction of 250 Euro for each violation:
- a. failure to apply to be removed from the VAT register when required to do so under applicable law;
 - b. failure to display a copy of the VAT registration certificate in the manner required by applicable law.
- 49.4. A taxable person registered for VAT who allows another person to use its unique VAT registration certificate shall be liable to a sanction of up to 5000 Euro.
- 49.5. Any person who without a lawful reason is found to have goods in their possession for which no VAT invoice or other records exist in respect of that supply shall be liable, in addition to any sanctions under Articles 49.1 (b) or 49.2 (b) of this Article, to a sanction of an amount equal to the estimated VAT calculated at a 15% rate of the open market value of the goods

Additional sanctions

Article 50

The Ministry of Finance and Economy may issue administrative instructions imposing additional sanctions for tax violations, where such sanctions do not exceed a total of 500 Euro.

Reduction in sanctions

Article 51

- 51.1. Where a taxpayer who is liable to one or more of the sanctions set out in Articles 43 to 50, voluntarily informs TAK of their liability before the taxpayer is first notified of a pending tax investigation by TAK which might have discovered that liability, the maximum financial sanction that may be imposed shall be 25% of the sanction that would otherwise have applied. Where a taxpayer so voluntarily informs after the taxpayer is first notified of a pending tax investigation, but before TAK commences that investigation, the maximum financial sanction imposed shall be 50% of the sanction that would otherwise have applied.
- 51.2. Where a taxpayer with tax liability outstanding:
- a) enters into a written agreement to pay the tax outstanding through two or more installments;
 - b) fulfills the terms of that written agreement; and
 - c) keeps all other tax obligations up to date throughout the course of that agreement;
- the financial sanction that would otherwise apply in respect of the late payment under Article 44 will be reduced to two percent (2%) of the tax due and interest incurred under Article 22 will remain payable.

Appeals to the Tax Administration

Article 52

- 52.1. The Director shall establish within TAK an Appeals Division responsible for considering appeals by persons who dispute an assessment or decision of the Director under legislation administered by TAK.
- 52.2. A person who disputes a tax assessment or official determination of TAK may appeal to the Appeals Division for reconsideration of the official determination. The appeal shall be filed within 60 days of the date that the taxpayer received the notice of the assessment or other official determination. The appeal shall be in writing and must indicate the reasons and documents on which the taxpayer bases the appeal.
- 52.3. The Minister of Finance and Economy may designate in an administrative instruction circumstances under which the 60 day period in Article 52.2 may be extended.
- 52.4. The burden of proving that an assessment or other official determination is incorrect before the Appeals Division shall be on the taxpayer.
- 52.5. The Appeals Division shall consider the appeal of the taxpayer and shall issue a decision thereon. The decision shall be delivered in writing to the person making the appeal as soon as practicable, but not later than 60 days after the date of appeal.

- 52.6. A decision of the Appeals Division shall be the final decision of the Director and shall be binding on TAK.
- 52.7. A person who does not agree with a decision of the Appeals Division may appeal to the Independent Review Board within 60 days of receiving notification of the decision of the Appeals Division.
- 52.8. Where the Appeals Division has not delivered a decision within 60 days of the day on which an appeal was filed, the taxpayer may appeal the assessment or other official determination directly to the Independent Review Board.

Establishment of the Independent Review Board

Article 53

- 53.1. The Independent Review Board established under UNMIK Administrative Direction No. 2000/7 shall continue as the Independent Review Board under this law.
- 53.2. Members of the Board shall be proposed by the Government based solely on their fitness to perform their functions. Members shall be appointed by the Assembly, except for two (2) members of the Board who shall be appointed by the SRSG following consultations with the Government. For the first appointment following the entry into force of this Law, seven (7) members shall be appointed for one (1) year term and eight (8) members shall be appointed for a two (2) year term, which may be renewed for one further term of two (2) years. Thereafter, the term of appointment of each member shall be two (2) years. Appointments under the present article shall commence on 1 June 2005.
- 53.3. The Board shall consist of a Chief Member and fourteen other members, all of whom are independent of the Ministry of Finance and Economy and of the Custom Service. At least seven of the members shall be from the Kosovo business community.
- 53.4. The Board shall pay such fees for the work of members as relates to the number of days or half days as they shall sit as members.
- 53.5. The Assembly may remove one or more members of the Board with the advice of the Government, if it determines that the member is unfit to execute his/her functions or is in a position of a conflict of interest contrary to article 55.5, except that any member of the Board appointed by the SRSG may only be removed by the SRSG on the same grounds following consultations with the Government. The Assembly or the SRSG, as appropriate, shall appoint a new member to replace any member who has been removed under this article, or has resigned from membership on the Board or has become unable to perform his/her functions. The member so appointed shall serve for the remainder of the term of the member being replaced, and such appointment shall be deemed a first appointment;
- 53.6. The Board is authorized to hire competent staff, acquire equipment necessary to carry out its functions, and establish premises from which it will operate.

Role of the Board

Article 54

- 54.1. The Board shall have jurisdiction to receive appeals against:
- a) a decision of the Appeals Division;
 - b) a jeopardy assessment under Article 19;
 - c) an assessment or other official determination of the Director where the Appeals Division has not delivered a decision within 60 days under Article 52.8;
 - d) official determinations under other legislation in Kosovo that provides for appeals to such Board.
- 54.2. The person appealing to the Board shall have the burden of proving that a decision, assessment or determination against which they are appealing is incorrect.
- 54.3. In reviewing the decisions, assessments and determinations under Article 54.1, the Board shall, subject to Articles 54.4 and 54.5, review the relevant testimony, documents and other evidence presented by the person appealing to the Board and by TAK. The Board shall then make its own findings of fact and conclusions of law.
- 54.4. Unless Article 54.5 applies, the testimony, documents and other evidence presented by the person appealing to the Board and by TAK shall be limited to the same evidence that was provided in respect of the previous decision, assessment or determination which is being appealed against under Article 54.1.
- 54.5. The Board may allow a person appealing to the Board or TAK to present new evidence where the Board is satisfied that:
- a) such evidence was not available at the time of the decision, assessment or determination which is being appealed against under Article 54.1; and
 - b) the admission of such evidence is necessary to avoid manifest injustice to the person appealing to the Board or to TAK.
- 54.6. The decision of the Board shall be issued in writing and shall be binding on both the person appealing to the Board and the Director unless amended or reversed by a Court.

Procedures for the Board

Article 55

- 55.1. The Minister of Finance and Economy may at the request of the Board establish a user fee for persons bringing appeals before the Board.
- 55.2. The Chief Member shall nominate an appeal panel of up to three members to hear an appeal brought before it. Cases shall be allocated on a random basis and the members of each panel shall be rotated.
- 55.3. The times and places of the hearings of the Board shall be specified by the Chief Member with a view to securing a reasonable opportunity for persons to appear before the Board with as little inconvenience and expense as practicable.

- 55.4. An appeal panel shall hear evidence under Article 54.3, discuss the case as a panel, and issue a written opinion, including the findings of fact or opinion of the Board, within 30 days after the conclusion of the hearing.
- 55.5. No member shall sit on an appeal panel where there is a likelihood of a conflict of interest by virtue of family relationships, business relationships or any other factors.
- 55.6. Members of the Board shall maintain the confidentiality of all taxpayer information and data obtained. This obligation shall continue even after their term of appointment has ended.

Judicial Review

Article 56

Decisions of the Board may be appealed to a court of competent jurisdiction providing such appeals are initiated within 60 days of receiving notification of the decision of the Board.

Obligation to Pay During Appeals Proceedings

Article 57

- 57.1. Whether or not a person has lodged an appeal to the Appeals Division or the Independent Review Board, tax due under the present law shall remain due and payable.
- 57.2. Notwithstanding Article 57.1, there shall be no enforced collection of tax until the time within which a taxpayer may appeal to the Appeals Division under Article 52.2 has expired, or until the Appeals Division has made its decision under Article 52.6, whichever is the later.
- 57.3. Unless the property seized is perishable, property seized by TAK shall not be sold or otherwise disposed of until the expiry of the 60 day period after delivery of notice of seizure under Article 28.5, or until the conclusion of the appeal procedures (other than Article 56) provided for in this law, whichever is the later. Where property seized has been sold or otherwise disposed of, any proceeds shall be held by TAK for the credit of the taxpayer until the matter that is appealed is finally resolved, at which time it shall be refunded to the taxpayer under Article 57.4 or deducted from the amount outstanding under Article 57.5, as appropriate.
- 57.4. If a matter that is appealed is finally resolved in favor of the taxpayer, TAK shall refund any excess tax paid, together with interest calculated at the rate prescribed by the Ministry of Finance and Economy in respect of each whole calendar month between the date of payment by the taxpayer to the date of TAK referring the refund to the Ministry of Finance and Economy for payment.
- 57.5. If a matter that is appealed is finally resolved in favor of TAK, the taxpayer shall pay outstanding tax, sanctions and interest accrued until the matter was resolved.

Taxpayer Representatives

Article 58

- 58.1. Taxpayers may participate in any aspect of a tax proceeding through a taxpayer representative.
- 58.2. For legal persons, taxpayer representatives may include the proprietor of a business activity, the president, director, manager, or administrator of a legal person, the bankruptcy representative of an organization in liquidation, the guardian of goods for an insolvent business, the administrator or heirs of an estate and any other person with written authorization to represent the taxpayer.
- 58.3. For physical persons, taxpayer representatives may be an attorney, certified accountant or other agent with written authorization to represent the taxpayer.
- 58.4. The authority and duties of a taxpayer representative shall be limited to the terms of the written agreement.
- 58.5. The participation of a taxpayer representative in any tax proceeding shall not deprive the taxpayer of his or her personal right to participate in such proceedings and shall not deprive TAK of access to the taxpayer.
- 58.6. A person who is a non-resident taxpayer under the applicable tax legislation must inform TAK of its taxpayer representative within three weeks after it begins generating income or acquiring property in Kosovo.

Confidentiality of Tax Information

Article 59

- 59.1. A tax official or any other person who has access to taxpayer information is prohibited from disclosing such information to any other person except as needed in a tax proceeding or otherwise provided in this Article.
- 59.2. Notwithstanding Article 59.1, a tax official may disclose information concerning a taxpayer to the following persons:
- a) the Ministry of Finance and Economy, where that information is needed for official purposes;
 - b) the Kosovo Statistical Office, and the Kosovo Business Registry for use in compiling statistics or for other analytical purposes provided that the information disclosed from tax proceedings is in a form that does not identify specific taxpayers;
 - c) the Kosovo Pension Savings Trust for a purpose authorized by UNMIK Regulation No. 2001/35 “On Pensions in Kosovo”;
 - d) the Ombudsperson Institution established under UNMIK Regulation No. 2000/38 “On the Establishment of the Ombudsperson Institution in Kosovo,” for use in resolving taxpayer complaints;
 - e) the Financial Investigation Unit established under UNMIK Administrative Direction No. 2003/3, the Financial Information Centre established under UNMIK Regulation No. 2004/2 “On the Deterrence of Money Laundering and Related Criminal Offences and other law enforcement agencies for use in:
 - (i) the investigation of tax and financial matters;

- (ii) criminal prosecution of tax and financial offenses;
 - (iii) the investigation of other criminal offenses in Kosovo where prior approval from the Court has been obtained;
 - f) the Courts for use in tax cases;
 - g) the Audit Office of Kosovo for the purpose of auditing TAK pursuant to UNMIK Regulation No. 2002/18 "On Auditor General in Kosovo";
 - h) other agents or employees of TAK in the course of and for the purpose of carrying out their official duties;
 - i) the tax authorities of a foreign country in accordance with international treaties or agreements;
 - j) the Customs authorities, for purposes of administering the customs legislation;
 - k) any person, when the taxpayer has been convicted of fraud or where the information consists of a list of registered persons for VAT in order that persons can check they are doing business with a VAT registered person.
- 59.3. A taxpayer may release any person from the duty of confidentiality. Such a release must be in writing and may limit the release to certain information or to use for a specific purpose.

Administrative Instructions

Article 60

The Minister of Finance and Economy shall issue administrative instructions to carry out the provisions of this law. Any provisions of the instructions that are inconsistent with this law have no legal effect.

Applicable Law

Article 61

The present Law shall replace UNMIK Regulation No. 2000/20 on Tax Administration and Procedures and it shall supersede any provision in the applicable law which is inconsistent with it;

Entry into Force

Article 62

The present Law shall enter into force on 1 May 2005.

Law No.2004/48 President of the Assembly
27 September 2004 _____
Academic Nexhat Daci



ADMINISTRATIVE INSTRUCTION No. 05/2005-
ON IMPLEMENTATION OF LAW No. 2004/48
'ON TAX ADMINISTRATION AND PROCEDURES'



ADMINISTRATIVE INSTRUCTION No. 05/2005

No. 05/2005, Date 29.04.2005

ON IMPLEMENTATION OF LAW No. 2004/48 'ON TAX ADMINISTRATION AND PROCEDURES'

Pursuant to Article 60 of Law No. 2004/48 "On Tax Administration and Procedures", promulgated through UNMIK Regulation No. 2005/17, the Ministry of Finance and Economy hereby gives the following Administrative Instruction regarding the implementation of that Law:

Section 1 Definitions

'Law' means Law No.2004/48 "On Tax Administration and Procedures".
'MFE' means the Ministry of Finance and Economy.
'Regulation' means UNMIK Regulation No. 2005/17 "On the Promulgation of the Law on Tax Administration and Procedures".
'TAK' means the Tax Administration of Kosovo.

Section 2 Tax Declarations

Article 1.1 of the Law includes a definition of "tax declaration" which is relevant for the purposes of the penalties for late-filed and non-filed tax declarations and for incorrect tax declarations. Tax declaration means any tax form filed in respect of any of the taxes implemented in Kosovo since 1999 that are administered by the TAK, including forms for withholding taxes and pension contributions collected by TAK, but excluding:

- tax forms used for installment payments for profit tax, corporate income tax and personal income tax (in respect of businesses who are required to or opt to pay tax on a "real" profit rather than a presumptive basis) – these forms are regarded as tax payment rather than tax declaration forms but where such forms are filed late, penalties for late payment and interest will apply
- tax forms used in respect of taxes collected by TAK's collection agents, namely the UNMIK Customs Service (in respect of VAT on imports) and

the Ministry of Public Service Vehicle Registration Unit (in respect of the vehicle road tax).

Section 3

Tax Administration of Kosovo (TAK)

Article 2.1 of the Law specifies that TAK shall have the status of an Executive Agency and it also attributes to TAK '*full operational autonomy*' within MFE. The meaning of this expression is that MFE will continue to have an exclusive role in formulating the overall revenue and tax policy for the government and TAK will continue to furnish statistical data necessary for this formulation. The administration of taxes from the operational prospective will be totally autonomous and out of the control of the Minister of MFE with certain exceptions which are specified in the Law such as:

- involvement in the appointment of the Director of TAK;
- involvement in the appointment of members of the Independent Review Board through being a member of the Government;
- approving cancellation of tax liabilities in accordance with the rules specified in the Law and this Administrative Instruction; and
- approving and publishing the interest rates for late tax payments and delayed refunds.

Article 2.3 of the Law specifies that TAK shall collect the highest revenue that is practicable but having regard to the resources available to TAK, the promotion of compliance with the tax laws (particularly voluntary compliance), and the compliance costs of taxpayers. The expression '*collecting the highest revenue that is practicable*' should not be read in isolation and TAK should not abuse its powers to only meet revenue targets. TAK should also consider the costs of collection and it should not ignore the compliance costs of taxpayers.

Section 4

Director of TAK

Articles 3.1 and 3.2 of the Law specify that the appointment and dismissal process of the Director of TAK shall pass through the following three tiers: Minister of Finance and Economy, Government and SRSG. The Minister of MFE shall make a recommendation for the appointment of a new Director only if a prior proposal for the dismissal of the existing Director has been presented and sufficient evidence is provided that the dismissal is due to violations stipulated in Article 3.2 of the Law, or the position is vacant, or an irrevocable resignation has been presented by the existing Director. The higher tiers can always reject a proposal made by the lower tier. All the powers, duties and tasks imposed by Article 3.3 of the Law on the Director of TAK and which he/she decides to delegate to his/her subordinates under Article 7.1, from

May 1st 2005, are included in the Delegation Matrix attached as an Annex to this Administrative Instruction. Future changes to the Delegation Matrix can be made by the Director of TAK without the need to update this Administrative Instruction.

Section 5

Public Rulings

Article 9.4 of the Law specifies that Public Rulings issued by the Director of TAK are not binding on persons liable to pay tax under legislation applicable in Kosovo. This means that persons liable for tax who disagree with the content of public rulings are free to use a different interpretation of the tax legislation. The Director of TAK cannot force persons liable to tax to be bound by public rulings but he/she will assure that tax officials of TAK follow the public rulings issued by TAK.

Section 6

Individual Rulings

Article 10.2 of the Law specifies that individual rulings are issued when individual taxpayers seek interpretation of specific tax provisions in connection with specific practical cases. Such individual rulings are binding on both TAK and taxpayers seeking such rulings only to the extent the taxpayer has made a full and true disclosure of the particular facts and aspects of the case he/she seeks to be interpreted in connection with applicable tax provisions. But if a taxpayer seeks a general interpretation of a given provision of tax legislation without making any reference to a particular case TAK can provide non-binding advice and/or, if appropriate, issue a public ruling on that provision.

Section 7

Creating and Retaining Records

Article 12.2.a of the Law specifies that taxpayers, taxable persons and withholding agents are required to create and retain records for a period of at least 6 years after the end of the tax period in which tax liability arose. As the periods of retention of books and records have varied for different types of taxes prior to the approval of the Law, this provision will have effect for tax periods starting on or after May 1st 2005. For tax periods that have commenced prior to May 1st 2005 the retention periods specified in respective tax legislation will continue to have effect.

Section 8

Access to books, records, computers and similar storage devices

Article 13.1 of the Law specifies that as a general rule TAK will give prior notice to taxpayers on its intention to access their business premises and/or check their books and records. In such case, TAK will give a minimum of 3 days notice. An exception to this general rule applies in *'exceptional circumstances that in the opinion of the*

Director warrant otherwise' where TAK may have full and free access to any premises where business is conducted, book, record, computer or similar record storage device without giving prior notice. Such exceptional circumstances will only arise where the Director concludes that access may provide him/her with materials relevant to any tax obligation and be exercised in situations such as, but not limited to, the following:

- TAK possesses information that a taxpayer is attempting to hide, manipulate or destroy tax or other financial evidence such as books, records, stocks of goods etc;
- TAK has indications that a taxpayer is attempting to leave Kosovo leaving outstanding tax obligations. Such evidence may include a request for visa to a foreign embassy, an extraordinary withdrawal or other bank transfer of money abroad etc;
- TAK possesses information that facts reported by the taxpayer are far from being true and accurate - thus immediate access to taxpayer premises, books and records may result in material evidence for reconstructing the whole tax situation and determining the tax liability.

The need to give prior notice shall also not be necessary where the taxpayer invites or otherwise allows TAK to visit their business premises, e.g. for an educational visit.

Section 9

Assessment, Self-assessment and Withholding Mechanisms

In accordance with Article 16.1 of the Law, as a broad principle taxes will be mainly selfassessed in Kosovo. Self-assessment means that taxpayers, and those required to withhold taxes on other's behalf, have the duty to compute their tax liability and this shall be considered as an assessment of the tax payable and properly due. TAK will endeavour to assist taxpayers to self-assess, but it is no defense to a taxpayer to say that are not liable for tax simply because they were not informed by TAK.

Section 10

Time Limits for Assessments

Article 18 of the Law specifies the time limits for TAK making an assessment. This is set at 6 years from the date when the tax declaration to which assessment is made was due. For example, a VAT tax declaration for the month of October 2005 is due on 30th of November 2005. TAK may make an assessment under Articles 17 or 19 on or before 30th of November 2011. But if a taxpayer, with the intent of evading tax, either fails to deliver a tax declaration or delivers a tax declaration that is determined to be incorrect, or commits fraud, the above time limit has no force and an assessment may be made at any time.

Section 11

Jeopardy Assessment

In cases where the Director of TAK decides to make a jeopardy assessment under Article 19 of the Law, a Notice of Jeopardy Assessment shall be issued. The Notice of Jeopardy Assessment shall contain all the details specified in Article 20 of the Law plus a demand for immediate payment of the amount due. A jeopardy assessment notice shall also include a note to the taxpayer on the right of the taxpayer to appeal directly to the Independent Review Board.

Section 12

Order of Payments

Article 23.1 of the Law specifies the order of payments, which is particularly relevant where a partial payment has been made. For example, a taxpayer has a total tax liability of 1,000 euro in VAT, as follows: 600 euro VAT + 200 euro penalties + 200 euro interest. Tax Administration seizes an asset of the debtor and sells it through public auction at 1,000 euro. The administrative cost for the seizure, guarding services, transportation and auction costs is 100 euro. Following the order of payments specified in Article 23.1 of the Law the result will be:

1. Collection costs- 100 euro
 2. Penalties - 200 euro
 3. Interest - 200 euro
 4. Tax - 600 euro
 5. Total 1,100 euro
- Less amount collected 1,000 euro
Remaining balance in tax due 100 euro

Section 13

Credits and Refunds

Under Article 24.4 of the Law, taxpayers who claim a refund for taxes paid in excess or in error shall file a Refund Claim Form in the tax office of their jurisdiction. The claimant shall provide specific data related to the claim such as the amount of tax claimed as a refund, the type of tax, the tax period in which the tax was paid in excess or in error, the bank and the bank account where he/she wants the refund to be credited.

Tax Administration shall endeavour to complete its processing of the refund claim within 60 days from the date the refund claim is filed. To avoid bureaucratic procedures in connection with minor claims, refund claims for small amounts and those belonging to low risk taxpayers (i.e. those having a successful history of eligible claims in the past) shall be immediately processed by checking only the records of Tax Administration and not the taxpayers' books and records. Tax Administration preserves the right to afterwards audit taxpayers' records and if it is found that a taxpayer was not entitled to that refund, penalties and interest will apply

on the amount of the refund claimed and processed in error in the same manner as if it was a tax due and payable to TAK.

Section 14

Liens

A lien filed by TAK pursuant to Article 27 of the Law is an enforcement instrument to force the taxpayer to pay the outstanding tax liabilities. By attaching a lien on an asset of the debtor taxpayer, TAK ensures that the asset will not be transferred, sold or disposed of by the taxpayer. A lien can be filed with any office responsible to register property in Kosovo such as the Kosovo Cadastral Agency, Buildings Registry, Vehicle Registration Unit, Registry of Secured Transactions etc., and it indicates that the owner of the asset owes a tax debt to TAK. The above mentioned registry offices are required to record any transaction in relation to an asset for which a lien is filed until they have been officially notified of a lien release by TAK.

Section 15

Levies

A levy is a seizure instrument through which the ownership rights on assets, property or income are transferred from debtor taxpayers to TAK. Under Article 28 of the Law TAK is entitled to sell through public auctions any non-cash asset seized and to apply the proceeds towards the liability of the debtor taxpayer. Any action to collect taxes through levies should commence within 6 years after the assessment of the tax is made. This time limitation is indefinitely extended if a court case has been initiated either by the taxpayer or TAK.

Section 16

Cancellation of tax that cannot be collected

In respect of Article 36 of the Law, circumstances where TAK considers that tax is uncollectible and thus it should be cancelled are as follows:

- the taxpayer has died and there is no prospect of recovery from the taxpayer's estate;
- the taxpayer has permanently left Kosovo;
- the taxpayer is bankrupt and the proceeds from an insolvency or liquidation process cannot fully satisfy TAK's debts;
- TAK has continuously failed to trace the concerned taxpayer;
- TAK has continuously attempted but has failed to enforce the collection of tax debt, and other similar circumstances.

Any proposal to MFE to cancel any tax liability shall be made in writing and it should be proposed by a panel of three members headed by the Director of TAK.

Any proposal to reinstate a cancelled liability shall also be provided to MFE and shall only be made where the taxpayer misrepresented facts prior to the cancellation decision.

Tax liability that has been cancelled cannot be reinstated where the only reason for such reinstatement is that the taxpayer received income after the cancellation decision, unless it is clear the taxpayer had an entitlement to receive that income at the time of the cancellation decision.

Section 17

Illegal Income

Under Article 37 of the Law any income derived by illegal and/or criminal activities punishable under Kosovo legislation, is subject to tax. Such treatment does not mean that these activities are legalized by paying the respective taxes. These activities will remain illegal and still prosecutable under Kosovo legislation.

Section 18

Re-characterizing arrangements

Under Article 38 of the Law, TAK may re-characterize arrangements between taxpayers where:

- There is no substantial economic effect. e.g. a taxpayer continuously sells at a lower price than the purchase price.
- The form of transaction does not reflect its economic substance. e.g. a taxpayer donates goods to a charity founded by him and gets the contribution deduction for income tax purposes, and the charity sells goods at market value without being subject to tax.
- A scheme to avoid taxes is in place.

Section 19

Understatement of income and diverted receipts

Under Article 41 of the Law, TAK has the authority to reinstate the income of taxpayers whose standard of living does not match income declared under tax legislation in Kosovo. e.g. where a taxpayer declares that he/she has had no income during the tax period and in the meantime starts building an expensive house or buys a luxury car (the funding for which cannot be attributed to non-taxable income such as receipt of an inheritance, remittances from relatives abroad, etc), TAK may recalculate the taxpayer's income by treating him/her as having received the amount of invested income.

Section 20

Failure to submit a tax declaration

Under Article 43 of the Law, the penalty for failure to submit a tax declaration on time is set at 5% per month or part month of delay with a maximum of 25% set as a cap. If for example a VAT declaration with a tax obligation of 1,000 euro was due by 31st of May 2005 and it is delivered on 19th of December 2005, the amount of this penalty will be 5% for June + 5% for July + 5% for August + 5% for September

+ 5% for October = $25\% \times 1,000 \text{ euro} = 250 \text{ euro}$. No penalties will apply for November and December 2005. The

meaning of the expression '*part of the month*' refers to periods shorter than a calendar month and it covers the following cases: I.e. a tax return is due on 15th of May 2005 and it is filed on 6th of June 2005. The penalty will apply and remain at the same level of 5% for the period 16th to 31st of May 2005 and it will apply and remain at the same level of 5% for the period 1st of June to 6th of June 2005. Or, if a tax return is due on 30th of September 2005 and it is filed on 1st of October 2005, the penalty will apply at the level

of 5% for being late for a part of the month.

Section 21

Failure to pay

Under Article 44 of the Law, the penalty for failure to pay on time is set at 2% per month or part of the month in delay with a maximum of 12 months set as a cap. If for example an Income Tax declaration with a tax obligation of 1,000 euro was due by March 31st 2006 and it is delivered on 20th of May 2007, the amount of this penalty will be 12 months $\times 2\% \times 1,000 \text{ euro} = 240 \text{ euro}$. Thus, no penalties will apply for April and May 2007. The expression '*part of the month*' has the same meaning as in Section 20 above.

Section 22

Understatement of tax and overstatement of tax refunds

In respect of Article 45.1.a of the Law, the expression '*negligence or gross carelessness*' shall refer to cases where something is done, or not done, in a way that suggests or implies a high level of disregard for the consequences, such as the following:

- a taxpayer has, during the course of the computation of their tax liability or refund claim, guessed the tax treatment of certain items rather than seeking advice from TAK or a tax advisor;
- a taxpayer has, during the course of the computation of their tax liability or refund claim, inadvertently and unintentionally excluded numerous or significant items from, or included numerous or significant items more than once in, their tax declarations;
- a taxpayer has kept proper books and records but has not paid enough attention over a period of time to ensure that everything is recorded and has taken a guess at the amounts not recorded. Most of the mistakes resulting from negligence and gross carelessness are due to lack of knowledge on tax issues or lack of attention while computing tax liabilities but they do not reflect an intentional behavior to avoid or reduce taxes. Negligence or gross carelessness does not arise where taxpayers have taken steps to ensure their tax declarations are correct but through no fault of their own errors have still arisen in those tax declarations. In respect of Article 45.1.b of the Law, the expression

‘deliberate and willful attempt to conceal the amount of tax’ shall refer to cases such as the following:

- a taxpayer has not kept proper books and records and has not completed tax declarations with the result that the tax situation has been determined based on TAK records and information;
- a taxpayer has intentionally excluded some invoices from their tax declarations so as to reduce the amount of a tax liability, or to increase the amount of a tax credit/refund claim;
- a taxpayer has intentionally included false invoices to increase the amount of a tax credit/refund claim, or to reduce the amount of a tax liability.

In respect of Article 45.2 of the Law, where a taxpayer fails to file a tax declaration, TAK has the duty to compute the tax liability of the taxpayer based on the best information that TAK possesses, to reinstate the tax liability that should have been declared. In these cases TAK shall prepare a substitute for the declaration in the name of, and on behalf of, the taxpayer. Penalties will apply for insufficient payment of tax between the amount of tax declared by TAK and the amount of tax declared by taxpayer which shall be deemed to be zero.

Section 23

Failure to create or retain records

Article 46.2 provides penalties for persons who do not create or retain records required by Kosovo’s applicable law. The expression “gross carelessness” shall refer to cases such as:

- a taxpayer has conducted business but has not kept books and records and has completed tax declarations based on estimates (note that the taxpayer has not intended to evade paying tax but has not taken the necessary steps to ensure that the correct amount of income, and if necessary expenditure, is recorded);
- a taxpayer has kept books and records but he/she does not paid enough attention over a period of time to ensure that everything was recorded and took a guess at the amounts not recorded (note that the taxpayer has not intended to evade paying tax, but has not taken the necessary steps to ensure that the correct amount of income is recorded – note also that had the number of instances of non-recording of transactions been limited to only one or two instances, that the taxpayer’s actions might be regarded as “careless” but not “grossly careless” in which case the penalty for gross carelessness would not apply);
- a taxpayer has kept books and records but in order to save space has thrown the records out in the rubbish and not kept them for the number of years required. The expression “deliberate attempt to avoid payment of tax” shall refer to cases such as:
- a taxpayer has conducted business but has not kept books and records and has not completed tax declarations (note there is a presumption given the self-assessment taxation system that in these circumstances tax is

being deliberately avoided – if TAK also wanted to prosecute the taxpayer for tax evasion under the Criminal Code, additional evidence would be needed by TAK to prove the deliberate attempt);

- a taxpayer has kept books and records but has become aware he is about to be investigated by TAK officers and has then destroyed the books and records.

Section 24

Errors by taxpayer representatives and tax advisors

Article 48 of the Law provides for the imposition of penalties on taxpayer representatives and tax advisors in certain situations. The liability of a taxpayer representative/tax advisor to such penalties is limited to decisions made only on the information available from the taxpayer and third parties. A taxpayer representative/tax advisor is not liable if errors in tax declarations were directly attributable to the actions of the taxpayer of which the taxpayer representative or tax advisor was unaware. The expression “carelessness or an unrealistic interpretation of the tax laws” shall refer to cases such as:

- a taxpayer representative/tax advisor has prepared tax declarations for a taxpayer but has not paid enough attention during the computation of a tax liability or refund claim and as a result has made numerous or significant unintentional mathematical errors;
- a taxpayer representative/tax advisor has prepared tax declarations for a taxpayer but during the computation of a tax liability or refund claim has forgotten to include numerous or significant items, or has included numerous or significant items more than once;
- a taxpayer representative/tax advisor has prepared tax declarations for a taxpayer based on a past TAK or Court ruling (on another case with similar facts) which has been superseded by a more recently published contrary TAK or Court ruling. The expression “reckless or intentional disregard of the tax laws and regulations” shall refer to cases such as:
- a taxpayer representative/tax advisor has without good reason advised a taxpayer that they are not liable to tax in respect of a certain activity or transaction which is later found to be liable for tax;
- a taxpayer representative/tax advisor has claimed all of the expenses of a business as a deduction from income without checking whether all are fully deductible for tax purposes.

Section 25

VAT violations

Articles 49.1 and 49.2 of the Law provide penalties for taxable persons who (a) make taxable supplies while not registered when they were required to do so or (b) fail to issue a VAT invoice or who issue an incorrect VAT invoice. In those articles, the expression “negligence or gross carelessness of the taxable person” shall refer to cases such as:

- a person’s turnover has increased above the VAT registration threshold, but they have not registered for VAT because they were unaware they had recently exceeded the threshold;
- a taxable person has issued invoices to its customers which include VAT but those invoices do not meet the requirements of a VAT invoice because the taxable person did not want to change their systems in order to meet the requirements. In those articles, the expression “deliberate and willful attempt by the taxable person” shall refer to cases such as:
- a person’s turnover has increased above the VAT registration threshold, but they have intentionally not registered for VAT to avoid having to account for VAT;
- a person’s turnover has consistently been above the VAT registration threshold, but they have not registered for VAT because they are unaware they are required to register – under Kosovo’s VAT system such persons are deemed to be aware of the requirements so consistent non-registration is regarded as having an intention not to register;
- a taxable person has issued invoices to its customers but those invoices do not include VAT because the taxable person does not want to charge VAT for their customers;
- a taxable person has not issued invoices to its customers or has consistently issued invoices that do not meet the requirements of a VAT invoice because the taxable person was unaware of the requirements – under Kosovo’s VAT system such persons are deemed to be aware of the requirements so consistent non-compliance is regarded as having an intention not to comply.

Article 49.5 of the Law provides a penalty for persons who are found to have goods in their possession for which no VAT invoice or other records exist in respect of the supply. This penalty for “goods without origin” applies to persons who are VAT registered or who are not VAT registered but have met the criteria so that they should have been registered.

Section 26

Reduction in penalties

Article 51.1 of the Law provides for reductions in penalties where taxpayers voluntarily disclose a previously undisclosed tax liability before TAK commences an investigation of the taxpayer’s activities. For the purposes of this provision, an investigation is not commenced until, in the case of a taxpayer who has been given prior notice under Article 13.1, the earlier of (a) the date on which they provide their records, or access to their records, to a TAK officer and (b) the date that is one month after the date on which prior notice was given to the taxpayer. In the case of taxpayers who have not been given prior notice under Article 13.1, the investigation is regarded as commencing on the date that is one week after the date on which a TAK officer first contacted the taxpayer to conduct an investigation.

Section 27

Appeals to TAK

Article 52.3 of the Law provides that the 60 day time limit for filing an appeal with TAK under Article 52.2 can be extended in certain circumstances. The circumstances where the 60 day period can be extended are where TAK is satisfied that:

- the reason for not filing within the time limit is solely due to factors beyond the control of the taxpayer; or
- the circumstances are such that to not allow the filing of an appeal would result in a manifest injustice.

Section 28

Entry into force

Under Article 62 of the Law, the Law enters into force on 1 May 2005. It applies to events that happen on or after that date. For example:

- interest payable on delayed refunds applies only in respect of refund claims made to TAK on or after 1 May 2005. (Refund claims made before that date which have been delayed are not entitled to interest for undue delay);
- reductions of penalties due to voluntary disclosures or compliance with installment arrangements to pay off tax arrears apply only in respect of voluntary disclosures made, and installment agreements entered into, on or after 1 May 2005;
- new or amended penalty provisions apply only in respect of offences committed on or after 1 May 2005. (Offences committed before 1 May 2005 but detected on or after that date shall be liable to any applicable penalties under UNMIK Regulation No. 2000/20).

INSTRUMENT OF DELEGATION OF POWERS

Pursuant to Article 7.1 of the Law on Tax Administration and Procedures (as promulgated by UNMIK Regulation 2005/17), I hereby delegate the powers vested in me under that Regulation to officers of the Tax Administration of Kosovo in accordance with the attached Schedule.

Mustafe Hasani
Director,

Tax Administration of Kosovo 29 April 2005

SCHEDULE

Power/article	Deputy Director	HQ Manager	Reg Off Mgr & Deputy Mgr	Team Leaders	Officers
Appointment of Deputy Directors (4.1)					
Removal of Deputy Directors (4.3)					
Appointment of senior managers (5.1)					
Removal of senior managers (5.3)					
Rules for tax officials (6)					
Revoke delegation (7.2)					
Report to MFE (8.1)	x				
Annual Report (8.2)					
Public ruling (9.1)	x				
Private ruling (10.1)	x				
Use of TINs (11.6)	x	x	x	x	x
TINs to Customs (11.7)	x				
Translate records (12.1)	x	x	x	x	x
Store on microfilm (12.2(b))	x	x	x	x	
Different tax periods (12.2(c))	x	x			
Access to premises with notice (13.1)			x	x	x
Access to premises without notice (13.1)			x	x	
Copy records (13.3(a)&13.6) *			x	x	x
Take records (13.3(b)&13.7) *			x	x	x
Retain records (13.3(c))			x	x	x

Require password (13.3(d))		x	x	x
Take computer (13.3(e)&13.7) *		x	x	
Check property (13.3(f))		x	x	x
After hours (13.4) *		x	x	
Authorization letter (13.5) *		x	x	
Produce records (14.1(a))		x	x	x
Attend TAK (14.1(b))		x	x	
Develop forms (15.2) x	x			
Make assessment (17.1) to (17.4)		x	x	x
Assess at any time (18.2)		x	x	
Jeopardy assessment (19)		x	x	
Deliver assessment notice (20.1)		x	x	x
Demand payment (20.4)		x	x	
Small balance (21.7) x				
Accepting tax payments (21.8)				
Publish interest rate (22.3) x	x			
Tax offset notice (24.1)		x	x	x
Retain tax credit (24.3)		x	x	x
Refund claims (24.5) *		x	x	x
Interest on refunds (24.6) *		x	x	
Bank agreement (25.1)				
Suing for unpaid tax (26.1) x		x		
Certificate of unpaid tax (26.2)		x	x	
Release a lien (27.4) x		x	x	
Filing to enforce a lien (27.5) x		x	x	
Collect by levy (28.1&28.8)		x	x	x
Deliver seizure notice 28.2&28.3)		x	x	x
Seize property (28.5)		x	x	
Jeopardy notice/demand (28.6)		x	x	
Enforcing levy (29.1 & 29.2)		x	x	x
Sale by auction (30)		x	x	
Recovery from partners (32.1)		x	x	x
Recovery from unincorp body (32.2)		x	x	x
Jeopardy order (33.1)		x	x	
Embargo imports/exports (34.1) x	x			
Terminate embargo (34.2) x	x			
Departure prohibition (35.1)		x	x	

Extend departure time limit (35.2)			x	x	
Cancellation of tax (36.1) *					
Actioning cancellation (36.1(a))			x	x	x
Reinstate liability (36.2)			x	x	x
Re-characterise arrangements (38.1)			x	x	
Notify re-characterising (38.2)			x	x	x
Related persons allocation (39.1)			x	x	
Related persons adjustment (39.2)			x	x	
Barter market adjustment (40.2)			x	x	
Recalculate income (41.1)			x	x	x
Request warrant for access (46.3)			x	x	x
Establish Appeals Division (52.1)					
Disputable assessment/decision (52.1)	x	x	x	x	x
Attend Independent Review Board (54)	x	x	x	x	x
Hold proceeds of seizure (57.3)			x	x	
Refund excess tax paid (57.4) *			x	x	x
Disclose confidential information (59)	x	x	x	x	x

*** Notes:**

(1) "x" designates the titles of positions given delegated authority, and this applies to both substantive and "acting" people in those positions. In cases where no "x" appears, the authority for the Director has not been delegated

(2) The Team Leader and Investigators of the Special Audit Unit in Tax Admin HQ shall have the

Same delegated authority as their counterparts in Tax Admin regional offices

(3) In the official version of the law, articles 13.4 to 13.7 may be shown as articles 13.3(g) to 13.6

(4) The delegations for refunding money to taxpayers under articles 24.5, 24.6 and 57.4 are also subject to financial delegation controls (i.e. authorising and approving officers)

(5) The delegation for cancelling tax under article 36.1 is defined in that section of the law (i.e. any employee can recommend cancellation but all recommendations need review by a committee of 3 employees including the Director and a Deputy Director)



Law No 03/L-071 -

ON AMENDMENTS AND SUPPLEMENTS TO THE LAW No. 2004/48
ON TAX ADMINISTRATION AND PROCEDURES



Law No. 03/L-071

ON AMENDMENTS AND SUPPLEMENTS TO THE LAW No. 2004/48 ON TAX ADMINISTRATION AND PROCEDURES

Assembly of Republic of Kosovo,

In support of article 65 (1) of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON AMENDMENTS AND SUPPLEMENTS TO THE LAW No. 2004/48 ON TAX ADMINISTRATION AND PROCEDURES

Article 1

Amendments and supplements to the Law No. 2004/48 on Tax Administration and Procedures promulgated under the UNMIK Regulation No. 2005/17 of 9 April 2005. In this document, references to the term “law” mean Law no.2004/48.

Article 2

In article 1 of the present Law the following definitions are added:

“**CBAK**” means Central Banking Authority of Kosovo established under the UNMIK Regulation No. 2006/47.

“**SIGTAS**” Standard Integrated Government Tax Administration System, which is the tax administration’s data processing system.

“**ICR**” means International Civil Representative.

“**Closing Balance Sheet**” means a financial statement for suspension of a commercial activity.

“**Tax Document**” means a document issued by the TAK to exercise the activities as defined by the law.

“**Beneficial Owner**” means the individual or legal entity, who enjoys the benefits of owning an asset (movable or immovable property) regardless of whose name the title to the property is in; the individual or legal entity, which has dominion and control over an asset.

“**Transfer of Assets**” means any transaction in which ownership of movable or immovable property is changed, or conveyed, from one person to another person.

“**Generally Accepted Accounting Principles**” means the recognized consensus or substantial authoritative support within a country at a particular time as to which economic resources and obligations should be recorded as assets and liabilities, which changes in assets and liabilities should be recorded, how the assets and liabilities and changes in them should be measured, what information should be

disclosed and how it should be disclosed, and which financial statements should be prepared;

“Undocumented Goods” means goods in the possession of a person for which there are no corresponding documents which can be shown to demonstrate how the person obtained the goods (from whom the person purchased the goods, or from whom the person received the goods in exchange for other goods or services, or from whom the person imported the goods).

“TAK” means Tax Administration of Republic of Kosovo.

“Fiscal Representative” means a citizen of Republic of Kosovo, designated to act on behalf of a non-resident taxable person of Republic of Kosovo, who does not have a business or other fixed place of business in Republic of Kosovo.

Article 3

Where the term “Director” is in the Law, it shall be replaced with the term “Director General”.

Article 4

4.1 In article 3.1, 3.2 and 8.2 of the Law, SRSB is replaced by ICR

4.2 In paragraph 3 of article 3 shall be added point g) and h) with this content:

g) enforce any other power or duty delegated by the Ministry of Economy and Finance, which are in accordance with the legislation in force.

h) the authority to enter into agreements with Central and Local POE's, subject to conditions to be established by a sub-legal act, whereby the tax administration will defer enforcing collection of taxes due from POE's, in order for any privatization process to move forward in an orderly manner, or in order to provide for the continued operation of these enterprises given their strategic importance to the well-being of the Republic of Kosovo.

Article 5

In Article 4 of the Law, the term “Deputy Director” shall be replaced with the term Deputies of Director General

Article 6

Tax Investigation Unit

Article 6 of the law becomes article 6.1 and new paragraphs 6.2, 6.3, 6.4, and 6.5 are added to read as follows:

6.2. With the purpose of detecting and preventing tax evasion, the Director General shall have the authority to establish a Tax Investigation Unit which, in case of any suspicion of tax evasion, or suspicion of criminal failure to meet any tax obligations as determined by law in Kosovo, shall have the authority:

- a) to investigate taxpayers transactions suspected for implication in tax evasion activities,

- b) to obtain bank records including those of any account or transaction that is applicable to a tax investigation,
 - c) to interview and interrogate taxpayers or other persons that are deemed to be involved in activities of tax evasion or other criminal violation of tax laws.
 - d) to carry out tax assessment and to collect evidences from a third party under article 14 of the Law.
 - e) to have direct access to Kosovo Customs Service during the assessment-clearance of goods of taxpayers.
 - f) to make direct referrals to competent officials for bringing criminal charges.
 - g) such other duties as may be assigned or delegated by the Director General.
- 6.3. Any official of the Tax Investigation Unit who is undertaking an investigation or proceeding in relation to a criminal offense under this article shall conduct the investigation in accordance with the applicable provisions of the Criminal Code of Kosovo, or its successor. Officials of the Tax Investigation Unit are authorized to investigate those offenses enumerated in Chapter 22 (Criminal Offenses against the Economy) of the Criminal Code of Kosovo, nr. L-002 or its successor.
- 6.4. In case of prevention either by a taxpayer or by any other person in carrying out the powers as determined in paragraph 2 of this article, the Unit may request authorization for assistance from the competent Public Prosecutor.
- 6.5. Procedures and functions of the unit shall be regulated by a sub-legal act.

Article 7

Fiscal Number and obtaining the Fiscal Certificate

Article 11 of the law is replaced by the following text:

11.1 TAK may issue a fiscal number for any persons subject to any kind of tax administered in Republic of Kosovo.

11.2 The procedures and criteria to be followed, including forms to be used and information to be provided, by both the taxpayer and TAK for issuance of a fiscal number will be regulated by a sub-legal act to be issued by the Minister of MFE. The sub-legal act shall include conditions under which the tax administration can refuse to issue a fiscal number where there is a poor history of compliance or there is reasonable suspicion of tax evasion.

11.3 In the absence of a sub-legal act, the fiscal number shall be the Business Registration Number issued by the Business Registration Agency within the Ministry of Trade and Industry; for business enterprises, the personal identification number issued by the competent body, and the number issued by the competent body for non-governmental organizations.

11.4 Any resident person who will do business or conduct projects or programs in Republic of Kosovo, through a non-resident person shall be required to provide an information statement to TAK prior to the non-resident person starting any activity in Republic of Kosovo. The form of the information statement and the criteria for

submitting the information statement shall be prescribed by the sub-legal act to be issued per 11.2 of this article.

11.5 Any non-resident person who is subject to taxation in accordance with the tax legislation of Republic of Kosovo shall appoint a fiscal representative prior to starting any economic activity in Republic of Kosovo. The fiscal representative shall register with the TAK within 5 days of being named. The form of registration and registration procedures shall be prescribed in the sublegal act to be issued per 11.2 of this article.

Article 8

Deregistration of Taxpayers

After article 11 of the Law is added a new article 11A reading as follows:

11A.1 The taxpayers have the right to deregister only if they have paid all the unpaid tax obligations and after submitting the closing balance sheet.

11A.2 TAK, within sixty (60) days after receiving a notice, is obliged to verify the tax situation and when necessary to carry out an audit of taxpayer's activity.

11A.3 Within sixty (60) days after receiving a written notice of deregistration from the taxpayer, if TAK considers that the taxpayer has not met requirements for deregistration as set out in paragraph 1 of this article, it will prepare a written notice that shall be delivered to the taxpayer.

11A.4 TAK is obliged to withdraw a dispute only when the taxpayer has paid all the outstanding liabilities for which he has been notified in writing by TAK.

11A.5 If within sixty (60) days after receiving a notice from the taxpayer requesting deregistration, TAK has not notified the taxpayer per Article 8.3 of this law, the taxpayer will be considered to be deregistered.

11A.6. TAK has the right to deregister from its active register any taxpayer when proven that he/she has not carried out activity during the last fiscal year. In this case, the taxpayers will be placed in a special register of inactive taxpayers, at which time TAK will inform the Business Registration Agency.

11A.7 Deregistration under articles 11A.1 to 11A.5 and the deregistration from active register as defined in article 11A.6 does not eliminate tax liabilities. In such cases TAK shall ensure the collection of tax in accordance with all relevant means of collection that may be applied to a taxpayer under the Law.

Article 9

At the beginning of paragraph 1 of article 12 of the Law to be added: "Taxpayers are obliged to keep books and registers compatible with the tax legislation" After paragraph 3 of article 12 is added a new paragraph 12.4, 12.5, 12.6 and 12.7 with the following text:

12.4 Each taxpayer, notwithstanding the annual turnover, in addition to keeping books and registers as set out by the Law, is also required to complete and maintain an inventory of goods in stock as of the end of the calendar year. Records provided under this paragraph must be ready on or before January 10 of the following year.

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

12.6 TAK may require that all supplies made by all or certain types of taxable persons be recorded by electronic means and may establish the specifications of the types of electronic machines which shall be used for such recording. In the case of supplies made by certain taxable persons involving transactions which are not recorded by electronic means, TAK may require such taxable persons to issue receipts in a manner prescribed by TAK.

12.7 Any transaction in excess of five hundred (500) euro, made between taxable persons, after 1 January 2009 is required to be made through bank account. For implementation of this article shall be issued a sub-legal act.

Article 10

After paragraph 6 of article 13, two new paragraphs 13.7 and 13.8 are added, reading as follows:

13.7 With the exception of the deadline specified in paragraph 14.1 of the Law, but not later than the date that the final assessment report is submitted, the taxpayer is allowed to provide new evidence if he/she could not present those documents due to causes which are beyond his/her control.

13.8 Any document provided beyond the deadline in 13.7 shall not be considered by Appeals department in any subsequent appeal submitted by the taxpayer.

Article 11

After paragraph 3 of article 14 of the Law the new paragraph 14.4 is added with the following text:

14.4 The above article 14.3 is not applicable for banks and other financial institutions that are required to inform TAK with regard to bank accounts, bank transactions, bank incomes and deposits upon request of TAK.

Article 12

After paragraph 6 of article 17 four new paragraphs, 17.7, 17.8, 17.9 and 17.10, are added with the following reading:

17.7 Where the TAK data contain sufficient information on an unfilled liability for a tax period, TAK may make immediate assessment based on this data. The procedures to be followed with regard of application of this article shall be regulated by a sub-legal act.

17.8 Allowable Expenditure

For determination of taxable income, the taxpayer is allowed a reduction from gross income, 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.

17.9 SHORTAGE OF GOODS (Un-depreciable goods) **Damage, destruction, burning and other losses**

For determination of tax, in case of damage, destruction or burning of goods to be accepted as economic activity costs, the taxpayer is required to document the lack of goods with persuasive documents issued by competent bodies. If the taxpayer does not document lack of goods following an appropriate request by TAK, then such goods shall be considered as goods sold.

17.10 In the context of assessment of tax liability, the terms and requirements for acceptance of

costs from paragraphs 17.8 and 17.9 shall be regulated by a sub-legal act.

Article 13

Cancellation of Tax Documents

After the article 20 of the present law a new Article 20A is added reading as follows:

20A.1 The Director General can cancel any tax document issued by TAK if it is determined any violation of tax legislation.

20A.2 The Director General may publish a notice in newspapers of general circulation and on the tax administration web site when a taxpayer certificate has been withdrawn so that other businesses can become aware of the withdrawal and its impact on their ability to engage in legal transactions with that business. The ability to publish such notices will also include the authority to publish a notice of non-issuance of a fiscal number as provided in Article 7 of this law, if the tax administration has not been able to verify the existence or address of an entity that has submitted registration documents to the Business Registration Agency.

20A.3 For the implementation of paragraph 1 of this article, the Minister of Economy and Finance shall issue a sub-legal act to define the conditions and way of cancellation of tax documents and issuance of public notices.

Article 14

In Articles 21.6, 25.1 and 25.2, the word Banking and Payments of Kosovo shall be replaced by the word Central Banking Authority of Kosovo (CBAK).

Article 15

After paragraph 4 of the Article 22 new paragraphs 22.5 and 22.6 are added reading as follows:

22.5 Notwithstanding paragraph 1 of Article 22 when the taxpayers submit a request to TAK for payment of tax by installment agreements, interest shall not accrue from the month of agreement conclusion if the agreement is respected.

22.6 Failure to comply with the agreement will result in reinstatement of interest due. If a taxpayer requests a subsequent agreement for the same liability, the provisions of 22.5 shall not apply.

Procedures and the length of agreement under 22.5, shall be regulated by a sub-legal act.

Article 16

In paragraph 1 of article 23 of the Law the order of payment is changed as following:

- a) collection costs,
- b) the amount of any tax due,
- c) sanctions and fines and
- d) interest

Article 17

Article 24 of the Law shall be revised as follows:

24.1 Any amount of any tax paid in excess of the amount due shall be applied to the taxpayer's current liability for any other tax or pension contribution due. TAK shall deliver to the taxpayer a notice in writing when such excess payment has been applied to another liability, advising the taxpayer of the amount of credit applied, tax and tax period.

24.2 Where the taxpayer has no other outstanding tax debts owing to TAK, or where there remains an amount of tax overpaid after applying the excess referred to in paragraph 1 of the present article, the taxpayer is entitled to claim a refund from TAK for the amount remaining overpaid.

24.3 The claim for credit and refund of any overpayment of any type of tax may be filed within six (6) years from the date such tax was paid. The location and procedure for claiming a tax refund and determination of adjustment of such refund shall be regulated by sub-legal act.

24.4 TAK shall action an allowable claim for refund within sixty (60) days from the day TAK received the claim from the taxpayer, by ensuring that details of the amount to be refunded are timely forwarded to the Ministry of Finance and Economy or, in case of pension contributions, to the Republic of Kosovo Pension Saving Trust.

24.5 In case when a taxpayer is entitled to a refund under paragraph 2 of the present article and that refund has not been applied within the time provided in paragraph 4 of this article, TAK shall pay to the taxpayer, in addition to the amount determined by TAK to be refunded, interest at a rate prescribed by the Ministry of Finance and Economy. When TAK determines that a refund should not be issued, or it should be withheld for administrative reasons in accordance with applicable law, interest will not be due on the amount not issued or withheld.

24.6 Interest under 24.5 shall begin to accrue on the 61st day following the receipt of the claim for refund.

Article 18

Paragraph 1 of Article 27 is revised as follows:

27.1 If a person who is liable to pay any tax to TAK under legislation applicable in Kosovo neglects or refuses to pay that tax within 10 days after delivery of an assessment notice, a lien shall arise on all property, or rights to property, belonging

to that person (whether movable, immovable, tangible, or intangible) in an amount equal to the unpaid tax, plus interest, sanctions, and the costs of collection.

After paragraph 6 of Article 27, are added 6 new paragraphs, 27.7, 27.8, 27.9, 27.10, 27.11, and 27.12, are added.

27.7 The lien described in Paragraph 1 of Article 27 of the law, also attaches to all property belonging to a third party, who is deemed to be the beneficial owner of a business which has incurred a tax liability, even though the business has been registered in another name and the tax liability has been incurred in that other name. In such circumstances, the lien will include language to show that it not only attaches to the property of the taxpayer in whose name the business is registered, but it also attaches to the property of (name) as beneficial owner of the business in which the tax debt has been incurred.

27.8 The lien described in paragraph 1 of article 27 of the Law also attaches to any property of the taxpayer which is held by a third person who is determined to be holding the property as a nominee of the taxpayer. In such circumstances, the lien will include language to show that it attaches not only to property of the taxpayer, but it also attaches to specific property held by another person as a nominee of the taxpayer.

27.9 Any lien under 27.7 and 27.8 so recorded will be enforceable in the same manner as any

other lien provided in Article 27.1. A sub-legal act shall be issued to establish the procedure that shall be applied and the basic criteria to determine the persons mentioned in paragraph 27.7 and 27.8.

27.10 Discharge of Property

TAK may issue a certificate of discharge of any part of the property subject to the tax lien if:

- a) There is paid over to the Tax Administration in partial satisfaction of the liability secured by the lien an amount determined by the tax administration, which shall not be less than the value, as determined by TAK.
- b) Such part of the property is sold and, pursuant to an agreement with the Tax Administration, the proceeds of such sale are to be held, as a fund subject to the liens and claims of the Tax Administration, in the same manner and with the same priority as such liens and claims had with respect to the discharged property.
- c) Any reasonable and necessary expenses incurred in connection with the sale of the property under b) and the administration of the sale proceeds shall be paid by the applicant or from the proceeds of the sale before satisfaction of any lien or claim of the TAK.

27.11 Socially-Owned Enterprise Debt With respect to tax debts of Socially-Owned Enterprises:

- a) It is specifically provided that, with respect to tax debts owed by Socially-Owned Enterprises which are under the administrative activity of the Privatization Agency of Kosovo (PAK), the tax administration shall record liens with respect to those tax debts as prescribed in paragraph 27.3 of this article.

- b) TAK will take no other enforcement action with respect to the tax debts of the SOE, nor will it take action to enforce the liens recorded, notwithstanding other provisions of this law. TAK shall have the right to assert its secured claim for the underlying tax debt against the proceeds received by the PAK following the sale of the SOE assets by PAK.
- c) Where an SOE owes a tax debt, the prohibition against TAK enforcing its lien claim on assets of that SOE shall expire as of midnight on 31 December 2010. After that date, TAK shall have the authority to seize any assets of the SOE which have not been sold by the PAK.

27.12 Expiration of Lien

The lien described in 27.1 shall lapse 6 years from the date of assessment and the tax due shall

no longer be collectable after that date, except in the following circumstances:

- a) the taxpayer submits an appeal of the tax assessment, in which case the six-year period is extended for the period of time from the date the case is received in TAK Appeals until TAK Appeals has issued its final decision or the period allowed for Appeals consideration has lapsed, plus an additional six months,
- b) the tax debt or assessment has been placed under the jurisdiction of a competent court or the Independent Review Board for any reason, in which case the six-year period is extended for the period of time from the date the case is received in the court (or Independent Review Board) until the court, or Board, decision is rendered, plus an additional six months,
- c) the taxpayer is a Socially-Owned Enterprise (SOE) subject to privatization by the Privatization Agency of Kosovo (PAK), in which case the six-year period is extended indefinitely and the lien does not expire until 6 months after the final accounting for the distribution of proceeds resulting from privatization has been approved by the competent body;
- d) the taxpayer is a Central Publicly-Owned Enterprise, or Local Publicly-Owned Enterprise, in which case the six-year period is extended indefinitely and the lien does not expire until the liabilities of the POE are fully satisfied;
- e) The taxpayer is outside Republic of Kosovo for a period of time in excess of three months, in which case the six-year period is extended for the period of time the taxpayer is outside Republic of Kosovo and for an additional six months after his return to Republic of Kosovo.
- f) The taxpayer and TAK mutually agree to extend the period of time for collection by written agreement, the length of which will vary according to taxpayer circumstances, but in general should not exceed an additional 24 months.
- g) The assessment date for computation of the six-year collection period shall be the date of the assessment notice issued per Article 20 of this law.

Article 19

In paragraph 5 of the Article 28 of the applicable Law the deadline for selling of seized property is changed from sixty (60) to thirty (30) days. This deadline is valid from the date of seized property until the sale of seized property.

Article 20

Article 30 of the Law becomes 30.1 and a new paragraph 30.2 is added with the following text:

30.2 Procedures for selling at public auction shall be regulated under the special sub-legal act.”

Article 21

Paragraph 3 of Article 31 is revised as follows:

31.3 Actions to collect tax debts must be taken within the statutory period provided by the law, during which the lien is valid as provided in Article 27 of the Law. If collection action has been initiated against a specific asset, the TAK is authorized to complete that collection action even though it may extend beyond the six 6-year statute or extended statute.

Article 22

Transfers of Assets

After article 35 of the Law a new article 35A as added with the following text:

35A.1 TAK shall have the authority to transfer an assessment of tax to another entity following a transfer of assets (movable or immovable) in the following circumstances:

- a) The taxpayer has transferred assets to another entity either in anticipation of incurring a tax debt or after having incurred a tax debt,
- b) The transfer of assets was for less than fair market value of the assets,
- c) The transfer of assets has left the taxpayer without the capability of paying tax debts and,
- d) TAK has notified the taxpayer and the other entity of the determination that the transfer of assets will result in an assessment against the third party and provided the third party their appeal rights.

35A.2 The amount of tax to be assessed against the other entity shall be the lesser of the tax due from the taxpayer, or the value of the property transferred.

35A.3 A transfer made within three (3) months of incurring a tax debt shall be considered as having been made in anticipation of incurring a tax debt.

35A.4 If the transfer has been made after a tax administration lien as provided in Article 27 has been recorded in the appropriate registry without satisfying the tax debt to which that lien applies, the tax lien will be considered to attach to the

transferred property and the transferred property will be subject to the levy procedures provided in Article 28 of the Law.

35A.5 The procedures to be followed in establishing an assessment against another entity recipient of transferred assets will be determined by a sub-legal act.

Article 23

After paragraph 2 in Article 36 a new paragraph is added with the following text:

36.3 Where a tax liability has become uncollectible as a result of the expiration of the collection statute as provided in Article 27, TAK may clear those liabilities from its records when the provisions of Article 27 and Article 31.3 have been met. TAK shall include in its annual report to the Minister and Competent Body the amount of debts cancelled because of this provision.

Article 24

Title of article 40 “Exchange Transactions” is changed to “Exchange Transactions and Third Party Information Reporting After paragraph 2 of article 40 of the Law are added new paragraphs 40.3, 40.4, 40.5 and 40.6 with the following text:

40.3 Payments of five hundred (500) Euros or more

All persons engaged in a trade or business, who are taxed on income real bases and making purchases of goods or services from another taxable person totaling five hundred (500) Euros or more in any taxable year, shall render a true and accurate return reporting such purchases to the TAK. Purchases made by the Government and the municipalities of Republic of Kosovo are also subject to these reporting requirements. Obligatory annual declarations under this article must be submitted at the Tax Administration not later than March 31 of following year.

40.4 Seller to furnish name and address

When necessary to make effective the provisions of this section, the name, address and Taxpayer Identification Number of the seller of goods or services shall be furnished upon demand of the purchaser.

40.5 Penalty for failure to submit information return

Each entity, except for governmental and municipal, required to submit information returns under this article, which fails to submit the information return, shall be subject to a penalty up to five hundred (500) euro

40.6 The Minister shall issue a sub-legal act setting forth the format in which the above reports are to be submitted to the TAK, including the ability to mandate conditions under which forms must be submitted in an acceptable electronic format.

Article 25

25.1 Paragraph 1 of the Article 41 of the Law shall be transferred as paragraph 7 of the Article 17 of the Law with the same content.

25.2 Paragraph 2 of the Article 41 is deleted.

Article 26

Administrative Penalty with respect to Fiscal Certification

After Article 42 of the Law new paragraphs are added with following text:

43.1 Any person who performs an activity without being provided with a Fiscal Certificate or without being registered with TAK, under criteria defined in article 7 of present law shall be liable to a penalty up to five hundred (500) Euro.

43.2 When it is determined that a taxpayer carries out an activity without a fiscal number, then TAK shall issue a fiscal number and apply the penalty as defined in paragraph 1 of this article.

43.3 In addition, TAK shall provide the business registry of the details of the un-registered business.

Article 27

Administrative Penalties with respect to Failure to File and Pay

Article 43 and 44 of the Law are deleted and replaced with one new article with the following text:

44.1 When a person required to file a tax return under the applicable legislation in Republic of Kosovo fails to do so by the due date, such person is subject to an administrative penalty of five percent (5%) of due tax for each month or part of the month that is late, with a maximum administrative penalty of twenty five percent (25%) of tax due.

44.2 When a person required to pay tax under the applicable legislation in Republic of Kosovo fails to pay the full or part of such tax by the due date, such person is subject to an administrative penalty of one percent (1%) of tax due for each month or part of the month that payment is late, up to maximum twelve months (12).

44.3 Penalties are not concurrent at the same time – The administrative penalty provided in article 44.2 shall not be applied for any month or part of the month during which the administrative penalty provided in article 44.1 is applied.

Article 28

Administrative Penalties Related to Understatements of Tax and Overstatements of Tax Refunds

Paragraph 1 of Article 45 of the Law is amended with the following text:

45.1 When a person who is required to complete a tax declaration under legislation applicable in Republic of Kosovo understates the correct amount of tax due, or overstates the correct amount of a tax refund to which they are entitled, such person shall be liable to an administrative penalty of:

- a) Fifteen percent (15%) of the difference between the correct amount of tax required to be declared and the amount of tax actually declared where such understatement or overstatement is 10% or less.

- b) Twenty-five percent (25%) of the difference between the correct amount of tax required to be declared and the amount of tax actually declared where such understatement or overstatement under 45.1(a) is more than 10% of the correct tax amount, or
- c) One hundred percent (100%) of the difference between the correct amount of tax required to be declared and the amount of tax actually declared where such understatement or, overstatement was deliberate and willful and as such it is concluded by a competent court.

Article 29

The Article 46 of the law is amended and replaced with the following text:

46.1 Failure to file information statement - Any person who is required to file an information statement with TAK and who fails to do so by the due date or who files an inaccurate or incomplete statement shall be liable to a sanction of one hundred twenty five (125) Euros.

46.2 Failure to create or retain records - Any person who is required to create or retain records under the legislation applicable in Republic of Kosovo and who fails to do so shall be liable to an administrative penalty as follows:

- a) Entities with annual turnover in up to thirty thousand (30,000) euros – an administrative penalty of one hundred twenty five (125)Euros,
- b) Entities with annual turnover from thirty thousand (30,000) Euros up to two hundred thousand (200,000) Euros – an administrative penalty of two hundred fifty (250) Euros,
- c) Entities with annual turnover from two hundred thousand (200,000) Euros up to 500,000 Euros – an administrative penalty of five hundred (500) Euros,
- d) Entities with annual turnover of five hundred thousand (500,000) Euros and above – an administrative penalty of one thousand (1,000) Euros.

46.3 The base for calculating the administrative penalty provided in paragraph 2 is the turnover of the previous fiscal year. For new businesses, the base is the real turnover of the current year.

46.4 Procedural rules for establishing the time within which transactions should be entered into the books of account for purposes of the penalty provided in paragraph 2 will be regulated with a sub-legal act.

46.5 Failure to provide access to books and records - Any person who is required to provide access to books or records or otherwise comply with Articles 13 and 14 of the law, and who fails to do so, shall be liable to an administrative penalty of one hundred (100) Euros for each day of default following the date specified by TAK. In

such cases, TAK may also request a warrant from a judge authorizing the entry or access sought under Articles 13 or 14 of the Law

Article 30 **Penalties for failure to withhold tax**

The Article 47 of the Law is amended and replaced with the following text:

47.1. Where a legal entity, or any organization other than a personal business enterprise, has failed to withhold, collect, or pay over a withholding tax or collected tax, any person responsible for withholding, collecting or paying over such tax, and who willfully fails to withhold, collect, or pay over that tax, shall be liable to an administrative penalty equal to the amount of the tax not withheld, collected or not paid over. For the purposes of this paragraph, willfulness shall be determined if the person(s) deemed responsible paid, authorized to be paid, directed to be paid, or allowed to be paid other creditors when that person knew, or should have known that the withholding tax or collected tax had not been collected, withheld, or paid over.

47.2. a) where a legal entity, or any organization other than a personal business enterprise, has failed to withhold, collect, or pay over a pension contribution, any person responsible for withholding and paying to the Kosovo Pension Savings Trust such pension contributions, and who willfully fails to withhold any such contributions or who willfully fails to pay any withheld contributions shall be liable to an administrative penalty equal to the amount of the contribution not withheld or not paid over to the Trust.

b) for the purposes of paragraph 47.2 (a), willfulness shall be determined if the person(s) deemed responsible paid, authorized to be paid, directed to be paid, or allowed to be paid other creditors when that person knew, or should have known that the withholding tax or collected tax had not been collected, withheld, or paid over.

47.3. The amount of the penalty provided in 47.1 and 47.2 is limited to the amount of tax not collected, withheld, or paid over. If, after assessing this penalty against responsible persons, the legal entity, or organization other than a personal business enterprise, pays the tax that was due to be collected, withheld, or paid over, the amount assessed against the responsible persons shall be abated and any liens filed shall be released.

47.4. The penalty provided in 47.1 and 47.2 may be assessed against one or more persons deemed to be responsible for the failure of the legal entity or other organization to withhold, collect or pay over a withholding or collected tax. However, the total amount of tax not withheld, collected or paid over can be collected only one time. Once the full tax amount has been paid by any entity, organization, responsible person, or combination thereof, any remaining penalty amounts due from responsible persons shall be abated and any liens filed shall be released.

47.5 Any person who fails or refuses to surrender any property subject to levy without reasonable cause under Article 29.3 of the Law shall be liable for an administrative penalty equal to 50 percent (50%) of the amount recoverable under Article 29.2 of the Law.

47.6 Any person who fails to set aside money as required under Article 33.1 shall be liable to an administrative penalty equal to that amount of money in question.

47.7 In cases when the employer is not required to withhold the tax or pension contributions, then the employee must file a declaration and pay in the end of the year.

Article 31

Administrative Penalty for errors by Taxpayer Representatives, Tax Advisors, or other persons acting on behalf of a taxpayer

The Article 48 of the law is amended with the following text:

Any person who signs a tax declaration on behalf of another person, who makes an error on such declaration, shall pay an administrative penalty of one hundred twenty five (125) Euros.

Article 32

Administrative Penalties with regard to VAT

Article 49 of the Law is amended and is replaced with the following text:

49.1 A taxpayer who makes supplies without being registered for VAT shall be liable for the VAT due on those supplies plus an administrative penalty of:

- a) Fifteen percent (15%) of the VAT due on those supplies if failure to register is due to negligence of person making taxable sales of less than ten thousand (10,000) €.
- b) Twenty-five percent (25%) of the VAT due on those supplies if failure to register is due to negligence of person making taxable sales of ten thousand (10,000) € or more.
- c) One hundred percent (100%) of the VAT due on those supplies where the failure to register was due to a deliberate and willful attempt by the taxable person to not pay VAT on those supplies, determined by a competent court in a criminal tax evasion case.

49.2. A taxable person who fails to issue a VAT invoice, or other document serving as an invoice, or who issues an incorrect invoice that results in an apparent decrease in the amount of VAT due or an apparent increase in the amount of credit claimable shall be liable for that decrease in amount due or that increase in the amount of credit claimable in respect of the invoice or transaction, plus an administrative penalty of:

- a) fifteen (15%) of the apparent decrease or increase in the amount of VAT due where the failure to issue a VAT invoice or the issue of an incorrect invoice was due to the negligence of the taxable person or

- b) twenty-five percent (25%) of the apparent decrease or increase in the amount of VAT due where the failure to issue a VAT invoice or the issuance of an incorrect invoice was due to the gross carelessness (failure to issue an invoice for a taxable supply in excess of one thousand (1,000) € or issuing an incorrect invoice that is more than € five hundred (500) above or below the amount that should have been included in the invoice) of the taxable person or
- c) one hundred percent (100%) of the apparent decrease or increase in the amount of VAT due where the failure to issue a VAT invoice or the issue of an incorrect invoice was due to a deliberate and willful attempt by the taxable person to either not issue a VAT invoice or to issue a false invoice as determined by a competent court in a criminal tax evasion case.

49.3 A taxable person who commits any of the following violations with respect to VAT shall be

liable to an administrative penalty of two hundred fifty (250) Euro for each violation:

- a) failure to apply for VAT registration upon reaching the applicable threshold under the VAT law, or failure to apply for removal from the VAT register when required to do so under applicable law,
- b) failure to display a copy of the VAT registration certificate in the manner required –by applicable law.

49.4 A taxpayer registered for VAT who allows another person to use its unique VAT registration certificate shall be liable to an administrative penalty of up to five thousand (5000) Euro. The person using a VAT Certificate belonging to someone else will be liable for the same administrative penalty. In addition to the administrative penalties, such cases shall be presented to the Public Prosecutor for criminal prosecution.

Article 33

Administrative Penalties for goods without origin

After the Article 49 of the Law a new text 49A is added as follows:

49A Undocumented Goods – Where a person possesses goods without origin, such goods may be seized and taken into protective custody by TAK. In such case, the procedures for seizure and sale of these goods shall be governed by the provisions of Articles 28, 29, and 30 of the Law.

Article 34

To the existing Article 51, new paragraphs, 51.3, 51.4 and 51.5 are added with the following text:

51.3 If a person liable to any tax proves reasonable cause, good faith, undue hardship or other grounds that will enhance the effectiveness of TAK, TAK may reduce or waive any assessed penalty on a case-by-case basis.

51.4 A commission appointed by the Director General shall consider requests for penalty reduction and issue a determination based on the review of all facts and circumstances.

51.5 For the implementation of this article the Minister shall issue a sub-legal act

Article 35

35.1 In Article 52.2 the deadline for filing an appeal against assessment-notice or any other official decision of TAK shall be changed from sixty (60) days to thirty (30) days from the date that the person has received an official notice.

35.2 Paragraph 3 of the Article 52 is changed by the following text:

52.3 The deadline for appealing against any official decision issued by TAK specified in paragraph 1 of this article can be extended if the taxpayer demonstrates reasonable circumstances that might have prevented him or her from respecting the legal deadline and such circumstances are out of taxpayers control or are such that if a deadline is not extended it might result in unfairness toward the person. The delay of the deadline shall be compatible with Law on Administrative Procedures No. 02/L-28.

35.3 In Article 52.7 of the Law the deadline for exercising an appeal by the Independent Review Board against the decision of Appeals Department is changed from sixty (60) days to thirty (30) days from the date of receiving the decision by the Appeals Department.

35.4 After paragraph 7 of the Article 52.7 is added the new paragraph 52.8 with the following text and paragraph 52.8 becomes paragraph 52.9.

52.8 If Appeals is unable to make a decision on the case based on the information provided by either the taxpayer or the TAK, Appeals may request additional information from either the taxpayer or the TAK or both. The time limits within which appeals must make their decision on the case will be suspended from the date the additional information is requested until the date the additional information is received.

Two new paragraphs 52.10 and 52.11 are added after paragraph 52.9, as following:

52.10. Only if foreseen otherwise by this law, the provisions related to appeal procedures in the Law on Tax Administration and Procedures have priority and exclude the application of provisions of the Law on Administrative Procedure.

52.11 Decision of the Independent Review Board regarding the appeal is a final decision. Against this decision can be open only an administrative conflict to the competent court.

Article 36

In Article 53.2 the number of Board members to be increased by two (2) new members, from fifteen (15) to seventeen (17). The nomination is to be done as for the other seven (7) members in the time period of one year.

Article 37

37.1 In Article 54.4 is deleted the word 'only when the article 54.5 is applied' the rest of the text remains the same.

37.2 Paragraph 5 of the Article 54 is repealed.

Article 38

On paragraph 2 of article 57 is changed with the following text:

57.2 Notwithstanding Articles 57.1 tax collection through levy is prohibited until the expiration date within which period a taxpayer is able to file an appeal to Independent Review Board under Article 54.1 or until the Board has not made any decision under Article 54.6, whichever is the last deadline.

Article 39

Keeping the TAK integrity and Anti-Corruption

After article 59 of the Law is added a new article 60 and article 60 of the existing law will be 62. The text of the article 60 is as following:

60.1 The Professional Standard Office (PSO) within TAK shall have the authority to investigate all allegations of TAK employee misconduct, all allegations of internal and external attempts to corrupt tax officials (including bribery attempts), all alleged violations of the TAK Code of Conduct and any other activities of employees or citizens which threaten the security or integrity of the TAK or its employees.

60.2 For the implementation of paragraph 1 of this article The Professional Standard Office (PSO) will have the authority to:

- a) interview witnesses both inside and outside the Tax administration,
- b) interview any third person who may have information that will assist in an investigation,
- c) compel testimony, information which will assist in an authorized investigation, including the production of bank records,
- d) prepare reports of investigation with recommendations for prosecution in appropriate cases and submit those reports through the TAK legal office to the prosecutors office,
- e) determine whether the matter under investigation should be dealt with administratively or through criminal proceedings,
- f) assist in the arrest of individuals deemed to be guilty of any act covered by this article, after such action is authorized by the public prosecutor,
- g) request information from police, courts, registries, municipalities, and other bodies to verify employment application data, financial status and assets, and other purposes related to anti-corruption and internal security investigations of TAK.
- h) conduct joint investigations with police and other law enforcement agencies in matters related to internal security, allegations of employee

- misconduct, and other activities of employees or citizens which may threaten the integrity or security of the tax administration,
- i) assist police and other law enforcement agencies in investigations which they have initiated related to alleged criminal code violations of TAK employees.
- j) liaise and exchange information with police and law enforcement agencies for the purpose of ensuring the integrity and security of the tax administration.

60.3 In case of prevention either by an employee or by any other person in carrying out the authorities as determined by Paragraph 2 of this article, the Unit may request authorization for assistance from the competent Public Prosecutor.

60.4 Any official of the Professional Standards Office who is undertaking an investigation or proceeding in relation to a criminal offense under this article shall conduct the investigation in accordance with the applicable provisions of UNMIK Regulation 2003/26, Provisional Criminal Code of Kosovo, or its successor. Officials of the Professional Standards Office are authorized to investigate those offenses enumerated in Chapter 29 (Criminal Offenses against Public Duty) of UNMIK Regulation 2003/25, or its successor.

60.5 Procedures and functions of the unit shall be regulated by a sub-legal act.

Article 40

Temporary International Measures

After article 60 is added a new article 61 and article 61 of the existing law will be 63. The text of the article 61 is as following:

61.1 Where the existing taxation laws of Kosovo relative to international taxation do not address taxation of international transactions, they may be supplemented by application of the principles of the OECD (Model Tax Convention of Income and Capital).

61.2 Where the existing tax laws relative to the international juridical double taxation of income and capital of persons in Republic of Kosovo do not address such taxation, the principles of the OECD Model Tax Convention on Income and on Capital shall apply in order to avoid double taxation of such income and capital.

61.3 Where the existing tax laws relative to the VAT taxation of transactions in respect of goods and services do not address such taxation, they may be supplemented by the principles of the EC Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

61.4 In accordance with Article 9 of the present law, the Director General may issue public rulings, either in general or on a case-by-case basis, to supplement the provisions of existing income tax or VAT laws in accordance with Articles 61.1 through 61.3 above. Upon entering a mutual tax convention with a contracting state, rulings under this Article with respect to transactions between Republic of Kosovo and that contracting state will no longer be authorized.

61.5 As necessary for implementation of VAT relative to goods and services, the Minister of Economy and Finance may issue public rulings that supersede the

existing provisions of the VAT Law, so long as the rulings are in accord with the EC Council Directive 2006/11/EC of 28 November 2006 and such rulings are agreed by Government. Upon adoption of a new or revised VAT Law by the Assembly, rulings under this Article will not longer be authorized.

Article 41 **Sub-legal acts**

Article 60 of the existing law is replaced by the following text and numbering will be 62:

62.1 The Minister of Economy and Finance shall have the authority to promulgate, in writing, implementing regulations (sub-legal acts) of general applicability as may be necessary and appropriate to further the proper, reasonable and uniform interpretation and application of the present law. Such implementing regulations shall be administered and applied by the TAK. No such implementing regulation shall have or be given any legal effect until properly published in the Official Gazette of Kosovo and otherwise made publicly available by the TAK in accordance with the Law on Access to Official Documents. Any person affected by such an implementing regulation who believes such regulation to be inconsistent with or not authorized by the present law may contest the validity of such regulation directly to the Independent Review Board as provided for in Article 54.1(d) of the existing law and subsequently to a court of competent jurisdiction as provided for in Article 56 of the existing law.

62.2 Sub-legal acts from articles 4, 6, 7, 9, 12, 13, 15, 17, 18, 20, 22, 24, 29, 34, and 39 for the implementation of present Law shall be issued within 6 months from the date of entry into force of present Law.

The article 62 of the existing law will be article 64.

Article 42 **Entry into Force**

This law enters into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosovo, with the exception of Article 24 of present Law enters into force by the 1 January after the year the Minister issues the sub-legal act referring to the implementation of this article.

Law No. 03/L-071

4 December 2008

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI

ADMINISTRATIVE INSTRUCTION No. 07/2009 -
ON REGISTRATION, DE-REGISTRATION AND
ISSUANCE OF FISCAL NUMBER



Ministry of Economy and Finance

Under the article 63 of the Law No. 2004/48 “*On Tax Administration and Procedures*”, as amended and supplemented with the Law No. 03/L-071, “*On Amendments and Supplements to the Law No. 2004/48, “On Tax Administration and Procedures*”, Minister of Ministry of Economy and Finance,
Hereby issues:

ADMINISTRATIVE INSTRUCTION No. 07 / 2009

ON REGISTRATION, DE-REGISTRATION AND ISSUANCE OF FISCAL NUMBER

Section 1 Goal and Scope

The goal of this Administrative Instruction is establishment of procedures and requirements for implementation of registration and de-registration of taxpayers and issuing fiscal numbers to taxpayers as provided in Article 11 of Law 2004/48 “*On Tax Administration and Procedures*”, as amended and supplemented with the Law No. 03/L-071, “*On Amendments and Supplements to the Law No. 2004/48, “On Tax Administration and Procedures*”.

This administrative instruction, is valid for all physical and legal persons operating in the territory of the Republic of Kosovo, with regard of registration, de-registration and obtaining “*Fiscal Number*”.

Section 2 Definitions

“*MEF*” – means Ministry of Economy and Finance;

“*Fiscal Number*” – means the number that TAK shall issue to each taxpayer and which shall be used for tax purposes;

“*MTI*” – means Ministry of Trade and Industry;

“*BRA*” – means Business Registration Agency in MTI;

“*Business Registration Number*” – means the registration number that a business organization obtains from BRA;

“*NGO*” – means Non-Governmental Organization, as defined in legislation regarding non-governmental organizations;

“*Spot Visit*” – means a direct contact that TAK makes with taxpayer in the site or place where he performs economic activity.

“*CBK*” – means the Central Bank of Kosovo.

‘The Law’ – means Law No. 2004/48, “On Tax Administration and Procedures”, as amended and supplemented by Law No. 03/L-071, “On Amendments and Supplements to the Law No. 2004/48, “On Tax Administration and Procedures”.

Section 3

Fiscal Number

1. The Taxpayer Identification Number currently used by TAK for purposes of administering the tax system is the Business Registration Number issued by the BRA. From the effective date of this sub-legal Act, for purposes of administering the tax system a “*fiscal number*” issued by TAK shall be used.
2. The “*fiscal number*” shall be a number of 8 digits, plus a check digit, randomly selected using an algorithm that will provide security against fraudulent numbers and duplication of numbers.

Section 4

Obtaining Fiscal Number

1. All business organizations registered with the BRA after the effective date of this administrative instruction, must apply for, and receive, a fiscal number from TAK before beginning any economic activity.
2. Business Organizations registered with BRA, before the effective date of this administrative instruction, must apply for a fiscal number within 150 days after entry into force of this administrative instruction, or by 31 December 2009, whichever comes first, per rules to be defined by TAK.
3. Any NGO, after registering with NGO Registration Office must apply to obtain a fiscal number under the rules provided in paragraph 1 and 2 of this section.
4. All Budget Organizations of the central Government and local governments must receive a “*fiscal number*”. Central or local institutions, may obtain one fiscal number for purposes of reporting employee wages and pension contributions. Budget Organizations should submit their fiscal number application to the respective TAK Regional Office.
5. Irrespective of the number of business organizations that an individual has registered with BRA, it will receive only one “*fiscal number*”. The income created from several businesses of an individual, shall be taxed as its sole income, as for VAT and Personal Income Tax. Individual Business organization shall be equipped with fiscal number only when the individual (owner) presents the personal identification number to TAK. Any individual, who created a new business organization and who has fiscal number issued by TAK, is liable to notify TAK for the registered business organization.
6. Any partnership will receive only one “*fiscal number*”, irrespective of the number of partners involved in the partnership. The partnership fiscal number must be a number separate and distinct from the fiscal number of any of the partners in the partnership.
7. Any individual who wishes to submit a tax declaration must apply for, and receive, a “*fiscal number*” from TAK, before submitting the declaration.

Section 5

Procedure on Obtaining the Fiscal Number

1. Application for “*fiscal number*” must be made to the applicable TAK regional office within 15 days after registering with the BRA.
2. Business organizations registered before this instruction entered into force, will be informed by TAK in writing on procedures to be followed for the fiscal number application, together with application form. Business organizations, after confirmation for the receipt of this information, shall apply within 10 days after receiving the information. Failure to receive the information from TAK, does not exclude the Business Organization from the obligation to obtain the Fiscal Number under the procedures provided in this Administrative Instruction.
3. TAK may make a visit to the business organization location prior to issuing a “*fiscal number*”. The visit must take place within 5 business days after receiving the fiscal number application. TAK must make a decision on whether to issue a number, or not, within 10 days after receiving the application. If the TAK is not able to locate the business organization location after two attempts made within the 5-day period and documented with the activities in the field, it will issue a negative decision to the taxpayer.
4. Any business organization that requires accelerated issuance of a “*fiscal number*” may submit an application for fiscal number to TAK. Prior to making application to TAK, he/she must have obtained a Business Registration Number from the BRA. Generally, applications for “*fiscal number*” should be submitted to the regional office which will be responsible for the tax affairs of the business. Officials of the regional taxpayer education unit will review the application; conduct appropriate checks, including possible visits to the business location; and make a determination on issuance of a fiscal number within 5 business days after the application is submitted.
5. After the decision of TAK to issue a fiscal number to the taxpayer, TAK shall provide a Fiscal Number document to the taxpayer. Such document shall contain:
 - 5.1. Fiscal Number issued to the taxpayer
 - 5.2. Reminder to the taxpayer that it must meet all filing and payment requirements in order to keep the fiscal number
 - 5.3. Request that such document be held in the taxpayer’s premises
 - 5.4. Request that it be available for review by TAK
 - 5.5. Reminder that the fiscal number issued to the taxpayer must be included in any invoice issued and any contract made with any other entity.

Section 6

Non-Issuance of a Fiscal Number

1. TAK may refuse to provide a “*fiscal number*” when taxpayer has a poor history of compliance. Any non-issuance of a “*fiscal number*” will be

- publicized for the benefit of other taxpayers. Publication guidance is described in Section 14 of this administrative instruction.
2. TAK may refuse to issue a “*fiscal number*” for taxpayer when he:
 - 2.1. gives inaccurate address information on the “*fiscal number*” application
 - 2.2. cannot be located at the address given to BRA after two attempts by TAK d
 - 2.3. does not respond to the 15-day notification to apply for a “*fiscal number*”
 - 2.4. Fails to provide information on the owner(s) of the entity to TAK officials upon their request.
 - 2.5. fails to provide other information required by TAK
 3. TAK may also refuse to issue a “*fiscal number*” if the owner(s) of the new business has/have a history of non-compliance with tax reporting and paying obligations. A history of non-compliance includes:
 - 3.1. having previously owned a business that failed for two, or more, months to comply with VAT liabilities;
 - 3.2. failed to report all employees on any one monthly Wage Tax Withholding and Remittance Statement;
 - 3.3. failed to report all employees on any one monthly Statement of Pension Contributions and failed to properly withhold, or pay in full, for one or more monthly Wage Tax Withholding or Pension Contributions tax liability;
 - 3.4. failed to declare or pay one or more annual income tax (personal or corporation) declarations;
 - 3.5. failed to withhold, or pay in full, for one or more monthly rental, dividend, interest, or other monthly withholding requirement;
 - 3.6. failed to submit and pay two or more Quarterly Tax and Contribution Payment for small or large individual business;
 - 3.7. failed to submit and pay two or more Quarterly Advance Payment Statements for small or large corporations.
 4. Taxpayers who have not provided accurate information on their “*fiscal number*” application or have not provided information upon request of TAK, may re-submit an application for “*fiscal number*” to their local TAK regional office. TAK will process any re-submitted application in the same manner as if it is a new application.
 5. If TAK determines that a “*fiscal number*” should not be issued, it must give the taxpayer a written notice at the business address given in the application stating the reasons for not providing the fiscal number within one day after the determination is made. The notification must include a notice to the business that it may be able to obtain a fiscal number by posting a bank guarantee as described in paragraph 6 of this section. Any negative decision may be appealed in accordance with Article 52 of The Law
 6. New businesses which have been refused a “*fiscal number*” because of a history of non-compliance, or businesses which have received a second letter proposing cancellation of their fiscal number, may enter into an agreement with the tax administration whereby the business will post an irrevocable bank guarantee with the tax administration in an amount to be determined based on

the projected turnover of the business or projected tax obligations of the business, but not less than €5,000. Such bank guarantee is to be held by the tax administration for a period of three years. If during that three-year period, the business has faithfully reported and paid all tax liabilities, TAK will return the bank guarantee to the taxpayer for cancellation. TAK will exercise its rights under the bank guarantee only as a last resort after having taken all other possible enforced collection actions. Once a satisfactory bank guarantee has been provided and agreed by the tax administration, the business can submit its request for a fiscal number. If the application is complete and all required information is provided to TAK, TAK will issue a fiscal number within 5 business days.

Section 7

De-Registration of a Taxpayer

1. As provided in Article 12 of The Law, if a taxpayer decides to cease its business activity (including a change in business form or change in type of legal entity), it must advise TAK in writing of the decision made, at least 60 days prior to the planned cessation of business as follows:
 - 1.1. Information in writing must include:
 - 1.1.1. the taxpayer name and address;
 - 1.1.2. the taxpayer fiscal number;
 - 1.1.3. the personal number of the owner, if a personal business enterprise;
 - 1.1.4. the amount of tax indebtedness, if any;
 - 1.1.5. the expected date of ceasing business activity;
 - 1.2. Information which must be included with the notification to TAK includes:
 - 1.2.1. a copy of corporate resolution (if a joint stock company or Limited Liability Company), which authorizes termination of the business activity signed by the authorized officials or partners;
 - 1.2.2. a copy of partnership agreement (if Partnership, association of persons or consortium) signed by all partners, members of the association of persons, or members of the consortium which reflects the agreement to terminate business activity of the partnership, association of persons, or consortium.
 - 1.2.3. copy of projected closing balance sheet and related financial statements;
2. The person authorized to submit the above documents should provide:
 - 2.1. an authorization by the taxpayer for submission of such documents
 - 2.2. a statement to show that the business is ceasing and request to de-register the business in accordance with applicable legal provisions.
3. Within 60 days after receiving the taxpayer's notice of intent to cease business activities, TAK must verify the tax situation of the business and, if necessary, conduct an audit of the business tax declarations. If the taxpayer has satisfied

all tax obligations, TAK will provide a certification that taxpayer met all de-registration requirements. Such notification must be sent to BRA within the 60-day period. The notification must include the taxpayer name and address, business registration number, TAK fiscal number, and a statement confirming that the business has met all requirements for de-registration.

4. If TAK determines that the business owes tax debts (either before or after audit) or has not submitted all required declarations, TAK will notify the taxpayer that it does not meet the requirements for de-registration. The notification will include a description of:
 - 4.1. all outstanding tax debts,
 - 4.2. all tax declarations not submitted,
 - 4.3. the right of taxpayer to appeal, and
 - 4.4. actions that must be taken by the taxpayer if it wants to de-register.
5. Following the notice for failure to meet de-registration requirements, TAK will take actions to place the taxpayer in the register of inactive taxpayers in accordance with paragraph 6 of Section 8 of this administrative instruction. Consideration must also be given to initiating the insolvency provisions established in Law 2003/4 on Liquidation and Reorganization of Legal Persons in Bankruptcy.
6. If the taxpayer subsequently submits all required declarations and pays all tax debts, it can submit another request for de-registration, which will include elements required in paragraph 1 of this section. Upon receipt of a written request described above, and after determining that the business meets the requirements for de-registration, TAK will follow the steps described in paragraph 3 of this section.
7. After making the decision to de-register the taxpayer, TAK shall remove the taxpayer from its database.
8. TAK will publicize the names of all de-registered businesses, including business registration number and fiscal number in accordance with the provisions of Section 14 of this administrative instruction.

Section 8

De-Activation of a Business

1. As authorized in Article 12.6 of The Law, TAK shall place taxpayers in a special register of inactive taxpayers when a taxpayer has not carried out any economic activity during the previous fiscal year. A taxpayer with an outstanding tax debt, or declarations that have not been submitted, shall not be placed in the register of inactive taxpayers until such time as TAK has determined that the debt cannot be collected because the taxpayer is no longer making activities and has no assets from which collection can be made. Taxpayer is entitled to appeal for placing him into inactive register.
2. With respect to tax declarations that have not been submitted, TAK must determine whether it is in the Government's interest to take necessary actions to secure the declarations, based on the collection potential. Generally, TAK must secure any declaration related to a collected or withheld tax as collection

of such tax can be made from the assets of responsible persons of the business. Once the declarations have been secured, or determination made, documented, and approved by the senior manager responsible for field operations that it is not in the Government's interest to secure the declarations, the taxpayer can be placed in the register of inactive taxpayers.

- 2.1. As used in paragraph 2 of this section, the term 'Government's interest' means that a determination is made that the costs of pursuing a declaration from a business that is no longer active are higher than the amount of revenue that may be collected if the declarations were secured and processed. As a point of reference, for example, if a LLC is no longer active and there are no assets from which to collect the tax liability that may be owed, there is little benefit to be gained by the Government of Kosovo in pursuing a corporate income tax declaration that has €500 in tax due.
3. Taxpayers which cannot be located, including those with outstanding tax debts or unfilled declarations, can be placed in a register of inactive taxpayers after TAK has taken all reasonable actions to locate the taxpayer or its assets, so long as there is evidence that those taxpayers have not engaged in any activity for a minimum period of 6 months. Prior to placing the taxpayer in the inactive register, TAK must record tax liens in all appropriate registries (if not previously recorded) to protect the Government's equity and rights in any assets the taxpayer may have. Generally, TAK must seize and sell any assets of the taxpayer before placing the taxpayer in the register of inactive taxpayers. If TAK determines that seizure and sale of the assets is not in the best interest of the Government, the reasons for not seizing and selling the assets must be clearly documented.
 - 3.1. As used in paragraph 3 of this section, the term, 'best interest of the Government' means that a determination has been made to not take a specific action, such as seizing and selling assets of a business because the projected revenue from such action is less than, or only marginally more than, the costs of taking the action. As a point of reference, for example, if a business has assets of only €300, the costs of advertising the asset and the time spent by the tax administration officials in taking the seizure action and selling the assets are greater than the amount that can be realized from the seizure and sale action, and therefore it is not in the best interests of the Government to take the action.
4. If, as a result of an investigation to secure declarations that have not been submitted or to collect an unpaid tax debt, TAK discovers that a taxpayer has stopped its business activity, TAK may place the taxpayer in the register of inactive taxpayers following actions to secure the declarations that have not been submitted and to collect the unpaid tax debts. Prior to placing the taxpayer in the register of inactive taxpayers, TAK must take the actions described in this paragraph, as well as those actions described in paragraphs 2 and 3 of this section. After verification visits, in line with its internal rules and procedures and any other appropriate action, TAK must confirm that the taxpayer is not exercising business activity.

5. TAK may place the taxpayer in the register of inactive taxpayers, irrespective of the length of time that has passed since the taxpayer last engaged in business activity, if it has undertaken all necessary actions to collect any tax debt and secure any declaration that was not filed as described in Paragraph 4 of this section.
6. If a taxpayer has notified TAK that it intends to cease business activities as provided in Section 7 of this sub-legal act, and TAK has determined that the business does not meet the criteria for de-registration because it owes taxes or has not submitted all declarations, TAK will take measures to secure all required declarations. TAK will also take all potential collection actions. Once all actions have been taken and it is confirmed that the taxpayer is no longer in business per Paragraph 4 of this section and all assets have either been disposed or adequately secured by tax liens, TAK can place the taxpayer in the registry of inactive taxpayers, and follow the de-registration procedures provided in Section 7 of this sub-legal act. TAK also shall initiate the insolvency provisions established in Law 2003/4 on Liquidation and Reorganization of Legal Persons in Bankruptcy.

Section 9

Cancellation of Fiscal Number

1. The authority to cancel any tax document provided in Article 20A.1 of The Law includes the ability to revoke a taxpayer's fiscal number if a taxpayer fails to meet their reporting and paying requirements. TAK may cancel the fiscal number of any taxpayer who repeatedly fails to timely: submit declarations, pay tax liabilities, information, reconciliation reports or annual certifications.
 - 1.1. A taxpayer will be considered to have repeatedly failed to submit timely declarations if:
 - 1.1.1. during a period of 12 months, it fails to submit two or more VAT declarations;
 - 1.1.2. during a period of 12 months, it fails to submit two or more monthly Wage Tax Withholding or Pension Contributions Forms;
 - 1.1.3. during a period of 36 months, it fails to submit one or more annual income tax (personal or corporate) declarations;
 - 1.1.4. during a period of 12 months, it fails to submit two or more monthly rental, dividend, interest, or other monthly withholding requirement declarations;
 - 1.1.5. during a period of 12 months, it fails to submit two or more Quarterly Tax and Contribution Payment for small or large business (individual businesses or corporations);
 - 1.1.6. During a period of 12 months, it fails to submit two or more quarterly Tax on Rent and Intangible Property Statements.
 - 1.1.7. during a period of 36 months, it fails to timely submit any information or reconciliation statement such as, but not limited

to: Annual Wage Tax Reconciliation Statement, Certificate of Pension Contribution and Tax Withholding, Summary of Annual Tax Withholding on Interest, Dividends, Royalties, Rent and Lottery Winnings, Annual Information Report of Payments of €500 or more, etc.

- 1.2. A taxpayer will be considered to have repeatedly failed to timely pay tax liabilities if:
 - 1.2.1. during a period of 12 months, it fails to timely pay the tax due on three or more VAT declarations;
 - 1.2.2. during a period of 12 months, it fails to pay the tax due on three or more monthly Wage Tax Withholding or Pension Contributions Forms;
 - 1.2.3. during a period of 36 months, it fails to timely pay the tax due on one or more annual income tax (personal or corporate) declarations;
 - 1.2.4. during a period of 12 months, it fails to timely pay the tax due on three or more monthly rental, dividend, interest, or other monthly withholding requirement declarations;
 - 1.2.5. during a period of 12 months, it fails to timely pay three or more Quarterly Tax and Contribution Payment for small or large business (individual businesses or corporations);
 - 1.2.6. During a period of 12 months, it fails to timely pay three or more quarterly Tax on Rent and Intangible Property Statements.
2. In order to cancel a taxpayer's fiscal number, TAK must deliver to the taxpayer a notice of proposed cancellation of fiscal number at least 30 days prior to the effective date of the proposed action.
3. During the 30-day period provided, the taxpayer may contact TAK and arrange to become current in any tax obligations that are delinquent. If the taxpayer has received only one letter proposing to cancel the fiscal number, and makes satisfactory arrangements to become current in all tax obligations, TAK will take that request into consideration, along with any other historical information regarding the taxpayer, in determining whether to cancel the fiscal number. If the taxpayer subsequently becomes delinquent again, TAK will send another letter to the taxpayer advising that the fiscal number will be cancelled at the end of the 30-day period. The second letter must note the fact that this is the second such letter sent to the taxpayer and describe the taxpayer's options as provided in this paragraph and paragraphs 4 and 5 of this section. The taxpayer is entitled to Appeal the TAK determination to cancel his fiscal number. The filing of an appeal will not prevent the cancellation of the fiscal number.
4. A taxpayer, which has received a second letter proposing to cancel its fiscal number may enter into an agreement for posting a bank guarantee with TAK as provided in paragraph 6 of section 6 of this administrative instruction. Any bank guarantee must be in an amount sufficient to cover 150% of all tax obligations outstanding, or pending, at the time the second letter is issued, without regard to projected turnover amounts.

5. If a taxpayer, which is a legal person, does not post a bank guarantee as provided in paragraph 6 of section 6 of this administrative instruction, following issuance of a second letter to a taxpayer proposing to cancel the taxpayer's fiscal number, and TAK cancels the fiscal number, TAK must apply to the economic court for placing the taxpayer into involuntary insolvency proceedings. Procedures established in Law 2003/4 On Liquidation and Reorganization of Legal Persons in Bankruptcy will be followed for initiating this process.

Section 10

Withdrawal of VAT Certificate

1. The Director General of TAK may withdraw a VAT certificate if concludes that taxpayer violated the law. The violation of the law which may result in cancellation or withdrawal of a VAT certificate includes, but is not limited to:
 - 1.1. Allowing a VAT Certificate to be used by another person;
 - 1.2. Submitting false or fictitious invoices using the VAT Certificate;
 - 1.3. Failing to timely submit two or more VAT declarations;
 - 1.4. Failing to timely pay one or more VAT liabilities;
 - 1.5. Failing to timely submit and pay two or more tax declarations which the taxpayer is required to submit;
 - 1.6. Under-declaring any tax liability by more than 25%
2. TAK must deliver to the taxpayer written notice of the cancellation or withdrawal of a VAT Certificate 10 days before the effective date of the withdrawal. Such notification shall contain:
 - 2.1. description of reasons for the proposal to withdraw or cancel the VAT Certificate;
 - 2.2. statement advising that if the VAT Certificate is withdrawn or canceled, the taxpayer cannot continue to perform business and, if the taxpayer does conduct business after the certificate is withdrawn, he will be subject to the penalties provided in The Law;
 - 2.3. the right for the taxpayer to appeal the cancellation or withdrawal within a 10 day period by filing an appeal in writing to the Regional Manager issuing the notification.
3. The appeal of the taxpayer must be made on the basis that TAK made an error in the facts described under paragraph 1 of this section. The taxpayer must prepare a statement with clear facts to prove that TAK proposal for withdrawal or cancellation of VAT Certificate is incorrect.
4. If taxpayer has appealed under paragraph 3 of this section and Regional Manager agrees with the submitted facts on the taxpayer's appeal, the Regional Manager must issue a letter to taxpayer, stating that the proposal for withdrawal or cancellation of VAT Certificate is cancelled.
5. After the 10 day period has expired, if the taxpayer did not appeal, or if the taxpayer appealed but the Regional Manager does not accept any changes based on the taxpayer's appeal, the Regional Manager must prepare a letter to the taxpayer advising him that the VAT Certificate is withdrawn or canceled.

- The letter must clearly indicate the basis on which the decision is made, including why the appeal did not change the determination made.
6. The letter advising the taxpayer that the VAT Certificate is being cancelled or withdrawn must be personally delivered to the taxpayer by a TAK official. The TAK official must give the letter to a responsible person of the taxpayer (if a legal entity) or to the taxpayer (if an individual business) and explain that the VAT Certificate is being withdrawn. It is preferred that the letter should be delivered to the taxpayer at the end of the business day to avoid unnecessary disruption of the business. The TAK official must obtain the VAT Certificate and advise the taxpayer that operating the business without the certificate will result in penalties and possible criminal prosecution.
 7. A VAT Certificate shall be canceled without the potential of re-instatement, if:
 - 7.1. The taxpayer has allowed his certificate to be used by another person (both the person who allowed his certificate to be used and the person who used the certificate shall be subject to penalties provided in The Law).
 - 7.2. the taxpayer has issued false or fictitious invoices
 - 7.3. In addition to canceling the VAT Certificate, the Regional Manager shall prepare a report requesting criminal proceedings as provided in Article 49 of The Law.
 8. A VAT Certificate that has been withdrawn due to failure of payment of tax or failure to file declarations may be re-instated upon the taxpayer's written request when the taxpayer has become compliant in submission of declarations, or made satisfactory arrangements for payment of debts. The written request must be addressed to the Regional Manager, who withdrew the VAT Certificate. The request must contain the taxpayer's fiscal number and identify the VAT Certificate to be reinstated (Name on the certificate, VAT Certificate Serial Number, and business address). Included in the request to reinstate the certificate, the taxpayer must state that he is aware of the requirement to submit declarations on time and to pay those declarations in order to maintain the VAT Certificate. The taxpayer must confirm its intention to remain current in submitting declarations and making timely payment.
 9. Upon receipt of the written request for re-instatement of the VAT Certificate, and confirmation that the taxpayer met the requirements for reinstatement, the Regional Manager shall re-instate VAT Certificate within 2 business days. Regional Manager must give full effort to re-instate VAT Certificate the same day when the request is received, so the taxpayer can restart business activity.
 10. If more than 30 days has passed since the certificate has been cancelled or withdrawn, the cancelled certificate will not be reinstated, but a new VAT certificate will be issued to the taxpayer, which will be effective for transactions from that date forward.
 11. As considered necessary by the Director General, TAK may conduct a program to replace all existing VAT Certificates after issuing a notice of intent to do so and advising taxpayers of the procedures for obtaining a replacement VAT Certificate. The tax administration may refuse to issue a replacement

VAT Certificate to any taxpayer meeting any of the conditions for refusal, withdrawal or cancellation of a fiscal number or VAT Certificate established in this administrative instruction.

12. When a VAT taxpayer is no longer considered to be a VAT taxpayer under the provisions established in the Law on Value-Added Tax, the VAT taxpayer must surrender its VAT Certificate to the TAK regional office responsible for that taxpayer's tax affairs. TAK will acknowledge the surrender of the VAT Certificate. VAT Certificates must be surrendered within 15 days after the taxpayer ceases to be a VAT taxpayer or ceases business activity. TAK will publish the names of all taxpayers who have surrendered their VAT Certificate as described in Section 14 of this administrative instruction.
13. TAK will maintain a listing of all taxpayers with active VAT Certificates on its web-site (www.atk-ks.org). The listing will be alphabetized using the first letter of the first part of the business name. The purpose of publishing is to inform the public that if a particular taxpayer has valid VAT Certificate. TAK must provide the public with instructions on access.

Section 11

Foreign Companies and Businesses Not Required to Register With Agency for Business Registration

1. As provided in Article 11.5 of The Law, any non-resident person who is subject to any tax in Kosovo in accordance with the tax legislation of Kosovo shall appoint a fiscal representative prior to starting any economic activity in Kosovo. The fiscal representative appointed by the non-resident person must be a resident of Kosovo, who is qualified to perform the duties of a fiscal representative. A fiscal representative may be either a physical person or a legal person.
2. Within 5 days after being appointed, the fiscal representative must submit his application for registration as fiscal representative to the TAK headquarters to Manager of Taxpayer Education Department. ATK has the right to refuse an appointment of a fiscal representative if it believes that the appointee is not qualified to perform the duties of a fiscal representative. Included with the application must be a letter of appointment signed by a responsible person of the non-resident person that has appointed the fiscal representative. The letter of appointment must indicate the acts that the fiscal representative is authorized to perform on behalf of the non-resident person.
 - 2.1. At a minimum the fiscal representative must be authorized:
 - 2.1.1. To submit invoices on behalf of the non-resident person to Kosovo persons for those transactions for which the fiscal representative is authorized.
 - 2.1.2. To receive invoices from Kosovo persons on behalf of the non-resident person with respect to those transactions for which the fiscal representative is authorized.
 - 2.1.3. Submit Kosovo VAT declarations on behalf of the non-resident person, and, if applicable Kosovo Income Tax declarations on

- behalf of the non-resident person
 - 2.1.4. To pay the tax liabilities and to receive tax refunds on behalf of the non-resident person as they are reported on the declarations submitted, or as adjusted by the tax administration
 - 2.1.5. To maintain records of the transactions for which the fiscal representative has been appointed and make those records available to the tax administration upon request.
 - 2.1.6. To act instead of and to represent the non-resident person when audits are made by TAK
 - 2.1.7. To fulfill all VAT-related import, export, and Customs obligations.
- 2.2. The applicant shall attach to the letter of appointment a certified copy of the fiscal representation agreement between the applicant and the non-resident person as well as a certified copy of tax registration evidence of the non-resident person in his country of residence. It is necessary to clearly specify in the agreement all activities which may be exercised by the tax representative.
- 2.3. TAK shall notify its authorization or refusal in writing to the applicant-fiscal representative and to the non-resident person within two (2) working days after making the determination to issue or refuse the application.
- 3. TAK shall refuse to accept the Fiscal Representative when:
 - 3.1. the applicant-candidate fiscal representative is not compliant with his or its own tax obligations or has committed earlier tax offenses being considered by TAK as tax evasion or tax avoidance
 - 3.2. the applicant has a history of making unlawful tax disputes
 - 3.3. A fiscal representative was not rehabilitated after a bankruptcy or after any other procedure under Kosovo law by which the applicant was put under supervision.
- 4. TAK may terminate the right for fiscal representation by a fiscal representative.
 - 4.1. TAK may terminate the right of a person to act as fiscal representative when :
 - 4.1.1. a false statement has been made by him as well as by or on behalf of the non-resident person in relation to the application for authorization as fiscal representative;
 - 4.1.2. the fiscal representative fails to submit declarations or to make tax payments by the due date;
 - 4.1.3. it is necessary to do so for the protection of the revenue.
 - 4.2. TAK shall notify the fiscal representative and the non-resident person in writing of such decision of termination. In such cases, a new fiscal representative must be appointed within 5 days after the notification is made to the non-resident person in accordance with the same principles as referred to in this section.
 - 4.3. Every person who is registered as fiscal representative, shall within 5 days of any changes being made in the name, constitution or ownership

of his business or any other event occurring which necessitates the variation of the registration, notify the Taxpayer Education Department in writing of such change, cessation or event and furnish all particulars of these changes.

5. A fiscal representative is jointly and severally liable for the tax debts of the non-resident person for whom he has been appointed. To guarantee performance of this liability, the fiscal representative may be required to post a bond with a financial institution located in Kosovo and recognized as a financial institution by the CBK, or provide some other form of guaranty as is agreed by TAK. Should TAK determine that a guaranty is required, it will advise the fiscal representative and the non-resident person of that requirement. TAK shall provide a period of 30 days in which an acceptable guaranty must be agreed. However, the fiscal representative shall not be guilty of any penalty determined in respect of the non-resident person for whom he acts, except in so far as:
 - 5.1. The offence consists in a contravention by the fiscal representative of an obligation which, by virtue of this section is imposed both on the fiscal representative and the non-resident person,
 - 5.2. The fiscal representative has consented to, or conspired in, the commission of the offense of the non-resident person
 - 5.3. The commission of the offence by the non-resident is attributable to any neglect on the part of the fiscal representative.
6. Even though the fiscal representative may already have a fiscal number and a VAT registration number, he must obtain a new fiscal number and VAT registration number on behalf of the non-resident for whom he is acting and is thus required to register his or its name against the name of the non-resident person and with the address of the fiscal representative, **(See Annex 1, example 1).**

The numbers will thus be issued to (name of fiscal representative) acting on behalf of (name of non-resident person). When submitting the application for representation, the fiscal representative is applying for both the fiscal number and VAT Certificate.

7. Cessation of fiscal representation:
 - 7.1. The appointment of a fiscal representative shall cease or be terminated:
 - 7.1.1. When his representation agreement with the non-resident person expires or when he ceases the representation activities during the agreed representation period,
 - 7.1.2. When a fiscal representative dies,
 - 7.1.3. When the fiscal representative becomes bankrupt, insolvent or incapacitated.
 - 7.2. A fiscal representative must notify TAK in writing that he will no longer be acting as fiscal representative. The notification must be done within 10 days before he ceases to act as fiscal representative for a non-resident person. The fiscal representative must also notify the non-resident

person that he is no longer going to act as his fiscal representative. If the non-resident person is continuing to operate in the Republic of Kosovo, the fiscal representative must indicate that fact in his notification to the tax administration. Such information must be delivered to the TAK headquarters, in Taxpayer Education Department.

8. The fiscal representative will be personally liable for all tax liabilities that accrue for the tax periods during which he acted as fiscal representative. Should an additional assessment of tax be made by the tax administration for a tax period during which the fiscal representative acted on behalf of the non-resident person, the fiscal representative will be liable for payment of the additional tax assessment.
9. When a fiscal representative ceases to act on behalf of a non-resident person that is continuing to engage in economic activity in Kosovo, the non-resident person must appoint a new fiscal representative within 5 days of being advised that the currently-appointed fiscal representative is going to withdraw. A fiscal representative is not released from his personal obligation by virtue of ceasing to act as a fiscal representative.
10. Notwithstanding the above, a non-resident person is not required to appoint a fiscal representative if:
 - 10.1. The non-resident person is carrying on a one-time transaction with a value of less than €5,000 in a 12-month period of time.
 - 10.2. The Kosovo person with whom the non-resident person is engaging in economic activity is liable to pay the VAT liability incurred through the reverse-charge mechanism and the non-resident person will not be eligible for exercising VAT input deduction right.

Section 12

Reporting Requirement for Domestic Businesses Contracting with Non-Domestic Businesses

1. In accordance with Article 11.4 of The Law, any resident person who will do business or conduct projects or programs in Republic of Kosovo, through a non-resident person shall be required to provide an information statement to TAK prior to the non-resident person starting any activity in Republic of Kosovo. The information statement (report) must include the name and address of the non-resident person, the foreign taxpayer identification number of the non-resident person, the nature of the work to be performed by the non-resident person, the length of time the non-resident person will be in Kosovo, the amount of compensation to be earned by the non-resident for the work to be performed, and any other information considered important.
2. The report must be submitted to Taxpayer Education Department, at the TAK headquarters. A copy of any written contract must be attached to report (see Annex 1, Example 2,3 and 4). The submission must be received at least 10 days before the non-resident person is scheduled to start work in Kosovo. If the date which is 10 days before the non-resident person is scheduled to start work in Kosovo is a weekend or holiday, the report must be received the last

- workday before the weekend or holiday.
3. The report must be submitted with respect to any non-resident person engaging in activity, or expected to engage in activity, in Kosovo for a period of more than two days during the calendar year. If the activity contracted is a continuing contract over a period of more than one year, only one report is required, which clearly reflects the length of time the activity is expected to continue.

Section 13

Changes in Registration Information and Business Form

1. Any change in taxpayer registration information must be submitted to the tax administration at least 15 business days before the effective date of the change. Some changes in registration information will require that TAK issue a new fiscal number. Changes in registration information must be on the Taxpayer Fiscal Number Application Form with the box checked to indicate that is being submitted to change registration information. All changes must be sent or personally taken to the TAK regional office responsible for the tax affairs of the taxpayer.
2. Changes in registration information required to be submitted to TAK include:
 - 2.1. Change in name of business;
 - 2.2. Change in business address or addition of new business location;
 - 2.3. Change in business ownership (legal entities), which does not change the legal business form;
 - 2.4. Any change in form of business (Personal Business Enterprise to LLC; LLC to Joint Stock Company; General Partnership to Limited Partnership; partnership to corporation; any legal entity to Personal Business Enterprise; and any other similar change in business form);
 - 2.5. Any merger of one business organization with another
 - 2.6. Any change in shareholders that have a 10% or greater interest in a legal entity
 - 2.7. Any change in either general partners or limited partners
 - 2.8. Any change in registered office of the business
 - 2.9. Any change in the name or address of contact person for the business
 - 2.10. Any change in the name or address of responsible persons of the business
 - 2.11. Any agreement providing for cooperation between or among two or more business organizations
3. Any change in form of business (Personal Business Enterprise to LLC; LLC to Joint Stock Company; General Partnership to Limited Partnership; partnership to corporation; any legal entity to Personal Business Enterprise; and any other similar change in business form) will result in issuance of a new fiscal number to the business. When a business proposes to change its form of ownership, the new business must apply for a new fiscal number under the procedures described in Section 1 of this sub-legal act. The old business must request de-registration in accordance with the procedures described in Section 7 of this Administrative Instruction. If the new business will be a VAT taxpayer, it

must also register to become a VAT taxpayer and obtain a new VAT Certificate (see **Annex 1, example 5, 6 and 7**).

4. Any agreement between two or more business organizations for engaging in joint economic activity is the equivalent of establishing a new business for purposes of TAK. Therefore, any consortium, grouping of persons, association of members, partnership, etc. must apply for, and receive, a fiscal number from TAK as provided in Section 4, even though the individual business organizations may already be registered for tax purposes. If the joint economic activity will result in liability to VAT, the joint activity must also register for VAT with TAK.
5. At the time of a merger of one business organization with another, the affected businesses must determine which business will be the one under which subsequent business activity will be conducted. The business under which subsequent business activity will be conducted will continue to use its fiscal number. The business which will not continue must request de-registration in accordance with Section 7 of this Administrative Instruction. Any reorganization, including mergers, must also comply with the requirements for reorganization established in the applicable Law on Corporate Income Tax and Law on Personal Income Tax.

Sections 14 Administrative Measures

1. Any person who performs an economic activity without being provided with a Fiscal Number as defined in section 4 of this Administrative Instruction, shall be liable to an administrative penalty in amount up to 500 € as provided in article 42 of the Law no. 2004/48 on Tax Administration and Procedures, as amended by Law no.03/L-071.
2. If a person (individual) or business organization (other than individual) engages in business without first obtaining a fiscal number, that person (individual) or business organization (other than individual) will be deemed to be operating an unregistered individual business enterprise, unregistered business organization or Limited Liability Company or general partnership. Such enterprises shall be liable to all tax liabilities arising from applicable tax legislation, and applicable penalties. Such unregistered enterprises will be deemed to have met the requirements for VAT registration.
3. TAK will publish a list of de-registered taxpayers and taxpayers which have been placed in the register of inactive taxpayers provided in section 7 and paragraph 1 and 6 of section 8 of this Administrative Instruction.
4. Placing a taxpayer in a register of inactive taxpayers by TAK, does not relieve the taxpayer of the obligation to pay any tax debt that may be owed. Taxpayers placed in the register of inactive taxpayers may be returned to TAK database of active taxpayers if TAK has information indicating that the taxpayer is active. If a taxpayer is returned to the database of active taxpayers, TAK must publish that fact so that other businesses will be aware that transactions with that taxpayer are now recognized.

5. Upon placing a taxpayer in the register of inactive taxpayers, TAK will notify the BRA of that action and the reasons for taking the action. The notification must include the taxpayer name and address; business registration number; taxpayer fiscal number; and a statement that TAK has placed the taxpayer in the register of inactive taxpayers.
6. If the taxpayer is subsequently returned to the database of active taxpayers, TAK will notify the BRA that the business is again active. Such notification must include the taxpayer name and address; business registration number; TAK fiscal number; and a statement that TAK has placed the taxpayer back in the database of active taxpayers.
7. In accordance with Article 20A of The Law TAK is authorized to publicize the names of those businesses that were not issued fiscal numbers per Section 6 of this Administrative Instruction, those who have been de-registered per Section 7 or whose fiscal numbers have been cancelled under section 9 of this Administrative Instruction. TAK will request publication of those names within 5 working days after the decision has been made to not issue a fiscal number or cancel an existing fiscal number. Publication must be made in the official languages of the Republic of Kosovo in at least two newspapers of general circulation. In addition TAK will publish all names of businesses that were not issued a fiscal number or whose fiscal numbers have been cancelled on its website.
8. Information to be published per paragraph 3, 6, and 7 of this section, will include:
 - 8.1. name and address of business
 - 8.2. business registration number of business
 - 8.3. fiscal number (for those businesses whose number is being cancelled)
 - 8.4. VAT Certificate number, if applicable
 - 8.5. Statement that TAK will not recognize any expense transactions, including VAT is applicable, with published businesses.
 - 8.6. effective date from which any transaction for expenses shall not be recognized
 - 8.7. Effective date from which any transaction for expenses shall be recognized (for those businesses being reinstated).
9. If TAK has cancelled or withdrawn a VAT Certificate under section 10 of this Administrative Instruction, it shall publish those taxpayers whose VAT Certificate has been withdrawn or cancelled as described in paragraphs 7 and 8 of this section.
10. If later TAK re-instates the VAT Certificate it will make a necessary publication for re-instatement. Regional Manager must ensure that TAK web site and database for public search are updated to reflect that taxpayer is an authorized VAT payer.
11. TAK will publish all taxpayers who returned back their VAT Certificates because they are no longer taxable persons because their turnover has fallen below the threshold at which a person becomes a taxable person and is required to register for VAT.
12. After the publication provided in paragraphs 3, 7 and 9 of this section, the

transactions with published taxpayers shall not be recognized for expense deduction purposes on an income tax declaration or for input credit on the VAT declaration.

13. If the fiscal representative, acting on behalf of the non-resident person, fails to pay any tax due to the Republic of Kosovo that has accrued for any tax period during which he was acting as fiscal representative, TAK shall issue an assessment in the name of the fiscal representative as referred to in subparagraph 8 of section 11 of this Administrative Instruction, and as provided in Article 20 of The Law. TAK shall collect such an assessment in the same manner as any tax according to the provisions of The Law.

Section 15

Forms

The Director General shall issue such forms as required by, and referred to in, this of this Administrative Instruction, including necessary instructions for their completion and submission.

Section 16

Entry into Force

This Administrative Instruction shall enter into force on the First day of August 2009

Ahmet Shala

Minister of Ministry of Economy and Finance

Date: 28/July/2009

Annex 1

Example 1:

Geosearch Austria, Arben Krasniqi Fiscal Representative

c/o Arben Krasniqi

Agim Ramadani, 42

Pristine

This will make him different from his own registration

Mr. Arben Krasniqi

Agim Ramadani, 42

Pristine

Example 2:

Kosovo Company A engages Macedonia LLC to maintain its computer network. Under the terms of the contract, representatives of Macedonia LLC are expected to visit Kosovo at least once every three months (or four times during the calendar year). The contract is for a period of three years, beginning on 1 January 2010. Kosovo Company A must submit a report as described in 8.1 to the tax administration by 22 December 2009. If 22 December is a weekend or holiday, the report must be submitted the last workday before the weekend or holiday. Since the contract results in a continuing activity, Kosovo Company A must submit only the one report to be received by the tax administration on or before 22 December 2009.

Example 3:

Kosovo Company B engages Turkey Company C to assist with a construction contract, expected to last 3 months. The contract is expected to begin on 1 April 2009 and end on 30 June 2009. Following the end of the contract, Kosovo Company B engages Turkey Company C to assist with another construction project beginning on 1 January 2010 for a period of 4 months. Kosovo Company B must submit a report as described in 8.1 to be received by TAK by 22 March 2009 with respect to the first contract. Since the contract is not a continuing contract, Kosovo Company B must submit a report with respect to the second contract to be received by TAK by 22 December 2009.

Example 4:

Kosovo Company B engages an individual from Montenegro to correct a one-

time computer problem. The work requires that the individual travel to Kosovo and work for two days. Since the work is expected to last only two days, no report is required.

Example 5:

Company A, a Personal Business Enterprise, determines that it wants to change its form of business to a Limited Liability Company, Company B, LLC. Company B, LLC must apply for a fiscal number in accordance with the provisions of Section 1 of this sub-legal act. Company A, must apply for de-registration in accordance with Section 4 of this sub-legal act. If Company A has any outstanding tax debts or has not submitted all required declarations, it will not be de-registered, but will be placed in the register of inactive taxpayers per Section 3.4 of this sub-legal act. The tax administration will continue to pursue collection of the tax debt and submission of any outstanding declarations from the individual that owned the personal business enterprise. If Company A is a VAT taxpayer, it must surrender its VAT Certificate to the tax administration, as provided in Section 6.11 of this sub-legal act and applicable legislation on Value-Added Tax. If Company B is going to be a VAT taxpayer, it must register for VAT in accordance with Section 6 of this sub-legal act and applicable legislation on Value-Added Tax. The owner of Company A will report the profits of Company A on his personal income tax return for that portion of the year in which the business operated as a personal business enterprise. As an officer of Company B LLC, the individual will receive compensation from the LLC in the form of wages subject to withholding. Since the individual will have income from both the personal business enterprise and wage withholding, both sources of income will be reported on his personal income tax return for that year. If, in subsequent years, the individual has only wage income from Company B LLC, he will not be required to submit an annual personal income tax return.

Example 6:

Company X is a LLC and passes a resolution to change its name to Company Y, LLC. Since the name change does not change the business form, Company Y does not need a new fiscal number, but is required to submit a name change to the tax administration per Section 9.1 of this sub-legal act.

Example 7:

Kosovo Partners is a General Partnership consisting of three general partners. The general partners have agreed to change their business form to that of a Limited Partnership, Kosovo Partners LLP, a Limited Partnership. Since this is a change in the business form, Kosovo Partners must request de-registration and Kosovo Partners LLP must apply for a new fiscal number. If Kosovo Partners is a VAT taxpayer, it must surrender its VAT Certificate to the TAK regional office responsible for its tax affairs. If Kosovo Partners LLP will be a VAT taxpayer, it must register for VAT with the TAK regional office responsible for its tax affairs.



ADMINISTRATIVE INSTRUCTION No.12/2009 -
AMENDMENT AND SUPPLEMENT OF THE ADMINISTRATIVE
INSTRUCTION NO. 06/2009
ON THE USE OF FISCAL ELECTRONIC DEVICES



ADMINISTRATIVE INSTRUCTION No.12/2009

Ministry of Economy and Finance

Based on Article 12 paragraph 6 and Article 62, Paragraph 2 of the Law No. 2004/48 dated 27 September 2004, *“On Tax Administration and Procedures”* as amended by the Law No. 03/L-071 dated 4 December 2008, *“On Amendment and Supplement of the Law No. 2004/48 on “Tax Administration and Procedures”*, By taking into account the Decision of the Government of Republic of Kosovo No.02/56, dated 18.02.2009, *“On the Implementation of Fiscal Cash Registers throughout Kosovo”*,

The Minister of Economy and Finance, hereby issues this:

AMENDMENT AND SUPPLEMENT OF THE ADMINISTRATIVE INSTRUCTION NO. 06/2009 ON THE USE OF FISCAL ELECTRONIC DEVICES

Chapter I Purpose and Scope

Article 1

Purpose

With this sub-legal act are determined rules for selection, installation and use of fiscal electronic devices during the trade activity in the Republic of Kosovo.

Article 2

Scope

1. The scope of this Administrative Instruction includes technical specifications of fiscal electronic devices, rules pertaining their use and maintenance during the supply by authorized persons, as well as manner of connecting the fiscal electronic devices with the TAK, for obtaining fiscal data from authorized persons.
2. For purposes of this sub-legal act, the following abbreviations shall have this meaning:
 - 2.1. “MEF”, means the Ministry of Economy and Finance;
 - 2.2. “TAK”, means the Tax Administration of Kosovo;
 - 2.3. “FCR”, means Fiscal Cash Registers;
 - 2.4. “FPRN”, Fiscal Printers;
 - 2.5. “POS”, means any electronic Point Of Sale;
 - 2.6. “TT”, means Tax Terminal;
 - 2.7. “TCFED”, means Tax Calculated

Fiscal Electronic Device; TFCED have to be equipped with an external or built-in TAX Terminal (TT). The purpose of this terminal is to transfer the reports from the fiscal memory to a server of Tax Administration through Internet by using the GPRS communication system of the mobile phone operators;

1. “POS”, means computerized fiscal system Points Of Sale;
2. “FED”, shall have only the meaning of Fiscal Cash Registers (FCR) and Fiscal Printers (FPRN). A FED includes fiscal memory, working daily memory, control processor unit and firmware (software version), real-time clock, printer mechanism, as well as other modules like displays, keyboards, interfaces (operational systems) for transmission of entry and exit data and others if required. FED’s technical and functional requirements are defined in a special document published by TAK;
3. “Commission”, means a body established by the Minister of Economy and Finance tasked to review and approve such requests;
4. “Fiscal data network”, means the communication network linking FED and TAK, pertaining transmission of fiscal data.

Article 3

Unaltered preservation in use

1. All persons who make supplies of goods or perform supplies of services at premises, units or locations accessible for public, in retail trade or wholesale trade where no invoice paid by bank transfer. are obligated to use FED, FCRs or FPRNs and other obligatory equipment as described in this sub-legal act.
2. It is further mandatory to print out and to issue a fiscal receipt to the customer at the moment that the supplies are recorded in the FED.
3. No change in FED use can be completed without the prior approval of the Tax Administration of Kosovo.
4. TAK General Director of TAK, shall issue a public ruling describing the dates by which affected businesses must install and begin using authorized FED’s.

Chapter II

Fiscal equipment

Article 4

General description of the FED

1. The implementation of FED’s includes electronic cash registers (ECRs) and Electronic Point of Sale (POS) systems, connected equipment, data transmitting equipment and systems including:
 - 1.1. Fiscal Cash Registers (non-portable “stand-alone” type and portable standalone type), and Electronic Point of Sale systems for registering and storing electronic fiscal data in accordance with the decision of the TAK General Director;

- 1.2. A fiscal cash register will have an inviolable fiscal memory, along with a working memory;
- 1.3. The data to be registered and stored in the memories, working memories or the fiscal memory must relate to the goods sold and the services rendered to the clients, allowing the establishment of fiscal reports in as is required in the public ruling.
2. A fiscal printer, which is a printer with a fiscal memory, is an inherent part of the fiscal cash register, or as a system component;
 - 2.1. PC based POS;
 - 2.2. Special electronics systems for point of sales as liquid fuel (oil, gas) station, etc.
3. Fiscal Electronic Signature Device (FESD) and any other fiscal device approved by the Commission to be established per Article 11 of this sub legal act, subject to the agreement of TAK. FED has a special Multilanguage status parameter. The parameter must have 3 states. According this states FED has to work in Albanian, English and Serbian languages.
4. There will be four types of fiscal systems which are classified as follows:
 - 4.1. portable “*Stand Alone*” or *independent* fiscal cash registers;
 - 4.2. non-portable “*Stand Alone*” fiscal cash registers;
 - 4.3. fiscal Point of Sale Systems with Fiscal Printers as receipt printers;
 - 4.4. fiscal Electronic Signature Device (FESD). Only the first three which are defined in Article 5 and Article 6, are authorized to operate in Kosovo.

Article 5

Portable and Non- portable “*stand alone*” fiscal cash registers

1. Portable “*stand alone*” FCR must have suitable dimensions and to have incorporated rechargeable battery which permit to be printed at least 10 000 lines without recharging the battery. Such FCR is not obliged to have a customer display.
2. Non-portable “*Stand Alone*” fiscal cash registers must have customer display, interface to control a cash drawer and at least one interface for connection a barcode scanner.
3. Portable “*stand Alone*” fiscal cash registers and his fiscal cash registers, must have incorporated the TT or interface for connection and use of external TT.
4. Each FCR must have a unique serial number registered in TAK.
5. The cash registers may also be connected directly or through a network to a computer. No computer’s software is allowed to change the data in the fiscal memory.

Article 6

Fiscal Point of Sale Systems with Fiscal Printer as receipt printer

1. Fiscal Systems in Sale Point, have to use like receipt printer only a Fiscal Printer. In such system the FPRN must be connected to control unit. It is

typical and more flexible the control unit to be a PC with run by a software program.

2. Each FPRN in the system must have a serial number, registered in TAK.
3. POS systems are different, functional and technical specifications will impose the same obligations and conditions as those imposed on the users of the fiscal cash registers, but will not mandate the manner in which those obligations are to be fulfilled.

Chapter III **FED's Software and Hardware**

Article 7 **Built-in software and hardware**

1. The built-in hardware includes the microprocessor or microcontroller and other components. The Built-in software, also called "*firmware*", acts as the fiscal data management system and also as application control program.
2. The hardware and software used by the user of the FED, is able to transfer the fiscal data of the user in the required format through TT to the Server of TAK as to allow further processing for tax purposes.
3. The installation of any FED, by an authorized person, is done in such a way that changes cannot be made to the original authorized firmware and hardware. Once the hardware and software have been installed any modifications must be done through an authorized person, approved by the Commission.

Article 8 **External application software included in Fiscal POS Systems**

1. External application software included in Fiscal POS Systems supports the rest of the data management system functions (accounting, etc).
2. In all cases in which installed application software is related with the contents of fiscal receipts, the authorized person making the installation, along with the user, must provide written confirmation to the tax administration that the software functions properly in accordance with specifications and data security requirements. The confirmation, which must be made before the FED is placed into operation, should attest that the software which generates the fiscal receipt fully operates in accordance with the legal tax requirements on bookkeeping and notes, with the requirements of this sub-legal act, with the technical and functional specifications of the TAK General Director, and does not violate in any way the integrity of the FED financial data.
3. The written confirmation, which attests the proper functioning of the software, must include:
 - 3.1. The full details on the manufacturer of the application software;

- 3.2. The exact distribution name and the current version number of this software.
- 3.3. A copy of a demo version of the specific software, saved in an appropriate magnetic or video format.
- 3.4. Full data on the software's requirements and operating conditions in a computer.
- 3.5. The operation of a Fiscal Electronic Device with an interconnected system using unauthorized application software for the issue of fiscal receipts is strictly forbidden and is subject to the implementation of penalties as referred to in the tax legislation;
- 3.6. Functional and technical specifications of the softwares will be issued by the TAK General Director.

Chapter IV

Transfer of Fiscal Data from the FEDto TAK

Article 9

Communication network

1. A communication network shall be established between FED's and the TAK for the purpose of electronically transmitting fiscal data on a predetermined interval.
2. This communications network, FDN, for communication between FED's and the TAK, must be :
 - 2.1. **Secure:** All connections must operate on a Virtual Private Network (VPN), between the TT and the passive FTP server of TAK, connected to internet. Telecommunication providers are responsible for implementation and maintenance of VPN topology and operation through GPRS technology. They support each TT with data SIM card with dynamic address. The TT must to be configured to work only with one FED.
 - 2.2. **Direct:** Transmission of fiscal data must be direct from the FED through TT to TAK server. The initiative for connection is by operator of the fiscal system. The transferred fiscal data is verified through MD5 check sum. This check sum is printed on a transfer report by FED after FTP server receives transferred data file. The MD5 is included in transferred file to be possible the file to be verified on next steps.
 - 2.3. **Efficient:** No unnecessary routing of traffic, if not determined by TAK, is permitted. Network traffic must be routed in a manner that minimizes cost to taxpayers while meeting all specified requirements.
3. Telecommunication providers must be authorized by TAK to provide service for the FDN.

Article 10

TAK computerized integrated system

The TAK IT system will receive the fiscal data and other periodical data data and other periodical data transmitted from the fiscal memories of the fiscal electronic devices of all taxpayers connected to the transmitted from the fiscal memories of the fiscal electronic devices of all taxpayers connected to the TAK system. The IT system will receive this information in a special electronic file and process it in such a way as to link it automatically to each relevant taxpayer. The frequency of transmitting the data will be included in a ruling or information issued by the TAK General Director.

Chapter V

Procedure for Requesting Authorization for the Use of FEDs, Testing Devices; Data Base of Users and Authorized Dealers

Article 11

Establishment of Commission

1. The Minister of Economy and Finance shall establish within MEF a responsible Commission, in charge of:
 - 1.1. Developing and implementing the procedure for testing and approval of FED's and other related equipment, including responsibility for approving all FED models and types to be authorized for use in the Republic of Kosovo based on review of the model capabilities and functions to determine if they meet the technical and functional requirements established for FED's;
 - 1.2. Reviewing prospective FED sellers of dealers to ensure that they meet criteria developed by the Commission for selling FED's;
 - 1.3. Testing FED Models proposed for use in Kosovo to ensure that they meet (comply with) the technical and functional specifications;
 - 1.4. Developing and implementing the security obligations and means of supervising of the authorized technicians' network with respect to installation and maintenance / repair of FEDs;
 - 1.5. The Minister of Economy and Finance may attribute to the commission any other function which he considers to be necessary for the good functioning of the FED system.
2. The Commission will consist of five members. Two members from TAK, two members from the Ministry of Economy and Finance and one independent technical specialist with well-known expertise in this field (from Government, academy, or private occupations, but not affiliated in any way with FED manufacturers or distributors or any components thereof). The head of the commission will be appointed by the Minister of Economy and Finance.
3. The procedures for applying for authorization to sell, install, or repair FED's, internal procedures and functioning of the Commission will be defined by the

Commission and approved by the Director of TAK in agreement with the Minister of Economy and Finance.

4. Commission's activity shall be carried out under a special regulation, adopted by the Minister of Economy and Finance.

Article 12

Apply for Authorization

1. Every manufacturer or importer or assembler of FED's may request to be an authorized dealer of FED's for one or more specific model at any time prior to selling such FED's in Kosovo.
2. Any request to be an authorized dealer may be submitted at any time, provided that the dealer is not authorized to sell any FED until it has been approved and authorized by the Commission. After the first authorized dealers of FED for first year the commission will not authorize before end of the first 12 months, after that the commission will review any request at least every six months.
3. Installation and service of authorized FED's can be done only by designated employees/technician of the license holder which has sold the FED.
4. The Commission shall have the power to request and to examine any information and data and may request such information as proven experience, solvency, credibility, technical personnel, repair problems, etc.
5. The Commission within 60 days from the date the request and all required information was received whether to grant a license to the requestor, or not.
6. The Commission is authorized to recall and cancel a given license:
 - 6.1. in any case of serious problems faced by users;
 - 6.2. in case that the dealer has violated any provisions of this, or any other sub-legal act issued with respect to FED's;
 - 6.3. if the dealer is delinquent in submitting tax declarations or making timely payment of tax obligations, or,
 - 6.4. in any case of major changes of the conditions under which the license was given.
7. In case of appeal against any negative decision of the Committee, the Independent Review Board is the only body competent to which an appeal can be made. The Independent Review Board may ask for an advisory opinion based on review of facts and expertise in fiscal electronic devices from one independent IT expert.
8. Ordinal – periodical tests: Sampling control may be performed by the Commission or on behalf of the Commission by assigned institutions, laboratories, or other organizations, to ensure that even after the initial approval, fiscal electronic devices and systems will continue to comply and operate reliably after the installation on the sites.
9. The TAK shall have the right to review any FED installation made by any vendor to ensure that it works in accordance with established requirements and specifications. In addition, the tax administration shall have the right to review records of any vendor to ensure that the vendor is complying with all

- requirements established in connection with their authorization to act as a vendor of FED's.
10. The Commission, acting through the Minister of Economy and Finance shall issue an instruction describing the documents and information to be submitted when requesting authorization to sell and install specific FED's. In its instruction, in addition to other requirements the Commission may establish, it must require the following:
 - 10.1. That the license holder guarantees its performance through a bank guarantee of acceptable guarantee. The dealer must provide an indemnity for purchasers in the event that the equipment sold and installed is found to not meet the technical and functional specifications in force at the time of installation;
 - 10.2. That the dealers publish a guide for the tax administration on access to the FED and retrieval of information from the FED to facilitate an audit by the tax administration;
 - 10.3. That the dealer must ensure that telecommunications between the purchaser of the device and the tax administration is through a telecommunications operator authorized by the tax administration;
 - 10.4. That the authorized dealer's agreement with an authorized telecommunication provider contains adequate guarantee for continued telecommunications capability between the purchaser of the device and the tax administration in the event the telecommunications company ceases its operations or decides to discontinue offering the service;
 - 10.5. That the authorized dealer's agreement with the authorized telecommunications company provide for guaranteed replacement or repair of its communication device (modem, etc) within 48 hours after a problem with the device has been reported;
 - 10.6. That the authorized dealer's agreement with the authorized telecommunications provider includes indemnification and replacement in the event that the communication device is found to not meet the technical and functional specifications at the time the device was installed.
 11. After issuance of the public ruling by the General Director of TAK, which defines functional and technical specifications and the Commission's instruction providing the specific information to be submitted with the request for authorization, the Minister of Economy and Finance will issue a Request for Expression of Interest which will invite all prospective sellers of FED's in Kosovo to submit their request for authorization to sell specific models and types of FED's.

Article 13

Issuance of specific license number

Once a model of FED has successfully passed all tests, the Commission will issue and give to the requester a special protected license number for the specific model of equipment. This license will provide evidence to customers that the dealer is

authorized to sell that specific model of equipment and that the model meets all specifications and criteria for use as a FED.

Article 14

Maintenance of Data Regarding Authorized Dealer, FED's installed, and Users

1. An electronic inventory will be kept by TAK of all FED's installed to include:
 - 1.1. identification of the device installed – type of device, serial number;
 - 1.2. date the device was installed and recognized in TAK;
 - 1.3. name address, and Fiscal Number of the user;
 - 1.4. location where the device is installed;
 - 1.5. name of authorized dealer, his address, fiscal number and VAT number of the authorized person;
 - 1.6. license Number issued for that dealer for that particular type of FED;
 - 1.7. data on authorized persons selling and installing FED;
 - 1.8. persons authorized to repair FEDs, including the type of FED which the person is authorized to repair, his name and address, ID card number, personal ID number, and the date of expiration of the authorization;
 - 1.9. license number issued for each specific FED;
2. TAK shall maintain and refresh the database on the electronic inventory.

Chapter VI

Security obligations and authorized installation and repair technicians

Article 15

Authorized Technicians

1. A licensed dealer, must designate those persons who will be authorized to install or repair those FED's which is licensed to sell. Installation of authorized FED's must be done by the designated technician. The license holder may designate persons who are not employees to repair FED's, however, the designation of a nonemployee shall not absolve the dealer from the responsibility of ensuring that repairs are done correctly and in accordance with established procedures.
2. The authorized dealer must submit the names, addresses, and personal identification numbers of those individuals designated as installation or repair technicians to the Commission before those individuals are authorized to install or repair FED's. The authorized dealer must include all necessary company and personal data (including technical qualifications) and a full face passport-sized photo.

3. The Commission will review the data submitted by the authorized dealer and make such inquiries as necessary prior to issuing, or denying, the authorization for the individual to install or repair FED's. The Commission will authorize a person designated by the authorized dealer.
4. Upon approving the person designated as an installation or repair technician, the Commission will request TAK to provide a picture identification card that identifies the individual as an installation technician or repair technician, or both if that is appropriate. The individual will be given a unique identification number that will be cross-referenced to his/her personal identification number in the data base maintained by TAK described in Article 14 of this sub-legal act.
5. The identification card must contain the following information:
 - 5.1. individual's name;
 - 5.2. Unique identification number,
 - 5.3. a statement that the individual is authorized and licensed to install (or repair, or both) designated FED's;
 - 5.4. the identification card must list those FED's that the individual is authorized to install or repair;
 - 5.5. validity term of the identification card.
6. Persons other than authorized dealers may be authorized by the Commission to repair FED's. Any person requesting to be authorized as a repair technician must submit an application to the Commission prior to undertaking any repairs of authorized FED's. The request for authorization must include the applicant's name, address, personal identification number, employment history, technical experience, and a full face passport-sized photo. The individual must attach to their request a certificate issued by the dealer proving his technical capability to repair FEDs, a copy of all diplomas and all certifications received for technical training that demonstrates their technical knowledge of the FED.
7. The Commission will review the application and take a decision. Any disapproval of the application must include a written notice about the reasons for the denial. Applications will be denied only if the application is not complete or the applicant clearly is not fit to be an authorized repair technician. If the applicant is approved as a repair technician, the Commission will follow the procedures in paragraph 4 of this article.
8. Authorized installation and repair technicians must be re-authorized annually. Installation and repair technicians must submit an application for renewal to the Commission at least 45 days before the current authorization expires. The application for renewal must include the same data and certifications required of first-time applicants. Renewals will be approved by the Commission, unless there is evidence that the technician is unfit to be authorized to install or repair FED's.
9. If an authorized installation technician or repair technician stops repairing or installing FED's before the expiration of his/her license, the technician must return the license to the Commission within 30 days after ceasing repair or installation activity.

Article 16

Secured Access to the Inside of the FED

1. Access to the inside of the FED must be protected by a special screw connecting the upper part of the FED with the lower part. This screw is fitted in a visible part of the cover of the FED so that access to the inside of the FED is impossible without the removal of the protective screw.
2. A lead seal must be used for the sealing of the screw which does not tolerate scrapings and it is carried out in such a manner to make impossible to remove it without destroying it.
3. If an authorized technician or dealer discovers that a lead seal has been broken on a FED, the technician shall immediately contact the designated TAK employee and not proceed with any repairs until authorized to do so by the tax administration.
4. If a TAK employee discovers that a seal is broken, the employee must immediately contact the designated TAK employee and disconnect the FED from the power supply so that it cannot be used until it has been examined and determined to be functioning properly.

Article 17

Authorized technicians – Access control code

1. Opening and re-sealing of an FED can be carried out only by a technician authorized by the Commission in accordance with Article 15 of this sublegal act.
2. The authorized technician's access to the FED must be controlled through the Fiscal Electronic Device special software program memory using a special algorithm – access code (password).

Article 18

Installation, Repairing, Maintenance and Service Booklet

1. Every FED must be accompanied by an *“Installation, Repairing, Maintenance and Service Booklet”*, given by its provider.
2. The owner of the FED has the obligation to keep the booklet and to present it in every case to TAK.
3. Prior to installation of a FED, the authorized dealer must advise TAK of the purchaser of the FED, the fiscal number of the purchaser, the serial number of the FED to be installed, the type of FED to be installed, and the expected date of installation. After installation, the authorized dealer must provide TAK with a copy of the sales invoice and a certification from the installing technician that the FED has been installed, that it is functioning properly, and the date of installation. During installation, the technician must conduct a communication

- test to ensure that it is capable of establishing a connection and communicating with the TAK IT system.
4. After repairing a FED that has malfunctioned, the repair technician must submit a report to TAK describing the malfunction, the date and time the malfunction occurred, and the date and time the FED was placed back in service.
 5. The user of the FED must request an annual check and maintenance of the FED by a technician employed by the authorized dealer. A copy of the report must be submitted to the Commission.
 6. After the installation, the repair of a malfunction, or annual maintenance, the authorized technician must fill in the details of the malfunction in the booklet and must write his/her credentials as they are displayed on his/her identification card together with the date and the time of beginning and termination of the installation or repairing process.
 7. Before leaving the premises following a repair, installation, or maintenance, the technician must verify that the FED is in service and operating properly.
 8. TAK shall have the right to review any FED repair or maintenance made by any authorized technician to ensure that repairs and maintenance are made in accordance with established requirements and specifications. In addition, the tax administration shall have the right to review records of any repair or maintenance provider to ensure that the maintenance or repair provider is complying with all requirements established in connection with their authorization to act as a repair technician of FED's.

Article 19

Use of Tax Vouchers

In case of a temporary FED malfunction, users are obligated to issue a written tax voucher for each sale made. A note book will be supplied by TAK which will contain serial numbers. A manual record will be made of all sales invoices issued as a result of FED malfunction. After the repair of FEDs, the user must immediately place it back in service. Further details regarding tax vouchers will be issued by TAK.

Chapter VII

Modes and Reports to be produced by the Fiscal Electronic Devices Systems

Article 20

The Reading Mode (X)

Every Fiscal System must allow reading and printing out of the data registered in the fiscal memory through the keyboard for a variety of statistical reports, which are for statistical purposes only, not for tax purposes. The specifications for the Reading Regime will be published in a public ruling issued by the General Director of TAK.

Article 21

The Closure Mode (Z)

1. Each Fiscal System must comply with specifications published in a public ruling by the General Director of TAK, to include:
 - 1.1. Making the fiscal closure of the daily turnover, printing out of the Daily Tax Report, and the data which must be transmitted to the TAK;
 - 1.2. Allow the reading of the content of the fiscal memory through periodical tax reports in conformity with published specifications;
 - 1.3. provide the conditions for performing verifications with respect of each daily tax report for the purposes of the control of accurate functioning of the fiscal memory;
 - 1.4. generate daily and other periodical tax reports which are characterized by the title of the report associated with the sign (Z) and must contain at the end of the receipt the fiscal logo and denomination "TAX REPORT"

Article 22

Programming Mode (P)

1. Each Fiscal Electronic Device System must, among other things:
 - 1.1. allow registration in the fiscal memory of specified Taxpayer's data, which have to appear on the tax receipt;
 - 1.2. allow programming of not less than five (5) tax rates. The tax rates are written in fiscal memory. This is allowed at the moment of the installation or after the closure of the daily tax report and the transmission of the Z data to the Tax Administration. The possibility must exist to display the different tax rates lettered from A to E. The letter A means the exempt tax rate, whereas letters B-E the different percentages of the tax rates provided by law. The change of a tax rate can happen only after the daily tax report is finalized and the related data transmitted into fiscal memory. The changes have to be made in the fiscal memory not less than five (5) times. The change of fiscal rate is made by serviceman according the special manual for the change of the tax rates.

Chapter VIII

Miscellaneous

Article 23

Fines and Penalties

1. Sanctions on basis of tax legislation:
 - 1.1. The failure to file an information or who files an inaccurate or incomplete statement including in particular the application information

for obtaining use permission with respect of the operation of any Fiscal Systems from the Committee as defined in Chapter 6 of this sub-legal act, shall be subject to the sanctions defined in Paragraph 1 of Article 46 of the Law No. 2004/48 as amended by the Law No.03/L-071 “*On Amendments and supplements to the Law No. 2004/48 on Tax Administration and Procedures*”;

- 1.2. the failure to create or retain records in paper form or in electronic form, in particular the software and hardware programs and descriptions of any used Fiscal Electronic Device as used on basis of this Sub-legal act shall be subject to the sanctions defined in paragraph 2 of article 46 of the law N0. 2004/48 mentioned under Paragraph 1 of this article;
 - 1.3. the procedural rules as referred to in Paragraph 4 of Article 46 of the Law No. 2004/48 referred to in paragraph 1.1 of this Article, establishing the time within which transactions should be entered into the books, including the electronic records and journals to be kept or to be communicated to TAK on the basis of this Sub-legal act, will be applicable;
 - 1.4. the failure to provide access to books and records including electronic records, programs and technical descriptions is subject to the sanctions as referred to in paragraph 5 of article 46 of the Law No. 2004/48;
 - 1.5. loss of diary or the failure to provide it upon request of TAK employee or repair authorized technician responding to the repair request;
 - 1.6. breach of any seal by an unauthorized person shall face the business with a penalty and eventual prosecution;
 - 1.7. any FED user or authorized dealer, who allows an unauthorized person to install or repair a FED, shall be a subject of administrative measures, even loss of licence.
2. Any other violation carried out by failing to meet the tax or fiscal obligations, shall be punished in accordance with the applicable law in the Republic of Kosovo.

Article 33

Entry into Force

This administrative instruction shall enter into force on the date 14/07/2009.

ADMINISTRATIVE INSTRUCTION No. 16/2009 -

ON IMPLEMENTATION OF LAW NUMBER 2004/48
ON TAX ADMINISTRATION AND PROCEDURES AS AMENDED
AND SUPPLEMENTED BY LAW NUMBER 03/L-071,
ON AMENDMENTS AND SUPPLEMENTS TO LAW 2004/48
ON "TAX ADMINISTRATION AND PROCEDURES"



Ministry of Economy and Finance

Based on Article 62 of Law No. 2004/48, *“On Tax Administration and Procedures,”* as amended and supplemented with Law No. 03/L-071, *“On Amendments and Supplements to the Law No. 2004/48, On Tax Administration and Procedures,”* the Minister of the Ministry of Economy and Finance,

Hereby issues:

ADMINISTRATIVE INSTRUCTION No. 16/ 2009

On Implementation of Law Number 2004/48 on Tax Administration and Procedures as Amended and Supplemented by Law Number 03/L-071, On Amendments and Supplements to Law 2004/48 on “Tax Administration and Procedures”

Section 1 Goal and Scope

The goal of this Administrative Instruction is the establishment of procedures and requirements for implementation of provisions of Law No. 2004/48, *“On Tax Administration and Procedures,”* amended and supplemented with Law No. 03/L-071, *“On Amendments and Supplements to the Law No. 2004/48, On and Procedures,”* (hereafter referred to as The Law).

Chapter I Agreements with Public Enterprises

Section 2 Authorization

1. Sub-paragraph 3.3.h of Article 3 of The Law provides that the Director General of the Tax Administration of Kosovo (hereinafter referred to as TAK) shall have the authorization to enter into agreements with Central and Local POE's to defer the enforced collection of taxes for the purpose of either facilitating the privatization of the POE or to provide for the continued operation of the POE. This authority is granted in recognition of the strategic importance of Central and Local.
2. Under sub-paragraph 3.3.h of Article 3 of The Law, the Director General's authorization to enter into agreements with POE's to defer enforced collection of taxes applies only in the following conditions:
 - 2.1. Facilitating privatization:

- 2.1.1. The POE must be scheduled for privatization within the next 12 months pursuant to the Decision of the Government of the Republic of Kosovo to undertake such action;
- 2.1.2. The POE must submit a written request to the Director General describing:
 - 2.1.2.1. the taxes for which deferral is requested;
 - 2.1.2.2. the legal basis for the request;
 - 2.1.2.3. the privatization process that will be undertaken (including a statement of how deferral of payment of taxes will facilitate the collection of the tax debt) and the dates on which actions are to be taken; and,
 - 2.1.2.4. the proposal for satisfying the tax debt if deferral is granted.
- 2.1.3. Upon receipt of a valid request for deferral of collection action, the Director General shall direct an immediate cessation of any enforced collection action planned or underway while the request is under consideration. In addition, the Director General shall:
 - 2.1.3.1. consider the written request of the POE and make a determination (decision) within 15 days;
 - 2.1.3.2. approve the request, unless there is an over-riding reason for not doing so, which is specified in writing to the POE;
 - 2.1.3.3. register a tax lien in all the applicable locations, if no lien has been previously recorded;
 - 2.1.3.4. enter into an agreement with the POE (whether by MOU or other agreement form) which clearly specifies the conditions of the deferral and the terms by which the tax debt will ultimately be paid. Such agreement must include a requirement that the POE remain current in its submission and payment requirements during the course of the agreement.
- 2.2. Provide the possibility for continued operation of the POE:
 - 2.2.1. The POE must submit a written request to the Director General describing:
 - 2.2.1.1. the taxes for which deferral is requested;
 - 2.2.1.2. the legal basis for the request;
 - 2.2.1.3. the impact on continued operations if the deferral is not granted; and,
 - 2.2.1.4. the proposal for satisfying the tax debt if deferral is granted.
 - 2.2.2. Upon receipt of a valid request for deferral of collection action, the Director General shall direct an immediate cessation of any enforced collection action planned or underway while the request is under consideration. In addition, the Director General shall:
 - 2.2.2.1. consider the written request of the POE and make a determination within 15 days
 - 2.2.2.2. approve the request, unless there is an over-riding reason for not doing so, which is specified in writing to the POE;

- 2.2.2.3. register a tax lien in all the applicable locations, if no lien has been previously recorded;
 - 2.2.2.4. when the liability is related to Value-Added Taxes (VAT), the Director General may relieve certain tax amounts, if the POE is unable to collect the VAT from the amounts invoiced to its customers. In such cases, the Director General may agree to allow the POE to pay VAT only to the extent of its collections. However, the Director General shall enter into such agreements only for a period not exceeding 18 months, at the end of which the POE must implement bad debt provisions (as established in the Law on VAT, but subject to modification for purposes of this section) to reduce its VAT liability in those cases in which customers do not pay their invoices.
 - 2.2.2.5. enter into an agreement with the POE (whether by MOU or other agreement (form) which clearly specifies the conditions of the deferral and the terms by which the tax debt will ultimately be satisfied.
3. The provisions of this section do not have any effect on the rights of any taxpayer to enter into an installment agreement for the payment of their tax debts. POE's are entitled to enter such agreements, in accordance with normal TAK procedures.

Chapter II

Tax Investigation Unit

Section 3

General Provisions

1. Article 6 of The Law authorizes the Director General to establish a Tax Investigation Unit (hereinafter: TIU) for the purpose of investigating possible tax evasion related to other possible criminal failure to meet tax obligations.
2. Included in the authority of the TIU is the authority to investigate those offenses related to criminal offenses against the economy as described in Chapter 22 of the Criminal Code of Kosovo (Law Number L-002) or its successor.
3. TIU is authorized to initiate cases based on:
 - 3.1. its own identification of potential tax crimes,
 - 3.2. information items received, or
 - 3.3. referrals made by other TAK functions.
4. In conducting its investigations, TIU must follow the guidelines established in the Kosovo Criminal Procedures Code. TIU shall have the authority:
 - 4.1. to investigate taxpayers transactions suspected for implication in tax evasion activities,
 - 4.2. to obtain bank records including those of any account or transaction that is applicable to a tax

- 4.3. to interview and interrogate taxpayers or other persons that are deemed to be involved in activities of tax evasion or other criminal violation of tax laws.
- 4.4. to carry out tax assessment and to collect evidences from a third party under article 14 of the Law.
- 4.5. to have direct access to Kosovo Customs Service (hereinafter: KCS) during the assessment- clearance of goods of taxpayers.
- 4.6. to make direct referrals to competent officials for bringing criminal charges.
- 4.7. as well as other duties, assigned by the General Director.

Section 4 **Investigative Mandate**

1. TIU investigates tax crimes related to:
 - 1.1. Legal Source Income is that income derived from legal business activity that is not properly reported. The legal source income program can also relate to improper reporting of expenses. The legal source income will also include possible violations related to withholding taxes and pensions.
 - 1.2. Illegal Source Income is that income derived from illegal activity, such as smuggling, income from un-registered or fictitious business, and other illegal activity that generates un-reported income.
 - 1.3. VAT reporting includes all potential tax crimes related to VAT – conducting economic activity without being registered, overstating input VAT credits, understating output VAT liabilities, issuing false or fictitious invoices, establishing fictitious businesses for VAT purposes, etc.
2. Investigations will be identified, initiated, and conducted in a manner that fosters confidence in the tax system and compliance with the law.
3. Upon concluding that there is probable cause to believe a tax-related crime has been committed, the investigating officer must prepare a written report of findings which describes:
 - 3.1. Justification and Ground for initiating the investigation;
 - 3.2. Legal grounds, which certifies that there was conducted a tax-related crime;
 - 3.3. Facts and legal arguments for penal prosecution of that tax-related crime.
4. The written report should be approved by the Manager of TIU and submitted to the Legal Office of TAK for review and preparation of the documents to be presented to the prosecutor.

Section 5 **Coordination in Investigations**

TIU shall conduct its investigations in coordination with a prosecutor assigned to the investigation per the Criminal Procedures Code of Kosovo.

Section 6

Duties and procedures of TIU

The General Director may establish an Internal Instruction prescribing the duties, and procedures of the TIU.

Chapter III

Creation and Maintenance of Records

Section 7

Requirement for books and records

1. Paragraph 1 of Article 12 of The Law requires a person who is liable to pay or withhold tax to create or maintain records of account that are compatible with tax legislation. Books and records may be in written or electronic form sufficient to allow determination of liability to pay or withhold tax. Records of account are records which are sufficient to show and explain a business's transactions and to disclose (with reasonable accuracy) its financial position at any time. The record of accounts must enable the business to prepare accounts that comply with the requirements of law.
2. The minimum books and records that must be maintained by businesses with annual gross turnover of €50,000 or less are:
 - 2.1. Purchase book in which all purchases and returns must be recorded;
 - 2.2. Sales book in which all sales and returns must be recorded;
 - 2.3. Cash receipts journal that relates to the sales book and purchase book such that all cash receipts and expenses are recorded;
 - 2.4. Bank statements, including records of deposits and withdrawals.
 - 2.5. Copies of supporting documents for the entries in the books/journals must be retained and associated with the applicable book/journal.
 - 2.6. Registration of goods should be made along with other registration of present goods received during the year
 - 2.7. The Employee book in which all employees, if any, shall be registered
 - 2.8. An annual inventory, as described in Section 8 of this Administrative Instruction, must be taken by the business and that record of inventory must be retained, along with any other inventories of goods on hand taken during the course of the year
3. Purchases for which an invoice is issued must be entered in the purchase book within 5 days after receipt of the purchase invoice. Sales for which a sales invoice is issued must be entered in the sales book within 5 days after issuance of the sales invoice. Cash purchases and cash sales must be recorded in the respective books or journals on a daily basis, no later than the day following the day of such purchase or sale. In addition, the beginning number and ending number of each day's sales receipts must be entered in the sales journal
4. 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. At a minimum, such books and records should include:

- 4.1. Purchase journal in which all purchases and returns are recorded;
 - 4.2. Sales journal in which all sales and returns are recorded;
 - 4.3. Cash journal in which all cash receipts and expenses are recorded;
 - 4.4. A capital account, if applicable, that includes the opening balance, additions to capital, expenses to be capitalized, depreciation rate, amount of depreciation, dispositions, and closing balance;
 - 4.5. Bank statements, including records of deposits and withdrawals;
 - 4.6. Financial statements and balance sheets as required for establishing the starting point for computation of the annual income tax declarations;
 - 4.7. Copies of supporting documentation for entries in the respective journals must be associated with applicable journal;
 - 4.8. In addition, an annual inventory must be taken by the business and that record of inventory must be retained, along with any other inventories of goods on hand taken during the course of the year;
 - 4.9. The book of employees in which all employees, if any, shall be registered;
 - 4.10. Copies of contracts and other relevant business correspondence must be retained.
5. Businesses may maintain records of economic activity in electronic form so long as they maintain all required books, journals, and records. Such records must accurately account for the income and expenses of the business applicable to a tax period, including all necessary subsidiary records. Electronic records must be maintained in a format that is retrievable and made available to the TAK upon request. Upon a reasonable request of the TAK, the business must print out those specific electronically-maintained records that are requested by the TAK.
 6. Businesses using fiscal cash registers and other fiscalized electronic devices that issue a receipt or invoice are required to retain a copy of the paper roll from the printer of those devices for a period of 6 years. Rather than retaining the paper rolls or paper copies, businesses may use an electronic journal, which meets the technical specifications as published in a public ruling issued by the Director General of the TAK. At a minimum, all original transaction data must be retrievable; original transaction data must include all transactions from the fiscalized electronic device; data must be secure and not corruptible; data must be in a format that can be read or retrieved in a readable format; and access to the electronic journal must be made available to the TAK upon request in a manner that allows the TAK to read and download the data in a format that can be reviewed and tested by the TAK.
 7. Businesses may use a system of issuing and receiving electronic invoices, so long as those invoices meet the requirements for paper invoicing as established in the Law on VAT. Electronic invoice data must be stored and retained in such a way that allows the business to:
 - 7.1. keep all original invoice data
 - 7.2. prevent data from being corrupted or lost

- 7.3. reproduce original invoices and associated messages at any time in a readable format, particularly upon request of the TAK
 - 7.4. find details of any invoice quickly and easily
 - 7.5. retain any electronic messages sent or received in respect of electronic invoices and reference them to the applicable invoice.
8. If a business has operations at more than one location, each location (branch) shall maintain records of their transactions to indicate goods received (purchase documents or transfer documents from another location) at the branch and sold or transferred from the branch (sales invoices, transfer documents, etc.). Each branch must be identified on the invoices it issues. At least monthly, the branch must transfer data to the headquarters of the business so that all branch transactions can be consolidated into one accounting system for preparation of tax declarations and consolidated financial records. Consolidated records must identify the inputs of each individual branch. In addition to records maintained at the various branches, records must be maintained at warehouses or distribution centers to show goods received at the warehouse or distribution center and transferred to the branches of the business. Centralized issuance of invoices for all branches is permissible so long as the branch to which the transaction belongs is readily identified on the invoice issued from the central location, and necessary records related to the transaction are maintained at the branch. If a business with multiple branches wishes to centralize all bookkeeping and recordkeeping activities in a manner not in accordance with the provisions of this sub-paragraph, the business must request an individual ruling from the TAK for authorization to deviate from these provisions.
9. All required books and records described in paragraphs 1 through 7 of this Section must be retained by the business for a period of six (6) years. Records related to assets that are depreciable over a period of more than six years must be retained for the depreciable life of the asset, plus an additional year. Records related to assets that require the determination of basis for capital gains treatment or determination of gain upon their sale must be retained until such assets are sold or disposed of plus an additional 6 years. Books and records must be maintained in an orderly manner that facilitates their compilation into summary reports as well as facilitating review and examination by the TAK.
10. Special additional requirements for activities related to suppliers of fuel:
- 10.1. In addition to other record-keeping requirements established by this Section, retail dealers in fuel products which are measured by meter at the time of delivery by pump shall record meter readings for each pump installed on each business premise at the beginning of each day. Such retailers must also maintain records of purchases of petrol products which will include the volume of products purchased and the price per unit paid for such purchases.
 - 10.2. In addition to other record-keeping requirements established by this Section, wholesale suppliers, and importers, of petrol products must maintain separate records for each customer to whom a sale or supply of fuel is made. Records must include the volume of products supplied and the unit price charged for each product supplied.

11. Special additional requirements for activities related to long-term contracts: in addition to other record-keeping requirements established in this Section, companies engaged in long-term contracts, such as construction or installation projects lasting 12 successive months or more, must maintain a separate accounting for each project. If multiple contracts exist within the project, there must be separate accounting for each contract within the project. For each contract, there must be a separate accounting for all expenses and inflows (advance payments, fees, etc.).

Section 8

Registration of goods

1. Paragraph 4 of Article 12 of The Law specifies that any taxpayer regardless of annual turnover, in addition to maintaining books and registers as provided by law, is required to conduct an inventory (registration) of goods in stock as of the end of the calendar year. Such registration must be completed on, or before, 10 January of the following year, and available for inspection upon request of the TAK. The record of registration of goods shall include the following indicators:
 - 1.1. name of goods;
 - 1.2. unit of measurement;
 - 1.3. price, and
 - 1.4. value.
2. Registration of goods should be maintained at the cost price.
 - 2.1. The cost price for goods purchased includes
 - 2.1.1. purchase price
 - 2.1.2. transport and treatment of goods while bringing them to the present location in their current condition
 - 2.1.3. customs fees from import and other taxes which are not refundable
 - 2.1.4. other costs attributed directly by obtaining ready-made products, materials and services
 - 2.1.5. trade reductions, discounts and similar items are deducted in order to determine the purchase costs.
 - 2.2. The cost price for goods manufactured or converted includes
 - 2.2.1. costs of raw materials costs directly related to production units, such as manpower costs
 - 2.2.2. systematic allocation of indirect fixed costs and indirect variable costs of production arising during conversion of material into ready-made products
 - 2.2.3. other costs that can be added to costs
3. Taxpayers, who exercise commercial, wholesale, or retail trade activities, must register their goods in stock to be supplied for resale in their existing condition. Such goods must be registered in a book or journal, usually with the title, "Goods in Stock as of 31 December (year)". Additional books can be kept to record various types of goods included in the total stock.
4. Taxpayers who exercise production activities usually have three types of stocks:

- 4.1. Raw material - the purchased goods which shall enter into production and be transformed into final products
- 4.2. Work process– those goods which are in the process of production and transformation into final products.
- 4.3. Final products - the finished products which still are not placed for sale.
5. Ownership of goods to be registered in the registration of stocks. In general, goods should be included in buyer's stocks, and are excluded from the seller's stocks, when the legal right is transferred from the seller to the buyer. However, there can arise several complicating issues, such as:
 - 5.1. Goods during transportation from seller to buyer, subject to local laws and customs, should be included in stocks of the financial entity responsible for transportation costs. In road transport, the term "FOB" is used internationally to indicate the passing of the legal rights. For example, the term "FOB destination" in the seller's invoice indicates that the buyer ensures ownership of goods when they arrive. Thus, any goods during transportation on the date of balance sheet, should be included in the seller's stocks, the opposite occurs when in the invoice denotes "FOB when loading".
 - 5.2. Consignment sale is a method of marketing which is used very often. The owner (consignor) delivers the consignment goods to an agent (consignee) who takes care for the goods and tries to sell them. The legal rights are not conveyed from consignor to consignee so that the consignment goods remain on the balance sheet until sold. When the consignee has sold the goods, the legal rights are conveyed to the purchaser. Goods on consignment must be registered in the stock of goods of the consignor until such time as they are actually sold. At the same time, however, the consignee must also register the goods that have been received for consignment sale, noting that they are goods on consignment including the name, address, and identifying information of the consignee.
 - 5.3. Goods sold to a buyer are not includable in the annual registration of stock, even though such goods may be returned under warranty or right of return if the goods do not meet the purchaser's satisfaction. If such goods are returned, the registration of stock must be adjusted accordingly with a notation that they were returned and the date of return.

6. Stock Balancing

In order to balance the physical inventory with accounting registers of stocks, it is necessary to take into consideration the items which should be included in stock inventory even though those items are not physically located with the goods that are being inventoried.

A working list of stock balance, as shown below, represents situations which are considered during stock balance, helps in the process of balance, and assist in calculating the reliable stock balance.

Section 1.01 Items that should be considered in stocks

Description	Amount
All physical stocks when physical inventory is made	
+ purchased goods which are in transit along with the right which is conveyed to the owner from the moment of transport	
- Sold goods inventoried with physical stocks	
+ sold goods which is in transition along with the right which shall be conveyed to the owner when it is received by the owner	
+ Consignment goods in other locations which are still in ownership of the company which is inventorying the stocks	
- the goods included in physical stocks which belong to the other company but held on consignment	
Total stocks	
Balance of stocks based on books	
Corrections of stocks based on books	

Example of the working list of stock balance

Section 1.02 Items that should be considered in stocks

Section 1.03

Description	Amount
All physical stocks when physical inventory is made	250,000
+ purchased goods which are in transit along with the right which is conveyed to the owner from the moment of transport	
- Sold goods inventoried with physical stocks	5,000
+ sold goods which are transit along with the right which shall be conveyed to the owner when it is received by the owner	
+ Consignment Goods in other locations which are still in ownership of the company which is inventorying the stocks	30,000
- the goods included in physical stocks which belong to	

the other company but are held on consignment	
Total stocks	275,000
Balance of stocks based on books	279,000
Corrections of stocks based on books	(4,000)

Section 9 Origin of Goods

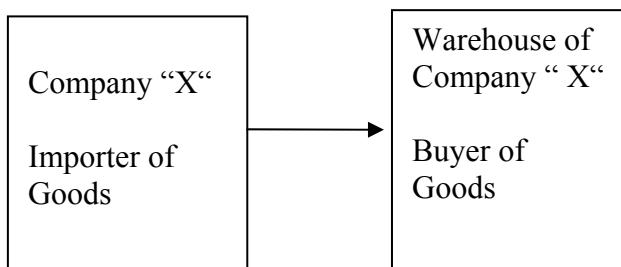
1. Paragraph 5 of Article 12 of The Law provides that goods in possession of a taxpayer be documented as to origin. This means that a taxpayer must be able to provide supporting documentation which justifies the origin of both the goods at the location, or locations, of the taxpayer and goods of the 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:
 - 1.1. Customs Documentation - Single Administrative Document (hereinafter SAD)– Customs documentation includes all documents required by the Customs Service of Kosovo for the importation of goods into Kosovo. A key document for TAK purposes SAD which is acceptable evidence that the goods have passed through the border and have undergone customs procedures. The SAD can be in the name of a person different than the purchaser of the imported item. The SAD may be in the name of the person who purchased and is importing the goods; the SAD may be in the name of a consignee of the imported goods; the SAD may be in the name of the person for whom the goods are ultimately destined. Therefore, the SAD can be used as evidence that the goods have been imported, but, by itself, it is not evidence of ownership of the goods imported. According to Customs legislation, the destination and itinerary of goods imported must be noted in the SAD and a SAD without that information, or other accompanying documentation regarding ownership (such as an invoice) is not acceptable as conclusive proof of the origin or ownership of the imported goods. If the imported goods are located in a place different from that noted on the SAD, or being transported in a direction not compatible with the destination noted on the SAD or other accompanying documentation, such goods may be considered as goods without origin and subjected to the applicable penalties and administrative action. This provision applies only to those goods that have been imported and are being transported to their destination in Kosovo. It does not apply to goods that have been imported and transported to their original destination and are now being distributed in Kosovo. Different evidence of origin (such as invoices or transport documents) must be provided with respect to such goods.

Example:

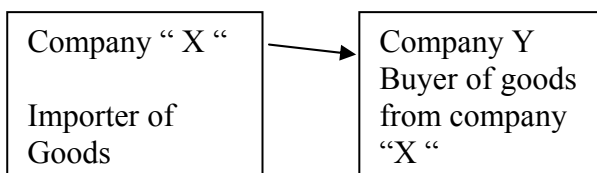
In cases where companies import goods into Kosovo and during domestic transport they are stopped by KPS for documentation, the transporters must show the SAD which proves that the goods have passed through the border and undergone customs procedures. It is important to ascertain the recipient of goods who is mentioned in the SAD. In case when the goods underwent customs procedures in the border point in Mitrovice and the SAD indicates the recipient is Company "X" in Prishtina, the goods must be sent to Prishtina to company "X". There are cases where imported goods can be sold without being placed in the recipient's warehouse, for example, Company "X" sells goods to Company "Y" and the transporter when being checked by the Police Service must present the SAD which proves that the recipient - the Importer is the Company "X" and delivery note (Transportation Document) issued by the Company "X" for the company "Y" which indicates that the goods are sold and transported by the same means of transport.

If the driver of vehicle is stopped in Pejë and at the request of the officer, the driver shows the SAD which specifies that the goods underwent customs procedures at the border point in Mitrovice and the recipient of goods is the Company "X" in Prishtina and the driver has no invoice or delivery note for further sale of goods, this means that the goods are considered to be 'goods without origin' and are subject to penalties and administrative action provided in The Law.

Case when goods are placed in the warehouse importer "X"



Case when goods are sold to the company "Y" without unloading in the warehouse of company "X"



- 1.2. Transportation Document/Delivery note is a support document for goods which are being transported domestically and are destined for a specified

destination – buyer, consignee, storage location, etc. All transportation of goods by road must be accompanied by documents for the transportation of goods (Transportation Documents) which must be in duplicate during the transportation of goods. The transportation document must be numbered and contain the following:

- 1.2.1. Name and address of the transporter
- 1.2.2. Name and address of the recipient of the goods
- 1.2.3. Description of the goods, including the quantity of each good
- 1.2.4. Place where the goods are to be delivered
- 1.2.5. Any other pertinent information

At the point of destination, the addressee must acknowledge receipt of the goods and return one copy to the transporter, retaining the second copy for his records. Upon receipt of an invoice for the goods, if the addressee is the purchaser of the goods, the addressee must attach a copy of the sales invoice to the transportation document. In the case of transporting goods for one's self, the transporter retains both copies of the transport document.

- 1.3. Invoice with VAT;
- 1.4. Invoice without VAT;
- 1.5. Tax certificate/coupons/receipt

The provisions related to invoices of the sub-paragraphs 1.3, 1.4 and 1.5 are given in Section 10 of this Instruction.

- 2. In addition to regular sales at a fixed location, there are also mobile sales or sales to the buyer's location. If an employee of a company sells goods at a buyer's location (door-to-door sales or fixed route), each vehicle used for transport of the goods to be sold at the buyer's location must include an inventory of the goods in the transport vehicle, including a dispatch document which documents the goods leaving the company warehouse and assigned to the transport vehicle, signed by both the dispatcher and the driver of the transport vehicle. Goods destined for a specific location must be accompanied by transport documents as described in Paragraph 1.2 of this section. The driver of the vehicle must be able to account for all goods dispatched, including retaining receipts or invoices for all goods sold or delivered. Transactions concluded through mobile sales shall be treated as sales by a branch of the company and accounted for accordingly. Records must be maintained as provided in section 7 of this Administrative Instruction.
- 3. If the goods are being sold by a distributor for the company, the distributor is not an employee of the company, but is an independent entity. The distributor must maintain records as prescribed in Section 7 of this Administrative Instruction. The distributor must be able to account for all goods in the transportation vehicle from the time of receiving the goods to, and including, the time of disposition. The distributor must be able to produce invoices to account for each good that was in the inventory of the transport vehicle, but is no longer there. As an independent distributor, the distributor must be able to

produce a transport document, which should account for the destination of all items in the transportation vehicle.

4. Any good at the taxpayer's location, or in circulation outside the taxpayer's location, which does not have documentation to verify ownership or destination, shall be considered as a good without origin and subjected to penalties and administrative action as described in The Law, particularly the actions provided in Article 49A of The Law.

Section 10

Invoices and Cash Register Receipts

1. Invoice Requirements for Transactions between Taxable Persons: An invoice with VAT, also known as tax invoice, is required to be issued by all taxpayers who are liable to pay VAT for each transaction in which a supply of goods or services to another taxable person (a person who is registered for VAT, or is required to be registered for VAT) is involved, whether that other taxable person is a business that will pass the service or good to another person or is the final consumer. The invoice should be issued in at least in two authentic copies, one for the seller and one for the customer or purchaser.
 - 1.1. The Tax Invoice should contain the following elements:
 - 1.1.1. A Serial No., which should be a sequential number, enabling the identification of the invoice;
 - 1.1.2. The Day/Month/Year in which the invoice is issued;
 - 1.1.3. The name and address of the seller (being a taxable person for purposes of VAT);
 - 1.1.4. The Fiscal Identification Number issued by the TAK to the seller;
 - 1.1.5. The VAT registration number which is issued by the TAK of Kosovo to the seller;
 - 1.1.6. The full name and address of the seller;
 - 1.1.7. The Fiscal Identification Number issued by the TAK to the customer or purchaser;
 - 1.1.8. The full name and address of the customer or purchaser;
 - 1.1.9. The VAT registration number which is issued by the TAK of Kosovo to the customer or purchaser, even though that customer or purchaser may not be liable for VAT on that supply, such as in the case of an exempt supply;
 - 1.1.10. The quantity and nature of goods supplied (itemized so that the type and quantity of each good is identified); or, the extent and nature of the services supplied. If goods are in transport, the quantities and type of goods in transport should match the quantity and type of goods on the invoice, unless there is documentation that accounts for the difference. If there is no documentation to account for differences in invoices as compared to actual goods in stock (either in transit or at a fixed location), excess goods for which there is no accounting will be considered to be 'goods without origin' as described in Section 9 of this Administrative instruction;

- 1.1.11. The date on which the supply of goods or services was made or completed, or the date of receipt of payment on account, insofar as that date can be determined and differs from the date of issue of the invoice;
- 1.1.12. The unit price of each good or service supplied inclusive of VAT (except for those goods or services exempted from VAT, in which case the unit price will not include VAT); the unit price exclusive of VAT for the goods or services; and the unit price after applying any price reduction or discount not included in the unit price;
- 1.1.13. The VAT rate applied;
- 1.1.14. The amount of VAT – if because of a special arrangement with the Government of Kosovo there is no VAT due on the supply of goods or services, reference to the special arrangement must be noted on the invoice;
- 1.1.15. If the supply of goods or services is an exempt supply in accordance with the provisions of the Law on VAT, the invoice must include reference to the provision of the law that grants the exemption;
- 1.1.16. If a taxable person supplies goods or services where the customer is liable for the payment of VAT, reference to the applicable provision of the Law on VAT or any other reference indicating that the supply is subject to the reverse charge procedure must be noted on the invoice;
- 1.1.17. At a minimum, an invoice must be signed by the seller; if the customer or purchaser is available to sign, that person should also sign the tax invoice.
- 1.2. All information on the invoice must be accurate and correct, so it is important to verify all information prior to issuing the invoice. In practice, there can appear various forms of invoices, but regardless of the form, invoices must contain the above noted elements of invoice, with a particular focus on the: Name of purchaser, Name of seller, Fiscal Identification Numbers, Address of buyer, Address of seller, VAT registration numbers, Description of goods, Amount of the invoice, and the VAT.
- 1.3. A Tax Invoice must be issued before the 15th day of the month following the month in which any of the following occurs (known in the Law on VAT as a chargeable event):
 - 1.3.1. the supply of goods or services to another taxable person takes place
 - 1.3.2. the payment on account is made before the goods or services are supplied
 - 1.3.3. a continuous supply of goods (such as electricity) or service (such as a fixed telephone line) takes place, in which case the continuous supply is considered to take place in monthly intervals
2. Invoice Requirements for Supply by Taxable Person to Non-Taxable Person
 - 2.1. When a taxable person makes a supply of goods or services to a person engaged in economic activity, but is not a taxable person (as described in

- paragraph 1 of this section), the taxable person must issue an invoice. An invoice issued by a taxable person to a person who is neither registered for VAT nor required to be registered for VAT must include at least the following elements:
- 2.1.1. The serial number of the invoice
 - 2.1.2. The Day/Month/Year in which the invoice is issued
 - 2.1.3. The name and address of the seller (being a taxable person for purposes of VAT)
 - 2.1.4. The name and address of the purchaser and the purchaser's Fiscal Identification Number issued by the TAK;
 - 2.1.5. The Fiscal Identification Number issued by the TAK to the seller;
 - 2.1.6. The VAT registration number which is issued by the TAK to the seller;
 - 2.1.7. The full name and address of the seller;
 - 2.1.8. The quantity and nature of goods supplied (itemized so that the type and quantity of each good is identified); or, the extent and nature of the services supplied;
 - 2.1.9. The date on which the supply of goods or services was made or completed, or the date of receipt of payment on account, insofar as that date can be determined and differs from the date of issue of the invoice.
 - 2.1.10. The unit price of each good or service supplied inclusive of VAT (except for those goods or services exempted from VAT, in which case the unit price will not include VAT); the unit price exclusive of VAT for the goods or services; and the unit price after applying any price reduction or discount not included in the unit price;
 - 2.1.11. The VAT rate applied
 - 2.1.12. The amount of VAT – if because of a special arrangement with the Government of Kosovo there is no VAT due on the supply of goods or services, reference to the special arrangement must be noted on the invoice
 - 2.1.13. If the supply of goods or services is an exempt supply in accordance with the provisions of the Law on VAT, the invoice must include reference to the provision of the law that grants the exemption
 - 2.2. A taxable person must issue an invoice to a non-taxable person before the 15th day of the month following the month in which any of the following occurs (known in the Law on VAT as a chargeable event):
 - 2.2.1. the supply of goods or services to another taxable person takes place
 - 2.2.2. the payment on account is made before the goods or services are supplied
 - 2.2.3. a continuous supply of goods (such as electricity) or service (such as a fixed telephone line) takes place, in which case the continuous supply is considered to take place in monthly intervals
 3. Invoice for Transactions from Non-Taxable Persons. An invoice without VAT is issued by businesses that are not liable to VAT (businesses which are neither

registered for VAT, nor required to be registered for VAT). These businesses do not have the right to benefit from VAT or to place VAT on their invoices. An invoice without VAT should also contain the basic elements of an invoice such as:

- 3.1. The name of the purchaser,
- 3.2. name of the seller,
- 3.3. Fiscal Identification Number of the seller,
- 3.4. Address of seller,
- 3.5. Address of purchaser,
- 3.6. Description of goods and Quantity, or extent and nature of services provided,
- 3.7. Unit Price
- 3.8. Total value of goods or services supplied
- 3.9. Other information as may be required by the purchaser
4. Cash Register Receipt. Each person engaged in the retail sale of goods (sales to the final consumer) must enter that transaction in a fiscal cash register, or other acceptable device as described in Administrative Instruction 12/2009 related to fiscal cash registers or fiscal electronic devices. Keeping in mind the requirements to document the origin of goods, a person making a purchase at retail must possess a cash register receipt which will provide documentary evidence of the origin of goods in possession. However, for a purchase at retail to be claimed as an expense on a corporate income tax return (hereinafter: CIT) or personal income tax return (hereinafter: PIT), a cash register receipt must be accompanied by an invoice as described in paragraph 4.1 of this section. A receipt issued by a cash register must include at least the following elements (subsequent technical specifications for fiscal cash registers and fiscal electronic devices may require additional elements in a specific format, in which case a cash register receipt must meet those additional elements to avoid penalties):
 - 4.1. The Header of the receipt:
 - 4.1.1. The name, address and fiscal number of the supplier, plus the VAT registration number if applicable.
 - 4.1.2. Telephone/Mobile Phone number of the supplier
 - 4.1.3. The cash register identification number
 - 4.1.4. The identification on the network, such as exists in a large supermarket
 - 4.1.5. The date and time of supply/receipt issuance
 - 4.1.6. The operator that has served
 - 4.2. The article details of the receipt:
 - 4.2.1. A number indication per article of the goods or services supplied or other article indication as allowed by the TAK
 - 4.2.2. An abbreviated description of each article of goods or services supplied followed by the reference code
 - 4.2.3. The quantity and nature of the goods supplied or the extent and nature of the services rendered multiplied by the unit price
 - 4.2.4. Amount of rebates indicated with minus sign and amount

- 4.2.5. VAT rate with a specific code for each rate and per item
- 4.2.6. The price inclusive of VAT for the items sold having the same quality inclusive of VAT if applicable (thus a total price for items sold of the same quality)
- 4.2.7. The price exclusive of VAT for the items sold of the same quality but without VAT for each item line.
- 4.2.8. The total, exclusive of VAT for the supplies of the transaction per rate to the client.
- 4.2.9. The total of VAT per rate if applicable
- 4.3. The footer of the receipt must contain a fiscal logo that is described in the technical and functional specifications issued in respect of fiscal cash registers/fiscal electronic devices.

Section 11

Transactions over Five Hundred Euros

1. Paragraph 7 of Article 12 of The Law provides that all taxable persons, who make transactions in respect of the supply of goods or services between taxable persons in excess of €500, must make payment in respect of such transactions through a bank transfer.
2. The term “*Taxable Person*” shall mean any person who is, or is required to be, registered for VAT and who, in Kosovo independently carries out any economic activity in a regular or non-regular manner, whatever the purpose or results of that economic activity.
3. For purposes of this Administrative Instruction, a “*Transaction*” shall be considered to be the full price of a supply or contractual obligation. Any payment in respect of a transaction as defined in this Administrative Instruction shall be made by bank transfer irrespective of the amount of the payment.

Example:

Taxable Person “A” purchases a supply of goods for re-sale in his market. The full price of the supplies purchased is €700. Taxable person “A” must use a bank transfer for making payment in respect of this transaction even though he may make two or more payments to complete the payment of the goods.

4. A “*Barter Transaction*”, with a value in excess of €500 conducted as provided in Article 40 of The Law is exempted from the requirement to make bank transfer in respect of the goods or services exchanged; however, if any payment is required in respect of this barter transaction, such payment must be made by bank transfer even though the payment amount may be below €500.

Example:

Taxable Person “B” purchases a vehicle from Taxable Person “C”. The full price of the transaction is €2,000. Taxable Person “B” gives Taxable Person “C” his used vehicle as partial payment for this transaction. Taxable Person “C” gives Taxable Person “B” credit of €1700 for his old vehicle, requiring Taxable Person B to pay an additional €300. Taxable Person B must pay the remaining €300 by bank transfer.

5. If a taxable person fails to make required payments by bank transfer as required by this article, such person shall be subject to penalty in accordance with Article 46 of The Law related to failure to create and retain records.

Chapter IV

Allowable Expenses, Shortage of Goods, Substitute for Returns, indirect methods Collecting Evidence

Section 12

Allowable expenses

1. Per Paragraph 8 of Article 17 of The Law, and as provided in any other relevant tax legislation, the taxpayer is allowed a reduction from gross income, 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. To be allowed, such expenses must be supported by evidence, including, but not limited to the following:
 - 1.1. Invoices
 - 1.2. Contracts
 - 1.3. Customs declarations
 - 1.4. Receipts
 - 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
2. Such documents must be available for inspection upon request by the TAK as provided in Article 13 of the Law.
3. No deduction shall be allowed for any accrued expense related to income which is subject to withholding (wages, dividends, interest, royalties, rents, lottery winnings, etc.) unless it is paid on or before 31 March of the subsequent tax period. Any expense not allowed by this sub-paragraph shall be deductible in

the tax period in which it is actually paid. A withholding obligation is based on the principle that the obligation to withhold applies only when the underlying amount (wages, interest, etc) is actually paid, not when it accrues. Thus, the date that an employer pays wages to his employees is the date on which the withholding obligation arises, irrespective of the payroll period for which the wages were paid. A payment of wages (or other payment subject to withholding) in advance of their due date is a payment of wages for this purpose and is subject to withholding at the time of payment of the advance wages.

4. To be deductible and allowable for tax purposes, an expense made out of Kosovo, must be fully documented by relevant documentation. These expenses must be made exclusively for economic activity in the tax period to which they refer. Such expenses are only allowable in Kosovo if not used for expense deduction purposes in another country. Relevant documentation shall be considered:
 - 4.1. Contracts
 - 4.2. Receipts
 - 4.3. Vouchers
 - 4.4. Documents of payments
 - 4.5. Travel tickets
 - 4.6. Travel orders
 - 4.7. Authorizations, etc.
5. Depending on the expense, there should be the relevant supporting documentation e.g. for business travel expenses abroad of an authorized person there must be:
 - 5.1. the authorization of that person (employee)
 - 5.2. order (permission) to travel,
 - 5.3. travel tickets
 - 5.4. invoices for expenses incurred abroad
 - 5.5. payment documents,
 - 5.6. vouchers for food costs and
 - 5.7. other supporting documents to prove that the business travel expenses are made exclusively for economic activity.
6. To the extent that other relevant tax legislation specifies allowable expenses not described in this section and includes the requirements for recognizing such expenses, the other relevant tax legislation shall govern the recognition of expense by the TAK. If this Administrative Instruction conflicts with other prior Administrative Instructions with respect to allowable expenses described in this chapter, the provisions of this Administrative Instruction shall govern the recognition of expense by the TAK. In the event of uncertainty, the Director General may issue a Public Ruling in accordance with Article 9 of The Law.
7. Article 14 of The Law describes the requirements to be followed by the Director General in collecting information or evidence with respect to a determination of a tax obligation. Among other things, Article 14 requires that persons must provide requested information within 7 days after delivery of a written notice that reasonably describes the information requested.

- 7.1. Paragraph 7 of Article 13 of The Law provides an exception to the rule established in Article 14 with respect to the requirement to provide requested information within 7 days after receipt of a written notice. Paragraph 7 of Article 13 indicates that a person may provide new evidence to the TAK up to the time that the final assessment report is submitted to the taxpayer, if the taxpayer has previously been unable to provide that information due to causes which are beyond the control of the taxpayer. For purposes of this paragraph, the final assessment report is the final written report of proposed adjustments delivered to the taxpayer at the conclusion of an audit, but prior to the entry of the adjustment into the TAK data processing system. Prior to issuing a final assessment report, the TAK must issue a written preliminary report to the taxpayer providing a period of five days in which to respond with additional information and documentation. The only additional documentation that can be provided during this period of five days is that documentation that meets the criteria established in paragraph 7 of Article 13, or documentation not previously requested in writing by the TAK.
- 7.1.1. In those situations in which a taxpayer is unable to timely provide the requested documentation due to circumstances beyond his control, the taxpayer must be able to document reasonable efforts made to respond to the request despite the problems encountered. Causes beyond the control of the taxpayer may include, but are not limited to:
- 7.1.1.1. Illness of the individual responsible for providing the requested documentation, if such illness prevented the responsible individual from going to his normal work location for a period of time which began prior to the receipt of the written request and continued beyond the 7-day period provided in the written request. Such illness must be documented by a certificate from an attending physician, accompanied by copies of invoices for the service provided by the physician. The person from whom the documentation is requested must be able to demonstrate that no other individual could provide the documentation requested;
- 7.1.1.2. Death of a member of the immediate family (spouse, son, daughter, grandson, granddaughter, son-in-law, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, or brother-in-law) of the person responsible for providing the requested documentation, if such death took place within the 7-day period provided in the written request and the taxpayer notified the TAK that the documentation would be delayed and the reasons for the delay. In such cases, the taxpayer and the TAK should agree on an extended time for providing the documentation;
- 7.1.1.3. Fire, Flood, Weather or other natural causes prevented the taxpayer from providing the records within the time provided,

so long as the taxpayer advised the TAK that the requested documentation would be delayed and the reasons for the delay. In such cases, the taxpayer and the TAK should agree on an extended time for providing the documentation.

- 7.1.1.4. The documentation requested was too voluminous to produce within the timeframe provided in the request, even though the taxpayer has made an extraordinary effort to do so. In such cases, the taxpayer must inform the TAK of the causes of the delay and agree to a reasonable period of time within which to provide the documents requested. In this circumstance, the burden is on the taxpayer to provide the records within the agreed extended timeframe.
- 7.1.2. If a person wishes to provide requested documentation in accordance with the provisions of paragraph 7 of Article 13, that person must transmit the requested documentation to the requesting TAK official with a letter which outlines the efforts made to provide the documentation within the timeframe requested. That letter must also describe those causes beyond control which prevented the timely provision of requested documentation to the TAK. Included with the letter must be documentation to support the statement of efforts made, as well as documentation to prove that there were circumstances beyond the person's control which prevented the timely submission of the requested documents or information.
- 7.1.3. As a general rule, the TAK shall accept the taxpayer's additional documentation or information if the taxpayer's request meets the requirements established in 7.1.1 and 7.1.2 of this section.
- 7.2. In making requests for information or documentation, where it intends to apply the provisions of paragraphs 7 and 8 of Article 13 of The Law, the TAK must make such requests in writing. Paragraph 2 of Article 14 of The Law provides that, "where the notice requires the production of documents or other records, such documents or records must be described with reasonable certainty." A general statement requesting "all books and records" does not describe with reasonable certainty the documents or records requested and is not sufficient for the purposes of applying the provisions of paragraphs 7 and 8 of Article 13 of The Law.
- 7.3. In processing a taxpayer's appeal, Article 13.8 of The Law provides that the Appeals Department of the TAK shall not consider any document or information submitted to the TAK, if:
 - 7.3.1. the TAK has issued a written request reasonably describing the requested document or information, and
 - 7.3.2. the requested information is submitted beyond the deadline provided in paragraph 7 of Article 13 of The Law.
 - 7.3.3. In addition to the provisions of this section, taxpayers who fail to timely provide access to books and records are subject to the penalty provided in Article 46.5 of The Law as described in Section 46 of this Administrative Instruction.

Section 13
Destruction of Inventory due to expiration, breakage, Obsolescence, or other failures

1. If a taxpayer who accounts for his income on the real basis (accounting for income and expenses on an annual income declaration) destroys all or part of his inventory due to expiration of the useful life of the inventory item or items, breakage of an inventory item or items, obsolescence, or other failure of an inventory item, such destruction may be considered as an exceptional loss allowable in the relevant tax period under the following conditions:
 - 1.1. T taxpayer notifies the regional manager responsible for that taxpayer's tax account in writing of the intent to destroy said inventory items at least 10 working days in advance of the destruction date. Such written notice must include:
 - 1.1.1. statement of intent to destroy inventory item(s)
 - 1.1.2. statement of reason that destruction of the inventory item(s) is necessary
 - 1.1.3. listing of inventory item(s) to be destroyed with an adequate description of the item(s) that would allow a reasonable person to identify the item(s)
 - 1.1.4. the number of units or volume included in the inventory item(s) to be destroyed
 - 1.1.5. the historical cost price (purchase price) of each inventory item to be destroyed
 - 1.2. Upon request from the TAK, the taxpayer must be able to provide adequate documentation, including:
 - 1.2.1. a copy of all notifications to the TAK that inventory items will be destroyed as required by sub-paragraph 1.1 of this section
 - 1.2.2. a listing of all inventory items destroyed which includes the name of the item, the number (or volume) of inventory items destroyed
 - 1.2.3. evidence of purchase of the inventory items
 - 1.2.4. the purchase price per unit of the inventory items destroyed
 - 1.2.5. inventory method used by the taxpayer
 - 1.2.6. documents of relevant institutions which have verified the destruction of goods, such as municipal sanitary institutions (if applicable) or other documentation to verify the destruction of inventory items, including TAK documentation regarding destruction of goods if a TAK employee was present during the destruction of the goods.
2. If a taxpayer as described in paragraph 1 of this section destroys inventory items because of spoilage of those inventory items (perishable goods such as fruits and vegetables), such destruction may be considered as an exceptional loss allowable in the relevant tax period if the taxpayer provides the following to the TAK upon request:

- 2.1. a listing of inventory item(s) destroyed with an adequate description of the item(s) that would allow a reasonable person to identify the item(s)
 - 2.2. the number of units or volume included in the inventory item(s) to be destroyed
 - 2.3. the historical cost price (purchase price) of each inventory item to be destroyed
 - 2.4. evidence of purchase of the inventory items
 - 2.5. the purchase price per unit of the inventory items destroyed
 - 2.6. documents of relevant institutions which have verified the destruction of goods, such as municipal sanitary institutions (if applicable) or other documentation to verify the destruction of inventory items
3. The amount of extraordinary loss allowed will be limited to the purchase price of the goods destroyed reduced by any amount received as compensation as a result of the destruction (insurance, manufacturer's reimbursement, etc.).
4. Goods for which there is no acceptable documentation to verify the destruction described in this section shall be considered as goods sold and taxed accordingly. Documentation described in this section should be considered acceptable, unless the TAK has documented evidence that some or all of the documentation provided is false.

Section 14

Goods Destroyed or Damaged by Casualty or Lost Due to Theft

1. In the case of goods destroyed or damaged by a casualty, or lost due to theft (stolen), the cost price of the destroyed goods may be recognized as a deductible expense for tax purposes.
2. For purposes of this section, a casualty includes destruction by natural or accidental causes, such as fire, wind, water (including floods), earthquake, civil disturbance, volcanic action, vehicle accident, or other accidents that are verifiable and documented by the applicable public institution.
 - 2.1. When goods have been damaged or destroyed by a casualty, or stolen, the taxpayer may be allowed a deductible expense related to the goods damaged, destroyed or stolen if the taxpayer provides to the TAK upon request the following:
 - 2.1.1. a description of the goods damaged, destroyed, or stolen including the number of units of each type of good or the volume of each type of good
 - 2.1.2. evidence of the purchase of the goods and the price at which the goods were purchased
 - 2.1.3. evidence that the goods for which an expense deduction is claimed were damaged, destroyed, or stolen
 - 2.1.4. the date on which the goods were damaged, destroyed, or stolen
 - 2.1.5. the manner in which the goods were damaged or destroyed, or the event which caused the goods to be damaged or destroyed

- 2.1.6. a statement or report from the applicable competent body that the goods were damaged, destroyed, or stolen – competent bodies include police, fire officials, municipal health officials, insurance adjusters, and other individuals in an official capacity whose duties include investigating reports of casualty or theft.
- 2.1.7. statements of witnesses to the casualty
- 2.1.8. other reasonable evidence as may be required by the TAK
- 2.2. The deductible expense deduction for destroyed or stolen goods is limited to the cost price of the goods destroyed by casualty or lost due to theft, adjusted by any amounts received as salvage value plus any amounts received from insurance on the property destroyed or stolen.
- 2.3. When goods have been damaged by a casualty, the taxpayer may be allowed a deductible expense equal to the difference in value between the cost price of the goods and the amount recoverable through a damaged goods sale. If the goods are insured, the deductible expense will be equal to the difference between the cost price and the amount recovered from a damaged goods sale plus the amount recovered from insurance on the damaged goods.
- 2.4. Goods damaged, destroyed, or stolen in one tax period may be deducted in the period in which the damage, destruction, or loss occurred. The amount of expense deduction will be reduced by any insurance reimbursement and other recovery as described in 2.2 and 2.3 of this section. In the alternative, if an insurance reimbursement is anticipated in the following tax period, the deduction may be delayed until the year in which the loss is reimbursed by insurance, in which case the deductible amount will be the cost price less the insurance reimbursement and any other amounts recovered. If the choice is made to take the deduction in one year and receive the insurance reimbursement in a subsequent year, the deduction is reduced by any amounts recovered with respect to the damaged or destroyed goods in the year the casualty occurred. The full amount of an insurance reimbursement received in a subsequent year must be included in income in the year the insurance reimbursement is received.
- 3. No deduction will be allowed for any damage or destruction which is caused by a deliberate act of the taxpayer or someone acting in behalf of the taxpayer, such as a taxpayer purposefully setting fire to his goods.
- 4. 4. If an insurance reimbursement exceeds the cost price of the goods damaged, destroyed, or stolen, the amount of reimbursement above the cost price shall be considered income to the taxpayer in the year received.

Section 15

Discounted Sales

1. Prior to destroying damaged goods, perishable goods, obsolete goods, it is common practice to offer such goods at a significantly reduced price (discounted sale) which will encourage sale of the items, rather than destruction

of the items. Businesses often offer similar price reductions for seasonal goods. For purposes of this section, a discounted sale is one in which the sales price of the good is reduced by sixty per cent (60%) or more from its original selling price in order to dispose of the good.

2. Discounted sales normally result in a loss to the business as the discounted price is normally less than the cost price. Such losses are allowable in the year incurred, provided that the taxpayer documents the reasons for selling items at a loss and provides evidence of the reasons for doing so to the TAK upon request by the TAK. Any loss incurred is limited to the difference between the purchase price and the price at which the goods are sold, reduced by any insurance reimbursement related to the damaged goods or compensation received in respect of the goods which have become obsolete. The taxpayer must be able to provide documentation which shows the date of purchase and purchase price of the good and the date of sale and reduced sales price of the good.
3. Discounted sales are distinguished from sales in which goods are offered at a reduced price as part of a marketing plan to attract customers to the business or at the suggestion of the manufacturer to sell its products. Sales prices must be documented by the business in order to verify that the goods were actually sold at a reduced price as compared to the normal sales price. Such documentation may include copies of newspaper advertisements, copies of television ads, or other marketing materials, including documentation of the date of sale. Any manufacturer incentives or other incentives received by the business in respect of goods sold at a reduced price must be included in the income of the business.

Section 16

Substitute for Return

1. Article 17 of The Law provides authority to the Director General to assess tax (prepare a substitute for return) in those cases in which the taxpayer has refused or neglected to submit a tax declaration as required by law. A substitute for return procedure can only be initiated after the due date for submitting the declaration has passed, unless it has been determined that the tax is in jeopardy as provided in Article 19 of The Law.
2. Prior to preparing a substitute for return (Declaration), a tax official must have requested, either in writing or orally, that the taxpayer submit the required declaration(s) and establish a specific period of time within which the taxpayer must voluntarily submit the declaration(s).
3. If the taxpayer does not submit the requested declaration(s) within the time period provided, TAK must initiate and conduct an audit in accordance with standard procedures for initiating and conducting audits, including submitting written requests for specific records from the taxpayer.
4. The declaration prepared by TAK will be based on the taxpayer records to the extent that verified records are available. TAK will also use the best

- information available to the TAK, including that obtained from third parties, such as banks, suppliers, customers, etc.
5. If there are insufficient records available on which to base a reasonable estimate of income, the TAK may use such indirect methods as described in Section 17 of this instruction.
 6. In determining the amount of tax to be assessed, the TAK will exercise its best judgment, maximizing the amount of income to the extent reasonable with less regard to determining the expenses. As provided in Section 12 of this instruction, any records not provided by the taxpayer during the course of this audit within the timeframes provided will not be considered in a subsequent appeal by the taxpayer.

Section 17 **Indirect Methods**

1. As provided in paragraph 3 of Article 17 of The Law, when circumstances exist that make determining, a tax liability difficult, due to lack of records, false records, or similar reasons, the TAK may use indirect methods that are relevant for calculating the tax liability of the taxpayer. These methods may be used in cases in which no declaration has been submitted, as well as in cases in which there is doubt as to the correctness of the tax liability declared.
2. Prior to using an indirect method of determining a tax liability, TAK must attempt to determine the correct tax liability using regular direct methods of auditing books and records of the taxpayer.
3. Indirect methods of verification and re-calculation of profits are essential tools for bringing audits to an effective conclusion in the absence of proper books and records. There are a variety of indirect methods which can be used. Some common examples are:
 - 3.1. Source and Application of Funds Method (hereinafter: SAFM; also known as the T-account method)

Description of method

SAFM of reconstructing income to determine the actual tax liability is an analysis of a taxpayer's cash flows and comparison of all known expenditures with all known receipts for the period. Net increases and decreases in assets and liabilities are taken into account along with nondeductible expenditures and nontaxable receipts. The excess of expenditures over the sum of reported and nontaxable income is unreported taxable income.

3.2. Bank Deposits and Cash Expenditures Method (BDCEM)

Description of method

BDCEM computes income by showing what happened to a taxpayer's funds. It is based on the theory that if a taxpayer receives money, only two things can happen: it can either be deposited or it can be spent. This method is based on:

3.2.1. Proof of deposits into bank accounts, after certain adjustments have been made for nontaxable receipts, constitutes evidence of taxable receipts.

3.2.2. Outlays, as disclosed on the return, were actually made. These outlays could only have been paid for by credit card, check, or cash. If outlays were paid by cash, then the source of that cash must be from a taxable source unless otherwise accounted for. It is the burden of the taxpayer to demonstrate a nontaxable source for this cash.

BDCM can be used in the examination of both business and non-business returns. It may supply leads to additional unreported income, not only from the amounts and frequency of deposits, but also by identifying the sources of such deposits. Determining how deposited funds are dispersed or accumulated (to whom and for what purpose) might also provide leads to other sources of income. If BDCM indicates an understatement of income, it may be due to either un-reporting of gross receipts or overstating expenses, or a combination of both.

3.3. Markup Method (hereinafter: MM)

Description of method

MM produces a reconstruction of income based on the use of percentages or ratios considered typical for the business under examination in order to make the actual determination of tax liability. It consists of an analysis of sales and/or cost of sales and the application of an appropriate percentage of markup to arrive at the taxpayer's Gross Receipts. By reference to similar, comparable businesses, percentage computations determine sales, cost of sales, gross profit or even net profit. By using some known base and the typical applicable percentage, individual items of income or expenses may be determined. These percentages can be obtained from analysis of relevant declared items in tax returns, official data of Government statistical bodies or industry publications. However, it is preferable to use the taxpayer's actual markups if possible. MM is a formal indirect method that can overcome the weaknesses of the BDCM, SAFM and the Net Worth Method, which do not effectively reconstruct income when cash is not deposited and the total cash outlays cannot be determined unless volunteered by the taxpayer. If personal enrichment occurs that cannot be identified, the effectiveness of these methods is diminished. For example, the possibility exists that significant personal acquisitions or expenditures are paid with cash & are not evident. MM can also be used when conducting audits of indirect taxes (VAT, Excise, and Sales Tax). The cost of goods sold is verified and the resulting Gross Receipts are determined based on actual markup. This method is most effective when applied to businesses whose inventory is regulated or purchases can be readily broken down in groups with the same percentage of markup. An effective initial interview with the taxpayer is the key to determining the pertinent facts specific to the business being examined.

3.4. Unit and Volume Method

Description of method

In many instances Gross Receipts may be determined or verified by applying the sales price to the volume of business done by the taxpayer. The number of units or volume of business done by the taxpayer might be determined from the taxpayer's books as the records under examination may be adequate as to cost of goods sold or expenses. In other cases, the determination of units or volume handled may come from third party sources.

3.5. Net worth method (hereinafter: NWM)

Description of method

NWM for determining the actual tax liability is based upon the theory that increases in a taxpayer's net worth during a taxable year, adjusted for nondeductible expenditures and nontaxable income, must result from taxable income. This method requires a complete reconstruction of the taxpayer's financial history, since the Government must account for all assets, liabilities, nondeductible expenditures, and nontaxable sources of funds during the relevant period. The theory of NWM is based upon the fact that for any given year, a taxpayer's income is applied or expended on items which are either deductible or nondeductible, including increases to the taxpayer's net worth through the purchase of assets and/or reduction of liabilities. The taxpayer's net worth (total assets less total liabilities) is determined at the beginning and at the end of the taxable year. The difference between these two amounts will be the increase or decrease in net worth. The taxable portion of the income can be reconstructed by calculating the increase in net worth during the year, adding back the nondeductible items, and subtracting that portion of the income which is partially or wholly nontaxable. The purpose of the NWM is to determine, through a change in net worth, whether the taxpayer is purchasing assets, reducing liabilities, or making expenditures with funds not reported as taxable income.

Chapter V Enforced Collection Procedures

Section 18 Notice of Assessment

1. Article 20 of The Law, Assessment Notice, provides as follows:
 - 1.1 If the Director General makes an assessment of tax, or the self-assessment by the taxpayer is not accompanied by the full amount of tax due, the Director shall deliver an Assessment Notice to the person liable for the tax.
 - 1.2 The Assessment Notice shall contain the following information:
 - 1.2.1 the name of the taxpayer;
 - 1.2.2 the taxpayer identification number;
 - 1.2.3 the date of the notice;
 - 1.2.4 the matter and tax period or periods to which the notice relates;
 - 1.2.5 the amount of assessed tax, sanctions, and interest;

- 1.2.6 a brief explanation of the assessment;
 - 1.2.7 a demand for payment of the amount due;
 - 1.2.8 the place and manner of payment of the amount due; and
 - 1.2.9 the appeal procedures.
- 1.3 The taxpayer shall, within 10 days after the notice is delivered, pay the amount due at the place stated in the notice. The amount payable shall include the tax, sanctions, and accrued interest up to and including the date of payment.
- 1.4 In the event of a jeopardy assessment under Article 19 of The Law, the Director may demand immediate payment of tax and take enforced collection immediately to secure the payment of taxes due.
- 2. Issuance of Notice of Assessment
 - 2.1. The Director must issue a Notice of Assessment and deliver it to the taxpayer within 5 days after making an assessment of tax. The Notice of Assessment must include the information contained in Article 20.2 of The Law as quoted above. A tax liability will not be considered to be valid or enforceable until a Notice of Assessment has been issued, unless the assessment is made under the provisions of Article 19 of The Law.
 - 2.2. The Notice of Assessment must include a demand for payment of the tax debt within 10 days from the date of the Notice of Assessment. The amount payable on the notice must include tax, penalty, and interest up to and including the end of the 10-day period provided in the notice. A Notice of Assessment dated 10 November, and delivered on that date, must include tax, penalty, and interest through 20 November. To ensure compliance with this legal requirement, the TAK shall ensure that the date on the notice bears the same date that the notice is placed in the mail or personally delivered per 2.3.1 and 2.3.2 below.
 - 2.3. As provided in The Law, “**Delivery**” means the service of a relevant document on a taxpayer by:
 - 2.3.1. handing the document to the taxpayer, the taxpayer representative, a member of the taxpayer’s household, or an officer, director or employee of the taxpayer (such action is deemed complete whether the person agrees to take the document or not);
 - 2.3.2. leaving the document at the taxpayer’s dwelling or usual place of business; or
 - 2.3.3. sending the document by mail to the taxpayer’s last known address.
- 3. The assessment date for purposes of all enforced collection activity shall be the date that the assessment notice is issued by the TAK as provided in Article 27.12 (g) of The Law.

Section 19

Liens

- 1. A lien is a charge or encumbrance that one person has on the property of another as security for a debt or obligation. In the case of taxes which are not paid by the due date prescribed in law for payment, Article 27 of The Law

provides that a lien will arise in favor of the TAK. Article 27.1 of The Law states:

“If a person who is liable to pay any tax to TAK under legislation applicable in Kosovo neglects or refuses to pay that tax within 10 days after delivery of an assessment notice, a lien shall arise on all property, or rights to property, belonging to that person (whether movable, immovable, tangible, or intangible) in an amount equal to the unpaid tax, plus interest, sanctions, and the costs of collection.”

This statutory lien is a very broad lien and gives TAK a security interest in all property (movable and immovable) of the taxpayer in order to secure the tax debt. It generally is not necessary to specify property to which a tax lien attaches since it is a broad and general lien attaching to all property or rights to property of the taxpayer. Exceptions include Nominee Liens and liens recorded at the vehicle registry.

2. The tax lien arises (and is perfected) when TAK meets the requirements of Section 27.1: an assessment of tax; notice and demand made on the taxpayer for payment; and neglect or refusal to pay the tax within the 10-day period provided in the notice. If these three requirements are met, the TAK lien is valid and is considered to have arisen at 5 PM on the date of assessment. Generally, the notice and demand must be made in written form; however, an oral demand that is well-documented can be made in lieu of a written demand. A tax lien attaches to all property of the taxpayer as described in paragraph1 of this section.

Recording Liens and Lien Priority

3. The tax lien must be recorded in public registries in order to establish the TAK priority with respect to certain transactions and other interested parties. A lien does not protect the TAK’s interest in real property if it has not been properly recorded in a public registry. If a person purchases property of a taxpayer who owes taxes, the purchaser can acquire the property free of the tax lien, if the tax lien has not been recorded in the appropriate public registry, unless the purchaser has been given actual notice of the existence of the lien. An unrecorded lien will have priority in a taxpayer’s property or rights to property with respect to unsecured creditors of the taxpayer.
 - 3.1. If a supplier is providing goods to a taxpayer under an agreed credit arrangement, the supplier can continue to provide those goods to the taxpayer free of the effects of the lien for a period of 30 days after receiving notice of the existence of the lien. After 30 days, any goods supplied to the taxpayer are supplied subject to the tax lien and may be seized and sold by the TAK clear of any claims of the supplier.

Example:

Wholesaler ‘X’ provides vegetables to Market ‘Z’. When X delivers the vegetables, he does not collect payment for the vegetables based on an arrangement he has with Z. Under that arrangement, X bills Z on delivery, but

payment from Z is not due until the first of the following month. X has recorded a pledge in the Pledge Registry in which he claims a security interest in the inventory of Z up to the amount of debt that X owes to Z.

Z incurs a tax debt of €1,000. TAK sends an assessment notice and Z fails to pay within the 10 days provided. The TAK assessment date is 10 June. TAK records its lien with the Pledge Registry on 20 August. Wholesaler X continues to supply vegetables to Market Z, which continues to neglect or refuse to pay its tax debt, even though Z has been advised of the consequences of non-payment. On 1 October, a TAK official visits X and advises him of the existence of the tax debt and the fact that a lien has been recorded at the Pledge Registry, and provides X with a copy of the recorded lien. X is further advised that any goods delivered to Z after 30 October will be subject to the tax lien and the TAK can seize and sell those goods for satisfaction of its tax debt without regard to the security interest that X has recorded. Any goods delivered prior to 30 October continue to be subject to the recorded security interest of X. X delivers goods to Z on 15 November. On 18 November, the TAK exercises its lien right in the assets of Z and seizes the inventory. All inventory delivered after 30 October is sold at public auction and all proceeds are applied to Z's tax debt, including the costs of collection.

3.2 If a creditor has provided a line of credit or a financing arrangement to a taxpayer, which is secured by certain assets of the taxpayer as recorded in the Pledge Registry, the creditor will continue to have a priority position with respect to advances made, even though a tax lien has been filed. The priority will continue with respect to advances made until the creditor is given actual notice of the existence of a tax lien and for 30 days thereafter.

Example:

Bank A enters into a financing arrangement with business B through which A advances B money in exchange for a security interest in the accounts receivable of B. The financing agreement is properly recorded at the Pledge Registry prior to TAK recording its tax lien. On 10 June, the TAK assesses a tax debt of €5,000 which is due from B. The TAK sends B a notice of assessment demanding that B pay the balance of taxes due within 10 days. B refuses or neglects to pay the tax debt within the 10-day period. On 5 July, the TAK records its lien with the Pledge Registry. On 15 July, A makes an advance to B in accordance with their financing arrangement. A makes another advance to B on 10 August per the financing arrangement.

On 20 August, the TAK has not yet received payment of its tax debt and B has not made any arrangements to pay the debt. On that date, an official of the TAK visits A and advises that B has a tax liability of €5,000 plus accrued penalty and interest. The tax official gives a copy of the tax lien to A and advises that A can make further advances to B for a period of 30 days, but after

30 days, the tax lien will have priority in any account receivable amounts that arise in favor of B after that date.

On 22 September, the TAK serves Notices of Levy on all accounts receivable owed to B. The Notices of Levy attach to any amounts that became due to B after 19 September.

3.3 With the exceptions of 3.1 and 3.2 above, a tax lien, properly recorded, has priority over any secured creditor which provides credit of any kind to the tax debtor after the lien has been recorded.

Example:

Taxpayer D owes the TAK €50,000. He owns 10 Hectares of property free and clear of any encumbrances (does not have any mortgages recorded against it). The TAK records a tax lien in the cadastre and other appropriate registries on 10 June 2009. On 15 July, a local bank lends Taxpayer D €80,000 and takes a mortgage on the 10 Hectares to secure its loan. Taxpayer D does not pay the tax lien, but uses the loan for other purposes. Because the tax lien was properly recorded prior to the bank mortgage, the tax lien has priority in the property over the bank mortgage. If TAK were to seize the land and sell it for €100,000, TAK would receive full payment of its tax debt (€50,000, plus costs of sale and accruals after 10 June 2009). The purchaser of the land would receive a clear title to the land as the bank loan was junior to the tax lien. The bank would be entitled to submit a claim to the TAK for any sales proceeds in excess of the amount of the tax debt, plus sales costs and accruals.

If the taxpayer had obtained a loan, using the land as security and the bank had recorded its mortgage on 1 June 2009, the bank mortgage would have priority over the tax lien because it had been recorded before the tax lien was recorded. If the taxpayer did not make his mortgage payments and the bank foreclosed on its loan, it would apply the proceeds first to its mortgage, plus costs and accruals. If there were any excess proceeds, the TAK would be entitled to claim the excess proceeds from the bank for satisfaction of its debt, assuming there were no other intervening creditors.

If the TAK were to seize the land and the bank mortgage had priority over the tax lien, the TAK would sell the property subject to the mortgage of the bank. The TAK has the right to seize only the taxpayer's interest in the property and can only sell the taxpayer's right in the property. Since the tax lien is junior to the bank lien, the TAK must sell the property subject to the bank lien. The TAK must announce at the time of sale that only the taxpayer's interest in the property is being sold and that the sale is being made subject to any lien or mortgage interests which hold a senior position to the tax lien. The TAK must provide an opportunity to the senior lien holders to announce the existence of their mortgage or senior lien at the time of sale.

4. Per Section 27.3 of The Law, a lien intended to attach to immovable property must be registered in the municipality in which the immovable property is located. The place of registry of such liens is the municipal cadastre office of the Kosovo Cadastre Agency. In order to attach to personal property of the taxpayer and establish the TAK's priority in the personal property, the lien must be recorded in the Pledge Registry located within the Ministry of Trade and Industry.

The lien must be recorded in any other office responsible for registering property in the Republic of Kosovo. Pending further development of the Pledge Registry located within the Ministry of Trade and Industry, liens on vehicles must be recorded with the Vehicle Registry.

5. **Property Sold in the Normal Course of Business.** A recorded lien does not attach to property sold in the normal course of business of a taxpayer. A sale of immovable property belonging to the taxpayer is not considered to be a sale in the normal course of business. A bulk sale of inventory is not considered to be a sale in the ordinary course of business. A sale is in the ordinary course of business if the purchase is from a seller who is regularly engaged in selling property of the type that the buyer purchases and both the buyer and the seller are unrelated and act in good faith. A buyer and a seller are unrelated if their interests are independent of one another, if the price that the buyer pays to the seller is fair and reasonable under the circumstances, and if the primary purpose of their transaction is not to defraud, delay, or hinder a pledge holder's or lien creditor's efforts to collect an obligation.

Example:

Market Z regularly sells vegetables to its customers, along with other grocery items. Customers are able to continue to purchase their vegetables and other grocery items, even though X has a security interest in the vegetables and the TAK has a tax lien properly recorded at the Pledge Registry. However, if Market Z attempts to sell its inventory in a bulk sale to a purchaser, the purchaser must do a complete record search to ensure that there are no encumbrances against the inventory. In this case, the purchaser will purchase the inventory subject to the security interest of X and the tax lien.

6. **Liens and Beneficial Owners.** A tax lien also attaches to property belonging to a third party, who is deemed to be the beneficial owner of a business. Section 27.7 of The Law provides:

The lien described in Paragraph 1 of Article 27 of the law, also attaches to all property belonging to a third party, who is deemed to be the beneficial owner of a business which has incurred a tax liability, even though the business has been registered in another name and the tax liability has been incurred in that other name. In such circumstances, the lien will include language to show that it not only attaches to the property of the taxpayer in whose name the business is

registered, but it also attaches to the property of (name) as beneficial owner of the business in which the tax debt has been incurred.

- 6.1. A beneficial owner is defined in The Law as *the individual or legal entity, who enjoys the benefits of owning an asset (movable or immovable property) regardless of whose name the title to the property is in; the individual, or legal entity, which has dominion and control over an asset.* A beneficial owner determination requires a thorough investigation of the facts and circumstances of the case. Factors to be considered in making the determination include:
 - 6.1.1. Who makes the daily decisions of the business and how those decisions are made
 - 6.1.2. Who pays the bills
 - 6.1.3. Who has the authority to pledge assets of the business for credit
 - 6.1.4. Who owns the assets of the business
 - 6.1.5. What is the relationship between the registered owner and the individual suspected of being a beneficial owner
 - 6.1.6. Who controls the bank account of the business
 - 6.1.7. Any other evidence that the registered owner is not the real, beneficial owner (registered owner admits to being paid to register the business in his name, etc.)
 - 6.1.8. The mere fact that a person is managing a business for someone else does not, by itself, make that person a beneficial owner of the business
- 6.2. Once a determination is made that the registered owner is not the real owner (beneficial owner), a TAK official must prepare a written report explaining the basis for that determination. The report must be approved by a TAK official at the managerial level or above. Once the report has been approved, the TAK must prepare and deliver a notice to the person considered to be the beneficial owner. The notice must include the following:
 - 6.2.1. Name, address and personal number of the person considered to be the beneficial owner
 - 6.2.2. The factual basis for determining that the person is the beneficial owner
 - 6.2.3. The amount of tax, penalty, and interest that is considered to be due from the taxpayer
 - 6.2.4. A demand that the amount due be paid within 10 days from the date of the notice
 - 6.2.5. A statement of the appeal rights available.

The date of the notice is the date from which the 6-year collection statute provided in Article 27.12 is computed.

- 6.3. The TAK will establish a separate account in its processing system to reflect the debt of the beneficial owner for monitoring purposes. Because there is already a debt (the debt of the taxpayer) in the accounts of the

TAK, the debt of the beneficial owner will not be included in the calculation of the debts owed to the TAK. The amount collected from the beneficial owner for the debt of the taxpayer shall be applied to the debt of the taxpayer, in order to ensure that the total amount of the tax liability is collected only one time – either fully from the beneficial owner, the taxpayer, or a combination of both.

- 6.4. Once the 10-day period for payment of the tax amount has expired, the TAK may record its lien against the beneficial owner, even though the beneficial owner may still appeal the decision. The lien shall include in its heading:

Ramadan X, Personal Number, as beneficial owner of ABC Company (street address, city, etc.). The lien must be filed in all registries applicable. The lien in respect of a beneficial owner conveys the same rights and powers as a normal tax lien.

Example:

XYZ Business is in the name of Xhema. The business has incurred a tax liability of €3,000. When the TAK enforced collection officer visits the business, Xhema is not there. He speaks with Ramadan, who says he manages the business for Xhema and does not know where he is. The collection officer asks Ramadan for financial information regarding the business – name of bank account, name of landlord, any loans owed by the business, assets of the business, debts owed by the business, monthly utility bills, and the names of any pledge holders. Through his investigation, the collection officer determines that, although the business was registered in the name of Xhema, Ramadan is the beneficial owner of the business. The profits of the business are deposited into his personal bank account, the pledges on record at the Pledge Registry are signed by him as owner of the business, Ramadan pays all the bills of the business from his personal bank account, Ramadan hires and fires all employees without consultation with Xhema, Ramadan makes all business decisions without consulting Xhema, vehicles used in the business are registered in Ramadan's name – Ramadan enjoys all the benefits of ownership, even if it is not registered in his name.

The collection officer prepares his report explaining the basis for the determination that Ramadan is a beneficial owner and submits it for approval. Upon receiving approval, the collection officer requests a notice be sent to Ramadan advising that he is considered to be the beneficial owner of XYZ Business. After 10 days, the collection officer requests a lien be filed as follows:

Ramadan X, Personal Number 0000000000, as beneficial owner of
XYZ Business
123 Nene Teresa
Pristinë

7. **Liens and Nominees** . The tax lien will also attach to specific property of a nominee in accordance with Article 27.8, which reads:
The lien described in paragraph 1 of article 27 of the Law also attaches to any property of the taxpayer which is held by a third person who is determined to be holding the property as a nominee of the taxpayer. In such circumstances, the lien will include language to show that it attaches not only to property of the taxpayer, but it also attaches to specific property held by another person as a nominee of the taxpayer.
- 7.1. A nominee is someone designated to act for another. As used in the tax lien context, a nominee is generally a third party individual who holds legal title to property of a taxpayer while the taxpayer enjoys full use and benefit of that property. In other words, the tax lien extends to property "actually" owned by the taxpayer even though a third party holds "legal" title to the property as nominee. Generally speaking, the third party in a nominee situation will be another individual, but such is not always the case, as a nominee could also be a legal entity or other form of organization.
- 7.2. A nominee situation generally involves a fraudulent conveyance or transfer of a taxpayer's property to avoid legal obligations. To establish a nominee lien situation, it must be shown that while a third party may have legal title to the property, it is really the taxpayer that owns the property and who enjoys its full use and benefit. No one factor determines whether a nominee situation is present, but a number of factors taken together may. The following list is neither exhaustive nor exclusive, but nominee situations typically involve one or more of the following:
- 7.2.1. The taxpayer previously owned the property
- 7.2.2. The nominee paid little or no consideration for the property
- 7.2.3. The taxpayer retains possession or control of the property
- 7.2.4. The taxpayer continues to use and enjoy the property conveyed, just as the taxpayer had enjoyed it prior to the conveyance
- 7.2.5. The taxpayer pays all or most of the expenses of the property
- 7.2.6. The conveyance was for tax avoidance reasons (not a requirement for establishing a nominee lien)
- 7.3. A nominee determination requires a thorough investigation of the facts and circumstances of the case. Factors to be considered in making the determination include those items noted in 7.2 above. If a nominee situation appears to exist, employees of the TAK must prepare a written report explaining the facts on which the determination is based. The report must include a determination of the amount of tax to be assessed against the nominee. The amount to be assessed against the nominee is the lesser of the tax owed by the taxpayer or the value of the assets on which the nominee determination is based. The written report must be approved by a TAK official at the managerial level or above.
- 7.4. Following approval of the written report, the TAK must prepare and deliver a notice to the person considered to be a nominee. The date of the notice is the date from which the 6-year collection statute provided in

Article 27.12 of The Law is computed. The notice must include the following:

- 7.4.1. Name, address and personal number of the person considered to be the nominee
 - 7.4.2. The factual basis for determining that the person is a nominee of the taxpayer
 - 7.4.3. The amount of tax, penalty, and interest that is considered to be due from the nominee (amount must be the lesser of the amount of tax, penalty and interest or the value of the assets considered in determining that a nominee exists)
 - 7.4.4. A demand that the amount due be paid within 10 days from the date of the notice
 - 7.4.5. A statement of the appeal rights available.
- 7.5. The TAK will establish a separate account in its processing system to reflect the debt of the nominee for monitoring purposes. Because there is already a debt (the debt of the taxpayer) in the accounts of the TAK, the debt of the nominee will not be included in the calculation of the debts owed to the TAK. The amount collected from the nominee for the debt of the taxpayer shall be applied to the debt of the taxpayer, in order to ensure that the total amount of the tax liability is collected only one time – either fully from the beneficial owner, the taxpayer, or a combination of both.
- 7.6. Once the 10-day period for payment of the tax amount has expired, the TAK may record its lien against the nominee, even though the beneficial owner may still appeal the decision. The lien must be filed in all registries applicable. The lien in respect of a nominee conveys the same rights and powers as a normal tax lien.
- 7.7. The lien in a nominee situation is similar to the normal tax lien, except that the nominee is identified as the name of the taxpayer and the lien only attaches to specific property of the nominee.

Example 1:

Taxpayer D has a tax debt owed to TAK. Taxpayer E is a nominee of Taxpayer D. The name on the lien would be Taxpayer E as nominee of Taxpayer D. The lien will also identify the specific property of Taxpayer E (the nominee) to which the lien attaches.

Example 2:

Taxpayer D operates a trucking company in Ferizaj as a personal business enterprise. He organized the business in June 2008. In July 2008, he purchased two trucks for use in his trucking business using a loan from the bank. In October 2008, he transferred the title to the trucks to his brother, Taxpayer E. In January 2009, he was unable to pay his December 2008 VAT declaration (due 31 January 2009), creating a tax debt of €700. The TAK sent him an assessment notice on 10 February. He was also unable to pay his January VAT declaration (Due 28 February 2009) and received an assessment notice dated 8 March 2009 in the amount of €800.

A TAK enforced collection officer contacted Taxpayer D on 12 March to discuss the tax debt and demand payment. Because Taxpayer D had transferred title to the trucks to his brother (Taxpayer E), his trucking company had no assets from which collection could be made and there was insufficient money in the business bank account to satisfy the debt. Upon investigation, the collection officer determined that Taxpayer D had continued to use the trucks in his business and paid no compensation to his brother for their use. In addition, the collection officer determined that Taxpayer D had continued to make the payments on the truck loan. Based on these facts, the collection officer determined that Taxpayer E is a nominee of Taxpayer D.

The collection officer prepared a report explaining the basis on which he made the determination that Taxpayer E is a nominee of Taxpayer D. The regional manager approved the report. The collection officer then prepared a notice of assessment meeting the requirements of 2.7.4 above and delivered it to Taxpayer E. The notice was dated 20 March 2009. The amount of the assessment against Taxpayer E is the lesser of the amount of tax due or the value of the assets used as the basis for the nominee determination. In this case, the trucks were valued at €7,500 each (a total of €15,000), so the amount of the assessment is equal to the amount of tax, penalty and interest due (€1,500, plus accrued penalty and interest).

On 31 March 2009, the collection officer recorded a lien, which included the following information:

Name: Taxpayer E (Personal Number) as nominee of Taxpayer D (taxpayer identification number), limited only to the property described in this lien.

Address: (Address of Taxpayer E)

In the body of the lien was the following statement:

This lien attaches to the rights, title, and interests in only the following property titled in the name of Taxpayer E:

One (color of truck) (Manufacturer and Model) Truck, Registration Number 111-11-1111, Vehicle Identification Number 7GJQ123JH674VIN

One (Color of truck) (Manufacturer and Model) Truck, Registration Number 222-22-2222, Vehicle Identification Number 6KLJ456PL875VIN

This notice has been filed to reflect Tax Lien interest in the property described above, and no other property.

Because the trucks are pledged as security for the loan at the bank, and the security is prior to the tax lien, the tax lien attaches to that part of the equity in the trucks which is in excess of the amount owed to the bank

8. Liens recorded in the names of either nominees or beneficial owners will be released when the nominee or beneficial owner have satisfied their portion of

the tax debt, even though the tax lien remains in effect with respect to further amounts still due from the taxpayer.

9. **Possessory Liens.** For purposes of this section, a ‘possessory lien’ is a lien in which property of a debtor is in the possession of a third party to secure a debt.
 - 9.1. A recorded lien shall have priority over a subsequent possessory lien, except in the following circumstances:
 - 9.1.1. repair works done by an automobile mechanic
 - 9.1.2. repair works done by a carpenter, plumber, painter, electrician, etc
 - 9.1.3. a landlord with respect to the goods of the tenant
 - 9.1.4. a storage rental facility
 - 9.1.5. any similar situation in which a third party retains possession of tangible personal property subject to a lien which secures the reasonable price of a repair or improvement of that property.
 - 9.2. The priority given to possessory liens, such as those described in 9.1.1 through 9.1.5 is based on the need to protect landlords, storage persons, and repair persons from the need to verify the existence of a lien, or lack of a lien, before undertaking the repairs, establishing a rental agreement, etc. It would be a significant burden on such persons to have to search lien registries before agreeing to do repair work, enter into a rental agreement, etc.

Example:

Taxpayer A, a personal business enterprise, owes a tax debt of €1,000. The TAK has recorded a lien at the pledge registry and other applicable registries. Taxpayer A needs a new engine in his car. He takes his car to a repair shop. A mechanic at the repair shop makes the necessary repairs at a cost of €500. The repair shop has a possessory lien for €500 so long as it retains possession of the vehicle. That possessory lien has priority over the tax lien, even though the tax lien came into existence before the debt to the repair shop arose.

Example:

Taxpayer B, a legal entity, needs a storage facility to store some of its goods. Taxpayer B owes the TAK €2,500. Taxpayer B enters into a contract with Storage Company to store the goods. The storage contract requires payments of €300/month. Taxpayer B fails to make three monthly payments and Storage Company begins efforts to evict Taxpayer B. In order to recover its delinquent rent, Storage Company refuses to return the goods stored in its facility to Taxpayer B. The storage company can sell the goods for satisfaction of its debt. The tax lien will not attach to the goods of Taxpayer B which are sold by Storage Company, even though it was recorded before the debt arose. The TAK would have the right to file a claim to any surplus funds resulting from the sale.

- 9.3. If a creditor establishes a possessory lien before the TAK establishes its tax debt or lien claim, the creditor can make advances against the security provided in the possessory lien up to the time that the TAK records its lien

at the Pledge Registry, cadastral office, or other appropriate place of recordation. Advances can continue to be made after the lien has been recorded. If the TAK gives actual notice of the existence of the lien to the creditor, the creditor can continue to make advances for 30 days from the date of receiving actual notice and those advances shall have priority over the tax lien, similar to the example in 3.2 of this Administrative Instruction.

10. **Discharge of Property.** Article 27.10 of The Law provides that TAK may discharge specific property from the effects of a lien in certain situations. Even though the specific property may be discharged from the effects of a lien, all remaining property of the taxpayer continues to be subject to the lien.

- 10.1. Article 27.10 (a) of The Law permits discharge of a specific piece of property of the taxpayer after partial satisfaction of the liability in an amount equal to the value of the government's interest in the property. In order to receive a discharge under this provision, the taxpayer must submit an application for discharge of property from a lien based on sub-article 27.10 (a). Included with the application must be a sales contract that reflects the amount being paid for the property, the proposed distribution of the proceeds, and an indication that the taxpayer is being fully divested of his interest in the property. The application must also include appraisals of the value of the property from two different licensed property appraisers. After review and verification of the application, if everything is in order, the Director or his delegate will issue a letter to the taxpayer agreeing to the discharge of the property in exchange for payment of a specified amount to be distributed from the sales proceeds, provided that the TAK receive a detailed accounting for the distribution of the sales proceeds. The TAK will issue a certificate of discharge to the purchaser of the property in exchange for payment in the amount previously agreed. The certificate will indicate that the property in question has been discharged from the effects of the lien against the taxpayer in exchange for the specified amount of consideration and that the lien no longer attaches to that specific piece of property.

Example:

Taxpayer has a tax liability of €10,000. The TAK has recorded its liens at the Pledge Registry and the cadastral office. The taxpayer's assets include a building, valued at €50,000, and a parcel of land valued at €12,000.

The building is encumbered by a mortgage with the bank for €45,000, which has priority over the tax lien (Tax lien recorded on 20 June 2008; mortgage from the bank dated 10 March 2008).

The land is encumbered by a mortgage with the bank for €4,500, which has priority over the tax lien (Mortgage dated 20 November 2006).

The taxpayer has been unable to obtain a loan to pay his tax liability and has entered into an installment agreement with the TAK requiring payments of €1,000/month. The taxpayer has agreed to sell his land and apply the proceeds to the tax debt.

The taxpayer receives a conditional offer to buy his land for €12,500. The taxpayer submits an application for discharge of property so that he can convey a clear title to the land to the prospective buyer. The application includes a copy of the sale contract, two independent appraisals from licensed appraisers (one determining the value of the land at €11,750 and the other determining the value of the land at €12,250). In addition, the application includes a copy of the property tax statement from the cadastral office which shows that the land was appraised for tax purposes at €10,000 for the tax year 2008. The schedule of proposed disbursements from the sale proceeds includes payment of the bank mortgage (€4,500), legal fees for preparation of documents and recording (€500), appraisal fees (€400), and the balance (€7,100) to be paid to the TAK toward the taxpayer's tax debt.

The TAK receives the application and determines that it is in the interests of the Government to accept the application and issue a Certificate of Discharge. The TAK prepares a letter to the taxpayer advising that it will issue a certificate of discharge upon completion of the sale, which divests the taxpayer of all rights and interest in the land, and upon receipt of the payment of €7,100. The TAK official accompanies the taxpayer to the bank and observes the taxpayer make payment of €7,100 to the TAK bank account. The TAK official obtains a copy of the payment document from the bank with the bank's stamp to reflect its receipt of the payment. The TAK official hands the taxpayer the Certificate of Discharge, signed by the Director, or his designate.

As a result of the issuance of the Certificate of Discharge, which the taxpayer must record at the cadastral office, the taxpayer has been able to sell his land free of the tax lien. However, the tax lien has not been released and still attaches to the building that the taxpayer still owns. The TAK has received a substantial payment toward its tax debt, which will be fully paid within three months based on the installment agreement of €1,000/month.

10.2. Article 27.10 (b) of The Law permits the discharge of a specified parcel of property from the effects of the tax lien provided that the lien attach to the proceeds of the sale with the same priority and rights that it had with respect to the property being sold. In order to receive a discharge under this provision, the taxpayer must submit an application for discharge of property from a lien based on sub-article 27.10 (b). Included with the application must be a sales contract that reflects the amount being paid for the property, the proposed distribution of the proceeds, and an indication that the taxpayer is being fully divested of his interest in the property. The application must also include appraisals of the value of the property from

two different licensed property appraisers, plus a copy of the immovable property tax valuation from the Municipal Property Tax Office. The application must also indicate the conditions under which a fund is being established which will be subject to the liens and claims of the government in the same manner and priority as was the property that was discharged. After review and verification of the application, if everything is in order, the Director or his delegate will issue a letter to the taxpayer agreeing to the discharge of the property subject to the proceeds from the sale being placed into a fund which will be subject to the liens and claims of the government in the same manner and priority as was the property being discharged. Prior to issuing the certificate of discharge, the TAK must receive a detailed accounting for the expected distribution of proceeds. The TAK will have the right to question its relative priority as well as the priority of other senior creditors. The TAK will issue a certificate of discharge to the purchaser of the property in exchange for evidence that the proceeds of the sale have been placed in a designated fund subject to the liens and claims of the government in the same manner and priority as was the property being discharged. Reasonable and necessary expenses incurred in connection with the sale of the property or administration of the sale proceeds will be paid from the proceeds of the sale before satisfaction of any claims. All claims to the sales proceeds must be processed within 60 days after the sale, unless a claim has been submitted for court review, in which case the proceeds will be distributed as soon as possible following the decision of the court.

Example:

Consider the same basic facts as in the example at 10.1, except there is a dispute regarding the taxpayer's title and right to sell the land. As a result, the court has ordered the land sold and the proceeds be placed into an escrow account pending a determination of the real owner of the land. The only difference between this situation and that in 10.1 is that the TAK will not immediately receive payment from the proceeds of the sale. When the court reaches a decision on the rightful owner of the land, the proceeds will be distributed. In the interim, the purchaser will have clear title to the land and will be able to enjoy its use. The TAK will receive payment from the escrow of the balance remaining after court costs, the bank mortgage and appropriate legal fees have been subtracted. Because of the court costs, the TAK will receive a much smaller payment than it would under the example in 10.1.

11. **Provisions Specific to SOE's.** Article 27.11 of The Law includes provisions specific to Socially-Owned Enterprises (hereinafter: SOE's) which prevent the TAK from taking certain enforced collection actions against SOE's. SOE's are under the administrative jurisdiction of the Privatization Agency of Kosovo (PAK). The Law on the Privatization Agency of Kosovo provides that the PAK is the only body authorized to sell an SOE or its assets. Article 27.11 (a) provides that the TAK may record a lien against the assets of an SOE that owes

a tax debt. That is the only action the TAK is permitted to take against an SOE. However, if an SOE fails to timely pay a tax debt or enters into an agreement to pay a tax debt and defaults on that agreement, TAK is authorized to pursue action to collect that tax debt through a Notice of Levy on the bank account of the SOE or through a Notice of Levy on other funds due to the SOE, including funds due to the SOE from the budget of Kosovo. Article 27.11(b) provides that the TAK, assuming that it has properly recorded its lien against the assets of the SOE, has the right to assert its secured claim against the proceeds of the sale when the assets are sold by PAK. The prohibition on taking enforced collection action against SOE's expires as of midnight on 31 December 2010. Any assets of SOE's remaining after this date can be seized and sold by TAK to satisfy any tax debts of the SOE. It is expected that the PAK will have had sufficient time to sell all assets of SOE's by that time and, to the extent that they have not, TAK should have the right to enforce its claims against the remaining assets. See paragraph 13 for provisions related to the period for collection of tax debts from an SOE.

- 11.1. To assert its secured claim against the proceeds of the sale of an SOE, the discharge of lien provisions of paragraph 10 shall be the process through which TAK asserts its claim against the proceeds. However, it is not necessary for the applicant (PAK) to submit appraisals from other persons in respect of determining the value of the property. TAK shall accept the sales price of the property as realized by PAK as representing the value of the property.
- 11.2. The TAK lien will apply to the proceeds of the sale in accordance with Law 03/L-067, recognizing that Law 03/L-067 has specific provisions regarding the establishment of a fund and the distribution of the proceeds of the sale of SOE property. The intent of this provision is that, by virtue of discharging the property from the effects of the lien, TAK's lien is transferred to the proceeds of the sale of the property and attaches to those proceeds with the same priority as it had with respect to the property itself.
12. **Statutory Period of a Lien and Re-Filing Requirement.** As provided in Section 27.12 of The Law, a lien is generally valid for a period of 6 years from the date of assessment and the tax is no longer collectable once the lien has ceased to be valid. However, there are exceptions in the law that allow the lien to be valid for an extended period of time. There are also requirements for a lien to be re-filed in order to retain its validity and priority in certain assets.
13. Exceptions to the six-year collection statute (period for collection) are:
 - 13.1. If a taxpayer submits an appeal to the TAK, the period for collection is extended for the period of time from the date the case is received in TAK Appeals until TAK Appeals has issued its final decision, plus an additional six months. TAK is prohibited from taking any enforced collection action while a case is in Appeals, although it can record tax liens when necessary.

Example:

As an example, the taxpayer's appeal request is received by TAK Appeals on 1 July. TAK issues its final decision in the case on 15 September. The case was in appeals for 77 days. The statute is extended for 77 days, plus an additional 183 days, or a total of 260 days. If the statute would have expired on 20 October 2010, it will be extended until 6 July 2011 (260 days from the original statute expiration date).

- 13.2. If a taxpayer appeals a TAK decision to the Independent Review Board, the period for collection is extended for the period of time from the date the case is received in the Independent Review Board until the Independent Review Board has issued its final decision, plus an additional six months. TAK is prohibited from taking enforcement action while a case is pending before the Independent Review Board, although it may record tax liens when necessary. The computation of the statute extension is the same as the computation of statute extension for a case that was submitted to TAK Appeals as described in the above example.
- 13.3. If a taxpayer debt is submitted to a court of competence, the period for collection is extended for the period of time from the date the case is received in the court (including, but not limited to, a competent appellate court, a bankruptcy court, a criminal court, and an economic court in a matter specifically related to the tax debt) until the applicable court has issued its final decision, plus an additional six months. The computation of the statute extension is the same as the computation of statute extension for a case that was submitted to TAK Appeals as described in the above example.
- 13.4. If the taxpayer is an SOE subject to privatization by the Privatization Agency of Kosovo (PAK), the six-year period for collection of the tax is extended indefinitely. A lien against a SOE does not expire until 6 months after the distribution of proceeds resulting from privatization has been approved by the competent body.
- 13.5. If the taxpayer is a POE, either centrally owned or locally owned, there is no six-year period of limitation on tax debts. The collection period for POE's does not expire until the tax debt of the POE is fully satisfied.

Example:

If a POE incurs a tax debt for employee wage withholding for the period January 2004 and the tax debt is assessed in the TAK system on 15 March 2004. Under normal circumstances, the period of collection for this tax debt would expire on 14 March 2010. Since the debt is owed by a POE, the period for collection does not expire until the POE pays the tax debt owed for the January 2004 period.

- 13.6. The TAK and the taxpayer may mutually agree to an extension of the collection statute by executing a written agreement per Article 27.12 (f)

of The Law. The written agreement must include the signatures of both the taxpayer (if a legal entity, the signature of an authorized officer of the legal entity) and an official delegated authority to sign on behalf of the Director General of the TAK. The agreement must describe the tax debt that is owed (each separate tax period that is going to expire must be noted), the date on which the collection period will expire, and the date to which the collection period has been extended. Generally, the collection period will not be extended for a period of more than 24 additional months. Any waiver must be signed by both parties at least 15 days before the collection period will expire. The collection statute will be extended only one time under this provision.

14. If the collection period has been extended for any of the reasons described in paragraph 19 of this Administrative Instruction, the tax lien to which the extended collection periods relates must be re-filed with applicable registries in order to retain the priority of the TAK with respect to those tax debts. Such re-filing must take place at least 90 days before the original collection period was due to expire.

Example:

Company A owes tax debts for January, February, and March 2003 VAT, as well as tax year 2005 Corporate Income Tax. The VAT taxes were assessed on 5 March 2003, 7 April 2003, and 6 May 2003 respectively. The Corporate Income Tax debt was assessed on 2 May 2006. The collection period for the VAT taxes is due to expire on 4 March 2009, 6 April 2009, and 5 May 2009 respectively. TAK recorded liens at the cadastre and pledge registry for all taxes due from Company A (VAT and Corporate Income Tax) on 6 July 2006. On 25 November 2008, TAK and Company A agree to an extension of the collection period for the VAT liabilities until 31 December 2010. By 4 December 2008, TAK must re-file its lien with both the cadastre and the pledge registry to indicate that the collection period for the VAT liabilities has been extended until 31 December 2010 and the lien with respect to VAT remains valid until that date. The re-filed lien must include a description of the tax liabilities covered by the lien (type of tax, tax period, and amount due for each tax period), the date the original lien was recorded, the document number of the original lien, the fact that the re-filed lien is an extension of the original lien and the priority established by the original line remains in effect until the date established by the re-filed lien. The original lien included the Corporate Income Tax liability. However, since the collection period for the Corporate Income Tax liability does not expire until 5 July 2012, it is not impacted by the re-filing requirements and there is no need to include that tax period in the re-filed lien. The re-filed lien refers specifically to the VAT liabilities.

Section 20

Interest

1. Article 22 of The Law provides that interest will accrue on any part of a tax debt that is not paid before the last date prescribed for payment. Interest will be calculated for each month or part of month that the tax remains unpaid from the date the tax is due. Interest continues to accrue up to, and including the date that the tax debt is paid, except as provided in paragraph 4 of this Administrative Instruction.
2. Article 42 of The Law provides that sanctions “shall be considered as tax due to TAK and collectable as tax.” Therefore, interest accrues on penalties (sanctions) assessed in connection with a tax obligation. Interest will accrue only on those sanctions that are imposed based on a percentage of the tax due. Interest will not accrue on penalties that are imposed at a fixed rate. Interest will be imposed on applicable assessed penalties only from the date on which a final notice is issued to the taxpayer as described in Section 24 of this Administrative Instruction. As additional penalty amounts accrue after the Final Notice date, interest will accrue on those additional amounts of penalties. Penalties to which interest will be applied are Late Filing Penalty, Late Payment Penalty, and the penalty provided by Paragraph One of Article 45 of The Law for understatement of income or overstatement of refund. The date on which interest will be applied on applicable penalties will be determined by the TAK based on the ability of the TAK data processing system to implement such interest computation.
3. The rate of interest shall be based on the commercial bank lending rate of interest in Kosovo, but should be a minimum of 0.5% higher than that rate. The Minister of the Ministry of Economy and Finance shall make a determination at least once per year, no later than the 1st of December regarding any changes to be made in the interest rate to be charged in the subsequent year. The change in interest rate, if any, shall become effective beginning with the First of January of each year. If the Minister determines that the interest rate should be changed more than one time in a tax year, any change in interest rate shall be effective as of the first of the month following the Minister’s determination. The TAK is responsible for publicizing the interest rate, including publication on the TAK web-site.
4. As provided in Article 22.4 of The Law, interest assessed or accrued may be collected in the same manner and with the same enforcement powers as if it were tax.
5. The TAK may enter into installment agreements with taxpayers through which a taxpayer can pay his tax debt, according to the terms and conditions of the agreement. Per Article 22.5 of The Law, beginning with the date the taxpayer signs an installment agreement until the tax liability is satisfied, no interest will accrue on the tax debt. If the taxpayer wishes to establish an agreement for a period of longer than 8 months, interest will continue to accrue for the duration of the agreement. Any agreement established under the provisions of Article 22.5 must meet the following conditions:
 - 5.1. The agreement cannot be for a period of more than 8 months beginning from the date the agreement is signed

- 5.2. The initial payment under the agreement must be at least €200 or 10% of the total tax debt included in the agreement, whichever is greater
- 5.3. The taxpayer must agree to remain current in all subsequent tax obligations, including making timely and correct quarterly advance payments (if applicable), registering for VAT when required (if applicable), and submitting all required declarations on or before the date prescribed
- 5.4. The taxpayer must make all payments on or before the date prescribed in the agreement – the agreement must indicate the date on which periodic payment must be made
- 5.5. Agreements may allow payments of varying amounts to be paid on the date prescribed for making the periodic payment
- 5.6. Periodic payments do not have to be scheduled on a monthly basis, but a payment must be scheduled at least once every three months

Example:

Taxpayer A owes the TAK €2,000 (including accrued penalty and interest) for Corporate Income taxes for the 2007 tax year. The 2007 Corporate taxes were due to be paid on 1 April 2008. Interest on the tax debt began on 1 April 2008 and continued to accrue on the first of each successive month at the rate of 1.5% per month (the current rate of interest on tax debts). On 10 June, 2009, the taxpayer signs an installment agreement with the TAK and agrees to pay the tax in monthly installments over the next 6 months (ending 10 December 2009). Since interest had accrued on 1 June 2009, the interest for the month of June will be considered part of the amount due on the installment agreement. Based on Article 22.5 of The Law, no further interest will accrue on the tax debt after 10 June 2009, assuming that the taxpayer respects the terms of the agreement. The taxpayer's initial payment must be a minimum of €200. After the initial payment, the agreement requires a payment of €300 to be paid on 1 July 2009 and 1 August 2009; payments of €400 to be paid on 15 September and 15 October; and a final payment of €400 to be paid on 9 December 2009. If these payments are timely paid and all other terms of the agreement are respected, there will be no interest accrued on this tax debt after June 2009.

6. In accordance with Article 22.6 of The Law, if a taxpayer defaults on an installment agreement, interest will be reinstated retroactive to the date the installment agreement was signed. If a taxpayer has defaulted on an installment agreement and wishes to re-establish an installment agreement, the subsequent installment agreement shall not include the interest waiver. Interest will continue to accrue on any subsequent installment agreement for the duration of the agreement.

This provision applies only to the liability that was included in the original agreement that defaulted, plus any subsequent liabilities incurred while the tax liability remained unpaid. Once that liability, plus any subsequent tax filing and

payment obligations, is fully satisfied and the taxpayer again incurs a tax debt, he will be eligible for an installment agreement that will include the interest waiver from the date the agreement is signed as described in paragraph 5 of this section. It must be noted that any installment agreement requires that a taxpayer remain current in all taxes that become due during the course of the agreement. Therefore, if the taxpayer incurs a tax obligation while the original liability remains unpaid, any agreement entered into while the original liability remains unpaid must include all additional unpaid tax debts.

Example:

Business B has a tax debt of €3,000 for December 2007 VAT (€2,000) and 2007 Corporate Income Tax (€1,000). He enters into an installment agreement on 5 March 2009. He fails to submit or pay his VAT declaration for April 2009 (€2,500) and submits his 2008 Corporate Income Tax declaration without payment (€4,000 tax due). Because Business B has not met the terms of his installment agreement, the agreement is terminated and interest is reinstated on the tax debt that was included in the agreement. Any subsequent agreement must include the tax debt remaining on December 2007 VAT and 2007 Corporate Income Tax, plus the April 2009 VAT and 2008 Corporate Income Tax liabilities. Interest will accrue on these liabilities for the duration of the agreement. Assume Business B remains current in all subsequent tax obligations and fully pays the tax debts outstanding according to the terms of the subsequent agreement by 31 March 2010, he will be eligible for an agreement that includes an interest waiver per paragraph 5 if he incurs a tax debt after 31 March 2010.

Section 21

Order of Payments

1. In accordance with Section 23 of The Law, payments are to be applied first to costs of collection (those costs arising from expenses of seizure and sale, costs associated with recording liens in various registries, court costs incurred, other costs incurred by the TAK in collecting a tax debt, but not including the salary costs of TAK officials). Payments will then be applied to tax, then penalties, and finally to interest. Applying payments in this order applies to the way in which payments are applied to any individual assessment in a tax module, not to the entire tax debt of the taxpayer.
2. Unless there are special, documented reasons otherwise, payments will be applied first to the oldest tax module and then to the next oldest, etc. An individual tax module will be fully paid before payments are applied to another tax module. For example, if a taxpayer owes 2005, 2006, and 2007 Personal Income Taxes, payments made to the TAK will first be applied to the 2005 tax period (including all costs of collection, tax, penalty and interest) before applying subsequent payments to the 2006 tax year. This provision applies to all tax types and tax periods, not just the personal income tax as described in the example.

3. If a tax period has both an amount due based on the self assessment of the taxpayer and an amount due based on an additional tax adjustment by the TAK, the TAK may apply a payment to the self-assessed amount first, including all accruals related to the self-assessed amount, before applying it to subsequent assessments. If a taxpayer owes Personal Income tax, including both the original self-assessment and audit assessment, a €6,000 payment on 10 January 2009 the TAK may apply the payment as follows: Refer to table 1 attached to this Administrative Instruction

Otherwise the TAK will apply payments to the oldest module, irrespective of the individual assessment dates within the module, as described in paragraph 2 of this section. Payment application as described in the example above may be appropriate if there is a concern regarding the ability to collect the 2005 tax period before the collection statute expiration date, since that assessment expires on 8 April 2012, whereas the collection statute expires on the additional amount assessed by audit for 2004 on 11 June 2013.

4. Notwithstanding paragraphs 1 and 2 of this section, a taxpayer may designate where a payment is to be applied and the TAK will apply the payment in the manner requested by the taxpayer. However, any amounts collected through enforced collection, including an installment agreement, will be applied in a manner that represents the best interests of the TAK and shall not be subject to designation by the taxpayer, except as mutually agreed between the taxpayer and TAK. The TAK may refuse to accept the taxpayer's designation of payment if such designation is intentionally done to damage the budget of the Republic of Kosovo. For example, if a taxpayer owes a debt on which the statute is due to expire in 6 months and also owes a debt that has three years before the statute expires; the TAK may refuse a taxpayer's designation of the payment to the newer debt, if the designation will result in the statute expiring on the old debt.

Section 22

Enforced Collection Action

1. If the taxpayer neglects or refuses to pay the tax due within 10 days after delivery of an assessment notice as described in Section 1 of this Administrative Instruction, the TAK is authorized to collect the tax due, plus accruals, by levy on property of the taxpayer or rights to property of the taxpayer. Prior to taking enforced collection action against any property, or rights to property, of the taxpayer, the TAK should record its tax lien in the applicable registries as described in Section 2 of this Administrative Instruction.
2. when collection is in jeopardy as provided in paragraph 6 of Article 28, the TAK shall deliver a 'Final Notice' to the taxpayer warning that seizure action or other enforced collection action will be initiated within 10 days if the full tax debt is not paid, or arrangements to pay are not made, before that time has

expired. The Final Notice must clearly state that it is the final notice to the taxpayer and, if there is no response, enforced collection action, including seizure of property held by the taxpayer or a third party, will be initiated without further warning. The notice must be sent to the taxpayer's last known residential or business address by registered mail, or personally delivered to the taxpayer at his residence or place of business. The notice must give the taxpayer 10 days in which to satisfy the outstanding debt amount or make satisfactory arrangements to resolve the tax debt. The notice must include:

- 2.1. the name of the taxpayer;
 - 2.2. the taxpayer identification number;
 - 2.3. the date of the notice;
 - 2.4. the tax and tax period or periods to which the notice relates;
 - 2.5. the amount of assessed tax, penalties, and interest;
 - 2.6. a demand for payment of the amount due; and
 - 2.7. the place and manner of payment of the amount due.
3. If, after 10 days from the date the Final Notice was delivered to the taxpayer, the tax debt remains unpaid, the TAK may levy on property belonging to the taxpayer, whether in the physical possession of the taxpayer or a third person.
- 3.1. TAK is prohibited from taking enforcement action while the taxpayer has the right of appeal to TAK Appeals or the Independent Review Board (hereinafter IRB).
 - 3.2. In addition, TAK is prohibited from taking enforcement action while the case is pending in TAK Appeals or IRB.
4. **Levy on Property in the Possession of a Third Person.** The TAK may levy on property in the possession of a third person by serving a Notice of Levy on the third person. Included in those persons considered to be third persons are banks; employers; debtors of the taxpayer, including accounts receivable, renters or leasers; other financial institutions; and any other person who is in the possession of property belonging to the taxpayer (whether movable, immovable, tangible, or intangible), or who has an obligation to the taxpayer at the time the levy was made. For purposes of Article 28 of The Law, the term 'person' shall be deemed to include a 'public authority', such as Treasury, as defined in The Law.
5. In order to seize property in the possession of a third person, an authorized officer of the TAK must serve a Notice of Levy (also known as Order for Blocking and Transfer) on the person in possession of the property of the taxpayer. The Notice of Levy must be addressed to the person in possession of the property, and include:
- 5.1. The name of the taxpayer whose property is being seized
 - 5.2. The location of the property (addressing the Notice of Levy to the person in possession of the property shall be considered to fulfill the requirement to indicate the location of the property being seized, when seizing property in the possession of the third person)

- 5.3. The type of liability (type of tax owed)
- 5.4. The tax period(s) for which the liability has arisen
- 5.5. The total amount of tax owed
- 5.6. Instructions on how to comply with the Notice of Levy, including the account number into which any payment shall be made

The Notice of Levy is not only a document through which the TAK seizes the property in possession of the third person (whether physically held or an amount which the person in possession is obligated to the taxpayer), but is also a document which requires that the amount subject to the levy be surrendered and paid over to the TAK in the account designated in the levy. The amount subject to the levy is the full amount of the property held by the third person, up to the total amount of tax due as indicated on the Notice of Levy; or the amount which the third person is obligated to pay to the taxpayer, up to the total amount of tax due as indicated on the Notice of Levy. Except as provided in Article 28.7 with respect to wages, the Notice of Levy attaches only to property held by the third person (or to the amount for which the third person is obligated to the taxpayer) at the time the Notice of Levy is served. A further exception is made with respect to recurring payments due to a taxpayer for services performed or goods provided, such as payments resulting from a contractual obligation. In such case, the Notice of Levy shall attach to current and future payments due to the taxpayer, if the levy is accompanied by a copy of a Notice of Tax Lien which has been recorded at the Pledge Registry, so long as the tax debt has priority over any other security interest that has been properly recorded. Similarly, a levy on a bank account shall be considered to be a continuing levy if the Notice of Levy is accompanied by a copy of a Notice of Tax Lien which has been recorded at the Pledge Registry and includes the same tax debts as the tax debts included on the Notice of Levy.

- 6. Upon receipt of the Notice of Levy, the person in possession of property belonging to the taxpayer shall not attempt to defeat the levy by making payment to any other person (including the taxpayer) of any amount subject to the levy. The person in possession must make payment of the amount obligated to pay or held to the TAK account designated in the Notice of Levy within 10 days after receipt of the Notice of Levy.
- 7. As provided in Article 29 of The Law, *“any person in possession of (or obligated with respect to) property subject to levy on which a levy has been made shall, on demand of an authorized officer, surrender such property (or discharge such obligation) to the authorized officer, except such part of the property as is, at the time of such demand, subject to execution under any judicial process”* (29.1). If the amount subject to levy has not been turned over to the TAK within the 10-day period provided in paragraph 6 of this section, the TAK will serve a Final Demand on the person to whom the Notice of Levy was served. The Final Demand will provide a 10-day period for the person on whom the Notice of Levy was served in which to comply with the requirements of the levy. The Final Demand will be served personally upon a responsible individual of the third party and be acknowledged by the responsible individual

to confirm receipt of the Final Demand. The confirmation will include the date and time that the Final Demand was served. At the time of delivery of the Final Notice, the authorized officer of the TAK shall advise the responsible individual of the consequences of not fulfilling the requirements of the Notice of Levy and Final Demand. If the person on whom the Notice of Levy was served is not able to pay the full amount of the levy, the TAK may authorize payment of the amount due in installments, lasting not more than 6 months.

8. 8. Paragraph 2 of Article 29 of The Law provides, *“any person who fails or refuses to surrender any property subject to levy on demand of the designated officer shall be personally liable to the government in a sum equal to the value of the property not surrendered, but not exceeding the amount of tax for the collection of which levy has been made (together with interest, sanctions, and costs), as if it were an understatement of tax.”* For purposes of this paragraph, the term person, in addition to the meaning given in The Law, shall include the bank, financial institution, employer, renter/leaser, or other business establishment on which the Notice of Levy has been served. If, following the issuance of the Final Notice, the person on whom the levy has been served fails or neglects to pay over to the TAK the amount that is subject to the levy, the TAK shall issue a Notice of Assessment to that person. The Notice of Assessment shall contain the same information as required in Section 20 of this Administrative Instruction. In addition, it shall state that the assessment is made under authority of Article 29.2 of The Law “On Tax Administration and Procedures” amended by the Law 03/L-71, following the failure of (the name of the person against whom the assessment is being made) to pay over the amount stated in the Notice of Assessment, even though a Final Demand was issued for such payment. The amount to be assessed shall be an amount equal to the value of the property not surrendered, but not to exceed the total amount of tax for which the Final Demand was made, plus any interest, applicable penalties, and costs as described in Paragraph 2 of Article 29 of The Law. An assessment made pursuant to the provisions of Paragraph 2 of Article 29 of The Law shall be collectible in the same manner as tax. Payment of the amount assessed under Paragraph 2 of Article 29 of The Law shall not relieve the person on whom the Notice of Levy and Final Demand were served of the responsibility to pay over to the TAK the full amount of the property held by the third person, up to the total amount of tax due as indicated on the Notice of Levy; or the amount which the third person is obligated to pay to the taxpayer, up to the total amount of tax due as indicated on the Notice of Levy.
9. Paragraph 3 of Article 29 of The Law provides that any person described in Paragraph 8 of this Section shall be liable to sanctions as provided in Paragraph 5 of Article 47 of The Law. For purposes of this paragraph, the term person, in addition to the meaning given in The Law and paragraph 8 of this Section, shall include the responsible person at the bank, financial institution, employer, or other business establishment. The responsible person is the individual who has the authority to determine what debts the bank, financial institution, employer,

or other business establishment will pay. In the absence of a clear basis for determining the responsible person, the responsible person of a legal entity will generally be the general manager, the president of a legal entity, the treasurer of a legal entity, the managing partner of an LLC or partnership, or other persons in a similar capacity. In a personal business enterprise, the owner of the personal business enterprise is always a responsible person, but it is also possible that the owner has placed sufficient responsibility in an individual employee of the company (bookkeeper, accountant, etc.), or in a financial management firm that they could also be held responsible for failure to satisfy a Notice of Levy and Final Demand as described in Paragraphs 4 through 8 of this Section.

The amount of the sanction to be imposed under this paragraph (per paragraph 3 of Article 29) is limited to an amount equal to 50% of the amount recoverable as a result of the issuance of the Notice of Levy (amount of the property held by the third person, up to the total amount of tax due as indicated on the Notice of Levy; or the amount which the third person is obligated to pay to the taxpayer, up to the total amount of tax due as indicated on the Notice of Levy).

Example:

Taxpayer A owes the TAK €5,000 in tax plus penalties and interest. He has an account at X Bank totaling €3,000 and ABC LLC owes him €7,000 for work that he did in the normal course of his business. The TAK serves a Notice of Levy on X Bank on 15 February and X Bank pays the €3,000 that it held for Taxpayer A into the account designated by the TAK of 22 February. On 10 March, the TAK then serves a Notice of Levy on ABC LLC, in the amount of €3,000 including penalties and interest. By 25 March, ABC LLC has not responded to the Notice of Levy. Since ABC LLC has not responded to the Notice of Levy, the authorized officer of the TAK serves a Final Demand on ABC LLC by personally handing the Final Demand on the General Manager of ABC LLC and obtaining an acknowledgement that ABC LLC has received the Final Demand, including the date and time the Final Demand was served. The General Manager admits that there is no dispute regarding the amount owed to Taxpayer A. The authorized officer of the TAK advised the General Manager of the consequences of not meeting the requirements of the Notice of Levy and Final Demand.

On April 8, ABC LLC has still not responded to the Notice of Levy or Final Demand. The authorized officer of the TAK prepares a Notice of Assessment as described in Paragraph 8 of this Article. The Notice of Assessment will show as tax the full amount of payment that the TAK should have received from ABC LLC (€3,000 plus the penalty and interest that has accrued since the Final Demand was served); in addition, the Notice of Assessment will include a sanction in the amount of €1,500 (or an amount equal to 50% of the amount recoverable – for purposes of this example the full computation was not made). The total amount of the assessment against ABC LLC will be €4,500, plus interest that will accrue on the

amount assessed as tax. The TAK is authorized to collect this assessment as if it were tax.

The establishment of this assessment against ABC LLC does not relieve it of the obligation to satisfy the Notice of Levy and Final Demand. If necessary, the TAK is authorized to sue ABC LLC for its failure to satisfy the Notice of Levy and Final Demand in accordance with the provisions of Article 26 of The Law.

In addition, the TAK is authorized to assess a sanction against the General Manager of ABC LLC in the amount of €1500 for his failure to direct ABC LLC to satisfy the requirements of the Notice of Levy and Final Demand. This sanction is collectible in the same manner as tax.

Both ABC LLC and the General Manager may appeal the assessment. However, there is minimal basis for an appeal, since the General Manager acknowledged that there was no dispute regarding the amount due to Taxpayer A.

10. If the third person is holding property of the taxpayer, other than cash or other form of money, such as a piece of equipment, vehicle, etc., the authorized officer of the TAK shall serve a Notice of Levy on the person holding the property of the taxpayer. At the same time, the authorized officer shall provide the third person with a copy of a Notice of Seizure as described in paragraph 14 of this Section, which includes a complete description of the property that has been seized. The original of the Notice of Seizure, including description of property seized, must be provided to the taxpayer. Judgment must be exercised by the authorized officer of the TAK in those cases in which the third person is using the property of the taxpayer and removing the property from the possession of the third person would cause significant damage to the third person. The TAK should encourage the taxpayer to enter into a formal agreement that authorizes the third person to retain possession of the seized property and holds the TAK harmless for any damage or loss of value that may be caused by the third person retaining possession of the property. Once seized, the TAK must proceed to sell the property in the same manner as any other seized property.
11. If the Notice of Levy is served on an employer to attach to wages owed to the taxpayer, such Notice of Levy is a continuous levy per Paragraph 2 of Article 28 of The Law. Such a Notice of Levy attaches to wages owed or to future wages to be earned (including any bonuses or other forms of compensation) from the time it is served on the employer until such time as the tax debt for which the levy was served has been satisfied. The Notice of Levy attaches to amounts due to the taxpayer after the amounts subject to withholding for pensions and taxes have been deducted from the salary. In addition, an amount of €20/week shall be exempt from levy to allow the taxpayer to meet basic needs for food as provided in Paragraph 2 of Article 31 of The Law.
12. **Property in the Possession of the Taxpayer.** As provided in paragraph 1 of Article 28 of The Law, *“it shall be lawful for the Director, or officer authorized*

in writing by the Director, to collect such amount (and such further amount as shall be sufficient to cover the expenses of the levy) by levy on property belonging to such person (whether in the physical possession of the taxpayer or a third person).

13. In most cases, the property in possession of the taxpayer will be property used by the taxpayer in the course of economic activity (business property). Prior to seizing any property of the taxpayer, the TAK must take those actions described in paragraphs one (1) through three (3) of this Section (or ensure that those actions have been taken), in addition to reviewing applicable records and registries to determine the taxpayer's rights and interest in the property. As is noted previously in this Administrative Instruction, the TAK is authorized to seize and sell only the rights and interests of the taxpayer in any property.
 - 13.1. In reviewing property records, the TAK must identify all possible encumbrances (creditors) against the property (pledge at the Pledge Registry, mortgage at the cadastre, etc.). The name of the creditor listed in the registry must be noted in the TAK record, the date that the encumbrance arose, and the property encumbered.
 - 13.2. The TAK must contact each creditor and determine the amount of debt outstanding and the status of the debt (current, in dispute, etc.). All information obtained must be documented in the TAK records.
 - 13.3. Any disputes regarding ownership of the taxpayer's property must be noted
 - 13.4. Based on the information obtained, the TAK must determine the taxpayer's equity (rights and interests) in the property and determine if there is sufficient equity to justify proceeding with a seizure and sale.
 - 13.5. If there is minimal equity in the property of the taxpayer, the Manager of the Regional office responsible for collecting the tax debt must obtain written authorization from the Deputy to the Director General for Operations before proceeding with the seizure. Generally, seizure of assets in which there is minimal equity should not be undertaken unless the taxpayer is a continual delinquent and will continue to increase tax debt if such action is not taken. Seizure will be authorized only after consideration of all other alternatives.
 - 13.6. If there is no equity in the property of the taxpayer, the TAK has no authority to seize any property. The TAK's lien attaches only to the equity of the taxpayer in the property. If the taxpayer has no equity, the TAK lien does not attach and there is no legal basis for the TAK to seize the taxpayer's property. In cases where the taxpayer is continuing to incur tax debts, but has no equity in assets, the TAK must give full consideration to submitting a petition in the court of jurisdiction for an involuntary dissolution in bankruptcy.
14. **Notice of Seizure and Inventory.** To seize property of the taxpayer, the authorized official of the TAK, after taking all required preliminary actions as described in this Section, shall attempt to make contact with the taxpayer or taxpayer's representative and demand payment of the tax debt. The responsible TAK official must be accompanied by a second TAK official if a seizure of

property from the taxpayer, or a third person, is anticipated. If the taxpayer is not able to pay the tax debt, or refuses to do so, and the TAK official determines that a seizure of property must be made, the TAK official must advise the taxpayer that a seizure of his assets is going to be made. The authorized TAK official must provide a Notice of Levy to the taxpayer as described in paragraph 5 of this Section. The TAK officials must then conduct an inventory of the property being seized and provide the taxpayer with a Notice of Seizure, which must contain the following:

14.1. The name and address of the taxpayer

14.2. The address where the property is located, if different from the taxpayer's address

14.3. Description of the tax liability that is owed (type of tax and tax periods)

14.4. The amount of tax due, assessed plus accruals to the date of the seizure

14.5. A complete description of the property that has been seized.

15. In accordance with paragraph 1 of Article 31 of The Law, only so much of the property of the taxpayer as is necessary to satisfy the tax debt of the taxpayer shall be subject to seizure. The TAK shall make a concerted effort to identify assets for seizure that can fulfill this requirement and seize only those assets. If it is not possible to separate taxpayer assets for purposes of seizure without destroying the overall value of the taxpayer's assets, seizure of all applicable assets is authorized. If the taxpayer's only asset which can be subjected to seizure is immovable property, and the taxpayer's equity exceeds the tax debt by more than 100%, and the TAK has recorded a lien against the property, seizure is not normally required for the TAK to collect its debt. However, if the collection statute is within one year of expiration, seizure of immovable property is authorized, even though the value may be disproportionate to the amount of tax debt outstanding.
16. If the taxpayer is not available at the time of seizure, a copy of the Notice of Levy and Notice of Seizure will be left with the taxpayer's representative at the place of business, in addition to delivering a copy to the address of the taxpayer's designated representative. If the taxpayer is a personal business enterprise, a copy of the Notice of Levy will also be personally delivered to the taxpayer's home address. A copy of the Notice of Seizure will also be left or delivered in the same manner and at the same time.
17. If an inventory of property cannot be taken at the time of seizure, the TAK official will provide a general description of the property seized at the time the seizure is made. Within 3 business days after the seizure has been made, the TAK must provide a supplemental Notice of Seizure which includes a complete description of the property seized. The supplemental notice of seizure must be given to the taxpayer or his designated representative immediately after the inventory has been completed. A copy of the supplemental Notice of Seizure will be sent to the taxpayer by post with a requirement that the postal service must certify that the document was delivered to the address and the date and time of delivery.
 - 17.1. Following the delivery of the Notice of Seizure to the taxpayer, TAK must determine a fair market value (open market value) of each item of property

seized and note that value on the TAK copy of the Notice of Seizure. The age, condition, and use of the property must be considered in determining its fair market value.

17.2. The open market value shall be determined without reference to any amounts that may be owed against the property.

17.3. The open market value determined shall be the starting point for determining the minimum bid price when the property is offered for sale.

18. **Protection of Seized Property.** Once property has been seized, the TAK has an obligation to protect the property to at least the same degree of protection as that provided by the taxpayer. If property is to be left at the taxpayer's premises, the ownership of that premises must be determined. If the premise is owned by the taxpayer, the taxpayer must be warned regarding sanctions for attempting to remove any seized property from the premises. Consideration should be given to changing locks to prevent taxpayer access and increase the security of the seized property.

18.1. If the premise is owned by a third party, the TAK assumes the obligations of the taxpayer with respect to the owner of the premises. That means that the TAK is obligated to negotiate an acceptable rental amount with the owner, which amount should not be greater than the rate paid by the taxpayer. If the taxpayer has paid rent for a specified period of time, the TAK has no obligation to pay rent until that period of time has expired, but must pay rent from that date forward. The TAK must obtain the owner's authorization to change locks to the business (costs to be charged to the taxpayer as cost of collection in the TAK data processing system). If TAK is unable to arrive at an acceptable arrangement with the owner of the premises, it must remove the seized property from the premises at the earliest opportunity, but not more than 5 business days after the seizure has been made.

18.2. If the business premise of the taxpayer is also occupied by another business, the TAK must ensure the security of the taxpayers seized assets without interfering with the ability of the second business to conduct its business affairs. Generally in such circumstances, the assets of the taxpayer should be removed from the premises. However, the TAK may make such other arrangements as are agreeable with both the other business and the owner of the premises (if the owner is someone other than the taxpayer).

19. **Minimum Bid.** Prior to advertising the property for sale, the TAK must determine the minimum bid price at which the property will be sold. A minimum bid is intended to protect the taxpayer and ensure that the property is not sold at a price that is substantially less than the forced sale value of the taxpayer's interest in the property. The minimum bid price must be accurately determined in order to provide for the equitable preservation of both the taxpayer's interest and the government's interest in the property. The minimum bid can never be greater than the government's lien interest in the property (the amount of tax due).

- 19.1. The starting point for determining the minimum bid price shall be the open market value determined in paragraph 18 of this Section.
- 19.2. TAK must consider the amounts of encumbrances (including accruals computed to the date of the sale) that have priority over the tax lien and subtract those amounts from the open market value. When sold, the property is sold subject to the claims of creditors that have priority over the tax lien, so the minimum bid price must take those amounts into consideration.
- 19.3. After reducing the open market value by the amount of encumbrances against the property that have priority over the tax debt, TAK must further reduce the value of the property based on the fact that the sale is a forced sale of the property – it is not taking place between a willing seller and a willing buyer. The difficulties associated specifically with a forced government sale (no guarantee of clear title, no warranty on the property, property is sold “as is”, etc.) should be considered in determining the forced sale value of the property. The reduction to be used in determining the forced sale value (minimum bid) of the property should be no less than 25% and no more than 50% of the value remaining after reducing the open market value by the amount of encumbrances against the property. For example, the TAK has seized a truck and has determined that the open market value of the truck is €10,000, which is the value noted on the TAK copy of the Notice of Seizure. The taxpayer bought the truck using a loan from the bank, which is prior to the tax lien. The taxpayer still owes €4,000 on the loan, leaving €6,000 as the taxpayer’s interest in the truck (and also the interest to which the tax lien attaches). Based on current economic conditions, the enforced collection officer determines that the minimum bid price should be established by reducing the value of the taxpayer’s interest in the truck by 40%. The minimum bid price established for the truck is €3,600 (€6,000 minus €2,400). Any purchaser at the TAK sale must take into consideration the fact that the truck has an existing bank lien in the amount of €4,000 for which satisfactory arrangements must be made, in addition to making the payment of €3,600 (or whatever higher amount is offered at the public sale) to the Tax Administration.
20. **Notice of Sale.** Once property of the taxpayer has been seized, it must be sold within a period that starts 30 days from the date of seizure (paragraph 5 of Article 28 of The Law) and ends 60 days from the date of the seizure. The period for selling property may be extended if circumstances require an extension, such as an adjournment of the sale which requires re-advertisement of the sale. The TAK is authorized to begin advertising the sale of seized property before the 30-day time for selling the property has expired, so long as the sale date is not less than 30 days from the date of seizure. For purposes of this provision, the date of seizure is the date on which the TAK took possession of the property by issuing a Notice of Levy and Notice of Seizure.

- 20.1. In order to sell the property, TAK must prepare a Notice of Sale, which must contain:
 - 20.1.1. Name of taxpayer
 - 20.1.2. Indication as to whether the sale is a public auction or sealed bid sale; if sealed bid sale, the method by which sealed bids are to be submitted to the TAK
 - 20.1.3. The date of sale
 - 20.1.4. The place of sale
 - 20.1.5. Statement that only the taxpayer's interest in the property is being sold and that the property is being sold "as is" without any warranties as to its fitness, use, value, or ownership (for that reason, the TAK should not advertise the value that is has placed on the property as it should not be in the position of suggesting a value which may cause a conflict with either the purchaser or the taxpayer).
 - 20.1.6. Complete description of property being sold adequate to allow an interested buyer make an estimate of the value and worth of the property.
 - 20.1.7. Location where property may be inspected and the dates and time when inspection can be made.
 - 20.1.8. Terms of payment which must be met by the successful bidder whether payment in full on acceptance of the highest bid or by installments specified in the Notice of Sale
 - 20.1.9. Qualifications that potential bidders must meet in order to bid on property (if any qualifications have been established); In order to bid on immovable property, the bidder must have evidence of having established a bank guarantee for a minimum of 10% of the outstanding tax debt
 - 20.1.10. Form in which payment must be made (by bank transfer) and how payment is made by the successful bidder
 - 20.1.11. Statement of the authority of the TAK for conducting the sale
- 20.2. A copy of the Notice of Sale must be delivered to the taxpayer prior to advertising the property for sale. An effort should be made to deliver the notice in person to the taxpayer or his authorized representative, if that is not possible, a copy of the notice of sale must be sent to the last known address of the taxpayer
- 20.3. A copy of the Notice of Sale must be sent to each creditor that has a recorded encumbrance against the property so that they will be aware that the property is being sold and they can be present at the sale to protect their interests.
- 20.4. Property seized must be advertised for sale at least 10 days before the scheduled sale date, but not more than 20 days before the scheduled date of sale.
- 20.5. A copy of the Notice of Sale must be published in at least one newspaper of general circulation in Kosovo, as well as in one newspaper of general circulation in the region in which the property is to be sold. One newspaper cannot serve both purposes. If there is no newspaper of general

- circulation in the region, the advertisement must be placed in a second newspaper of general circulation in Kosovo.
- 20.6. A copy of the Notice of Sale must be posted in at least three prominent public places in the municipality or local community in which the property to be sold is located. In addition, if the sale is to be held in a different location, the Notice of Sale must be posted in at least three prominent public places in the municipality or local community in which the sale is to be held.
 - 20.7. Copies of the Notice of Sale should be sent by post to all known interested buyers – prospective purchasers that frequently attend TAK sales and prospective purchasers that contact the TAK and request a copy of the Notice of Sale.
 - 20.8. If it is necessary to adjourn a sale after it has been advertised, the sale must be re-scheduled at a time that is no more than 90 days from the date of seizure. The sale must be re-advertised in accordance with the provisions of this paragraph and its sub-paragraphs.
 21. Whether the property is offered for sale by public auction or sealed bid, the TAK must allow time before the sale for prospective purchasers to view and examine the property. If there are encumbrances against the property which have priority over the tax lien, the TAK must provide the prospective purchasers with the applicable information, to include the name of the creditor, the kind of encumbrance (mortgage, loan, judgment, etc), the place where the encumbrance is recorded, the date the encumbrance was recorded, and the amount due.
 22. **Public Auction Sales.** If the sale is to be conducted via public auction, it generally should be conducted at the location at which the property to be sold is located.
 - 22.1. TAK will ensure that all prospective bidders are registered, meet any qualifications described in the Notice of Sale (if required, all bidders must present evidence of having a bank guarantee), and given a bidder's number.
 - 22.2. At the announced time, the TAK official that will conduct the sale must announce that the TAK is offering the property described in the Notice of Sale to the highest bidder. The TAK official will make the following announcement: *The TAK of Kosovo is offering for sale the property described in the Notice of Sale* (if there are only one or two items for sale, it is desirable to read their description; if the list is long, it is only necessary to refer the prospective bidders to the Notice of Sale and the property listed there). *The sale will be conducted by open competitive bidding. The property offered for sale is being sold where it is and in its current condition. The TAK is selling only the right, title, and interest of (name of the taxpayer) in the property. The property is being sold subject to any encumbrances that are superior to the lien of the TAK. The TAK is aware of the following encumbrances against the property that are superior to the lien of the TAK (name the persons who hold the encumbrances and the amount due on each encumbrance – if only certain*

property is subject to the encumbrance identify the specific property to which the encumbrance attached). (Offer the representative(s) of the senior lien holder(s) an opportunity to make an announcement regarding the lien they claim and the amount that must be paid to satisfy that claim.) *The TAK makes no warranty or guaranty, express or implied, as to the validity of the title to the property or the quality, quantity, weight, size or condition of any of the property, or its fitness for any use or purpose. The terms of sale were stated in the Notice of Sale- they are (Describe the terms of sale). Are there any questions regarding the bidding procedure or the terms of the sale? Does everyone understand the conditions of this sale and the conditions under which the property is being offered?* (If the property is to be sold as one total lot and in the aggregate, explain to the bidders that the property will first be offered for sale in the aggregate and then in individual lots) *The bidding must begin at the minimum bid price. If there are no bids that meet this price, the sale will be adjourned and re-announced at a later time. When you bid, please hold up your bidder number so that your bid can be properly recorded in the sales record. The minimum bid for this property has been determined to be €_____. The auction is now open for your bids.*

- 22.3. As the bidding progresses, a record must be made of the bidder number of each bid and the amount bid. The record must be retained in the sale file.
- 22.4. If the property has been divided into different lots, and the TAK has determined that it will offer the property for sale in the aggregate and in separate lots, the official conducting the sale will advise that the sale will be held in two stages.
 - 22.4.1. In the first stage, the property will be offered for sale in the aggregate at the minimum bid price set for the property. After the bidding is ended for the property in the aggregate, the name of the successful bidder and the amount of the bid must be noted and announced. The successful bidder must be advised that his bid will be held in reserve pending the outcome of the sale of the individual groups.
 - 22.4.2. In the second stage, the property will be sold in the groups established prior to the sale as advertised. Bidding on each group will continue with the bids tabulated and noted in a register of bids. The successful bidder for each group will be announced when bidding for the group has ended and the successful bidder will be advised that the acceptance of the bid is a tentative acceptance pending the outcome of the bidding on the remaining groups of property.
 - 22.4.3. When bidding on the individual property has exceeded the amount bid for the aggregate, assuming that the amount exceeds the minimum bid amount, the sale may continue until bids amount equal to the tax debt are received. If, after receiving sufficient bids to

- satisfy the tax debt, there are still groups of property remaining, TAK will release the remaining groups to the taxpayer.
- 22.4.4. If the total amount bid for the individual groups of property is equal to or less than the amount bid for property in the aggregate, the property shall be declared sold to the bidder with the highest bid when the property was offered for sale in the aggregate.
- 22.5. The person in charge of the sale shall meet with the successful bidder immediately after the sale to arrange final payment and release of the seized property.
- 22.6. When all conditions have been met and full payment received, TAK shall prepare a Bill of Sale that transfers all the rights, title, and interest of the taxpayer in the property sold to the successful bidder.
23. **Sealed Bid Sales.** TAK may also offer property for sale via a sealed bid sale. When conducting a sale by sealed bids, the property can only be offered in the aggregate. A sealed bid sale can take place in a location that is most conducive to holding such a sale, including in the TAK regional office.
- 23.1. TAK will ensure that all prospective bidders are registered, meet any qualifications described in the Notice of Sale (if required, all bidders must present evidence of having a bank guarantee), and given a numbered envelope and a sealed bid form.
- 23.2. At the announced time, the TAK official that will conduct the sale must announce that the TAK is offering the property described in the Notice of Sale to the highest bidder. The TAK official will make the following announcement: *The TAK of Kosovo is offering for sale the property described in the Notice of Sale (if there are only one or two items for sale, it is desirable to read their description; if the list is long, it is only necessary to refer the prospective bidders to the Notice of Sale and the property listed there). The sale will be conducted by sealed bid. The property offered for sale is being sold where it is and in its current condition. The TAK is selling only the right, title, and interest of (name of the taxpayer) in the property. The property is being sold subject to any encumbrances that are superior to the lien of the TAK. The TAK is aware of the following encumbrances against the property that are superior to the lien of the TAK (name the persons who hold the encumbrances and the amount due on each encumbrance – if only certain property is subject to the encumbrance identify the specific property to which the encumbrance attached). (Offer the representative(s) of the senior lien holder(s) an opportunity to make an announcement regarding the lien they claim and the amount that must be paid to satisfy that claim.) The TAK makes no warranty or guaranty, express or implied, as to the validity of the title to the property or the quality, quantity, weight, size or condition of any of the property, or its fitness for any use or purpose. The terms of sale were stated in the Notice of Sale- they are (Describe the terms of sale). Are there any questions regarding the bidding procedure or the terms of the sale? Does everyone understand the conditions of this sale and the conditions under which the property is being offered? The minimum bid*

for this property has been determined to be €_____. Bids submitted for less than this amount will not be accepted and will be disqualified upon opening. The auction is now open for your bids.

- 23.3. After making the opening statement, an adequate amount of time must be provided to allow bidders to prepare and submit their bids by placing the bid in the numbered envelope provided, sealing the envelope and placing it in a container provided for receiving sealed bids. A warning must be given to bidders when there are only five minutes left in which to submit bids.
- 23.4. When the time for submitting sealed bids has passed, the person in charge of the sale shall announce to the people present that the bids are going to be opened. Each envelope will be removed from the container individually, opened, and the bid announced to all present, after which it will be entered in the official record of the sale. If a bid has been submitted for less than the minimum bid, the audience will be informed of the bidder name and number and advised that the bid is for less than the minimum bid amount and is, therefore, disqualified. The information to be entered includes: bidder number, bidder name, property for which bid submitted, and amount of bid submitted.
- 23.5. When all bids have been opened, read, verified that they meet the minimum conditions, and entered into the official record of the sale, the person in charge of the sale shall announce to those present the winning bid and declare that the property has been sold to (name of winning bidder) for (amount of winning bid).
- 23.6. The person in charge of the sale shall meet with the successful bidder immediately after the sale to arrange final payment and release of the seized property.
- 23.7. When all conditions have been met and full payment received, TAK shall prepare a Bill of Sale that transfers all the rights, title, and interest of the taxpayer in the property sold to the successful bidder.
24. **No Minimum Bid Submitted.** If there are no bids submitted, either orally or by sealed bid, which meet the minimum bid criteria, the person in charge of the sale shall announce that the sale has been postponed for lack of a minimum bid and will be re-scheduled at a later date.
25. When a sale has been postponed for lack of a minimum bid, a determination must be made whether to reduce the minimum bid amount, re-advertise the property with the same minimum bid, or abandon the sale and return the property to the taxpayer as having insufficient value to sell.
 - 25.1. If the decision is made to reduce the minimum bid, the amount of the new minimum bid shall be an amount not less than 40% of the value remaining after reducing the open market value by the amount of encumbrances against the property. This represents an additional 10% reduction of the amount authorized in paragraph 19.3 of this Section.
 - 25.2. If the property is to be offered for sale a second time, a new Notice of Sale must be prepared with the new sale date. The Notice of Sale must be

prepared according to the provisions of paragraph 20 of this Section. The property must be re-advertised for sale within 10 days after the original sale was postponed with a sale date not later than 30 days after the original sale date. The new Notice of Sale must be published and posted in the same manner as described in paragraph 20 of this Section.

26. **Abandoned Sale.** A sale of seized property may be abandoned and seized property returned to the taxpayer in the following circumstances:
 - 26.1. An initial sale was attempted but no bids were received that met the minimum bid criteria and it is determined that there is insufficient equity in the property to offer it for sale a second time; or
 - 26.2. The property is offered for sale a second time at a reduced minimum bid and there were no bids received that met the minimum bid criteria.
 - 26.3. If a sale of seized property is abandoned to the taxpayer, the TAK must submit a petition to the court of jurisdiction for an involuntary bankruptcy proceeding to be initiated in order to prevent the taxpayer from incurring any additional tax liabilities and to allow the court to sell any assets of the taxpayer through its sale procedures (See Section 24 of this instruction).
27. **Cancelled Sale.** A sale can be cancelled before the sale is completed if it is determined by the TAK that an error has been made that violates the legal or procedural requirements for TAK seizure and sales. The Director General shall have the authority to review the facts and issue a directive to cancel the sale. The directive shall include the basis for the decision to cancel the sale. If a sale has been cancelled, the TAK must correct the legal or procedural deficiency and re-advertise the sale. Any subsequent sale must be re-advertised and scheduled no more than 30 days from the date that the sale was cancelled.
28. A sale may be cancelled upon receipt of an order from a court that has appropriate jurisdiction. If the court order includes instructions for turning the property over to the court, TAK is obliged to do so, however, TAK shall retain the priority in the proceeds that it would have enjoyed had it sold the property itself. If the cancellation order is for the purpose of a hearing to determine rights in the property, TAK shall retain possession of the property pending the decision of the court. If TAK is subsequently authorized to sell the property, it shall advertise the sale and schedule it to be held no later than 30 days after receiving authorization to proceed with the sale.
29. **Failure of Successful Bidder to Fulfill Requirements.** If any successful bidder fails to timely fulfill all conditions of a sale, any amounts paid or guaranteed by the bidder will be retained by the TAK as damages for the failure of the successful bidder to perform according to his contract and to offset any expenses associated with the sale process.
30. **Expedited Sales.** If property seized is in danger of spoiling or losing value or the costs of maintaining the seized property are disproportional to the amount of tax due, TAK may conduct an expedited sale of the seized property. Such circumstances could occur if fresh vegetables or fruit are included in the items seized. Likewise, the costs of maintaining live animals may be such that the expense would be disproportional to their value or the tax debt and an expedited

sale would save value for the taxpayer and maximize the TAK's collection effort.

- 30.1. An expedited sale may be authorized in writing by the Director General when circumstances in paragraph 30 of this Section are present, pursuant to written recommendation made by the Manager of the region which is responsible for the seizure and sale. Such written recommendation must include the reasons why an expedited sale is necessary and the consequences if an expedited sale is not held. The written recommendation must also provide a minimum bid price for the items to be sold. The minimum bid must be determined based on the open market value of the items to be sold, less any known encumbrances against the items to be sold and then discounted a maximum of 50% to take into consideration the distressed nature of the sale.
 - 30.2. The taxpayer, or his authorized representative, must be given a copy of the Notice of Sale (if the taxpayer cannot be located, efforts to locate the taxpayer must be documented) and given an opportunity to pay the amount of the minimum bid in order to redeem the seized goods and avoid their being sold at distressed prices. If the taxpayer pays the minimum bid price, the items to be sold at the expedited sale will be released from the seizure and returned to the taxpayer upon receipt of evidence that the minimum bid amount has been paid at an authorized bank. Property redeemed by the taxpayer in this manner shall not be subject to subsequent seizure by the TAK for a minimum of 30 days.
 - 30.3. An expedited sale must be advertised as widely as possible in the time allowed. At least 5 potential bidders (unrelated to the TAK officials conducting the sale or any supervisory or managerial personnel of the TAK) must be contacted and given an opportunity to be present for the sale. Notices of the pending sale must be placed in at least three prominent public places at least one hour before the time scheduled for the sale.
 - 30.4. An expedited sale must be conducted as a public auction. The minimum bid price must be announced, along with a statement that this is an expedited sale of the specified property in accordance with Article 28 of The Law and the provisions of this Administrative Instruction.
 - 30.5. The terms of sale for items sold under the expedited sale procedure must require that the successful bidder provide evidence to the authorized TAK official conducting the sale of having paid the full amount of the bid into the specified bank account within one (1) hour after the winning bid has been announced. Generally, items are sold in an expedited sale in an aggregate of all items to be sold, rather attempting to sell individual items. Items sold will not be released to the successful bidder until evidence of payment has been received.
31. Property seized from a taxpayer may be released back to the taxpayer, in whole or in part, in the following circumstances:

- 31.1. If the TAK and taxpayer enter into satisfactory arrangements for settlement of the tax debt prior to the sale, the seizure may be released and property returned to the taxpayer so long as the taxpayer pays all expenses incurred by the TAK in seizing and protecting the property. The seizure will not be released until such time as the taxpayer provides satisfactory evidence of paying all expenses incurred in seizing and protecting the property.
- 31.2. It has been determined that an excessive amount of property has been seized and it is possible to conduct a successful sale to satisfy the tax debt with only part of the assets seized and splitting assets will not create an inequitable situation for the taxpayer.
- 31.3. Release of the seizure in whole, or in part, will facilitate the ultimate collection of the tax debt.
- 31.4. It is determined that the assets are subject to jurisdiction of a court or legal process that has a superior claim to the assets, unless such bodies consent to the seizure and sale of the assets by the TAK.
- 31.5. It is determined that the seizure was wrongful or that the debt which formed the basis for the seizure is incorrect or no longer exists
- 31.6. TAK has determined to abandon a sale as provided in paragraph 26 of this Section.

Section 23

Transfers of Assets

1. Article 35A of The Law provides as follows: **35A.1** *TAK shall have the authority to transfer an assessment of tax to another entity following a transfer of assets (movable or immovable) in the following circumstances:*
 - 1.1. *The taxpayer has transferred assets to another entity either in anticipation of incurring a tax debt or after having incurred a tax debt,*
 - 1.2. *The transfer of assets was for less than fair market value of the assets,*
 - 1.3. *The transfer of assets has left the taxpayer without the capability of paying tax debts and,*
 - 1.4. *TAK has notified the taxpayer and the other entity of the determination that the transfer of assets will result in an assessment against the third party and provided the third party their appeal rights.*

Where TAK discovers, either through audit or collection action, that a transfer of assets as described in sub-paragraphs 1(a) through 1(c) of this Section has taken place, and in order to establish an assessment under Article 35A, TAK must follow the general principles provided in Articles 17 through 20 of The Law, as well as the provisions of this Chapter.

2. For purposes of the implementation of Article 35A of The Law, a transfer of assets in anticipation of incurring a tax debt shall be determined in the following circumstances:

- 2.1. If a taxpayer transfers assets at any time after receipt of a notice delivered by the TAK that a tax audit or tax investigation is scheduled to take place, such transfer shall be considered to be a transfer of assets in anticipation of incurring a tax debt. However, if the taxpayer can provide evidence that a sales agreement had been made at least 30 days, but not more than 90 days, prior to receiving notice of the pending tax audit or tax investigation, a transfer of assets that has taken place pursuant to such an agreement will not be considered to be a transfer of assets in anticipation of incurring a tax debt, even though the transfer did not actually take place until after the taxpayer received notice of the pending tax audit or tax investigation. Such a transaction must be a transaction in which a money transfer occurs, such as a bank transfer, etc., or a legitimate loan made through a bank or similar authorized lending organization.
- 2.2. If a taxpayer transfers assets within a 30-day period prior to the taxpayer ceasing its business activity, such transfer will be considered to be a transfer in anticipation of incurring a tax debt. The 30-day period referred to shall be a period which begins 30 days before the date on which the transfer of assets takes place. If the business closes on 31 January 2009, any transfer made on, or after, 1 January 2009, will be considered to be a transfer in anticipation of incurring a tax debt.
3. If the TAK has established a tax debt against a taxpayer, and assets of the taxpayer are subsequently transferred before the TAK has recorded its lien, the TAK may have a basis for making an assessment against the transferee if all conditions established in The Law and Sub-Legal Act for such an assessment are met.
4. Article 35A.(b) provides that a transferee situation arises if the following conditions are met:
 - 4.1. The taxpayer has transferred assets to another entity either in anticipation of incurring a tax debt or after having incurred a tax debt (as described in 6.2 above),
 - 4.2. The transfer of assets was for less than fair market value of the assets,
 - 4.3. The transfer of assets has left the taxpayer without the capability of paying tax debts and,

For purposes of this Article, the term ‘assets’ shall be interpreted to be either the singular (asset) or plural (assets). The fair market value of the assets may be determined in any manner, so long as the basis for the value is clearly documented and is based on factual data. Generally, the fair market value must be determined after taking into consideration the age and condition of the asset. In determining the value of the property, the taxpayer’s records should be analyzed to determine the cost of the asset when it was new, the beginning value as shown on the depreciation schedule or worksheets associated with the depreciation schedule. The remaining value of the assets as shown on the depreciation schedule should be considered to be the minimal fair market value of the assets. Inquiries should be made of dealers familiar with the assets or similar assets. If cash is transferred, the fair market value will be equal to the value of the cash transferred. If the assets are encumbered by a lien recorded at the Pledge Registry or cadastre, the

fair market value determination should be made taking into consideration the information obtained in the registry.

5. If the taxpayer has transferred assets as described in paragraph 4 of this Section and is unable to pay his tax debts out of remaining assets, the transfer of assets will be considered to have left the taxpayer without the capability of paying his tax debts.

Section 24

Involuntary Bankruptcy Petitions

1. Law 2003/4 on “Liquidation and Reorganization of Legal Persons in Bankruptcy” (promulgated by Regulation 2003/7) establishes the provisions for bankruptcy petitions, including involuntary bankruptcy. As indicated in the title of the law, the bankruptcy provisions relate to legal persons, including general partnership, limited partnership, joint stock companies, and limited liability companies. It does not include private businesses, insurance companies, financial institutions, pension providers, or enterprises in public or social ownership which have not yet been transformed into legal entities.
2. As a creditor of taxpayers who owe tax debts, the TAK has the right to submit a petition to the applicable court to request that the assets of a debtor taxpayer be placed under the jurisdiction of the court for an orderly liquidation of the debtor taxpayer.
3. The TAK can submit a petition for involuntary bankruptcy when all the following are present:
 - 3.1. The debt has been due at least 60 days;
 - 3.2. The tax debtor owes TAK more than €2,000;
 - 3.3. The debt is not conditional or subject to a bona fide dispute (the taxpayer cannot be in Appeals, IRB, or a Court with jurisdiction to hear appeals of tax cases, and
 - 3.4. The debtor is generally not paying his debts as they become due.
4. A debtor is presumed to generally not be paying his debts when the TAK demonstrates that he has not paid one or more tax debts.
5. While not required, before submitting a petition in the case of a partnership, TAK should take all possible actions to collect the debt from the individual partners. In a general partnership, all partners are jointly and severally liable for the debts of the partnership. This means that the debts of the partnership can be collected from both the assets of the partnership and the assets of the individual partners. Limited partners are liable for the debts of the partnership only to the extent of their interest in the partnership. However, every limited partnership is required to have a general partner, who is personally fully liable for the debts of the limited partnership.
6. The Legal Officer, or person designated by the Director General, of the TAK is authorized to submit petitions for involuntary dissolution in bankruptcy to the

court of jurisdiction for bankruptcy and represent the TAK in all proceedings before the court.

7. When the court of jurisdiction accepts the petition, all assets of the taxpayer are considered to be under protective custody of the court. The TAK, as well as other creditors, is precluded from enforcing its claim against the assets of the tax debtor. This includes entering into an installment agreement with the taxpayer, should he wish to do so, unless the court agrees to such action.
8. Upon acceptance of the petition by the court, the TAK shall place a notice in newspapers of general circulation and such legal publications as distributed in the Republic of Kosovo advising the public that the taxpayer is in liquidation proceedings and the TAK will not recognize any further transactions involving that taxpayer. Such notice shall also be published on the TAK web site.
9. When the court recognizes the case as closed, the taxpayer is considered to be dissolved and will no longer exist. All tax debts due from the debtor prior to the petition date are considered to be extinguished and are no longer collectable.
10. The TAK is authorized to cancel all tax debts which have arisen prior to the petition date from its data processing system upon receipt of notice of case closure from the court of jurisdiction.

Section 25

Assessments against Responsible Persons

1. Section 47.1 of The Law provides:
Where a legal entity, or any organization other than a personal business enterprise, has failed to withhold, collect, or pay over a withholding tax or collected tax, any person responsible for withholding, collecting or paying over such tax, and who willfully fails to withhold, collect, or pay over that tax, shall be liable to an administrative penalty equal to the amount of the tax not withheld, collected or not paid over. For the purposes of this paragraph, willfulness shall be determined if the person(s) deemed responsible paid, authorized to be paid, directed to be paid, or allowed to be paid other creditors when that person knew, or should have known that the withholding tax or collected tax had not been collected, withheld, or paid over.
2. The terms withholding tax or collected tax include VAT, wage withholding, rent withholding, interest withholding, dividend withholding, royalty withholding and any other withholding tax that is currently imposed, or may be imposed in the future.
3. If any form of business, other than a personal business enterprise, fails to pay a collected tax or withholding tax, TAK is authorized to determine the person, or persons, who were responsible (responsible person(s)) for the business' failure to pay the collected tax or withheld tax.
4. The assessment authorized under this Section is intended to facilitate the collection of tax and enhance voluntary compliance. It serves as an alternative means of collecting the unpaid tax debts related to withholding taxes or collected taxes, when those taxes cannot be fully collected from the business or company that failed to pay the underlying taxes. Before initiating actions

- against the responsible persons, TAK must first make a reasonable effort to collect the tax debt from the business, including seizure and sale of its assets, if there is adequate equity in those assets.
5. During an assessment there should be taken into account paragraph 1 of Article 47 of The Law: responsibility and willfulness. The person against whom an assessment is made under Article 47 of The Law must be responsible as described in this Section and must have willfully failed to either withhold, collect or pay over the collected or withheld tax.
 6. **Establishing Responsibility.** Responsibility is a matter of status, duty, and authority. A determination of responsibility is dependent on the facts and circumstances of each case. Potentially responsible persons include:
 - 6.1. An officer or employee of a corporation (a president or managing director of a legal entity, managing partner of a partnership, Treasurer, Chief Financial Officer, Chief Operating officer);
 - 6.2. Corporate Director or shareholder;
 - 6.3. Partner;
 - 6.4. Another corporation;
 - 6.5. Accountant or tax representative;
 - 6.6. Any other person who has authority to determine what creditors should be paid and exercises that authority;
 7. A responsible person has:
 - 7.1. A duty to perform;
 - 7.2. The power to direct the act of collecting the withheld or collected taxes and paying them over to the TAK;
 - 7.3. Accountability for and authority to pay the collected or withheld taxes;
 - 7.4. Authority to determine which creditors will or will not be paid.
 8. To determine whether a person has the status, duty and authority to ensure that the withheld or collected taxes are paid, consideration must be given to the duties of the officers as set forth in the corporate by-laws as well as the ability of the individual(s) to authorize bank transfers or cash disbursements. In addition, determine the identity of the individuals who:
 - 8.1. Are officers, directors, or shareholders of the corporation
 - 8.2. Hire and fire employees
 - 8.3. Exercise authority to determine which creditors to pay
 - 8.4. Sign and file the VAT tax or withholding tax returns
 - 8.5. Control payroll/disbursements
 - 8.6. Control the corporation's voting stock
 9. The full scope of authority and responsibility is contingent upon whether the responsible person had the ability to exercise independent judgment with respect to the financial affairs of the business. For example, a bookkeeper in the company may be the person authorized to pay creditors and sign tax declarations. However, if the bookkeeper is not able to make the decisions regarding which creditors to pay and takes action only after receiving direction from a senior person in the business, then the bookkeeper cannot be considered

to be a responsible person as the bookkeeper did not have the authority to determine which creditors to pay.

The fact that a person is an officer or owns stock in the company does not necessarily make that person a responsible person for purposes of this Administrative Instruction. Other factors, as noted in paragraph 6 of this section, must also be present.

10. Persons with ultimate authority over financial affairs of the company may generally not avoid responsibility by delegating that authority to someone else.
11. Persons serving as volunteers solely in an honorary capacity as directors and trustees of NGO's with public benefit status will generally not be considered responsible persons unless they participated in the day-to-day or financial operations of the organization and they had actual knowledge of the failure to withhold or collect and pay over the withheld or collected taxes.

Example:

An employee who works as a secretary in the office of the company. She makes cash deposits and disbursements for the company on a regular basis at the control and direction of the Chief Financial Officer of the company. She is directed to pay suppliers even though the company has not yet paid its VAT liability. The employee is not a responsible person for the unpaid withheld or collected taxes because she does not have the ability to exercise independent judgment as to what bills to pay and what taxes to pay.

Example:

The long-time controller of the company was never a shareholder, officer, or director of the company, but he was responsible for overseeing the finances of the company, including the preparation of the payroll and filing the company's VAT and withholding returns. When the company did not have enough money to pay the gross payroll to the employees, he paid net payroll, but did not pay the withholding tax. Because he had the authority to pay the taxes and the knowledge that there was a tax debt, the controller could be considered to be a responsible person.

12. **Willfulness.** Willfulness means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. No evil intent or bad motive is required.
13. To show willfulness, it must be demonstrated that a responsible person was aware, or should have been aware, of the outstanding taxes and either intentionally disregarded the law or was plainly indifferent to its requirements. A responsible person's failure to investigate or correct mismanagement after being notified, or becoming aware, that withholding or collected taxes have not been paid satisfies the willfulness criteria.

Example:

If a managing director of a legal entity has submitted a VAT declaration without full payment, he knows that the tax is due. If he submits that declaration without full payment, and subsequently pays other debts without paying the tax obligation, he

has acted willfully and could be determined to be liable for the administrative penalty for failure to collect or pay over a withheld or collected tax.

14. **Assessment of Administrative Penalty.** When a person has been determined to be a responsible person who has acted willfully in failing to collect, withhold, or pay over a collected or withheld tax, the TAK shall have the authority to establish an assessment against that responsible person. While the facts and circumstances will be more difficult to prove, another legal entity could be the responsible person for purposes of paragraph 1 of Article 47 of The Law.
 - 14.1. The TAK shall prepare a written report describing the tax liability outstanding and the efforts made to collect the tax from the business that incurred the tax debt.
 - 14.2. The written report described in sub-paragraph One above must also include a written description of the facts used to determine that the person against whom the assessment is being recommended is considered to be a responsible person and that such person acted willfully within the meaning of The Law.
 - 14.3. The written report must be submitted to the taxpayer as a Notice of Proposed Assessment and must include the amount of tax to be assessed for failure to collect, withhold or pay over collected or withheld taxes. It is desirable to submit the Notice of Proposed Assessment to the responsible person by direct contact in order to discuss the report and process through which responsibility has been determined.
 - 14.4. The amount of tax to be assessed against the responsible person is the amount of tax required to be withheld or collected that has not been paid. The amount to be assessed does not include any penalties or interest that has been assessed or accrued in respect to the unpaid tax liability. If the amount unpaid is VAT, for example, the amount to be assessed against the responsible person is the amount of VAT that remains unpaid at the time the assessment is made, not including any penalty or interest that may be assessed or accrued.

Example:

Taxpayer A owes January, February, March, and April VAT obligations. The total tax on the returns when they were submitted was €2,000. Taxpayer has made one payment which has reduced the total amount of tax to €1,750. The balance of penalty and interest total €700. The amount of assessment to be made against the responsible officer is €1,750.

Example:

Corporation B has a tax debt of €2,000 including penalty and interest for non-payment of an interest withholding obligation. The amount of withheld tax is €1,200 and the balance of the assessment is penalty and interest. The amount of the assessment to be made against the responsible officer is €1,200.

Example:

Corporation C has a tax debt for wage withholding of €2,500 including penalty and interest tax €1,800, Penalty 300, and Interest 400. TAK collects €750 by levy on the bank account of Corporation B. Since TAK can apply payments resulting from enforced collection in the best interests of the Government, the levy payment is applied to the penalty and interest (€700) and €50 is applied to tax. The amount of assessment to be made against the responsible person is €1,750 (the amount of tax remaining due).

- 14.5. The taxpayer must be given 15 days in which to respond to the proposed assessment with additional information to demonstrate why the proposed assessment is not proper. Any responses made within the 15 day period must be considered by the TAK official responsible for recommending or approving the assessment. If the additional information demonstrates that the proposed assessment should not be made, the TAK official making that determination must prepare a report that explains that an assessment will not be made against the individual
- 14.6. After the 15-day period has expired, TAK will issue a Notice of Assessment to the taxpayer as described in Section 18 of this Administrative Instruction (per Article 20 of The Law). The assessment notice will be issued to “Taxpayer A as responsible person of Corporation B”. The notice will include a brief description of the basis for the assessment, such as: “You have been determined to be a responsible person of (name of Corporation) in accordance with the provisions of Article 47 of The Law. The notice will include the taxpayer’s appeal rights, as required by Section 20 of The Law.
- 14.7. Once the assessment has been made against a responsible person, the amount assessed is collectible with the same procedures as any other tax. Since the amount assessed is tax, late payment penalty and interest will accrue on the amount due beginning on the first of the month after the assessment has been made.
15. **Amount Collected Only Once.** In accordance with Article 47.1 of The Law, the amount of withheld or collected tax can be collected only one time. The assessment against the responsible person is simply a means of ensuring the collection of the tax debt and is not intended to be a means of collecting additional revenue. If the legal entity (or other business organization) which owes the underlying tax pays its full tax debt, the amount assessed against the responsible person shall be abated.
16. The TAK shall maintain a separate accounting for the amounts assessed against the responsible persons in order to ensure that the accounts receivable inventory of TAK is not over-stated. Any amounts collected from a responsible person shall be applied to the underlying tax liability of the legal entity and a memo entry made in the separate accounting record maintained with respect to the responsible person. Any amounts paid by the legal entity, which are applied to its delinquent tax amount, will also be noted in the separate accounting of the responsible person. When the total amount assessed against the responsible

person has been collected, including penalty and interest and any amounts collected from the legal entity (or other business organization) and applied against its tax, an amount sufficient to cancel out the tax debt will be credited to the account of the responsible person. When the tax debt has been cancelled, any liens recorded against the responsible person will be released.

17. If more than one responsible person has been assessed for the same debt, the TAK must establish a process that ensures that only an amount equal to the tax amount not collected or withheld by the legal entity (or other business organization) is collected and there is no excessive collection made.
18. **Pension Withholding.** Paragraph 2 of Article 47 of The Law provides that where a legal entity, or other business organization, except personal business enterprise, fails to withhold or pay over withheld pension contributions, the person (or persons) responsible for such failure may be assessed an amount equal to the contribution not withheld, collected, or paid over.
19. Procedures for implementation of paragraph 2 of Article 47 of The Law are the same as those for implementation of paragraph 1 of Article 47 of The Law as described in this section of this Administrative Instruction, except as described in paragraphs 20 and 21 of this section.
20. The amount of tax to be assessed is the amount of tax not withheld or withheld amount not paid over. In the case of pension withholding, the amount of tax not withheld or withheld amount not paid over, is the amount of contribution that is required to be withheld from the employee's wages and does not include the amount of contribution that is matched by the employer.
21. The Law "On Pensions in Kosovo" requires an employer to withhold a specified amount from an employee's wages and match that amount with the employer's own funds. The amount of tax subject to assessment against a responsible person (or persons) is only the amount of contribution that the employer is required to withhold from the employee's wages (including any additional pension amounts that the employee agrees to have withheld as a pension contribution).

Example:

Corporation A has paid payroll to its employees and was required to withhold a total of €2,000 for pension contributions. It was required to match that amount for a total tax liability of €4,000. Corporation A fails to pay any of its tax liability. The amount to be assessed against a responsible person (or persons) is €2,000 as that is the amount of contribution required to be withheld and the withheld amount required to be paid over to the Kosovo Pension Savings Trust.

Chapter VI **Credits and Refunds**

Section 26

Offsets to Current Tax Liabilities

1. Paragraph 1 of Article 24 of The Law provides TAK the authority to apply any overpayment reported on a tax declaration submitted by the taxpayer to any current liability of the taxpayer, irrespective of the type of tax that created the overpayment or the tax liability outstanding. Except as provided in paragraph 3 of this Section, any overpayment will be automatically applied to current tax liabilities by TAK. No request from the taxpayer will be necessary for TAK to apply an overpayment to a current tax liability.
2. When an overpayment is applied to a current tax liability, TAK shall issue a notice to the taxpayer advising of the application of the overpayment. The notice must include information to show the amount of overpayment and the type of tax and tax period to which the overpayment was attributable, as well as the amount and the type of tax and tax period to which the overpayment was applied.
3. Notwithstanding paragraph 1 of this Section, TAK shall not offset a VAT overpayment against a tax debt until such credit has been in existence for three months. If a taxpayer with a VAT credit in existence for three months or more owes a tax debt of more than €5,000, TAK shall notify the taxpayer that an audit of the VAT credit will be initiated and, if the credit is determined to be valid, an amount of the credit up to the amount of the tax liability will be applied to the tax liability and the balance will be refunded. In such cases, the taxpayer will not have an option of retaining the credit for application against subsequent VAT tax debts.

Section 27 Claims for Refund

1. As provided in paragraph 2 of Article 24 of The Law, a taxpayer who has an overpayment on a tax declaration is entitled to claim a refund of that amount, if the overpayment qualifies for a refund (as in the case of a VAT credit).
2. To obtain a refund of an overpayment of a tax liability, or a credit balance for which the taxpayer is eligible to claim a refund, the taxpayer must submit a claim to TAK on a form prescribed by TAK. The claim form shall be submitted to the regional office, or large taxpayer office, responsible for the taxpayer's tax affairs. Included with the claim form must be:
 - 2.1. The taxpayer's name
 - 2.2. The taxpayer's physical address
 - 2.3. The taxpayer's Fiscal Number and, if applicable, the VAT Registration Number
 - 2.4. The address to which the taxpayer wishes notices regarding the refund to be sent
 - 2.5. If the taxpayer wishes the refund to be directly deposited into a bank account, the necessary bank details to which the refund should be directed
 - 2.6. The type of tax, tax period, and amount of refund claimed
 - 2.7. The cause of the overpayment or credit, or how the overpayment or credit came into existence.

- 2.8. Documentation required to support the refund claim
3. In the case of a claim for refund of VAT cases, the documentation required to support the claim, in addition to the items described in paragraph 2 of this Section, must include:
 - 3.1. Statement of business regarding the cause of the overpayment of VAT, such as investments, large unusual purchases, etc.
 - 3.2. If more than 50% of the transactions of the claimant are with one company, the name of the company, the address of the company, the relationship of the company to the claimant, the Fiscal Number of the company, the VAT Registration Number of the company
 - 3.3. All purchase invoices for the three months prior to the month of the creation of the credit being claimed, purchase invoices for the month in which the credit being claimed was created, plus the purchase invoices for the succeeding months prior to the month of the VAT refund claim
 - 3.4. All sales invoices for the three months prior to the month of the creation of the credit being claimed, sales invoices for the month in which the credit being claimed was created, plus the sales invoices for the succeeding months prior to the month of the VAT refund claim
 - 3.5. All contracts fulfilled during the period for which the refund claim is requested, or in process during that time
 - 3.6. All customs documentation, plus associated purchase invoices, for all imports into Kosovo during the three months prior to the month in which the credit being claimed was created, all customs documentation and associated purchase invoices for the month in which the credit being claimed was created, plus the customs documents and associated purchase invoices for the succeeding months prior to the month of the VAT refund claim
 - 3.7. Any other documentation or requirements established in the Law on VAT
 - 3.8. Any other documentation requested by TAK during the processing of the claim.
4. As an exception to paragraph 2 of this Section, overpayments of Corporate Income Tax and Personal Income Tax of less than €500 shall not require submission of a refund claim. Such refunds may be claimed by indicating on the respective Corporate Income Tax declaration or Personal Income Tax Declaration that the taxpayer wishes to receive a refund of the overpayment shown on the declaration. The taxpayer must include appropriate bank information so that the overpayment can be paid directly to the designated bank account. TAK will process such refund claims immediately upon receipt following a review of TAK data which indicates that a refund is appropriate.
5. No refund will be issued until such time as the taxpayer has submitted all tax declarations due. A taxpayer who has not submitted all declarations will be considered to have not submitted a valid refund claim. Any refund claim submitted when the taxpayer has not submitted all required declarations will be rejected.
6. The fact that TAK has issued a refund in accordance with paragraph 4 of this Section does not imply that TAK has accepted the declaration as submitted.

- TAK retains the right to audit any declaration submitted within the time period provided by applicable legislation in force.
7. A refund claim may be submitted at any time after the due date for submitting the applicable declaration up to 6 years from the date the tax was paid. For purposes of determining the date of payment of tax, advance payments of CIT or PIT shall be considered to have been paid on the date such declarations are due to be submitted to TAK.
 8. If a payment has been submitted in error, a claim for refund of such payment may be submitted to the tax administration, in accordance with the provisions of this Section, prior to the due date of the tax declaration for which the payment was erroneously made. If there are outstanding tax liabilities, TAK shall apply the payment to any current tax liabilities, as provided in Section 28 of this instruction, prior to making the refund payment.
 9. TAK must process a valid refund claim within 60 days from the date it is received in the applicable TAK office. Claims which do not include the information required by this Section will not be considered to be valid claims and will be rejected by the receiving office. During the course of reviewing the refund claim, TAK may request additional information from the claimant in accordance with Article 14 of The Law. If such information is not provided within the timeframe prescribed in the written request, the responsible TAK office shall reject the refund request and advise the taxpayer of the reason for the rejection.
 10. If TAK does not process a valid claim within 60 days after it has been received, it must pay interest on the claim at the rate of interest prescribed by the Minister of the Ministry of Economy and Finance. Interest shall be computed on the amount of the claim that is approved for refund to the taxpayer beginning with the 61st day after the valid refund claim was received. No interest shall be due on a rejected refund claim. If the claim is rejected beyond the 60-day time period for reasons described in paragraph 9 of this Section, no interest shall be due.
 11. Interest shall not be due on any VAT refund amount that is withheld for administrative reasons as provided in the Law on VAT or an Administrative Instruction issued in accordance with the provisions of that law.
 12. If TAK subsequently audits a declaration for which a refund was received and determines that the taxpayer should not have received a refund, or should have received a refund for less than that actually paid, an adjustment to tax shall be made and applicable penalties and interest may be computed on the tax adjustment.

Chapter VII

Report of Transactions over €500

Section 28

Reportable Transactions

1. Paragraph 3 of Article 40 of The Law requires that, *“All persons engaged in a trade or business, who are taxed on income real bases and making purchases of goods or services from another taxable person totaling five hundred (500) Euros or more in any taxable year, shall render a true and accurate return reporting such purchases to the TAK. Purchases made by the Government and the municipalities of Republic of Kosovo are also subject to these reporting requirements. Obligatory annual declarations under this article must be submitted at the Tax Administration not later than March 31 of following year.”*
2. In accordance with paragraph one of this Section, a taxpayer (taxable person) must submit an annual report to TAK if they purchase goods or supplies totaling €500 or more from another taxable person (the supplier) in any taxable year. For purposes of this Section, the term “taxable person” shall mean any person who is, or is required to be, registered for VAT and who, in Kosovo independently carries out any economic activity in a regular or non-regular manner, whatever the purpose or results of that economic activity. The taxable year shall be the period beginning 1 January and ending 31 December of any calendar year, or any other taxable year approved by TAK for a specific taxpayer.
3. The report must include all goods and services purchased from the supplier, whether they were subject to VAT, or not. Exempt supplies must be included in determining if purchases from a supplier equaled or exceeded €500 in a taxable year. Such supplies must be included in the annual report required to be submitted to TAK by paragraph one of this Section.
4. In addition to taxable persons described in paragraph 2 of this Section, all Budget Organizations of the Central Government and all municipalities of the Republic of Kosovo are subject to reporting purchases of supplies of €500 or more from any supplier during a calendar year.

Section 29

Reporting Transactions

1. The report required by Section 28 of this Administrative Instruction must include the name of the supplier, the address of the supplier, the fiscal number of the supplier, the VAT number of the supplier, the total amount of supplies (in Euros) purchased from the supplier during the calendar year, the amount of taxable supplies purchased, the amount of exempt supplies purchased, and the VAT paid on the supplies purchased.
2. Reports for the previous taxable year must be submitted to TAK by 31 March of the subsequent year. Reports must be submitted on a form prescribed by TAK in accordance with instructions provided with the form.
3. Taxable persons making annual purchases totaling €500 or more from 10 or more suppliers must submit the annual report required by paragraph one of Section 31 of this Administrative Instruction in an electronic format to be issued in a Public Ruling following the publication of this administrative instruction.

4. Budget Organizations of the Central Government and Municipalities of the Republic of Kosovo are required to submit annual reports as required by this Section, including the requirement to submit reports electronically, if applicable.
5. As provided in The Law, this reporting requirement will begin with the taxable year following the year in which this Administrative Instruction is published. Thus, the first taxable year in which this reporting requirement will be effective is the calendar year ending 31 December 2010. The first reports required by this section will be due on or before 31 March 2011.

Section 30

Requirement to Provide Information

1. Purchasers are responsible for obtaining the information required for preparation of the annual report required by Section 28 of this instruction. As provided in Section 29 of this instruction, information which must be obtained includes the name and address of the supplier, the Fiscal Number of the supplier, the VAT Registration Number of the supplier, the total amount of supplies (in Euros) purchased from the supplier during the calendar year, the amount of taxable supplies purchased, the amount of exempt supplies purchased, and the VAT paid on the supplies purchased.
2. As provided in paragraph 4 of Article 40 of The Law, sellers are required to provide their name, address, fiscal number (Taxpayer Identification Number), and VAT registration number upon request of the purchaser.
3. Except for Budget Organizations of the Central Government and Municipalities of the Republic of Kosovo, taxable persons who fail to submit the annual report required by Section 28 of this instruction shall be subject to a penalty of up to €500 (paragraph 5 of Article 40 of The Law).

Chapter VIII

Penalties and Penalty Relief

Section 31

Penalty Handbook for Taxpayers and Tax Administration

1. With the many different penalty provisions, there is a need to develop a fair, consistent, and comprehensive approach to penalty administration. The purpose of this penalty handbook is to provide guidance to all areas of TAK for all penalties imposed by the tax laws of Kosovo. The handbook is written in an order that addresses the philosophy of penalties and basic conditions for relief, followed by instruction on application of the penalties addressed in this handbook and specific requirements for relief from certain penalties, where specific requirements exist. While this section of the Administrative Instruction is written as a tax administration handbook on penalty administration, it is included in its entirety in the Administrative Instruction for the public to also

- understand the role that penalties play in tax administration and the manner in which they are to be applied in Kosovo. Since the Handbook is included in its entirety in the Administrative Instruction, its provisions have the same force and effect as a sub-legal act.
2. Every function in TAK has a role in proper penalty administration. It is essential that each function conduct its operations with an emphasis on promoting voluntary compliance. Appropriate business reviews should be conducted to ensure consistency with the penalty policy statement and philosophy. It is important to ensure that approaches are consistent and penalty information is used for identifying and responding to compliance problems. Managers should continuously review information for trends which may suggest changes in compliance programs, training courses, educational programs, penalty design, and penalty administration.
 3. While penalty relief, once a penalty has been assessed, is the responsibility of a commission appointed by the Director in accordance with Article 51 of The Law, or decisions reached by Appeals, all employees should keep the following objectives in mind when making penalty determinations:
 - 3.1. Similar cases and similarly situated taxpayers should be treated alike.
 - 3.2. Each taxpayer should have the opportunity to have their interests heard and considered.
 - 3.3. Strive to make a good decision in the first instance. A wrong decision, even though eventually corrected, has a negative impact on voluntary compliance.
 - 3.4. Provide adequate opportunity for incorrect decisions to be corrected.
 - 3.5. Treat each case in an impartial and honest way (i.e., approach the job, not from the government's or the taxpayer's perspective, but in the interest of fair and impartial enforcement of the tax laws).
 - 3.6. Use each penalty case as an opportunity to educate the taxpayer, help the taxpayer understand their legal obligations and rights, and assist the taxpayer in understanding their appeal rights and, in all cases, observe the taxpayer's procedural rights.
 - 3.7. Endeavor to promptly process and resolve each taxpayer's case.
 - 3.8. Make each penalty determination in a manner which promotes voluntary compliance.
 4. TAK Penalty administration will be guided by this Policy Statement: *Penalties constitute one important tool of the tax administration in pursuing its mission to effectively collect the revenue of Kosovo. Penalties support that mission only if they enhance voluntary compliance. The tax administration will design, administer and evaluate penalty programs solely on the basis of whether they do the best possible job of encouraging compliant conduct on the part of our taxpayers. In the interest of an effective tax system, the tax administration will use penalties to encourage voluntary compliance by: (1) helping taxpayers understand that compliant conduct is appropriate and non-compliant conduct is not; (2) deterring noncompliance by imposing costs on it; and (3) establishing the fairness of the system by justly penalizing the non-compliant taxpayer. To this end, the tax administration administers a penalty system that is designed to:*

- 4.1. *Ensure consistency*
 - 4.2. *Ensure accuracy of results in light of the facts and the law;*
 - 4.3. *Provide methods for the taxpayer to have his or her interests heard and considered;*
 - 4.4. *Require impartiality and a commitment to achieve the correct decision;*
 - 4.5. *Allow for prompt reversal of initial determinations when sufficient information has been presented to indicate that the penalty is not appropriate;*
 - 4.6. *Ensure that penalties are used for their proper purpose and not as bargaining points in the development or processing of cases.*
5. The remainder of this handbook will more fully explain this policy statement, the relief that can be granted, and the application of the specific penalties provided in The Law.

Section 32

Purpose of Penalties

1. Penalties exist to encourage voluntary compliance by supporting the standards of behavior expected by the tax laws and regulations of Kosovo.
2. For most taxpayers, voluntary compliance consists of preparing an accurate return, filing it timely, and paying any tax due. Legitimate efforts made to fulfill these obligations constitute compliant behavior. Most penalties apply to behavior that fails to meet one or all of these obligations.
3. Penalties encourage voluntary compliance by:
 - 1.1. Defining standards of compliant behavior,
 - 1.2. Defining remedial consequences for noncompliance, and
 - 1.3. Providing monetary sanctions against taxpayers who do not meet the standard.
4. These three factors support the public conviction that the tax system is fair and the penalty is in proportion to the severity of the noncompliance.

Section 33

Encouraging Voluntary Compliance

1. Taxpayers in Kosovo assess their tax liabilities against themselves and pay those liabilities voluntarily. This system of assessment and payment is based on the principle of voluntary compliance. Voluntary compliance exists when taxpayers conform to the law without compulsion or threat.
2. Compliant self-assessment requires a taxpayer to know the rules for filing returns and paying taxes. TAK is responsible for providing information to taxpayers, which includes:
 - 2.1. Written materials that clearly explain the rules.

- 2.2. Forms that permit the self-computation of tax liability.
3. In a voluntary compliance system, taxpayers have a responsibility for determining what their tax obligations are and must make an effort to obtain the necessary information, understand what the information means to them, and apply the information in a correct manner. Taxpayers who fail to assume their responsibilities will have a difficult time in obtaining relief under the criteria in this handbook or the law.
 4. In addition to paragraph 3 of this Section, TAK must also provide a means to preserve and enhance our voluntary compliance by fairly, consistently, and accurately administering a system of penalties.
 5. Although penalties support and encourage voluntary compliance, they also serve to bring additional revenues into the Government, impose remedial charges against taxpayers, and indirectly fund enforcement costs. However, these results are not reasons for creating or imposing penalties.
 6. Penalties advance the mission of TAK when they encourage voluntary compliance. Compliance is achieved when a taxpayer makes a good faith effort to meet the tax obligations defined by the tax laws and regulations. Penalties support voluntary compliance by assuring compliant taxpayers that tax offenders are identified and penalized.
 7. TAK has the obligation to advance the fairness and effectiveness of the tax system. Penalties should:
 - 7.1. Be severe enough to deter noncompliance.
 - 7.2. Encourage noncompliant taxpayers to comply.
 - 7.3. Be objectively proportioned to the offense.
 - 7.4. Be used as an opportunity to educate taxpayers and encourage their future compliance.
 8. TAK personnel may educate taxpayers and encourage their future compliance by:
 - 8.1. Discussing causes for the delinquency and listening to taxpayer's reasons and concerns for noncompliance,
 - 8.2. Ensuring that taxpayers understand their filing and paying responsibilities, and
 - 8.3. Ensuring that taxpayers understand their ability to request penalty relief in appropriate circumstances.
 9. Penalties should relate to the standards of behavior they encourage. Penalties best aid voluntary compliance if they support belief in the fairness and effectiveness of the tax system. This belief encourages compliance in areas that cannot be reached through audits or other programs

Section 34

Fair and Consistent Approach to Penalties

1. TAK's approach to penalty administration must ensure:
 - 1.1. **Consistency:** TAK should apply penalties equally in similar situations. Taxpayers base their perceptions about the fairness of the system on

their own experience and the information they receive from the media and others. If TAK does not administer penalties uniformly (guided by the applicable statutes, regulations, and procedures) overall confidence in the tax system is jeopardized.

- 1.2. **Accuracy:** TAK must arrive at the correct penalty decision. Accuracy is essential. Erroneous penalty assessments and incorrect calculations confuse taxpayers and misrepresent the overall competency of TAK.
- 1.3. **Impartiality:** TAK employees are responsible for administering the penalty statutes in an even-handed manner that is fair and impartial to both the government and the taxpayer.

Section 35 **Penalty Relief**

1. Paragraph 3 of Article 51 of The Law, amended by the Law 03/L-071, provides that a taxpayer may request relief from a penalty assessed if the taxpayer believes that reasonable cause, good faith, undue hardship, or other grounds that will enhance the effectiveness of TAK.
2. Generally, relief from penalties falls into four separate categories. They are:
 - 2.1. Reasonable Cause, including a good faith effort to comply with the law
 - 2.2. Statutory Exceptions
 - 2.3. Administrative Waivers, such as undue hardship or other grounds that will enhance the effectiveness of TAK
 - 2.4. Correction of TAK Error.
3. To request relief, the taxpayer must submit a written statement to the Director General of the tax administration that provides a complete description of the penalty that was assessed; a narrative describing the basis on which relief is requested and facts that support the request for relief; any supporting documentation necessary; and signature of a responsible person attesting that the information submitted is true and correct.
4. The Director General shall establish a penalty relief commission composed of three members of the TAK management staff, who are at least Regional Managers or their equivalent.
5. In making its decision regarding penalty relief, the penalty relief commission must consider the facts and circumstances of each case. The penalty relief commission must consider the guidance provided in this handbook in making its determination of granting or denying penalty relief
6. The penalty relief committee will only consider requests for relief submitted before an appeal has been considered by TAK Appeals. A determination of the penalty relief committee may be appealed to TAK Appeals, but a determination made by TAK Appeals cannot be considered by the penalty relief committee.
7. Any penalty assessed as a result of tax fraud or other tax crime is not eligible for relief.

Section 36

Requesting and Considering Penalty Relief

1. A taxpayer request for relief will generally be made after receiving notice of an assessment. However, a taxpayer may request penalty relief after receiving a notice of proposed assessment arising from an audit of the taxpayer.
2. When the request is received carefully analyze the taxpayer's reasons to determine if penalty relief is warranted. The burden of proof is generally upon the taxpayer.
3. Each request must be evaluated on its own merit including:
 - 3.1. The events or parties involved, and
 - 3.2. If the taxpayer exercised ordinary business care and prudence, but due to circumstances or events beyond the taxpayer's control the taxpayer was unable to meet the tax requirement or if other penalty relief criteria apply.
4. The taxpayer's obligation to meet the requirement is ongoing. Ordinary business care and prudence requires that the taxpayer continue to attempt to meet the requirements, even though late.
5. Determine if the taxpayer's explanation addresses the penalty imposed.
 - 5.1. The dates and explanations should clearly correspond with events on which the penalties are based to show that the taxpayer is entitled to relief from the penalty.
 - 5.2. Request additional information from the taxpayer to clarify the explanation if the dates and explanations do not correspond with the events on which the penalty is based.
6. Review available TAK information in determining whether or not the taxpayer exercised ordinary business care and prudence. Check the preceding tax years (at least two) for payment patterns and the taxpayer's overall compliance history.
 - 6.1. The same penalty, previously assessed, may indicate that the taxpayer is not exercising ordinary business care.
 - 6.2. If this is the taxpayer's first incident of noncompliant behavior, weigh this factor with other reasons the taxpayer gives for relief, since a first time failure to comply does not by itself establish reasonable cause, but will be given a substantial amount of weight in making the determination. Other factors would need to reflect a serious disregard for the tax laws.
7. Consider the length of time between the event cited as a reason for the noncompliance and subsequent compliance. The length of time between events may serve to cancel or reduce the event's effect. Penalty relief may not be appropriate if after considering all facts and circumstances the taxpayer fails to timely correct noncompliant behavior.
8. Consider if the taxpayer could have anticipated the event that caused the non-compliance.
9. The following are examples where penalty relief may not be appropriate.
 - 9.1. The taxpayers claim that they were unable to comply with the filing requirement due to a death in the family. The death occurred several

months prior to the due date of the return. The return was not filed until a year after the due date of the return.

- 9.2. Taxpayers claim that they were unable to comply with the filing requirement because the records necessary for filing were in the control of a third party, i.e., a bankruptcy trustee or an accountant. The records were returned to the taxpayer well in advance of time the return was required to be filed. The return was not filed until several months after the records were returned.
- 9.3. In both of the examples, the timing of the event may prevent the taxpayer from receiving penalty relief unless other factors justify the delay in filing.

Section 37

Taxpayer Entitled to Relief

1. If the taxpayer provides an explanation that supports their request, waive or abate the applicable penalties. If the explanation applies to only a portion of the penalty, only that portion of the penalty should be waived or abated. Procedures for abating penalties will be developed and implemented by the tax administration.
2. Responsible officials of the TAK will document any decision made under this Administrative Instruction, including the basis on which the decision was made. Any information received which supports the decision will be attached to the decision and retained in an official file of TAK, which can easily be retrieved as necessary.
3. If relief is granted prior to assertion of a penalty that is normally automatically assessed by SIGTAS necessary action must be taken to prevent the automatic assessment by SIGTAS. If such an automatic assessment does occur, the provisions of Section 42 of this Administrative Instruction should be applied.

Section 38

Taxpayer Not Entitled to Relief

1. If a final determination that the criteria for granting relief from the penalty was not established, the decision must be documented as in Section 37 above. Any information received which supports the decision will be attached to the decision and retained in an official file of TAK, which can easily be retrieved as necessary.
2. A written notification of the decision to not grant penalty relief must be delivered to the taxpayer. The notice should include:
 - 2.1. A complete explanation of the Service's decision and the basis for denial;
 - 2.2. Information on the appeal procedures to be followed if the taxpayer wishes to appeal the decision.

Section 39

Reasonable Cause

1. Reasonable cause is based on all the facts and circumstances in each situation and allows TAK to provide relief from a penalty that has been assessed. Reasonable cause relief is generally granted when the taxpayer exercises ordinary business care and prudence in determining their tax obligations but is unable to comply with those obligations.
2. In the interest of equitable treatment of the taxpayer and effective tax administration, the abatement of civil penalties based on reasonable cause or other relief provisions provided in this handbook must be made in a consistent manner and should conform with the considerations specified in the applicable laws, regulations or administrative instructions in power.
3. For those penalties where reasonable cause can be considered, any reason which establishes that the taxpayer exercised ordinary business care and prudence, but was unable to comply with a prescribed duty within the prescribed time, will be considered. Acceptable explanations are not limited to those in this Administrative Instruction.
4. Taxpayers have reasonable cause when their conduct justifies the abatement of a penalty. Each case must be judged individually based on the facts and circumstances at hand. Consider the following questions in making a determination:
 - 4.1. What happened and when did it happen?
 - 4.2. During the period of time the taxpayer was non-compliant, what facts and circumstances prevented the taxpayer from filing a return, paying a tax, or otherwise complying with the law?
 - 4.3. How did the facts and circumstances prevent the taxpayer from complying?
 - 4.4. How did the taxpayer handle the remainder of their affairs during this time?
 - 4.5. Once the facts and circumstances changed, what attempt did the taxpayer make to comply?
5. Reasonable cause does not exist if, after the facts and circumstances that explain the taxpayer's noncompliant behavior cease to exist, the taxpayer fails to comply with the tax obligation within a reasonable period of time.
6. **Ordinary business care and prudence.** Any reason that establishes a taxpayer exercised ordinary business care and prudence but was unable to comply with the tax law may be considered for penalty relief.
 - 6.1. Ordinary business care and prudence includes making provision for business obligations to be met when reasonably foreseeable events occur. A taxpayer may establish reasonable cause by providing facts and circumstances showing the taxpayer exercised ordinary business care and prudence (taking that degree of care that a reasonably prudent person would exercise), but nevertheless was unable to comply with

the law.

- 6.2. In determining if the taxpayer exercised ordinary business care and prudence, review available information including the following:

6.2.1. **Taxpayer's Reason.** The taxpayer's reason should address the penalty imposed. To show reasonable cause, the dates and explanations should clearly correspond with events on which the penalties are based. If the dates and explanations do not correspond to the events on which the penalties are based, request additional information from the taxpayer that may clarify the explanation.

6.2.2. **Compliance History.** Check the preceding tax years (at least 2) for payment patterns and the taxpayer's overall compliance history. The same penalty, previously assessed or abated, may indicate that the taxpayer is not exercising ordinary business care. If this is the taxpayer's first incident of noncompliant behavior, weigh this factor with other reasons the taxpayer gives for reasonable cause, since a first time failure to comply does not by itself establish reasonable cause.

6.2.3. **Length of Time.** Consider the length of time between the event cited as a reason for the noncompliance and subsequent compliance. Consider:

6.2.3.1. When the act was required by law;

6.2.3.2. The period of time during which the taxpayer was unable to comply with the law due to circumstances beyond the taxpayer's control, and

6.2.3.3. When the taxpayer complied with the law.

6.2.4. **Circumstances Beyond the Taxpayer's Control.** Consider whether or not the taxpayer could have anticipated the event that caused the noncompliance. Reasonable cause is generally established when the taxpayer exercises ordinary business care and prudence but, due to circumstances beyond the taxpayer's control, the taxpayer was unable to timely meet the tax obligation. The taxpayer's obligation to meet the tax law requirements is ongoing. Ordinary business care and prudence requires that the taxpayer continue to attempt to meet the requirements, even though late.

- 6.3. **Ignorance of the Law.** In some instances taxpayers may not be aware of specific obligations to file and/or pay taxes. The ordinary business care and prudence standard requires that taxpayers make reasonable efforts to determine their tax obligations. Reasonable cause may be established if the taxpayer shows ignorance of the law in conjunction with other facts and circumstances.

6.3.1. For example, consider:

6.3.1.1. The taxpayer's education,

6.3.1.2. If the taxpayer has been subject to the tax,

6.3.1.3. If the taxpayer has been penalized, or

- 6.3.1.4. If there were recent changes in the tax forms or law which a taxpayer could not reasonably be expected to know.
- 6.3.2. The level of complexity of a tax or compliance issue is another factor that should be considered in evaluating reasonable cause because of ignorance of the law.
- 6.3.3. Reasonable cause should never be presumed, even in cases where ignorance of the law is claimed.
- 6.3.4. The taxpayer may have reasonable cause for noncompliance if:
 - 6.3.4.1. A reasonable and good faith effort was made to comply with the law, or
 - 6.3.4.2. The taxpayer was unaware of a requirement and could not reasonably be expected to know of the requirement.
- 6.4. **Mistake was made.** The taxpayer may try to establish reasonable cause by claiming that a mistake was made.
 - 6.4.1. Generally, this is not in keeping with the ordinary business care and prudence standard and does not provide a basis for reasonable cause.
 - 6.4.2. However, the reason for the mistake may be a supporting factor if additional facts and circumstances support the determination that the taxpayer exercised ordinary business care and prudence
- 6.5. **Forgetfulness.** The taxpayer may try to establish reasonable cause by claiming forgetfulness or an oversight by the taxpayer or another party caused the noncompliance.
 - 6.5.1. Generally, this is not in keeping with ordinary business care and prudence standard and does not provide a basis for reasonable cause.
 - 6.5.2. Relying on another person to perform a required act is generally not sufficient for establishing reasonable cause.
 - 6.5.3. It is the taxpayer's responsibility to file a timely and accurate return and to make timely payments. This responsibility cannot be delegated.
 - 6.5.4. Information to consider when evaluating a request for an abatement or non-assertion of a penalty based on a mistake or a claim of ignorance of the law includes, but is not limited to:
 - 6.5.4.1. When and how the taxpayer became aware of the mistake.
 - 6.5.4.2. The extent to which the taxpayer corrected the mistake.
 - 6.5.4.3. The relationship between the taxpayer and the subordinate.
 - 6.5.4.4. If the taxpayer took timely steps to correct the failure after it was discovered.
 - 6.5.4.5. The supporting documentation.
- 6.6. **Death, Serious Illness, or Unavoidable Absence.** Death, serious illness or unavoidable absence of the taxpayer may establish

reasonable cause for late filing or payment for the following:

- 6.6.1. An **individual**: If there was a death, serious illness, or unavoidable absence of the taxpayer or a death or serious illness in the taxpayer's immediate family (i.e. spouse, sibling, parents, grandparents, children).
- 6.6.2. A **corporation, estate, trust , etc.**: If there was a death, serious illness, or other unavoidable absence of the taxpayer (or a member of such taxpayer's immediate family), and that taxpayer had sole authority to execute the return or pay the tax (person responsible).
- 6.6.3. If someone, other than the taxpayer or the person responsible, is authorized to meet the obligation, consider the reasons why that person did not meet the obligation when evaluating the request for relief. In the case of a business, if only one person was authorized, determine whether this was in keeping with ordinary business care and prudence.
- 6.6.4. Information to consider when evaluating a request for penalty relief based on reasonable cause due to death, serious illness, or unavoidable absence includes, but is not limited to, the following:
 - 6.6.4.1. The relationship of the taxpayer to the other parties involved.
 - 6.6.4.2. The date of death.
 - 6.6.4.3. The dates, duration, and severity of illness.
 - 6.6.4.4. The dates and reasons for absence.
 - 6.6.4.5. How the event prevented compliance.
 - 6.6.4.6. If other business obligations were impaired, and
 - 6.6.4.7. If tax obligations were attended to promptly when the illness passed, or within a reasonable period of time after a death or absence.
- 6.7. **Unable to Obtain Records.** Explanations relating to the inability to obtain the necessary records may constitute reasonable cause in some instances, but may not in others. Consider the facts and circumstances relevant to each case and evaluate the request for penalty relief.
 - 6.7.1. If the taxpayer was unable to obtain records necessary to comply with a tax obligation, the taxpayer may or may not be able to establish reasonable cause. Reasonable cause may be established if the taxpayer exercised ordinary business care and prudence, but due to circumstances beyond the taxpayer's control they were unable to comply.
 - 6.7.2. Information to consider when evaluating such a request includes, but is not limited to an explanation as to:
 - 6.7.2.1. Why the records were needed to comply.
 - 6.7.2.2. Why the records were unavailable and what steps were taken to secure the records.
 - 6.7.2.3. When and how the taxpayer became aware that they

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placed on notice that the advice is no longer correct or no longer represents TAK's position.

- 7.5. The taxpayer is placed on notice as the result of any of the following events that present a contrary position and occur after the issuance of the written advice:
 - 7.5.1. Written correspondence from TAK that its advice is no longer correct or no longer represents TAK's position;
 - 7.5.2. Enactment of legislation or ratification of a tax treaty;
 - 7.5.3. A Court decision;
 - 7.5.4. The issuance of an sub-legal act related to the issue; or
 - 7.5.5. The publication of a public ruling, or other statement in the tax administration web site.
- 7.6. Taxpayers must submit the necessary supporting information, including a copy of their correspondence to TAK and the written response received from the TAK with their request for relief.
- 7.7. Even though the taxpayer may not qualify for relief based on considerations discussed in 7.3 above the taxpayer may still qualify for some penalty relief if it is determined that the taxpayer exercised ordinary business care and prudence in requesting advice from TAK and relying on it to the extent the taxpayer did rely on the advice.
- 7.8. **Advice from a Tax Advisor.** Reliance on the advice of a tax advisor generally relates to a reasonable cause exception for the understatement of income or overstatement of refunds or similar issues of a technical or complex nature. If a tax advisor is able to demonstrate that a position taken on an income tax declaration which resulted in an understatement of income or overstatement of refund was a reasonable position, and the taxpayer reasonably relied on that advice, a finding of reasonable may be possible depending on the facts and circumstances of each individual case. However, the taxpayer's responsibility to file, pay or deposit taxes cannot be excused by reliance on the advice of a tax advisor.
8. **Fire, Casualty, Natural Disaster, or Other Disturbance.** Relief from a penalty may be requested if there was a failure to timely comply with a requirement to file a return or pay a tax as the result of a fire, casualty, natural disaster, or other disturbance.
 - 8.1. Relief from a penalty because the taxpayer suffered from a fire, casualty, natural disaster, or other disturbance could be considered if, as a result of the fire, the taxpayer was unable to access their records; or as the result of an accident, the responsible party was hospitalized and unable to file the return or pay the tax.
 - 8.2. Fire, casualty, natural disaster, or other disturbances are factors to consider. One of these circumstances by itself does not necessarily provide penalty relief.
 - 8.3. Penalty relief may be appropriate if the taxpayer exercised ordinary business care and prudence, but due to circumstances beyond the taxpayer's control they were unable to comply with the law.

8.4. Factors to consider include:

- 8.1. Timing.
- 8.2. Effect on the taxpayer's business.
- 8.3. Steps taken to attempt to comply.
- 8.4. If the taxpayer complied when it became possible.
- 8.5. The determination to grant relief from each penalty must be based on the facts and circumstances surrounding each individual case.

Section 40

Administrative Waiver

1. TAK may formally interpret or clarify a provision to provide administrative relief from a penalty that would otherwise be assessed. An administrative waiver may be addressed in either a Public Ruling, News Release, or other formal communication stating that the policy of TAK is to provide relief from a penalty under specific conditions.
2. An administrative waiver may be necessary when there is a delay by TAK in:
 - 2.1. Printing or mailing of forms
 - 2.2. Publishing guidance, writing of regulations, or
 - 2.3. Other conditions.
3. When TAK has determined that one of the conditions in paragraph 2.2 exists, it is authorized to issue a formal communication in the form of a Public Ruling that advises the public that the deadline for submission of declarations has been extended or that certain penalties will be waived for a specified period of time due to inappropriate, inadequate, or inaccurate instructions or guidance. Such public rulings will be published extensively in the media of Kosovo, as well as being placed on the TAK website.

Section 41

Undue Hardship

1. Undue hardship generally does not affect a person's ability to file and therefore would not provide a basis for penalty relief in a failure to file situation. However, each request must be considered on a case-by-case basis. Undue hardship may establish reasonable cause for some penalties.
2. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer for making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.
3. Undue hardship may support relief from the addition to tax for late payment of tax if, the explanation for the noncompliance supports such a determination. However, the mere inability to pay does not ordinarily provide the basis for granting penalty relief. The taxpayer must also show that they exercised ordinary business care and prudence in providing for the payment of the tax

liability.

4. In determining whether the taxpayer was unable to pay the tax in spite of the exercise of ordinary business care and prudence in providing for payment of his tax liability, consideration will be given to all the facts and circumstances of the taxpayer's financial situation, including the amount and nature of the taxpayer's expenditures in light of the income (or other amounts) he could, at the time of such expenditures, reasonably expect to receive prior to the date prescribed for the payment of the tax. The taxpayer may claim that enough funds were on hand but, as a result of unanticipated events, the taxpayer was unable to pay the taxes.
5. Consider an individual taxpayer's inability to pay a factor when considering penalty relief if the taxpayer shows that, had the payment been made on the payment due date, undue hardship would have resulted. In the case where a taxpayer files bankruptcy, consider inability to pay a factor if the insolvency occurred before the tax payment date.
6. Undue hardship does not support relief from late payment penalty in the case of failure to timely pay withheld or collected taxes. Withheld and collected taxes represent amounts held by the taxpayer in trust for the Government and are not the taxpayer's funds to be used for his/its expenses, other than the payment of the tax liability arising from the obligation to withhold or collect the taxes in question.
7. Information to consider when evaluating a request for penalty relief includes, but is not limited to, the following:
 - 7.2. When did the taxpayer know they could not pay?
 - 7.3. Why was the taxpayer unable to pay?
 - 7.4. Did the taxpayer explore other means to secure the necessary funds?
 - 7.5. What did the taxpayer supply in the way of supporting documentation, such as copies of bank statements?
 - 7.6. Did the taxpayer pay when the funds became available?

Section 42

TAK Error

1. A TAK error can be any error made by TAK in computing or assessing tax, crediting accounts, etc. When an employee from any area of TAK identifies a computer programming application that caused a penalty to be assessed in error, that employee should submit a written report to the Deputy Director Information Technology describing the issue and how the improper programming is causing erroneous assessments, penalties, or other problems impacting on the accuracy of the tax administration data base.
2. The Deputy Director, Information Technology should analyze the issue in conjunction with appropriate personnel from Information Technology, Compliance and Operations to determine the proper calculation so that the programming error can be corrected and to determine the extent of the problems caused by the error.
3. If a programming correction can be made to retroactively correct the problem,

- such actions should be taken and any erroneous penalties or assessments should be corrected with a notice to the taxpayer advising of the reason for the adjustment to their tax records.
4. If a programming correction cannot be made retroactively, an appropriate fix must be made to ensure that the error does not occur in the future. A printout of taxpayer cases with the error should be made and agreement reached regarding how they will be corrected – which TAK function will be responsible for the correction and the procedures by which the corrections will be made.
 5. If the error is an isolated error and not a recurring problem, each penalty should be manually adjusted by a responsible person after obtaining appropriate approvals. Examples of such cases are:
 - 5.1. A math error when manually computing a penalty,
 - 5.2. Any other error, when it can be shown that (a) the taxpayer did in fact comply with the law, and (b) TAK did not initially recognize that fact.
 - 5.3. Automatic assessment of a penalty when a competent tax administration official has determined that no penalty should be assessed and documentation of that determination is available.
 6. Adjustments under this sub-paragraph do not require consideration by the commission appointed by the Director General per Section 35 of this Administrative Instruction, but they must be documented and adjustments approved by the Deputy to the Director General (Compliance).

Section 43

Administrative Penalty with Respect to Fiscal Certification

1. Per paragraph 2 of Article 43 of The Law, *“Any person who performs an activity without being provided with a Fiscal Number or without being registered with TAK, under criteria defined in Article 7 of the present law shall be liable to a penalty equal to five hundred (500) Euro.”*
2. Paragraph 2 of Article 43 of The Law further provides that TAK shall issue a previously un-registered taxpayer a fiscal number and assess the penalty provided in paragraph one of Article 43 of The Law. Upon contact with an un-registered business, a TAK employee must obtain sufficient identification information (name, address, personal identification number, date business started, number of employees, telephone number, bank account information, any other previous or current businesses operating, etc.) to allow entry of the taxpayer into the TAK IT system for issuance of a Fiscal Number.
3. As provided in Article 43 of The Law, TAK is authorized to assess a penalty of €500 when any person performs an economic activity without being equipped with a Fiscal Number.
4. In addition, to assessing a penalty for engaging in economic activity without a fiscal number, TAK shall also provide the Business Registry Agency (hereinafter BRA).with information regarding the business.

Section 44

Administrative Penalties with Respect to Failure to File and Pay

1. Article 44 of The Law provides for penalties based on a failure to submit a declaration on a timely basis or failure to pay the tax due on a timely basis.
2. **Failure to File.** The penalty for failure to file (submit a tax declaration) by the due date for submitting such declarations is 5% of the amount of tax due on that return. The penalty is assessed for each month or part month that the declaration is late for a maximum of 5 months. Under this provision, the maximum penalty to be assessed is 25% of the tax due on the tax declaration.

Example:

VAT declaration for July 2009 is due on 31 August 2009. If there is an amount of tax due (after applying appropriate credits) of €100, the failure to file penalty will be €5 (100×0.05) per month for the first 5 months the declaration is late. If the declaration is submitted on 2 September, the penalty will be only €5; if the declaration is not submitted until April 2010, the penalty will be €25 as the return is more than five months late, but the maximum penalty is limited to 25% of the tax due.

Similarly, a Corporate Income Tax Declaration is due on 1 April (under current Corporate Income Tax law). A Corporate Income Tax Return for the year 2008 must be submitted by 1 April 2009. If the tax owed for the year is €1,000 and the taxpayer has made timely advance payments during 2008 (including the payment due 15 January 2009) of €950, the tax due on the declaration will be €50. If the declaration is submitted in August 2009, the penalty will be 25% (5% per month for 5 months) of €50, or €12.50.

3. If TAK makes a subsequent assessment of additional tax, the failure to file penalty will be applied to the additional amount of tax in the same manner as it was applied to the tax declaration submitted by the taxpayer.
4. If the taxpayer never submits a return and the tax administration prepares a return for the taxpayer, the failure to file penalty will be applied to the tax determined to be due by the tax administration in the amount of 5% per month for each month the declaration is not submitted, to a maximum of 25%.
5. **Failure to Pay.** If the taxpayer fails to make payment of the tax by the date prescribed for making such payment, TAK is authorized to assess a penalty of 1% of the tax amount not timely paid for each month or part month that the tax remains unpaid.
6. Failure to Pay Penalty (also known as Late Payment Penalty) is charged for a maximum of 12 months, or a maximum penalty of 12%.
7. As provided in Article 44.3 of The Law, the Failure to File and Failure to Pay Penalties cannot be assessed for the same month or part of a month. The Failure

to File Penalty will be assessed for the period of time the declaration remains unsubmitted (to a maximum of 5 months or 25%). The Failure to Pay Penalty will begin in the month following the last month for which the Failure to File Penalty was assessed. If the declaration is timely submitted without payment, the Failure to Pay Penalty will start from the date payment was due, but not made.

Example:

January 2009 VAT Declaration Due on 28 February 2009 was submitted without payment on 10 June 2009 without payment. Tax due on the declaration was €1,000.

Failure to File Penalty will be assessed on €1,000 for a period of 4 months (March, April, May, and June) for a total of 20% or €200.

If the tax due remains unpaid, the Failure to Pay Penalty will be assessed at 1% of the tax due (€1,000) on 1 July 2009 and will continue to be applied on the first of each month thereafter until it reaches the maximum penalty of 12% (June 2010).

If the January 2009 VAT is timely submitted by 28 February without payment, the Failure to Pay Penalty will be assessed on 1 March and continue at 1% per month until the tax is paid for a maximum period of 12 months or 12%.

8. **Relief From Failure to File and Failure to Pay Penalties.** If the taxpayer provides reasonable cause for the late submission of a declaration as described in the Administrative Instruction, the tax administration will consider the information provided in determining whether relief should be granted, or not. Relief will not be granted if the failure to submit the declaration was based on carelessness or negligence, such as forgetting to submit the declaration or belief that the date for submission was a date other than the date set by law. As noted in this Administrative Instruction, consideration must be given to all facts and circumstances in determining if relief is appropriate.
9. Reasonable cause for Failure to Pay is difficult to establish as it requires that the taxpayer demonstrate that he made provisions for payment of the tax, but an unexpected event that took precedence over payment of the tax occurred. It may also be possible to determine reasonable cause based on a finding of undue hardship as described in Section 8 of this Administrative Instruction. Consideration must be given to the nature of the event and whether it legitimately should have taken precedence over payment of the tax. Generally, with some possible exceptions, the taxpayer must pay the tax before consideration can be given to relief from the Failure to Pay Penalty, since the penalty continues until the tax is paid or the maximum penalty has been reached.

If the maximum penalty has been reached and the tax remains unpaid, it would be very unlikely that reasonable cause for failure to pay the tax can be found to exist for that length of time. Reasonable cause for Failure to Pay cannot exist for withheld taxes or collected taxes (wage withholding, VAT, etc.)

10. Depending on facts and circumstances, relief may be applicable to only part of the penalty, in which case, relief should be granted for that part of the penalty to which reasonable cause exists. No penalty relief will be granted to a taxpayer who has been convicted of a tax-related crime.

Section 45

Administrative Penalties Related to Understatements of Tax and Overstatements of Tax Refunds

1. Article 45 of The Law provides a penalty submitting a declaration which understates the tax due or submitting a declaration or claim which overstates the amount of tax refund due. This penalty only applies to declarations which have been adjusted during an audit of the declaration or in circumstances in which TAK determines a tax amount due when the taxpayer has failed to submit a declaration.
2. The amount of penalty described in paragraph 1 of this Section is dependent on the amount of the understatement of tax or overstatement of refund as follows:
 - 2.1. If the amount of the understatement of tax (or overstatement of refund) is 10%, or less (the difference between tax declared (refund claimed) and adjusted tax due (refund due) is 10% or less than the tax declared or refund due), the penalty is 15% of the difference between the correct amount of tax or refund due and the amount of tax declared, or refund claimed, by the taxpayer.
 - 2.2. If the amount of the understatement of tax (or overstatement of refund) is more than 10% (the difference between tax declared (refund claimed) and adjusted tax due (refund due) is more than 10% of the tax declared or refund due), the penalty is 25% of the difference between the correct amount of tax or refund due and the amount of tax declared, or refund claimed, by the taxpayer.
 - 2.3. If the understatement of tax or overstatement of refund is deliberate and willful, the penalty is 100%. A penalty of 100% can only be assessed where a criminal court has determined that the taxpayer willfully attempted to evade tax or overstate a refund claim and found the taxpayer guilty of a criminal tax offense.

Example:

With regard to application of penalty: A VAT declaration was timely submitted and paid with tax due of €500. The tax administration audited the return and determined that the tax declared should have been €540. Since the difference between the

amount reported and the amount that should have been reported is 10% or less of the amount declared a penalty of 15% is applied to the understatement of €40.

Calculation:

Tax as declared:	€500
Tax as determined by TAK	€540
Difference	€ 40 (less than 10% of €500)
Penalty	€ 6 (€40*.15)

A claim for VAT refund was submitted requesting a refund of €20,000. The tax administration audited the claim and determined that the correct refund should be only €10,000. Since the amount determined by the tax administration is more than 10% less than the amount claimed by the taxpayer (the amount claimed is more than 10% greater than the amount determined by the tax administration), the penalty to be applied is 25% of the difference between the amount claimed and the amount determined by the tax administration.

Calculation:

Refund claimed:	€20,000
Refund determined by TAK:	€10,000
Difference:	€10,000 (more than 10% of €20,000)
Penalty:	€ 2,500 (€10,000*.25)
Refund to taxpayer	€ 7,500 (€10,000 less €2,500)

The taxpayer has failed to submit a declaration even though the tax administration has sent written notice that it has not received a declaration. The tax administration has no alternative but to determine the tax due using indirect methods and assesses an amount of €5,000 in tax. The understatement of tax penalty will be 25% of the amount understated, in this case it will be 25% of €5,000, or €1,250. In addition, the assessment will be subject to a Failure of File Penalty of 5% of the tax due for each month the declaration was not submitted up to a maximum of 25%, so assuming that the declaration was more than 5 months overdue, the Failure to File Penalty will also be 25% of €5,000, or an additional €1,250.

- 3. Relief from Penalty.** There is limited basis for relief from the penalty described in this paragraph (understatement/overstatement). If the taxpayer has overstated expenses or purchases, which caused the tax to be understated, the taxpayer will have to demonstrate that the overstatement of expenses or purchases was caused by a bona fide error in calculation of the expenses. If the taxpayer has understated income or value of sales based on a calculation of income or sales which inaccurately stated the sales price of the goods sold, the taxpayer will be required to demonstrate that the sales price was a bona fide sales price calculated to provide a reasonable return on investment and a price which reflected the open market for similar goods in similar market conditions. In such cases, there may be a basis for penalty relief based on reasonable cause and

the fact that the taxpayer made a good faith effort to accurately calculate the correct amount of tax or overpayment of tax.

4. If the taxpayer has relied on advice from a professional tax advisor, who is knowledgeable of tax laws and application of accounting standards, penalty relief may be granted. In such cases, the taxpayer must demonstrate that the professional tax advisor gave the advice based on an accurate and full disclosure of facts and circumstances by the taxpayer. To be granted relief, the advice must be relevant to the issue in question and the taxpayer must have closely followed that advice.
5. No penalty relief will be granted to a taxpayer who has been convicted of a tax-related crime.

Section 46

Administrative Penalties with Respect to Information Statements, Records Creation and Retention, and Access to Records

1. **Failure to Provide Information Statement or Providing Inaccurate Information Statement.** Article 46.1 of The Law provides for a penalty of €125 for failure to provide a timely information statement or for providing an inaccurate information statement. This penalty does not apply to information statements required by Paragraph 3 of Article 40 of The Law, except that it does apply with respect to the provision of inaccurate information statements required under that article. Table 1 in this section summarizes the information statements to which the penalty provided in this sub-paragraph apply.
2. Information statements required by this law, the Law on Personal Income Tax, the Law on Corporate Income Tax, or the Law on VAT are required to be submitted to the recipient of the income (purchaser or seller of goods or services in the case of VAT) by dates specified in the respective legislation. The law also provides that certain information statements be provided to the tax administration by dates specified in the respective legislation. The penalty applies to each information statement submitted after the date required, or for each information statement required to be submitted that is not submitted. The penalty also applies to each information statement provided which does not accurately reflect the information required by law or Administrative Instruction. Penalties may be applied as a result of an audit or as a result of an observation visit or compliance spot check. Penalties arising from a compliance spot check or observation visit cannot be imposed against the same taxpayer more frequently than once every 30 days.
3. For purposes of the penalty described in this section, other statements or documents considered to be information statements to which this penalty applies include:
 - 3.1. A tax invoice required to be provided by a VAT taxpayer is also considered to be an information statement subject to this penalty.
 - 3.2. An application for tax administration to authorize use of specified fiscal electronic devices.

- 3.3. A receipt issued by a fiscal electronic device (fiscal cash register, fiscal point of sale device, etc), which must be issued to each customer for each transaction conducted through that device.
- 3.4. Invoices required to be issued (currently, or in the future) by any business with respect to transactions conducted. Refer to table 2 attached to this Administrative Instruction
4. **Penalty for Failure to Create or Retain Records.** Article 12 of The Law describes the requirements for creating and retaining records required by relevant tax legislation in Kosovo. Each law relative to tax matters, including Administrative Instructions related thereto, contains specific requirements for creation of records necessary for recording transactions required for determination of a correct tax liability.
5. Article 12.2 of The Law requires that required records be retained for a minimum of 6 years from the end of the tax period to which they relate.
6. Article 46.2 of The Law provides a penalty for failure to create required records or failure to retain those records for the length of time required by applicable legislation. The penalty established by this article is based on annual turnover of the taxpayer for the previous tax period, except for a new business, the penalty will be based on the annual turnover as of the date the taxpayer was determined to not have created required books or records.
 - 6.1. Taxpayers with annual turnover from zero to €30,000 are subject to a penalty of €125 for failure to create or retain required books and records
 - 6.2. Taxpayers with an annual turnover from €30,000 to €200,000 are subject to a penalty of €250 for failure to create or retain required books and records
 - 6.3. Taxpayers with an annual turnover from €200,000 to €500,000 are subject to a penalty of €500 for failure to create or retain required books and records
 - 6.4. Taxpayers with an annual turnover of €500,000 and above are subject to a penalty of €1,000 for failure to create or retain required books and records.
7. The penalties for failure to create or retain required books and records shall apply to each instance in which a taxpayer is found to not have the required books and records. Notwithstanding the previous sentence, the penalty will not be applied more than once every thirty days. Cases of penalty application are classified as follows:
 - 7.1. Included in, but not limited to, acts or omissions which will cause the application of this penalty are a failure to report employees and failure to make required payments through bank transfer. A failure to report employees or make required payments through bank transfer are the result of a failure to maintain or create adequate books and records.
 - 7.2. During the course of an audit covering multiple years, the penalty for failure to create or maintain adequate books or records may be applied

to each year under audit.

- 7.3. A penalty for any year under audit may be applied for each of three acts, or omissions, such as failure to create required books or records, failure to make payment through bank transfer (applicable only to transactions after 11 February 2009), and failure to report all employees of the business. Since the penalty applies to each instance of failure to maintain or create adequate books and records a business such as that described in paragraph 6.4 of this section could be subject to a maximum penalty of €3,000 if it failed to create required books and records, failed to report employees, and, after 11 February 2009, failed to make payments via bank transfer.
8. **Failure to Provide Access to Books and Records.** Article 46.5 of The Law provides for a penalty of €100 per day for each day that a person, who is required to provide an authorized official of the tax administration access to books or records, fails to provide the required access. This penalty applies to any person required to provide access to books or records, not only to the taxpayer or his representative.
9. While the penalty refers to access to books and records, the penalty also applies to any person who fails to comply with any of the requirements of Articles 13 and 14 of The Law as well as failure to comply with applicable procedures described in Administrative Instruction 05/2005 dated 20.04.2005, or its successor.
10. Requirements for imposition of this penalty include:
 - 10.1. If the tax administration is initiating a tax audit and desires to conduct that audit at the taxpayer's premises, the tax administration must send a written notice of the pending audit to the taxpayer at least three working days prior to the start of the audit, unless there are exceptional circumstances that in the opinion of the Director General warrant otherwise, as described in Section 8 of Administrative Instruction 05/2005 or its successor. The taxpayer must grant TAK access to the business premises (access to books and records) at the time and date in the notice, or make mutually agreeable arrangements for a different time or date.
 - 10.2. A request for books or records, or access to books or records, must relate to:
 - 10.2.1. An on-going investigation related to tax matters conducted by the Tax Investigation Unit of TAK;
 - 10.2.2. A tax audit conducted by a tax inspector, or other authorized official, of TAK;
 - 10.2.3. Enforced collection action undertaken by an enforced collection officer, or other authorized official, of TAK; or,
 - 10.2.4. An investigation of the conduct of a tax official undertaken by the Office of Professional Standards of TAK.
 - 10.3. Except as provided otherwise in this section, TAK must have issued a written notice to the holder of the books or records from which information is required which provides a reasonable period of time,

at least seven (7) days, for the record holder to comply. If the record holder provides a reasonable explanation of the need for additional time beyond the 7-day period, the TAK official shall grant an extension of the period for complying with the request for access to books and records. Such extension shall be confirmed in writing with the new date for complying with the request clearly stated in the written confirmation.

- 10.4. A written notice requesting books or records must describe the books or records required to be provided to the requesting official with sufficient specificity to allow a reasonable person to understand the records required. The notice must be more specific than, “all books and records” it must describe the specific books and records requested.
- 10.5. The written notice described in 10.3 above must specify the date and place where the records are to be provided. Generally, the books or records to be examined should be examined at the place where the records are maintained, unless copies of the records have been requested, in which case the records should be requested to be delivered to a location most convenient to the holder of the copies requested.
- 10.6. The written notice must include reference to the legal authority for requesting access to the books and records.
- 10.7. If the record holder does not respond within the time provided in the written notice (requesting books, records, or access to books or records), the tax administration must send a final request to the record holder advising of the consequences of continued failure to comply with the written request for books, records, or failure to allow access to books or records. This notice must give the taxpayer 5 calendar days in which to comply.
- 10.8. If the record holder does not comply with the final notice, the authorized tax administration official must prepare a notice to the record holder advising that the continued failure to provide the requested records, or books, or access to books or records, has resulted in the imposition of a penalty of €100 and that an additional penalty of €100 will be imposed for each succeeding day that the failure to provide the books, records, or access to books or records continues. The penalty will be assessed against the record holder and will be collectible from the assets of the record holder in the same manner as tax per Article 42 of The Law.
- 10.9. To assess the penalty against a record holder, the tax administration must send a Notice of Assessment as described in Article 20 of The Law. A Notice of Assessment is required only for the first day that the tax is applicable. The Notice of Assessment must indicate that an additional €100 will be assessed for every day that the record holder fails to comply with the request for books, records, or access to books or records.

- 10.10. TAK must ensure that additional assessment of the penalty stops on the day that the record holder complies with TAK request. No penalty will be assessed for that day.
 - 10.11. Notwithstanding the above, TAK will not be required to provide written notice prior to attempting to make a visit for contact regarding an enforced collection matter, an observation visit, a compliance spot check, or a visit for the purpose of confirming information submitted with a request for fiscal number. In such cases, the taxpayer is required to provide access to the business premises so that the tax administration official can complete his/her official business.
 - 10.12. If the taxpayer refuses to provide access to books and records, the taxpayer will be penalized €100 and given a written warning that any subsequent failure to provide access to the premises or books and records for the purposes noted in this sub-paragraph will result in a €100/day penalty, beginning on the day such subsequent access is denied. The written warning will include a description of the access or books and records requested and that the access or books and records may be required as early as the following business day. If access is denied, or books and records are not made available at the time of the next visit, the taxpayer will be given written notice as provided in sub-paragraph 10.8 of this section. A second notice as provided in sub-paragraph 10.7 of this section is not required in these circumstances.
11. In addition to the penalty of €100 per day which is imposed by this section, TAK shall also have the authority to request and obtain a court order from a competent court requiring the record holder to turn over such records or books as have been requested, or requiring the record holder to provide access to the requested records or books. Further, as provided in Article 13.8 of The Law, records not produced within the deadline established in Article 13.7 of The Law shall not be considered by Appeals in any subsequent appeal.

Examples of the application of the penalties:

Failure to provide information statements: During the course of an observation visit, the tax inspector determines that a VAT taxpayer is not issuing tax invoices as required by law. The taxpayer is subject to a €125 penalty for the failure to issue a tax invoice. If the tax inspector observes more than one incidence of not issuing a tax invoice, the taxpayer is subject to the €125 penalty for each incidence observed in which a tax invoice was not issued during that visit. As provided in this Administrative Instruction, penalties arising from observation visits or compliance spot checks cannot be applied to the same taxpayer more than once every 30 days.

Failure to create or retain records: During the course of an audit, the tax inspector determines that the taxpayer, whose annual turnover is €20,000, has not maintained a sales book as required by the Law on Corporation Income Tax. The taxpayer is subject to a €125 penalty. If the tax administration makes a compliance check 45 days later and the taxpayer has still not maintained the required sales book,

the taxpayer is subject to an additional penalty of €125.

Failure to provide access to books and records: An enforced collection office has requested information from a bank regarding an account held by the bank on behalf of a business which owes tax debts. The enforced collection officer has provided an appropriate request in writing to the bank and followed the initial notice with a final demand for information which clearly described the information requested and the date by which the information was needed. The bank has failed to provide the requested information on the basis of bank secrecy and confidentiality. The Law specifically provides that bank secrecy or confidentiality does not apply to an investigation of the tax administration. The tax administration sends the bank a Notice of Assessment advising the bank that the penalty for failure to provide information requested or access to the information requested has resulted in an assessment of €100 and the penalty will continue to be assessed at the rate of €100 for each day that the information requested is not provided.

Failure to provide access to books and records: A tax inspector visits a business in order to make a compliance spot check. The business owner refuses to provide the tax inspector with access to his books and records and the tax inspector is unable to complete the compliance spot check. The taxpayer is subject to a penalty of €100 for failure to provide the tax inspector with access to books and records required to complete the compliance spot check. The tax inspector provides the written warning as provided in sub-paragraph 10.12 of this section. If the tax inspector makes a visit to the business the next day and the taxpayer refuses to provide access to the books and records, the taxpayer will be subject to an additional penalty of €100. During the second visit, the tax inspector will give the taxpayer a written notice as provided in sub-paragraph 10.8 of this section.

12. **Relief from Penalties.** Relief from the penalty for failure to submit information statement may be considered based on reasonable cause if the taxpayer submits the information statement late. Consider the facts and circumstances as provided by the taxpayer. In the first year in which information statements are due relief may be granted based on lack of knowledge of the requirements if the taxpayer has been fully compliant with all other tax reporting and paying obligations. After the first year in which information statements are due, no relief will be granted to taxpayers who do not submit information statements, unless such failure was due to circumstances beyond the control of the taxpayer, such as described in Section 39 of this Instruction.
13. Penalties for failure to provide information statements described in paragraph 3 of this section may be waived for the first three months in which those information statement requirements exist. After the initial start-up period (3 months), no relief will be granted for failure to provide the required information requirements.
14. Relief from the penalty for failure to create or retain records may be considered based on reasonable cause during the first 6 months of a taxpayer's business operations. Relief will be considered based on the facts and circumstances as provided by the taxpayer, including efforts made to understand the record-

keeping requirements. If there were no efforts made to understand the requirements, no relief will be granted. If the taxpayer has received a visit from a TAK official which provided information on record-keeping and other tax obligations, no relief will be considered for failure to create or retain records.

15. Relief from the penalty for failure to provide access to books and records may be considered if the record holder demonstrates that a good faith effort was made to provide the books or records on a timely basis, but was unable to do so within the timeframes provided. No relief will be granted if the taxpayer refuses to provide access to premises upon request from an authorized TAK official. No relief will be granted if the record holder refuses to provide books and records requested by a written request which specifies the books or records requested with reasonable specificity.

Section 47

Administrative Penalty for Errors by Taxpayer Representatives, Tax Advisors, or Other Persons Acting on Behalf of a Taxpayer

1. Article 48 of The Law states, “Any person who signs a tax declaration on behalf of another person, who makes an error on such declaration, shall pay an administrative penalty of one hundred twenty-five (€125) Euros.”
2. The key word in the above section is ‘error’. Paid professionals (whether employed by the company or by an external contractor) should take care in the preparation of documents being submitted to the tax administration as they are being paid to submit correct documents to the tax office. This provision is intended penalize those persons who sign declarations for another taxpayer for their carelessness, or deliberateness, in making a mistake on the declaration, such as:
 - 2.1. a math error in calculation ,
 - 2.2. placing an incorrect fiscal number on the declaration,
 - 2.3. using an incorrect form (such as a March VAT declaration form for submitting the April VAT declaration),
 - 2.4. using an incorrect address, entering information on the wrong line of the declaration,
 - 2.5. omitting information,
 - 2.6. erroneously duplicating information, etc.
3. This penalty is not intended to apply to a person in the employ of the taxpayer who signs the declaration on behalf of the taxpayer if that person was not involved in the preparation of the declaration or was not a person responsible for the error. However, if the employee who signed the declaration on behalf of the taxpayer was charged with the responsibility of ensuring that declarations submitted by the taxpayer were correct and error-free, such an employee may be found liable for the penalty.
4. This penalty is not intended to apply to circumstances in which a taxpayer representative, tax advisor, or other person acting on behalf of the taxpayer has

made a reasonable interpretation of a provision of law and TAK disagrees with that interpretation.

5. The liability established under Article 48 of The Law is limited to decisions made only on the information available from the taxpayer and third parties. A taxpayer representative/advisor/other person is not liable for this penalty if the errors in tax declarations are directly attributable to the actions of the taxpayer of which the taxpayer representative/tax advisor/other person was unaware.
6. If guidance in the tax administration literature establishes the position of the tax administration on an issue, or published court rulings establish an interpretation of a provision of law, and a taxpayer representative ignores that guidance and takes a contrary position on a declaration, the penalty may be applied.
7. Generally, reasonable cause shall not be considered as a basis for relief of this penalty. However, if a penalty has been proposed contrary to the provisions of paragraphs 3, 4 and 5 of this Section, relief from the penalty may be appropriate.

Section 48 **Administrative Penalties with Regard to VAT**

1. **Penalty for making supplies without being registered:** Paragraph 1, Article 49 of The Law provides a penalty for a taxable person who makes supplies without being registered for VAT. While not specifically stated in The Law, this penalty applies only to those taxpayers that meet the requirement for VAT registration, or are voluntarily registered for VAT (taxable person). For example, this penalty does not apply to a business with a turnover of less than 10,000 Euros, unless that business has voluntarily registered for VAT.
2. The penalty amount to be assessed is directly related to the amount of supplies made by a taxable person after that taxable person becomes liable to VAT. In addition to being liable for the VAT on the supplies made after being required to register for VAT, the taxable person shall be considered as negligent in his failure to register making him subject to an administrative penalty of 15% of the sales made after being required to register, if the taxable person has made less than 10,000 Euros in taxable supplies after having met the registration requirement.

Example:

Taxpayer B surpassed the annual turnover threshold on 5 May 2009. The Law on VAT requires that Taxpayer B register for VAT within 15 days after surpassing the threshold. In July 2009, TAK discovered during a compliance visit that Taxpayer B had surpassed the threshold on 5 May 2009, but had not yet registered for VAT, even though at the time of the compliance visit, Taxpayer B had made taxable sales of 8,000 Euros after having reached the VAT threshold. Based on the compliance visit, TAK registered Taxpayer B for VAT purposes and secured VAT declarations for the months of May and June. TAK assessed late filing penalty on the May declaration (the June declaration was considered to be submitted on time) and assessed a penalty of 15% of the VAT due on the 8,000 Euros in sales made after

Taxpayer B surpassed the registration threshold. Computation of penalty: $8,000 \times .16 = 1,280$ VAT due on the sales; $1280 \times .15 = 192$ – amount of penalty to be assessed for making taxable supplies after meeting the requirement for VAT registration and not being registered.

3. If the taxpayer has made taxable sales of 10,000 Euros or more after being required to register, the penalty shall be 25% of the VAT due on those taxable sales. Computation would be: Taxable sales of 20,000 $\times .16 = 3,200$ VAT due on sales; $3,200 \times .25$ penalty = 800 Euro penalty for making taxable supplies after meeting the requirement for VAT registration and not being registered for VAT.
4. The law provides for a penalty of 100% of the VAT due on taxable supplies made after meeting the requirement for VAT registration and not being registered for VAT if the failure to register was due to a willful and deliberate attempt by the taxable person to not pay VAT. This penalty can only be applied if a person is found guilty of criminal tax evasion by a court of competent jurisdiction. All recommendations or proposals for criminal prosecution should include a proposal that this penalty be imposed if the person is found guilty of the tax evasion charges to the extent that those charges relate to a person making supplies without being registered for VAT even though that person was required to be registered for VAT.
5. **Penalty for failure to issue an invoice and/or issuing an incorrect invoice.** Article 49.2 of The Law provides a penalty for failure to issue an invoice, or other document serving as an invoice, or who issues an incorrect invoice that results in an apparent decrease in the amount of VAT due or an apparent increase in the amount of credit claimable.
6. In addition to being liable for the VAT due resulting from the failure to issue an invoice or the issuance of an incorrect invoice, an administrative penalty of 15% of the apparent decrease or increase in the amount of VAT due if the failure to issue an invoice or issuance of an incorrect invoice was due to the negligence of the taxable person. Negligence for purposes of this penalty arises when the taxable person fails to issue an invoice for a taxable supply of 1,000 Euros or less or issues an invoice that is 500 Euros or less above or below the amount that should have been included in the invoice. For purposes of application of this penalty, no penalty will be imposed if the total penalty amount is €5 or less.

Example:

In the example in paragraph 2 of this Section, Taxpayer B failed to register for VAT even though he had surpassed the annual threshold for VAT registration and was required to be registered for VAT. Included in the €8,000 of sales, Taxpayer B made sales of €200, €500, €800, €950, €850, €750, €800, €950, €850, €750, and €600. The penalty is computed as follows:

$200 \times .16 = 32$ VAT due on sale; $32 \times .15 = 4.80$ Penalty for failure to issue that invoice

$500 \times .16 = 80$ VAT due on sale; $80 \times .15 = 12$ Penalty for failure to issue that

invoice

800 X .16 = 128 VAT due on sale; 128 X .15 = 19.20 Penalty for failure to issue that invoice

950 X .16 = 170 VAT due on sale; 170 X .15 = 25.50 Penalty for failure to issue that invoice

850 X .16 = 136 VAT due on sale; 136 X .15 = 20.40 Penalty for failure to issue that invoice

750 X .16 = 121 VAT due on sale; 121 X .15 = 18.15 Penalty for failure to issue that invoice

800 X .16 = 128 VAT due on sale; 128 X .15 = 19.20 Penalty for failure to issue that invoice

950 X .16 = 170 VAT due on sale; 170 X .15 = 25.50 Penalty for failure to issue that invoice

850 X .16 = 136 VAT due on sale; 136 X .15 = 20.40 Penalty for failure to issue that invoice

750 X .16 = 121 VAT due on sale; 121 X .15 = 18.15 Penalty for failure to issue that invoice

600 X .16 = 96 VAT due on sale; 96 X .15 = 14.40 Penalty for failure to issue that invoice

Total Penalty to be applied: 197.40

7. The penalty described in paragraph 6 of this Section is increased to 25% if the failure to issue an invoice, or the issuance of an incorrect invoice, is due to gross carelessness. Gross carelessness is defined as failure to issue an invoice to a taxable person for a taxable supply of more than €1,000 or issuing an incorrect invoice that is more than €500 above or below the amount that should have been stated in the invoice.

Example:

During the audit of Taxpayer D, it was discovered that an invoice issued for €200 was incorrectly issued and that €800 is the amount that should have been stated on the invoice. The additional amount of VAT due as a result of this incorrect invoice is €96 (800 less the 200 stated on the invoice = 600 X .16 = €96 additional VAT due). The penalty to be assessed is 96 X .25 = €24. The audit also discovered that Taxpayer D had failed to issue an invoice for a taxable supply made in the amount of €3,000. The VAT due on the taxable supply is €480 (3,000 X .16 = 480). The penalty for failure to issue the invoice is €120 (480 VAT due X .25 = €120).

8. The law provides for a penalty of 100% of the VAT due on taxable supplies made without issuance of an invoice or issuance of an incorrect invoice for a taxable supply if the failure to issue an invoice or issuance of an incorrect invoice was due to a willful and deliberate attempt by the taxable person to either not issue an invoice or to issue a false invoice. This penalty can only be applied if a person is found guilty of criminal tax evasion by a court of competent jurisdiction. All recommendations or proposals for criminal prosecution should include a proposal that this penalty be imposed if the person

is found guilty of the tax evasion charges to the extent that those charges relate to a taxable person making taxable supplies without issuing an invoice or issuing an incorrect invoice.

9. **Failure to apply for VAT registration or properly display a VAT registration certificate.** The Law on VAT requires persons who surpass a specified annual turnover threshold to register for VAT, thus becoming a taxable person for purposes of VAT. The Law on VAT provides that a person must apply for VAT registration within 15 days after surpassing the specified threshold. The Law on VAT also requires that taxable persons apply for removal from the VAT registry when they meet the conditions specified in the Law on VAT.
10. Article 49.3 of The Law provides a penalty of €250 for failure to register for VAT when required to do so and €250.
In the example in paragraph 2 of this section, Taxpayer B was penalized for making taxable supplies without being registered for VAT. In addition to that penalty, Taxpayer B is also liable for the penalty of €250 provided in this section for having failed to register for VAT. The combined penalties are €442 – making taxable supplies without being registered and failing to register.
11. The Law on VAT also requires that the original, respectively a certified copy of the VAT Registration Certificate shall be displayed at each place of business activity so that it can be easily read by the public.
12. Paragraph 3 of Article 49 of The Law provides a penalty of €250 for failure to display a copy of the VAT Registration Certificate in the manner required by applicable law. A penalty of €250 will be applied to taxable persons who do not display their VAT certificate in a place where it can be easily read by the public. That means that the copy of the certificate must be displayed in a public part of the business (not on the wall of an office, if that office is not readily accessible to the public). In addition, the public must be able to easily read the copy of the VAT registration certificate. Posting a VAT certificate on a wall behind a counter such that the distance from the public to the certificate renders it incapable of being read would be a violation and subject to this penalty, even though the certificate is posted in a public part of the business.
13. The penalty described in paragraph 12 above applies only to taxable persons after they have been registered for VAT. It is not a penalty that can be imposed at the same time as the penalty for failure to register for VAT as provided in paragraph 3‘a’ of Article 49. Obviously, a person who has not registered for VAT cannot have a VAT certificate to display. Therefore, the penalty is imposed only on those taxpayers who have registered for VAT and received a VAT registration certificate, but have not displayed it.
14. **Penalty for allowing another person to use an issued VAT registration certificate.** As provided in Paragraph 4 of Article 49 of The Law, a taxable person who allows another person to use his VAT registration certificate shall be liable for a penalty of €5,000. Similarly, a person who uses a VAT registration certificate issued to another person is liable for a penalty of €5,000. The penalty applies equally to the person who allowed another person to use his VAT registration certificate and to the person who illegally used the VAT

registration certificate.¹

15. Since allowing another person to use a VAT registration certificate (and using another person's VAT registration certificate) is a form of tax fraud and evasion, each instance of TAK discovering the inappropriate use of a VAT registration certificate must be reported to the Public Prosecutor for possible criminal prosecution. It is the responsibility of the inspector discovering the inappropriate use of a VAT registration certificate and his/her team leader to prepare the case report describing the facts and the legal basis for criminal prosecution. Once completed, the report will be forwarded to the TAK Legal Office for preparation of the prosecution recommendation.
16. **Penalty Relief.** Penalties assessed in accordance with the provisions of Article 49 of The Law are essentially fixed penalties and generally not subject to administrative relief. They are based on factual circumstances. Lack of knowledge of the requirement to obtain a VAT registration certificate, for example, is not a valid reason for relieving the penalty. There may be a basis for relief from the penalty related to failure to obtain a VAT registration certificate if the taxpayer is able to demonstrate an inability to register within the specified timeframe due to circumstances beyond his control. However, if the taxpayer did not make a subsequent effort to obtain the VAT certificate, then relief is not applicable.
17. There is no basis for relief of the penalty imposed for issuance of an invoice with an incorrect amount. The taxpayer had to have known at the time of issuing the receipt that it was an incorrect invoice, yet proceeded to issue it anyway. That action represents a willful act of disregard for the law and application of the penalty as provided in The Law is appropriate. If the penalty is imposed for issuing an invoice in an incorrect format, relief may be possible based on the facts and circumstances involved. If identifying information on the receipt is in an incorrect position, it is appropriate to issue a warning to the taxpayer for an initial offense. If, after a reasonable period of time the format has not been changed, then imposition of the penalty is appropriate.
18. There is minimal basis for relief from the penalty related to failure to properly post a VAT registration certificate. If the taxpayer has made a good faith effort to properly post the certificate, it may be appropriate to issue a warning for the first offense. If upon a return visit a week later (for example), the taxpayer has still not properly posted the VAT certificate, imposition of the penalty is appropriate.
19. There is no relief possible for the penalty imposed based on allowing another person to use a VAT registration certificate. That is an illegal act and the taxable person knows that his certificate is not be loaned to another person. The person using another person's VAT registration certificate is also aware that his action is not appropriate. The amount of the penalty imposed could be appealed based on it not being commensurate with the severity of the offense. However, unless the inspector imposing the penalty did not follow the basic guidance, the amount of penalty should be generally appropriate.

Section 49

Administrative Penalties for Goods Without Origin

1. Article 49A of The Law provides the tax administration with the authority to seize goods in the possession of a person if those goods cannot be documented as to their origin.
2. The authority granted in this article of The Law allows TAK to make a protective seizure of the goods without documentation, pending the assessment of applicable tax or applicable penalty, or other appropriate administrative action.
3. Paragraph 5 of Article 12 of The Law provides that “Goods in possession of a taxpayer must be documented as to origin.” Sections 7 through 10 of this Administrative Instruction describe the documents that must be maintained to confirm the origin of goods in a taxpayer’s possession. As described, such documents include invoice with VAT, invoice without VAT, Unique Customs Document (SAD), Tax Certificates/Vouchers, and Delivery Note.
4. If, during the course of assigned activities, an official of TAK discovers goods that are not properly documented, the official shall immediately request assistance from the Kosovo Police Service, Kosovo Customs Service, or the tax administration. The TAK official must also contact his immediate manager and report the situation and request verbal authorization to proceed with the seizure of the goods once assistance has arrived. Further action with respect to the goods will not be taken until assistance arrives. Under no circumstance should the tax administration official attempt to interfere with the movement of the goods or attempt to seize the goods before a second person arrives.
5. When assistance arrives, the tax administration official must prepare a notice of provisional seizure, identifying the goods that are without proper documentation. The notice must include a statement of the authority for taking the seizure action and clearly indicate the reasons for taking the protective seizure action. The notice must also include an inventory of items seized, including a description of each item (or group of similar items) and the number (or volume) of each item (or group of items). The original of that notice must be given to the taxpayer as soon after the seizure action as possible, with the tax administration official retaining a copy for the official record. When providing the notice of seizure to the taxpayer, the tax administration official must explain to the taxpayer that the goods have been seized because they were not properly documented. The taxpayer must be advised that:
 - 5.1. He has the right to appeal this action to the tax administration Appeals staff,
 - 5.2. An assessment of VAT, or income tax, will be made based on the value of the goods seized,
 - 5.3. Once the value of the goods has been determined and the amount of tax has been assessed, some goods will be released and the tax administration will retain an amount of goods sufficient to satisfy the tax assessment at a public auction, and

- 5.4. If other bodies, such as Customs, have an interest in confiscating the goods that would potentially be released, those bodies will be given an opportunity to confiscate the remaining goods.
6. The tax administration must immediately begin to determine the value of the goods seized and the VAT, or income tax, due on those goods. At the same time, the tax administration must determine the compliance record of the person holding the goods without proper documentation and secure all declarations that have not been submitted, or begin an audit to determine the full extent of the tax liability of the person in possession of the goods without proper documentation. The investigation must extend to include a determination of the true owner of the goods (if the person in possession is not the true owner) and a full investigation of the true owner, including determination of any outstanding tax obligations and possible criminal referral for attempted tax evasion.
 7. Within 5 days after seizing the goods, TAK the tax administration must make a jeopardy assessment (under authority of Article 19 of The Law) of the tax due on the seized goods. For a taxpayer required to be registered for VAT, the assessment will be based on the amount of VAT that would be due if those goods were sold at the price established in the taxpayer's records, or, in the absence of a price, the amount of VAT that would be due if a sale of those goods were to take place in the open market. Since there is no proper documentation of the goods, input VAT will not be computed in determining the amount of VAT due. If the taxpayer is not required to be registered for VAT, the amount of tax to be assessed shall be 3% of the estimated gross sales price of the seized goods. All applicable penalties will be applied in establishing the assessment. For the purposes of corporate or personal income tax, no expenses will be allowed for the cost of the goods seized, since those goods were not properly documented. Upon determining the amount of tax due based on the value of the seized goods, the tax administration must issue a Notice of Jeopardy Assessment which contains all the details of a Notice of Assessment as provided in Article 20 of The Law. The Jeopardy Notice of Assessment must include a demand for immediate payment of the amount due. The Jeopardy Assessment Notice must also include the fact that the taxpayer may appeal directly to the Independent Review Board. Any appeal to the Independent Review Board must be made within 30 days from the date of issuance of the Notice of Jeopardy Assessment.
 8. Upon making the jeopardy assessment and issuing the requisite Notice of Jeopardy Assessment, administrative responsibility for the collection case must immediately pass (no later than the end of the day in which the jeopardy notice was made) to the Enforced Collection Team Leader in the TAK Regional Office in which the protective seizure was made. The enforced collection team leader must assign an enforced collection officer to the case no later than the day following receipt of the case.
 9. Immediately upon receipt of the jeopardy assessment, the enforced collection officer must record a lien at the cadastral agency and the Pledge Registry, as well as any other applicable registry.

10. Once liens have been registered, the enforced collection officer must visit the taxpayer and request payment of the amount due on the jeopardy assessment, plus any additional amounts the taxpayer may owe. If the taxpayer is unable to pay the amount due, the enforced collection officer must issue a Notice of Seizure to the taxpayer with respect to the goods that are being held under a protective seizure. This seizure is essentially a continuation of the protective seizure which the law authorizes to be made prior to the taxpayer having an opportunity to exercise any appeal rights. Therefore, the prohibition in Article 57.2 of The Law on taking enforced collection action during the period of time in which the taxpayer can exercise his appeal rights does not apply to seizures made under the provisions of Article 49A of The Law. The Notice of Seizure must include:
 - 10.1. The taxpayer whose property is being seized,
 - 10.2. The location of the property,
 - 10.3. The type of liability,
 - 10.4. The tax period for which the liability arose,
 - 10.5. The amount of tax assessed,
 - 10.6. A full description of the goods being seized
11. The goods which are the subject of seizures made under Article 49A of The Law may not be sold until after the time within which the taxpayer may exercise his appeal rights has expired. The sale of seized goods must be carried out in accordance with Article 30 of The Law, and the provisions of Section 22 of this Administrative Instruction.
12. Upon the seizure of goods without proper documentation as described in paragraph 5 of this section, the Deputy to the Director General (Compliance) must be notified. The Deputy to the Director General (Compliance) will contact the Kosovo Customs Service to advise that goods without proper documentation had been seized and to determine if they are interested in confiscating that portion of the goods that the tax administration is not going to sell. If the Kosovo Customs Service is not interested in the goods, the Deputy to the Director General (Compliance) shall advise the applicable Regional Manager that the goods in excess of the amount necessary to satisfy the tax liability may be released back to the taxpayer. It is the responsibility of the Regional Manager to ensure that sufficient goods are retained to satisfy any tax liabilities of the taxpayer.
13. All tax administration officials involved in actions with respect to administration of Article 49A must document completely the actions taken and the basis for taking those actions. In addition, the possession of goods without proper documentation generally leads to tax evasion and tax fraud. Therefore, a report of all circumstances surrounding the seizure, the compliance history of the person in possession of the goods without origin, and other pertinent facts should be prepared and submitted to the TAK Legal office for preparation of a request to the public prosecutor for a criminal investigation. Once TAK the tax administration has established its own criminal investigation function (Tax Investigation Unit) the request for criminal investigation should be submitted to that function.

Chapter IX Appeals

Section 50 Appeals at the TAK Appeals Department

1. As provided in Article 52 of The Law, a taxpayer may submit a written appeal to TAK Appeals Department (hereinafter AD) related to any tax assessment made by TAK or official determination of TAK.
2. Unless otherwise provided in Article 52, appeals to tax assessments made by TAK or official determinations of TAK are exclusively governed by the appeal provisions provided in paragraph 10 of Article 52 of The Law.
3. An appeal of a TAK tax assessment or other official determination made by TAK must be submitted to the Appeals Department of TAK within 30 days from the date that the taxpayer received the official assessment or other official determination notice. The Law defines delivery as "the service of a relevant document on a taxpayer by:
 - 3.1. handing the document to the taxpayer, the taxpayer representative, a member of the taxpayer's household, or an officer, director or employee of the taxpayer (such action is deemed complete whether the person agrees to take the document or not);
 - 3.2. leaving the document at the taxpayer's dwelling or usual place of business; or
 - 3.3. sending the document by mail to the taxpayer's last known address.Since delivery is defined as service on a taxpayer, the delivery date shall be considered to be the received date.
4. The 30-day period in which a taxpayer must submit an appeal, as provided in paragraph 3 of this Section starts to run from the first day following the day when the person has received the official decision. If the end of the 30-day period falls on a holiday (Saturday, Sunday or official holidays), the 30-day period will end on the first day after the holiday.
5. According to paragraph 2 of Article 52 of The Law, the time period for submitting an appeal under paragraph 3 may be extended, in cases when the taxpayer was prevented from submitting a timely appeal due to circumstances beyond the taxpayer's control or the circumstances are such that to not extend the time period would result in unfairness to the taxpayer. In order to qualify for an extension under this paragraph, the taxpayer must submit a written request to TAK Appeals which describes the circumstance that prevented a timely appeal or the unfairness that would result if the appeal was not heard.

Example:

A taxpayer who was supposed to have submitted his appeal against an assessment notice by 21 March 2009, which was the last date for submitting an appeal, submitted his appeal on 22 March 2009. With the request for appeal of the assessment notice was a written statement requesting that the appeal be considered even though late, due to circumstances beyond the taxpayer's control. In this illustration, the taxpayer was hospitalized on the last day for submitting the appeal. Included with the written request for consideration of a late appeal was confirmation documentation of the hospitalization (copy of hospital invoice, discharge sheet, and medical statement from a physician). The appeal was submitted immediately upon his release from the hospital.

6. Travel outside the country is not normally considered to be beyond the taxpayer's control, unless the travel is caused by an emergency, such as death in the immediate family, unexpected business emergency, etc.
7. Generally, the time for submitting an appeal will not extend more than 30 days beyond the original date for submitting the appeal. In that period of time, a business must adjust to whatever emergency or cause of delay, so that it can prepare and submit an appeal.
8. As noted in Paragraph 1 of this Section, an appeal of an assessment notice or official determination must be submitted in writing. The written appeal must include:
 - 8.1. the name, address and fiscal number of the taxpayer;
 - 8.2. a description of the matter being appealed (assessment notice including date of notice, date notice received, type of tax, tax periods, and amount of tax for which the appeal is being submitted);
 - 8.3. the determination or part of determination that is being appealed;
 - 8.4. the legal basis for the appeal;
 - 8.5. a description of the reasons why the official notice of assessment or determination is considered to be incorrect or inappropriate, including references to legal basis for determination that the determination is incorrect or inappropriate; and
 - 8.6. the signature of the taxpayer, the designated official of the taxpayer, or the taxpayer's authorized representative.
9. AD may reject any appeal that does not meet the basic criteria provided in Paragraph 8 of this Section.
10. As per paragraph 5 of Article 52 of The Law, TAK is required to issue its decision to the taxpayer in writing within 60 days of the date of the appeal. For purposes of this administrative instruction, the date of appeal shall be considered to be the date that the appeal is received in TAK.
11. In reviewing the taxpayer's appeal, TAK Appeals must ensure that the taxpayer is not providing new data that is prohibited per Paragraph 8 of Article 13 of The Law and the provisions of Section 12 of this administrative instruction.
12. If AD is unable to issue a decision in the matter due to lack of information in the case file, it may request additional information from either TAK or the

- taxpayer. In either case, the period of time for making a decision in the case is suspended from the time that Appeals requests the additional information until the information is received in Appeals, per paragraph 8 of Article 52 of The Law.
- 12.1. In the case of a request for additional information sent to another TAK function, the suspension shall be for a maximum of 15 additional days.
 - 12.2. In the case of a request for additional information sent to the taxpayer, the suspension shall be for a maximum of 45 days. If the information is not received within that time, TAK Appeals shall make its decision in the case based on the information that is available.
 - 12.3. As provided in paragraph 9 of Article 52 of The Law, if TAK Appeals does not issue its decision within the 60-day time period (or the extended time period due to the suspension provided in Paragraph 8 of Article 52 of The Law), the taxpayer may submit an appeal directly to the Independent Review Board.
13. Article 52.6 of The Law provides that the decision of AD shall represent the final decision of the Director General of TAK and shall be binding on TAK, with respect to the assessment notice or official determination for which it was issued. Once the final decision of TAK Appeals has been issued, all functions of TAK shall respect that decision and implement it, including such making such adjustments as necessary in the TAK IT system.
- 13.1. Notwithstanding the provisions of Paragraph 6 of Article 52 of The Law, if the Director General of TAK subsequently becomes aware that the Appeals decision was not correct and to not correct that decision would result in a manifest injustice to the taxpayer, the Director may request TAK Appeals and the TAK Legal Office, along with other applicable TAK officials, to review the decision and determine if it should be revised or if the taxpayer should be required to seek a reversal through the Independent Review Board.
 - 13.2. If the Director General of TAK determines that the principles, on which a decision of TAK Appeals was made, should be binding on TAK with respect to all similar cases, the Director General shall issue a public ruling as provided in Article 9 of The Law.

Section 51

Independent Review Board

1. A taxpayer, who is not satisfied with the decision of AD, may submit a written appeal to the Independent Review Board (hereinafter IRB) within 30 days after receiving the decision of AD. If not otherwise documented as having been received earlier, the presumed date of receipt shall be considered to be that date which is five (5) days after the date that the AD decision was mailed.
2. As provided in Article 53 of The Law, IRB shall consist of a Chief Member and 16 other members, all of whom are independent of the Ministry of Economy and Finance or any subordinate body of the Ministry of Economy and Finance.

3. New members appointed to IRB are to be appointed for a period of one (1) year with right of re-appointment for a period of two years.
4. Dismissal of IRB members shall be in accordance with Paragraph 4 of Article 53 of The Law
5. IRB shall have the authority to consider the following appeals:
 - 5.1. An appeal against a decision of the AD;
 - 5.2. An appeal of a jeopardy assessment made in accordance with the provisions of Article 19;
 - 5.3. An appeal in which the AD did not render a decision within the timeframe provided in paragraph 9 of Article 52 of The Law;
 - 5.4. Official determinations under other legislation in Kosovo that provides for appeals to such Board.
6. As provided in Paragraph 2 of Article 54 of The Law, the burden of proof is on the taxpayer in any appeal before IRB . This means that it is up to the taxpayer, or person making the appeal, to prove that the assessment or decision described in paragraph 5 of this Section was incorrect.
7. The taxpayer is not allowed to introduce new evidence in the hearing before the Board. The Board is required to make its determination based on the information previously considered by TAK appeals. As provided in Paragraph 4 of Article 54, “the testimony, documents, and other evidence presented by the person appealing to the Board and by TAK shall be limited to the same evidence that was presented in respect of the previous decision, assessment, or determination which is being appealed against under Paragraph 1 of Article 54” of The Law. This limitation shall also apply to those cases on which TAK Appeals rendered a decision because the taxpayer did not provide additional information requested within the time provided. However, if the taxpayer has appealed to IRB based on the fact that AD did not render a decision within the timeframe provided in paragraph 9 of Article 52, the taxpayer may introduce such new evidence as is reasonable and allowed by IRB which is applicable to the case under appeal.
8. As provided in Article 56 of The Law, a decision of IRB may be appealed to a court of jurisdiction within 60 days of receiving notification of a decision by IRB. If not otherwise documented as having been received earlier, the presumed date of receipt shall be considered to be that date which is five (5) days after the date that the decision of IRB was mailed.
9. Per paragraph 2 of Article 57, TAK is prohibited from taking any enforced collection action (other than for recording a tax lien or issuing reminder notices) during the time in which a taxpayer may submit an appeal to IRB or during the time in which the appeal is pending before IRB.

Chapter X

VAT and Import/Export Certificates

Section 52

Registration for VAT

1. Any person that is required to be registered for VAT (Value Added Tax) must register for VAT and obtain a VAT Certificate within 15 calendar days after meeting the requirement to register. Article 49 of The Law provides penalties for those persons who make taxable supplies without being registered for VAT. For purposes of this Chapter, the term taxable person shall mean any person who is, or is required to be, registered for VAT and who, in Kosovo independently carries out any economic activity in a regular or non-regular manner, whatever the purpose or results of that economic activity.
2. All persons are required to register for VAT if they make supplies of €50,000 or more in any consecutive 12-month period (or such other threshold requirement as may be established by VAT legislation)
3. The supplies made by persons whose turnover in a consecutive 12-month period does not exceed the 50,000 euro threshold cannot be charged with VAT per VAT legislation. Persons who make these supplies are not required to register under VAT legislation, but have to pay VAT on their imports, as well as having to pay VAT on the supplies made to them by taxable persons. They are not entitled to charge VAT on supplies they make and are not entitled to a credit of the input VAT paid on imports and on supplies made to them.
4. Taxable persons (those persons whose turnover in a consecutive 12-month period is €50,000 or more, or who have voluntarily registered for VAT) who export goods and are registered for VAT purposes under applicable VAT legislation shall be deemed to make taxable supplies which are exempted with the right to deduct input VAT (zero-rated exports). Such persons are entitled to an input tax credit and they are required to submit a monthly tax declaration.
5. Persons that wish to be VAT taxable persons may voluntarily apply for VAT registration regardless of their turnover. Once a taxpayer has become a voluntary VAT taxpayer, the choice can be revoked only in accordance with provisions of the Law on VAT.
6. Any person who has failed to register as provided in paragraphs 2 and 3 of this Section shall be registered in a compulsory manner by TAK with retroactive force to the date that such registration was required.
7. Voluntary and compulsorily registered taxable persons are subject to all VAT requirements in the same manner as those taxpayers who registered after their annual turnover exceeded the threshold.
8. All VAT registration forms must be submitted in person to the TAK regional office responsible for the tax affairs of the business by an authorized person of the business. VAT registration forms must be accompanied by a copy of business registration documents, Fiscal Number Certificate, and official picture identification (passport, identity card, etc.).
9. If a business has more than one branch or location, the business must declare its principle business location to TAK at the time of registering for VAT. Any other business locations of the taxpayer must also be noted so that proper VAT Certificates can be issued for all locations. Any change in any business location or principle business location, as well as any addition to, or subtraction from,

the number of business locations or branches, must be notified to TAK within 10 days after the change has been made.

10. Upon receipt of the VAT Registration form, TAK will ensure that the information on the registration form is accurate and that the taxpayer is current in all tax obligations. In addition, TAK will visit each business location that the taxpayer has listed on the registration form to ensure the accuracy of the data provided. TAK will determine whether to issue a VAT Certificate, or not, within 10 working days after receipt of the VAT Registration Form.
11. If TAK determines that the taxpayer is eligible for a VAT Certificate, it will notify the taxpayer of that determination no later than the next working day after making the determination. The taxpayer will be given the option of visiting the authorizing TAK office or having the VAT Certificate delivered.
12. Each VAT Certificate will have a unique serial number on its face. That Serial Number, which is the taxpayer's VAT registration number, must be included, along with the taxpayer's fiscal number, on all invoices issued by the taxpayer.
13. If TAK discovers that the taxpayer is not current in all tax obligations or that the information in the registration form is not accurate, TAK will deliver a written notice to the taxpayer in writing that a VAT certificate cannot be issued. The notice will advise the taxpayer of the reason for not issuing the VAT Certificate and remind the taxpayer of penalties for engaging in VAT transactions without a VAT Certificate. The notice will also provide the taxpayer with information regarding appeal rights. TAK will deliver the written notice to the taxpayer within 2 days after determining that a VAT Certificate will not be issued.

Section 53 **Import/Export Certificates**

1. All persons are required to obtain an Import/Export Certificate prior to undertaking any import or export activities if they:
 - 1.1. import goods into Kosovo, if they are not otherwise registered for VAT purposes; or
 - 1.2. export goods from Kosovo, if they are not otherwise registered for VAT purposes.
2. All Import/Export registration forms must be submitted in person to the TAK regional office responsible for the tax affairs of the business by an authorized person of the business. Import/Export registration forms must be accompanied by a copy of business registration documents, Fiscal Number Certificate, and official picture identification (passport, identity card, etc.).
3. Upon receipt of the Import/Export Registration form, TAK will ensure that the information on the registration form is accurate and that the taxpayer is current in all tax obligations. If TAK determines that the taxpayer is eligible for an Import/Export Certificate, it will print the Certificate and provide it to the

taxpayer. If the taxpayer is not current in all declaration submissions or payment of taxes, no Import/Export Certificate will be issued until such time as the taxpayer is current in all tax matters, or a formal agreement for payment of any unpaid taxes has been established.

4. Each Import/Export Certificate will have a unique serial number on its face.

Section 54

Cancellation and Withdrawal of Certificates

As provided in Article 20A of The Law and Section 10 of Administrative Instruction 07/2009, the Director General of TAK may cancel or withdraw a VAT Certificate if TAK determines that the person to whom the certificate has been issued has violated the law.

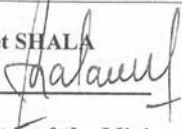
Chapter XI

Effect on Other Administrative Instructions and Entry into Force

Section 55

Implementation and Entry into Force

1. Administrative Instruction 05/2005 dated 29/04/2005 remains in effect, so long as its provisions do not conflict with any of the provisions of this Administrative Instruction. This Administrative Instruction shall supersede any administrative instructions previously issued with respect to The Law 2004/48 to the extent that the provisions of those administrative instructions conflict with the provisions of this Administrative Instruction.
2. This Administrative Instruction shall enter into force on the date of signing by the Minister of Economy and Finance.

Ahmet SHALA

Minister of the Ministry of Economy and Finance

Prishtine, date 01 / 02 / 2009

TABLE 1

<u>2004</u>	<u>2005</u>	<u>2004 Audit Assessment</u>
<u>Assessed 8 April 2005</u>	<u>Assessed 9 April 2006</u>	<u>Assessed 12 June 2007</u>
Tax 1,000	Tax 1,200	Tax 3,000
Penalty 240	Penalty 288	Penalty 720
Interest 690	Interest 612	Interest 2,070
Total 1,930	Total 2,100	Total 5,790
Paid 1,930	Paid 2,100	Paid 1,970
Balance -0-	Balance -0-	Balance 3,820

TABLE 2

Law	Information Statement Required	Due Date for Submitting Information Statement	Penalty Amount	Information Statement to be Provided to:	
				Recipient (Taxpayer or Customer)	Tax Administration (Applies after 1 January 2010)
Law on Personal Income Tax	Statement of Wage Withholding	1 March	€125 for each late or inaccurate statement	Annual Statement of Tax Withheld from Wages paid to recipient	Annual Reconciliation Statement and copy of statement given to each recipient
	Statement of Pension Withholding	1 March	€125 for each late or inaccurate statement	Annual Statement of Pension Withheld from Wages paid to recipient	Annual Reconciliation Statement and copy of statement given to each recipient
	Statement of Lottery Withholding	1 March	€125 for each late or inaccurate statement	Statement of Tax Withheld from Lottery Winnings paid to recipient	Annual Reconciliation Statement and copy of statement given to each recipient
Law on Personal Income Tax and Law on Corporate Income Tax	Statement of Rent Withholding	1 March	€125 for each late or inaccurate statement	Statement of Tax Withheld from Rent paid to Landlord	Annual Reconciliation Statement and copy of statement given to each recipient
Law on Personal Income Tax and Law on Corporate	Statement of Interest Withholding	1 March	€125 for each late or inaccurate statement	Statement of Tax Withheld from Interest paid to recipient	Annual Reconciliation Statement and copy of statement given to each recipient

Income Tax					
Law on Personal Income Tax and Law on Corporate Income Tax	Statement of Royalty Withholding	1 March	€125 for each late or inaccurate statement	Statement of Tax Withheld from Royalties paid to recipient	Annual Reconciliation Statement and copy of statement given to each recipient
Law on Personal Income Tax and Law on Corporate Income Tax	Statement of Withholding on Foreign Persons	1 March	€125 for each late or inaccurate statement	Statement of Tax Withheld from certain payments made to foreign persons	Annual Reconciliation Statement and copy of statement given to each recipient
Law on Tax Administration and Procedures	Statement of Annual Purchases in excess of €500 from a single supplier	31 March (Applies to purchases after 1 January 2010 – first annual statement due 31 March 2011)	€500 for each statement not provided ; €125 for each inaccurate statement	Statement of annual purchases in excess of €500	Annual Statement
	Application for tax administration to authorize use of specified fiscal electronic devices.	Prior to installation of fiscal electronic device	€125 for each late or inaccurate statement or application		Application
	Receipt issued by a fiscal electronic device (fiscal cash register, fiscal point of sale device, etc).	At the time each transaction is completed through the fiscal electronic device	€125 for each late or inaccurate statement (fiscal electronic device receipt)	Fiscal electronic device receipt	
Law on VAT	Tax Invoice	15 days after end of month in which taxable transaction occurred	€125 for each late or inaccurate statement	Tax Invoice	
	Sales Invoice	At the time each transaction is completed that is not completed through a fiscal electronic device	€125 for each late or inaccurate statement (manually prepared sales receipt)	manually prepared sales receipt	



ADMINISTRATIVE INSTRUCTION No.17/2009 -
Protection of TAK Integrity



ADMINISTRATIVE INSTRUCTION No. 17/ 2009

Ministry of Economy and Finance

Under Article 62 of Law No. 2004/48, *“On Tax Administration and Procedures,” as amended and supplemented* with Law No. 03/L-071, *“On Amendments and Supplements to the Law No. 2004/48, On Tax Administration and Procedures,”* the Minister of the Ministry of Economy and Finance,
Hereby issues:

ADMINISTRATIVE INSTRUCTION

Protection of TAK Integrity

No. / 2009

On implementation of article 60 of the Law No. 2004/48 On Tax Administration and Procedures amended and supplemented by the Law No. 03/L-071 On amendment and supplement of Law No. 2004/48 on Tax Administration and Procedures.

Section 1

Purpose

The purpose of issuing this Administrative Instruction is to define procedures and functions of the Office of Professional Standards of TAK.

Section 2

Definitions

For purposes of this chapter, the following definitions have the following meanings:

1. **TAK**-means Tax Administration of the Republic of Kosovo
2. **OPS**-means the Office of Professional Standards
3. **Criminal Offense**- according to this instruction includes the following offenses: abuse of official duty or authority; embezzlement in the exercise of duty; fraud on duty; receiving bribes; giving bribes; the exercise of influence; the disclosure of official secrets, counterfeit of official documents; illegal collection and payment; and providing false information in a matter involving official duty
4. **Monitoring**- means the checking and surveillance made by the OPS at the officials of TAK or property of TAK for verification of provisions regarding clothes, financial status, background, working hours, work behaviors, the use of the property of TAK-etc.
5. **Secondary job**- means the work and activity that the official of TAK performs by payment outside of primary employer
6. **"Officer"**- means employees of TAK-with the exception of the Director of TAK.

6. **Officer on call-** means the OPS official who is responsible for conducting his/her duties and responsibilities even after regular working hours, if authorized by the Manager of OPS.
7. **Law-** means the Law No. 2004/48 “ *On Tax Administration and Procedures*” amended and supplemented by the Law No. 03/L- 071 “*On Amendment and supplement of the Law No. 2004/48 on Tax Administration and Procedures*”

Section 3 **Functions of the OPS**

1. OPS function is the prevention and investigation of misconduct of tax officials, in case of suspicion of corruption, other abuse of official duty, and violations relating to the code of conduct of the TAK. OPS also has the authority to investigate the actions of citizens who threaten the security or integrity of TAK or its employees.
2. OPS officials must exercise the functions under paragraph 1 of this section in conformity with the legislation in force.
3. If the OPS officials feel themselves threatened or endangered either by internal or external persons in exercising their authority, they may request assistance from the competent public prosecutor;
4. OPS Official beyond regular working time has the status of on-call duty officer;
5. OPS officials must not reveal information about cases that are investigated by the OPS or comment on these cases to unauthorized persons
6. Officials who are employed in the OPS enjoy all the benefits entitled to tax inspectors and as well as the allowances for the risk
7. OPS officials are entitled to expenditures of representation due to the nature of work, if so authorized by the Director General of TAK, or his delegate.

Section 4 **Respecting Human Rights and Freedoms**

During the investigation, monitoring and communication with officials and third parties, the fundamental rights and freedoms of citizens guaranteed by the Constitution and the law, must be respected. The image and authority of the Tax Administration of Kosovo must not be harmed by actions or lack of action of OPS.

Section 5 **Initiation and management of suspected cases**

1. Any official of the TAK (director, deputy directors, managers, team leaders, tax inspectors and other employees) is obliged to report any suspected case under paragraph 1 of section 57 of this instruction, as soon as possible to the office of OPS.

2. Any suspected case for any TAK staff is submitted to the OPS and is entered in the Standard form;
3. Cases can be reported in writing or orally to the OPS;
4. The case presented is analyzed by OPS officials to ascertain the grounds for initiating the investigation and to identify whether the offence has to do with administrative or criminal violations;
5. OPS shall report each case suspected for a criminal act performed by an officer of TAK, to Kosovo Police or to the Office of the Public Prosecutor;
6. Any information or document that is offered by persons that report the case must remain confidential for non-competent persons;
7. OPS shall keep the Director General of TAK generally informed regarding the status of the program, including the status of specific investigations. The Director General and all other TAK officials are required to respect the confidential nature of information and to disclose information regarding ongoing investigations only as necessary to further the investigation or prosecution effort;
8. OPS along with prosecutors and other persons involved in the case has an obligation to ensure full anonymity of persons who wish to remain anonymous, based on legislation that regulates this issue;
9. Once an investigation has been initiated by OPS, TAK officials shall take no further action with respect to the subject of the investigation, unless authorized by OPS or the Director General following consultation with OPS.

Section 6

Authorization for investigation

1. The investigation of suspected criminal offense is initiated by priority obtaining an authorization from the competent Public Prosecutor in conformity with Article 39 of The Law
2. For investigating cases of suspected administrative violation, the authorization under paragraph 1 of this Article is not required.

Section 7

Investigating cases of suspected administrative violations

1. For investigating cases of suspected administrative violations committed by a tax official, OPS has the authority to take the following actions:
 - 1.1. interview witnesses;
 - 1.2. provide and examine evidence;
 - 1.3. to interview the suspected person;
 - 1.4. to examine the files;
 - 1.5. provide information from third parties;
2. When it is considered that there is sufficient evidence related to the case and that there is no need for additional evidence and information, OPS will compile the investigation report.

3. The investigation report along with the evidence administered during the investigation shall be forwarded to the disciplinary committee of TAK, in case OPS has found facts of violations.
4. The investigation report or file can be given to relevant departments upon request, so long as doing so will not have a harmful impact on the further investigation and prosecution.

Section 8

Investigating cases of suspected criminal violations

1. For investigating cases concerning suspected criminal violations committed by the official, the OPS, after obtaining authorization from the competent prosecutor, has the authority to undertake the following actions:
 - 1.1. to interview witnesses, both inside and outside of TAK;
 - 1.2. to interview third persons who may have information that will assist in investigations;
 - 1.3. ask for evidence, and other information that will assist in an authorized investigation, including the issuance of bank records;
 - 1.4. to determine whether the issue under investigation should be dealt with administratively or through criminal proceedings;
 - 1.5. assist in the arrest of individuals thought to be guilty of any act covered by this article, after such action is authorized by the public prosecutor;
 - 1.6. seek information from police, courts, registries, municipalities and other bodies to verify the details of the application for employment, financial condition and assets, and other purposes related to the anticorruption investigations and internal security of the TAK;
 - 1.7. conduct joint investigations with police and other law enforcement agencies in matters relating to internal security, alleged misconduct of employees and activities of other employees and citizens that could endanger the integrity or security of the Tax Administration;
 - 1.8. assist Police and other law enforcement agencies in the investigations which they have undertaken and related to alleged violations of the penal code by the employees of TAK;
 - 1.9. to communicate and exchange information with police and law enforcement agencies in order to ensure integrity and safety of Tax Administration;
 - 1.10. when it is considered that sufficient evidence was collected related to the case and that there is no need for additional information and evidence OPS shall compile an investigation report which shall be forwarded according to the procedure set forth in paragraph 3 of this Section;
 - 1.11. if the administrative evidence provides the grounds for suspicion of a criminal offense, the investigation report is submitted to the legal office of TAK to file the criminal charge. If during the gathering of evidence, no facts were found, the prosecutor who issued the authorization regarding the case should be notified;

- 1.12. criminal investigation files may be offered only to the prosecution and judicial authorities. According to the suggestion of the prosecutor or at its own discretion, OPS may send the criminal offence case to the Police Kosovo, even though it has the authority to conduct the investigation.
2. Notwithstanding the provisions of paragraph one of this section, OPS is authorized to conduct such preliminary inquiries as necessary to determine if a criminal act has occurred prior to seeking authorization from the competent prosecutor for further investigation. Such preliminary inquiries must be made keeping in mind the principles of the Kosovo Code of Criminal Procedures. Included in authorities related to preliminary inquiries are the authority:
 - 2.1. to interview witnesses, both inside and outside of TAK;
 - 2.2. to interview third persons who may have information that will assist in investigations;
 - 2.3. seek information from police, courts, registries, municipalities and other bodies to verify the details of the application for employment, financial condition and assets, conflict of interest concerns, and other preliminary inquiries related to the anticorruption efforts and internal security of the TAK;
 - 2.4. to communicate and exchange information with police and law enforcement agencies in order to ensure integrity and safety of TAK.
3. OPS shall retain records of all preliminary inquiries made whether they become formal investigations, or not.

Section 9

Content and Description of the Investigation Report

1. The investigation report must contain the following information:
 - 1.1. Details of the investigated person,
 - 1.2. Details of the event;
 - 1.3. Information on the conducted activities;
 - 1.4. Findings and recommendations.
2. The report/case file should:
 - 2.1. contain all notes and evidence gathered during the investigation, including an index of the contents;
 - 2.2. remain confidential and can not be provided to any person or body outside TAK, with the exception of cases when the file is requested by the court or the police for investigation under the laws in force;
 - 2.3. the file and contents may be reviewed by those persons within TAK who need to review the case file for approval or preparation of the file for the prosecutor;
 - 2.4. be retained in a secure container in the OPS during the course of the investigation and ant court Proceedings
 - 2.5. be placed in a secure archive once the final court, or administrative, action has been completed (or the investigation has been discontinued).

3. The record must be retained for the length of time provided for any appeals, plus an additional two years.

Section 10

Conducting the Interview

1. The interview of offenders, or third party, both for administrative and criminal violations must be conducted in conformity of the following points:
 - 1.1. The statement should not be taken under the influence of pressure.
 - 1.2. The statement is made in the native language of the person who gives the statement.
 - 1.3. The statement should be done verbally and recorded in writing by the officer of the OPS in a standard form.
 - 1.4. The statement must be signed by the witness and if he/she refuses to sign, the denial should be noted in the form and the reason why he refused to sign.
 - 1.5. Sufficient time should be given to the person who is being heard for giving his testimony.
 - 1.6. The person can be interviewed in the office of TAK- or at person's location.
 - 1.7. The interview should be conducted in a private and comfortable location that is free from distractions.
2. Statements made by witnesses are confidential and can be disclosed only to persons authorized by the prosecutor.

Section 11

Administration and examination of evidence

1. Documentation and evidence obtained by the OPS officer investigating the case is entered in the standard form (SP-F11).
2. The examination of the evidence will be done by OPS officials, and, as necessary, assistance of other professional or technical persons may be requested, in which case the file or information may be provided in whole, or in part, to the appropriate officials.
3. All evidence obtained during the investigation of criminal offenses, is confidential, and it is the responsibility of officials of the OPS involved in the case to preserve or maintain records as described in paragraph 2 of Section 63 of this instruction.

Section 12

Administration of statements on property

1. Financial Disclosure Statements of designated TAK officials to be submitted to Manager OPS within 30 days after the effective date of this administrative instruction.

2. The Financial Disclosure Statements and any applicable changes are entered in a database maintained by OPS that is not accessible by other TAK employees or the public.
3. The details of the personal Financial Disclosure Statements remain confidential except in cases when they are requested in writing by any relevant bodies (police, judiciary, prosecution) pursuant to a written order by the prosecutor, in which case they may be given by the responsible OPS official.
4. Except for the Director General and Deputies to the Director General, who are required to submit financial disclosure statements to the anticorruption agency, the following TAK officials are required to submit an annual Financial Disclosure Statement to the OPS:
 - 4.1. At the discretion of the Director General of TAK, any TAK official required to submit a financial disclosure statement (or its equivalent) to any other Kosovo Government authority may also be required to submit such statement to OPS.
 - 4.2. To the extent that any Deputy to the Director General is not required to submit a financial disclosure statement (or its equivalent) to any other Kosovo Government authority, those officials are required to submit such a statement to OPS in accordance with the provisions of this section.
5. If OPS notices a questionable increase in property that is unexplained, OPS will notify the prosecutor under article 60.2 of Law No. 2004/48 on Tax Administration and Procedures in order to initiate an investigation.
6. The frequency of submitting the Financial Disclosure Statement shall be determined by the Director General and may be different for each type of employee.
7. Employees new to TAK, who are selected into any of the positions described in paragraphs 4.1 through 4.24 of this Section must submit their Financial Disclosure Statement within 30 calendar days from the day when they started to work in Tax Administration of Kosovo.
8. A current employee of TAK who is promoted into one of the positions described in paragraphs 4.1 through 4.24 of this Section must submit a Financial Disclosure Statement within 30 days after they are selected for the position.
9. A current employee who is promoted, who is already in a position requiring the submission of a Financial Disclosure Statement is not required to submit a new Financial Disclosure Statement, but must submit the next periodic statement on the scheduled date.
10. Every purchase of an article in value greater than 2.000 euros shall be reported in the OPS, within 15 calendar days from the purchase of the article.
11. On a periodic basis, not more than annually, according to a schedule to be established by OPS, each person required to submit a Financial Disclosure Statement must submit an up-dated Financial Disclosure Statement which reflects the changes from the previous Financial Disclosure Statement.
12. OPS shall analyze the Financial Disclosure Statements submitted to determine if there are changes from previous statements or unexplained assets, etc.

Section 13

Monitoring (inspection) of respecting the rules and guidelines arising from the Code of Conduct for TAK

1. Initiation of Monitoring can be done based on OPS officer's discretion, so long as it is based on an objective or random selection.
2. OPS has the authority to monitor the behavior of employees toward other employees or toward members of the public; in their official daily activities to include monitoring of taxpayer contacts and use of time; utilization of TAK property; the appearance of workers; placing logos and other signs on TAK properties etc.
3. After each monitoring, an inspection report must be prepared.
4. If during the inspection, OPS identifies any violations committed by the TAK official or group of officials within the TAK , it will prepare a written report which outlines the facts and evidence which will form the basis for a managerial decision regarding possible discipline.
5. If, during a monitoring operation, or in the course of other observations of TAK staff, the OPS official may intervene if he notices irregularities in conduct of a TAK staff member, if such intervention is necessary to protect the image and the integrity of TAK;

Section 14

The procedure of Authorization for secondary jobs outside TAK

1. Any employee of TAK (except the Director General). who wants to take a second job outside TAK, must submit a written application including a description of job duties, type of business of employer, name of prospective employer, planned work schedule, and relationship to employer (if any) before starting the secondary job;
2. OPS will analyze the written request for a secondary job, provided that this request be approved by the applicable Regional Manager, or the manager of the employee for those employees in a HQ function.
3. OPS will consider the request for secondary job (outside employment) only after it has been reviewed and approved by the required levels of management.
4. OPS's decision regarding authorization for outside employment must be given in writing.
5. The authorization for outside employment will not be granted for following activities:
 - 5.1. Finance officer or accountant in private businesses;
 - 5.2. Salesperson of any kind in private business;
 - 5.3. Auditor in a private company;
 - 5.4. Tax advisor in any private business;
 - 5.5. Judicial expert on tax issues;
 - 5.6. Trainer for a private company or private educational institution (except as an occasional guest lecturer) in any subject that relates to taxation, including accounting courses;

- 5.7. Any other activities where the OPS considers that the person in question may be in conflict of interest as defined by practices in TAK and Section 8 of the TAK Code of Conduct, discredits the organization or when the secondary job harms the organization or implementation of activities foreseen in the TAK.
6. An employee must request authorization for outside employment for each period of outside employment, even if the employee has previously performed the same service for the same employer.
7. In addition to the provisions of this administrative instruction and The Law, TAK employees must also respect the provisions of Law Nr. 02/L-133 on preventing conflict of interest in exercising public functions.
8. A TAK employee may not perform duties for a secondary employer during regular working hours, unless such employee is on annual leave at the time of performing such duties. Performing work activities for a secondary employer during regular work hours (even if on annual leave) is not encouraged as it is nearly impossible to do so without interfering in the employee's regular working duties TAK.
9. After a secondary work is completed TAK official must ensure that the secondary employer withheld the tax or it must file and pay its income from secondary work through the annual return under the tax legislation if the employer is not obliged to withheld the tax and contributions for him/her.
10. If TAK has entered a memorandum of understanding with any organization with the purpose of offering assistance, TAK employees may fulfill the obligations of TAK with regard to the MOU irrespective of the provisions of this administrative instruction regarding outside employment. In the case of an MOU, TAK employees are performing the official duties of TAK, even if performing those official duties at another organization.

Section 15

Prevention of Misconduct and Corruption

1. In addition to other activities described in this administrative instruction, OPS will undertake the following educational and training activities in order to maximize efforts to prevent misconduct and corruption:
 - 1.1. Anti-corruption training organized by the office of professional standards for TAK staff, particularly audit and collection staff;
 - 1.2. Annual Code of Conduct Training for all TAK staff members; new employees must be given Code of Conduct training within the first three months after their entry on duty;
 - 1.3. Training in other legislation that impacts on conduct, conflict of interest, or other issues that are under the responsibility of OPS; and,
 - 1.4. Public campaigns to increase the awareness of the public regarding the need to protect and respect the integrity of TAK and the manner in which the public can assist in ensuring that TAK employees maintain the highest degree of integrity.

Section 16

Cooperation with Other Institutions

1. Office of Professional Standards may investigate cases in cooperation with Kosovo police or other relevant institutions in the Republic of Kosovo.
2. Office of Professional Standards is obliged to provide information, evidence and data that are requested in writing by a prosecuting authority so long as such information is pertinent to the charges being considered and is within the authority of TAK to provide, with full regard to the confidentiality requirements of The Law which defines the issue of information confidentiality in TAK.
3. The OPS can cooperate with institutions and organizations outside the tax administration in attending or conducting workshops, trainings, anticorruption campaigns, etc.
4. The Director General may enter into such agreements as necessary with other organizations and institutions that will enhance the ability of OPS to identify and investigate misconduct or corruption in TAK.

Section 17

Procedures of Background Investigation for Employees of TAK

1. OPS is authorized to investigate the background of any employee of TAK in order to ensure the integrity of TAK and confirm the eligibility of the employee to be employed by TAK in any capacity. While background investigations normally relate to new employees during their probationary period, OPS is authorized to verify the background of any employee irrespective of the length of service of that employee.
2. In conducting investigations to confirm eligibility of an employee to be employed at TAK, OPS can verify whether their diplomas, certificates, medical certificates, and other documents are original. OPS may verify any information or statements made by an employee in their application for employment or any other document submitted with respect to employment with TAK.

Section 18

Conflicts of Interest

1. Any TAK employee engaged in official duties must remove themselves from any work activity that involves a family member, former employer, or other close associate.

Example:

Examples of situations requiring employees to remove themselves from the work activity include, but are not limited to the following:

- 1.1. A data processing person inputting declarations notices that a declaration in assigned work relates to a business of a family member. The data processing person must advise the team leader or manager of Data

- Processing and request that the declaration be removed from the assigned declarations;
- 1.2. A tax inspector is assigned a business operated by his brother-in-law for a compliance check. The tax inspector must advise his team leader of the family relationship and the team leader must assign the compliance visit to another tax inspector;
 - 1.3. A collection officer receives a collection case on his cousin. The collection office must advise his team leader of the family relationship and the collection case must be assigned to another collection officer.
 - 1.4. A Regional Manager notices that a business operated by his brother has been identified for audit. The regional manager must notify the Deputy to the Director General (Operations) who must assign the audit to another regional office.
 - 1.5. An appeals officer is assigned an appeals case involving a business owned by a good friend. The appeals officer must advise the manager of appeals and have the case reassigned to another appeals officer.
 - 1.6. A procurement official notices that a business owned by her father's brother has submitted a bid on a tender. The procurement official must advise the manager of procurement and remove herself from any further activity with respect to that procurement action.
 - 1.7. A tax inspector is assigned to audit a business for which the inspector worked before becoming a tax inspector. The tax inspector must advise the team leader and have the audit reassigned to another tax inspector.
 - 1.8. A tax inspector is assigned an audit of a business for which her spouse is bookkeeper. The tax inspector must advise her team leader and have the audit reassigned to another tax inspector.
 - 1.9. A team leader notices that his team has been assigned an audit of a business for which the Deputy Regional Manager's wife is accountant. The team leader must advise the manager of the case assignment. The Regional Manager must advise the Deputy to the Director General (Operations) so that the audit can be reassigned to another region.
 2. In addition to advising the appropriate manager or team leader, the employee must complete Form SP-F3.
 3. For purposes of the conflict of interest provisions of this Section, a family member includes all members of the immediate and extended family, such as:
 - 3.1. Father
 - 3.2. Father-in-law
 - 3.3. Mother
 - 3.4. Mother-in-law
 - 3.5. Grandparents of both spouses
 - 3.6. Brothers and Sisters of grandparents of both spouses
 - 3.7. Son or Daughter
 - 3.8. Son-in-law or daughter-in-law
 - 3.9. Brother or Sister
 - 3.10. Step-son, Step-daughter, Stepbrother, step-sister
 - 3.11. Cousins

- 3.12. Aunts and Uncles
- 3.13. Nieces and nephews
- 4. For purposes of the conflict of interest provisions of this Section, a close associate includes, but is not limited to:
 - 4.1. Former employer;
 - 4.2. Friend;
 - 4.3. Current or former business associate;
 - 4.4. Colleagues of the OPS who they consider to have specific relations with ;
 - 4.5. Neighbor;
 - 4.6. Members of Social Clubs to which the employee or spouse may belong (A second level manager may make a determination that a conflict of interest does not exist on a case by case basis, in which case the employee may continue with the work activity)
 - 4.7. Entities with which the employee has or has had an outside employment authorization
- 5. Any team leader, deputy manager, or manager that is aware of a conflict of interest situation and does not report that situation to OPS and their direct manager, will be subject to disciplinary action.
- 6. Any team leader, deputy manager, or manager that is aware of a conflict of interest situation who does not take action to correct the conflict of interest situation (if in a position of authority to take action) will be subject to disciplinary action.
- 7. OPS may establish an investigation when it suspects that a conflict of interest situation exists, existed, or has been allowed to exist contrary to the provisions of this Section.
- 8. Any un-reported conflict of interest situation will subject employees or managers to disciplinary action, if they were aware, or should have been aware, of the conflict of interest.
- 9. To avoid conflict of interest situations involving TAK employee audits, TAK Management shall identify qualified inspectors who shall be designated to conduct audits, including review of refund claims, of TAK employees, if such an audit or refund claim review shall become necessary. Only designated employees shall be authorized to conduct such audits or refund claim reviews.

Section 19

Issuing Guidelines and Standard Forms

- 1. For the purpose of implementation in practice of this instruction, the OPS may issue procedures, guidelines and relevant forms;
- 2. OPS will be responsible for updating and revising the code of conduct for TAK.

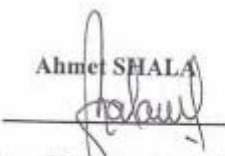
Section 20

Effect on Other Administrative Instructions and Entry into Force

- 1. Administrative Instruction 05/2005 dated 29/04/2005 remains in effect, so long as its provisions do not conflict with any of the provisions of this administrative

instruction. This Administrative Instruction shall supersede any administrative instructions previously issued with respect to The Law 2004/48 to the extent that the provisions of those administrative instructions conflict with the provisions of this Administrative Instruction.

2. This Administrative Instruction shall enter into force on the date of signing by the Minister of Economy and Finance.

Ahmet SHALA

Minister of Economy and Finance

Pristine, date 01/12/2009



Law No. 03/L-113
ON CORPORATE INCOME TAX

Law No. 03/L-113

ON CORPORATE INCOME TAX

Assembly of Republic of Kosovo,

According to paragraph (1) of Article 65 of Constitution of the Republic of Kosovo,

Adopts:

LAW ON CORPORATE INCOME TAX

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Law terms used below have the following meaning:

“Capital assets” means tangible property with a service life of one year or more;

“Dividend” means a distribution by a company to a shareholder:

- of cash or stock with respect to the shareholder’s equity interest in the company; and
- of property other than cash or stock, unless the distribution is made as a result of liquidation;

“Economic activity” means an activity entered into for the purpose of earning income;

“Financial statements” means the general purpose financial statements prepared in accordance with UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations;

“Foreign source income” means gross income that is not Kosovo source income;

“Gross income” means all income received or accrued, including but not limited to, income from production, trade, financial, investment, professional or other economic activities;

“Intangible property” means patents, copyrights, licenses, franchises, and other property that consists of rights only, but has no physical form;

“Real Estate” means all land and buildings and all units within buildings such as apartments or areas for commercial purposes and

“Immovable property” means all real estate and establishments and structures below or above the land surface and connected to the land.

“Involuntary conversion” means property, in whole or in part, that is destroyed, stolen, seized, or condemned, or the taxpayer is otherwise forced to dispose of by reason of threat or imminence of any of the foregoing;

“Kosovo source income” means gross income that arises in Kosovo, which includes;

- income from business activity where such activity is located in Kosovo;

- income from the use of movable or immovable property located in Kosovo;
- income from the use of intangible property in Kosovo;
- interest on a debt obligation paid by a resident or a public authority;
- dividends paid by a resident business organization;
- gain from the sale of immovable property located in Kosovo; and
- other income not covered by the above-mentioned subparagraphs arising from economic activity in Kosovo.

“Market value” means the price at which similar goods or services of like quality and quantity would be sold in an arm’s-length transaction;

“Non-resident” means any person or group of persons that is not resident in Kosovo;

1A.1. **“Permanent establishment”** means a fixed place of business through which the business of a non-resident person is wholly or partly carried on in Kosovo.

1A.2. **“Permanent establishment” shall include:**

- a) any place of management;
- b) any branch;
- c) any office;
- d) any factory;
- e) any workshop;
- f) Any mine; and
- g) any oil or gas source, quarry or other place of exploitation of natural resources.

1A.3. **“Permanent establishment” shall also include:**

- a. any building site, construction, assembly or installation project or supervisory activity in connection therewith, but only if such site, project or activity lasts longer than one hundred eighty three (183) days. Where the site, project or activity lasts longer than one hundred eighty three (183) days, including any preparatory activity, the site project or activity shall be deemed to have been or created a permanent establishment from the day such work commenced;
- b. the furnishing of any service, including any consultancy service but excluding any supervisory activity referred to in article 1A.3 (a), carried out in Kosovo by a non-resident person through employees or other personnel, but only if such activities continue within Kosovo for a period or periods of totaling ninety (90) days or more within any twelve-month (12) period. Where the activities do continue within Kosovo for a period or periods totaling ninety (90) days or more within any twelve-month (12) period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced;
- c. any site used for the research for natural resources within Kosovo, where such activities within Kosovo continue for a period or periods totaling one hundred eighty three (183) days or more within any twelve-month (12) period. Where the activities do continue for a period or periods totaling one hundred eighty three (183) days or more within any twelve-month (12) period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced; and

- d. any immovable property situated in Kosovo and owned by a non-resident person.
- 1A.4. Notwithstanding subsections 1A.1 and 1A.2 of this section, where a person other than an agent of an independent status to whom section 1A.7 applies, acts in Kosovo on behalf of a nonresident person shall be deemed to have a permanent establishment in Kosovo in respect of the activities which that person undertakes for the non-resident person, if such a person:
- a. has and habitually exercises in Kosovo an authority to conclude contracts in the name of the non-resident person, unless the activities of such person are limited to those mentioned in section 1A.6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that subsection; or
 - b. has no such authority but habitually maintains in Kosovo a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the taxpayer.
- 1A.5. A non-resident person who provides insurance shall, except in regard to re-insurance, be deemed to have a permanent establishment in Kosovo if it collects premiums in Kosovo or insures risks situated in Kosovo through a person other than an agent of an independent status to whom Section 1A.7 applies.
- 1A.6. Notwithstanding subsections 1A.1, 1A.2 and 1A.3 of this section “permanent establishment” shall be deemed not to include:
- a. the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to non-resident person;
 - b. the maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of storage or display;
 - c. the maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of processing by another tax payer;
 - d. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the non-resident person;
 - e. the maintenance of a fixed place of business solely for the purpose of carrying on, for the non-resident person, any other activity of a preparatory or auxiliary character; and
 - f. the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (a) to (e) of this subsection, provided that the overall activity of the fixed place of business resulting from this combination is only of a preparatory or auxiliary character.
- 1A.7. A non-resident person shall not be deemed to have a permanent establishment in Kosovo merely because it carries on business in Kosovo through a broker, general commission agent or any other agent of an independent status, provided that such person are acting in the ordinary course of their business. However, when the activities of such an agent are devoted

wholly or almost wholly on behalf of that taxpayer, and the conditions are made or imposed between that taxpayer and the agent in their commercial and financial relations which differ from those which would have been made between independent taxpayers, he will not be considered an agent of an independent status within the meaning of this subsection.

- 1A.8. The fact that a non-resident person controls or is controlled by a company which is a resident of Kosovo, or which carries on business in Kosovo (whether through a permanent establishment or otherwise), shall not of itself deem either company a permanent establishment of the other.

“Person” means a natural person or a legal person;

“Public authority” means a central, regional, municipal, or local authority, public body, ministry, department, or other authority that exercises public executive, legislative, regulatory, administrative or judicial power;

“Related person” means persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationship shall mean:

- the persons are officers or directors of one another’s business;
- the persons are partners in business;
- the persons are in an employer-employee relationship;
- one person holds or controls fifty percent (50%) or more of the shares or voting rights in the other person’s company;
- one person directly or indirectly controls the other person;
- both persons are directly or indirectly controlled by a third person; or
- the persons are husband or wife, or relatives to the third degree inclusive, or in law to the second degree inclusive;

“Representation costs” means all costs related to promotion of the business or its products and includes costs for publicity, advertising, entertainment and representation;

“Resident” means a person or group of persons that is established in Kosovo or that has its place of effective management in Kosovo; and

“Tax period” means the calendar year;

Article 2

Taxpayers

1. The following persons shall be taxpayers under this Law:
 - 1.1. a corporation or other business organization that has the status of a legal person under the law applicable in Kosovo;
 - 1.2. a business organization operating with public or socially owned assets;
 - 1.3. an organization registered as a non-governmental organization under legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo; and
 - 1.4. a non-resident person with a permanent establishment in Kosovo, subject to provision of paragraph 2 of Article 3 of this law;

Article 3

Object of Taxation

1. The object of taxation for a resident taxpayer shall be taxable income from Kosovo source income and foreign source income.
2. The object of taxation for a non-resident taxpayer shall be taxable income from Kosovo source income.

Article 4

Taxable Income

1. A taxpayer with annual gross income of five thousand and one (50.001) euro or greater shall calculate taxable income by preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in this Law.
2. A taxpayer with annual gross income of five thousand (50.000) euro or less shall calculate taxable income:
 - 2.1. in accordance with sub-article 2.1 and 2.2 of paragraph 2 of Article 31 of this law; or
 - 2.2. by preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in this Law
3. Taxpayers who opt to calculate taxable income and prepare financial statements pursuant to sub-paragraph 2.2. of paragraph 2 of this law in any tax period shall be required to calculate taxable income and prepare financial statements in that manner for each subsequent tax period.
4. As an exception to the sub paragraphs above, taxpayers whose principal activity is the insurance or reinsurance of life, property, or other risks shall calculate taxable income and pay income tax in accordance with Article 28 of this law.

Article 5

Tax Rate

For the tax period 2009 and subsequent tax periods, the corporate income tax rate shall be ten percent (10%) of taxable income.

CHAPTER II

INCOME EXEMPT FROM TAX

Article 6

Exempt Income

1. The following income shall be exempt from corporate income tax:
 - 1.1. without prejudice to section 29 of this law, the income of organizations registered under legislation on the Registration and Operation of Non-Governmental Organizations that have received and maintained public

- benefit status to the extent that the income is used exclusively for their public benefit purposes;
- 1.2. income of the Central Bank of Kosovo, and of entitled and duly authorized international inter-governmental financial institutions operating in Kosovo;
 - 1.3. Dividends received by a resident taxpayer from a resident company that paid Kosovo corporate income tax; and
 - 1.4. Income from a contractor, other than a local contractor, generated from contracts for the supply of goods and services to the United Nations (including UNMIK), the Specialized Agencies of the United Nations and the International Atomic Energy Agency.

CHAPTER III EXPENDITURES

Article 7 Allowable Expenses

1. Subject to the limitations in this 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.
2. No deduction shall be allowed for any expense unless it is documented in the manner required by an Administrative Instruction to be issued by the Ministry of Finance and Economy.

Article 8 Disallowed Expenses

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 depreciated or amortized under the provisions of this Law;
 - 1.3. fines and penalties;
 - 1.4. income tax; and
 - 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.

Article 9 Allowable Deductions

1. Contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under this Law up to a maximum of five percent (5%) of taxable income computed before the expenditures are deducted.

2. An allowable contribution under paragraph 1 of this Article must be made to:
 - 2.1. an organization registered under legislation on registration and function as a non-governmental organization that has received and maintained public benefit status;
 - 2.2. any other non-commercial organizations that directly perform activities in the public interest and not for profit, such as:
 - 2.2.1. medical institutions;
 - 2.2.2. educational institutions;
 - 2.2.3. organizations to protect the environment;
 - 2.2.4. religious institutions;
 - 2.2.5. institutions that care for disabled or elderly persons;
 - 2.2.6. orphanages; and
 - 2.2.7. institutions that promote science, culture, sports or arts.
3. An allowable deduction shall not include a contribution that directly benefits related persons of the donor.
4. Any taxpayer who claims an allowable deduction must file an annual tax declaration in accordance with paragraph 2 of Article 30 of this law and submit a receipt in respect of such deduction to the Tax Administration.

Article 10 **Representation Costs**

Representation costs are allowed as expenses under this Law up to a maximum of two percent (2%) of total gross income.

Article 11 **Bad Debts**

1. A bad debt shall be considered an expense if it meets all of the following three (3) conditions:
 - 1.1. the amount that corresponds to the debt has previously been included in income;
 - 1.2. the debt is written off in the taxpayer's books as worthless; and
 - 1.3. there is adequate evidence of substantial unsuccessful attempts made by the taxpayer to collect the debt.
2. Bad debts that are deducted as expenses and then collected later shall be included as income at the time of collection.

Article 12 **Reserve Funds**

1. Except as otherwise provided in this Law, contributions to reserve funds are not allowable as an expense.
2. Banks are entitled to an expense for the creation of a special reserve fund for the bank's doubtful assets, of an amount not to exceed the maximum amount allowable by the Central Bank of Kosovo.

3. Subsequent to the creation of the special reserve fund, any amount withdrawn from the fund shall be included in income and any amount placed back into the fund, to replenish it to the allowable amount, shall be allowed as a deduction.

Article 13 **Payments to Related Persons**

1. Compensation or emoluments paid to a related person shall be allowed as an expense in an amount equal to the lesser of the actual payment or the market value.
2. Interest, rent, and other expenses paid to a related person shall be allowed as an expense in an amount equal to the lesser of the actual payment or the market value.

Article 14 **Depreciation**

1. Expenditures on tangible property, other than expenditures for land, works of art, and other property which are not subject to wear, owned by the taxpayer and used for the taxpayer's economic activity, shall be recovered over time by depreciation deductions in the manner prescribed by this Article.
2. Expenditures on improvements to leaseholds used for the taxpayer's economic activity shall be recovered through depreciation deductions calculated using the straight-line method with a period equal to the life of the leasehold.
3. All tangible property of the taxpayer that is subject to depreciation under subparagraph 1 of this article shall be placed in one of the following categories:
 - 3.1. Category 1: Buildings and other construction structures;
 - 3.2. Category 2: Automobiles and light trucks, computers, peripherals, and other data processing equipment, office furniture and office equipment, instruments, sundries and other accessories; and
 - 3.3. Category 3: Plant and machinery, heavy transport vehicles, earth moving equipment, other heavy vehicles, rolling stock and locomotives used for rail transport, airplanes, ships and all other tangible assets.
4. Property in each category shall be treated as follows:
 - 4.1. Category 1: property shall be accounted for in segregated asset accounts;
 - 4.2. Category 2: property shall be placed in one pool and have a consolidated capital account; and
 - 4.3. Category 3: property shall be placed in one pool and have a consolidated capital account.
5. The amount allowed as a depreciation deduction for the tax period shall be determined by applying the following percentages to the capital account for such category under the reducing balance method at the close of the tax period:
 - 5.1. Category 1: five percent (5%);
 - 5.2. Category 2: twenty percent (20%); and
 - 5.3. Category 3: fifteen percent (15%).

6. An asset shall first be taken into account for the purpose of the present Article when it is first placed into service.
7. The initial addition to the capital account for any asset acquired during the year shall be its cost plus insurance and freight. The initial addition to capital account for any property constructed by the taxpayer shall include the taxes, duties, and interest attributable to such property for the periods before the property is placed into service.
8. Expenditure on an asset belonging to Category 2 or Category 3 that is less than one thousand (1.000) euro shall be allowed as a current expense.

Article 15 **Special Allowance for New Assets**

1. If a taxpayer purchases any asset belonging to Category 3 for the purpose of the taxpayer's economic activity between 1 January 2005 and 31 December 2008, a special deduction of ten percent (10%) of the cost of acquisition of the asset shall be allowed in the year in which the asset has been first placed into service. This deduction shall be in addition to the normal allowable depreciation deduction. The deduction shall be allowed only if the asset is new or is placed into service in Kosovo for the first time. A deduction shall not be allowed if the asset is transferred from an existing or a former business in Kosovo.
2. Other special allowances may only be granted if so provided by specific Law.

Article 16 **Repairs and Improvements**

1. In the case of any segregated asset account and any pooled asset account:
 - 1.1. to the extent that the amounts expended during the tax period to repair, maintain or improve the property do not exceed five percent (5%) of the balance in the account at the beginning of the year, such amounts shall be allowed as a deduction for such year; and
 - 1.2. to the extent that such amounts exceed five percent (5%), such excess shall be treated as improvements and added to the applicable segregated asset or pooled account.

Article 17 **Amortization**

1. Expenditures on intangible assets that have a limited useful life including patents, copyrights, licenses for drawings and models, contracts and franchises are deductible in the form of amortization charges.
2. The method of amortization shall be the straight-line method and the allowance shall be based on the useful life of the asset as determined by the legal agreement governing the acquisition and use of the intangible asset.

Article 18

Exploration and Development Costs

1. All exploration and development costs in respect of a natural deposit of minerals and other natural resources and interest attributable thereto shall be added to a capital account and amortized under the present Article.
2. The amount allowed as an amortization deduction with respect to exploration and development costs referred to in paragraph 1 of this Article for the tax period shall be determined by multiplying the balance in the capital account by a fraction of:
 - 2.1. the numerator of which is the units extracted from the natural deposit during the year; and
 - 2.2. The denominator of which is the estimated total units to be extracted from the natural deposit over the life of the asset.
3. The estimated total units to be extracted referred to in sub-paragraph 2.2 of paragraph 2 of this article shall be determined in accordance with instructions concerning such estimates to be set out in an Administrative Instruction issued by the Ministry of Finance and Economy.

CHAPTER IV

CAPITAL GAINS AND LOSSES, BUSINESS LOSSES

Article 19

Capital Gains and Losses

1. Capital gain means income that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
2. The amount of capital gain is the positive difference between the sales price of the capital asset and the cost of the capital asset as determined under paragraph 7 of this Article.
3. Capital loss means a loss that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
4. The amount of capital loss is the negative difference between the sales price of the capital asset and the cost of the capital asset as determined under paragraph 7 of this Article.
5. The sales price of a capital asset shall be the sum of any money received plus the market value of any property other than money received as consideration for the sale.
6. If the parties are related persons and the sales price is less than the market value, then, for purposes of the present Article, the sales price shall be the market value.
7. The cost of the capital asset is the amount that the taxpayer paid for the acquisition of the capital asset, increased by the cost of improvements, and reduced by depreciation and other expenditures allowable under this Law.

8. This Article does not apply to capital assets subject to depreciation as pooled assets.
9. Capital gains shall be recognized as business income and capital losses as business losses.

Article 20

Involuntary Conversions

A capital gain shall not be recognized on the involuntary conversion of property to the extent that the consideration received from the conversion consists of either property of the same character or nature or money that is invested in property of the same character or nature within a replacement period of two (2) years.

Article 21

Business Losses

1. A business loss is the negative difference between the taxpayer's income and expenses arising from economic activity.
2. The amount of the business loss determined under this Article may be carried forward for up to seven (7) successive tax periods and shall be available as a deduction against any income in those years.
3. The amount of the carry forward taken into account for any tax period after the year of the business loss shall be the entire amount of the loss, reduced by the aggregate amount previously allowed as a deduction.
4. If a taxpayer has a business loss in more than one (1) year, the present Article shall be applied to the losses in the order in which they arose.

CHAPTER V

LIQUIDATION AND REORGANIZATION

Article 22

Distribution of Property

1. A company that distributes property other than stock to a shareholder with respect to the shareholder's interest shall recognize a gain or a loss as if such property had been sold to such shareholder at its market value.
2. The property distributed to the shareholder shall be valued at the market value of the property.
3. In the case of a distribution of stock dividends that does not change the share of participation of the recipient, the company shall not recognize a gain or a loss and the shareholder shall not realize income.



Article 23

Liquidation

1. In the case of a liquidation of a company, the company shall take into account any gain or loss as if it had sold the property distributed in the liquidation at its market value.
2. Except as otherwise provided in this Law, the recipients of property distributed in liquidation shall be treated as if they exchanged their equity interest in the liquidated company for an amount equal to the market value of such property.
3. In the case of a liquidation of a subsidiary where the property of the subsidiary is distributed to a parent, the parent shall not recognize any gain or loss.

Article 24

Reorganization

1. Transfers of property pursuant to a written plan for a reorganization of a taxpayer, whether due to bankruptcy, merger, acquisition or otherwise, which is approved by the Tax Administration, shall not be taxed under this Law.
2. In the case of a reorganization, the book value of the property held by the reorganized taxpayer shall be determined by reference to the book value of such property immediately before the reorganization.
3. In the course of a reorganization, a distribution to a shareholder in respect of the shareholder's equity interest shall not constitute taxable income to the shareholder.
4. Except as otherwise established in an Administrative Instruction issued by the Ministry of Finance and Economy, the acquiring taxpayer shall succeed to and take the place of the acquired taxpayer with respect to inventories, loss carry forwards, dividend accounts, and all other such items.

CHAPTER VI

TRANSFER PRICES, AVOIDANCE OF DOUBLE TAXATION

Article 25

Transfer Prices

1. The price used in conjunction with asset transactions or contract obligations between related persons shall be considered the transfer price.
2. The price expected to be received in conjunction with asset transactions or contract obligations between parties that had been dealing at arm's-length shall be considered the arm's-length price.
3. The arm's-length price shall be determined under the comparable uncontrolled price method and, when this is not possible, the resale price method or the cost-plus method.

4. The difference between the arm's-length price and the transfer price shall be included in taxable income.

Article 26

Avoidance of Double Taxation

1. A resident taxpayer who receives income from business activities outside of Kosovo through a permanent establishment outside of Kosovo, and who pays tax on that income to any State, shall be allowed a tax credit under this Law in an amount equal to the amount of tax paid to such State.
2. Any tax credit under the present Article is limited to the amount of tax that would be paid under this Law on the income made in such State.
3. Any applicable bilateral agreement on avoidance of double taxation shall supersede the provisions of this Article.

CHAPTER VII

WITHHOLDING TAX

Article 27

Withholding Tax on Dividends, Interest, Royalties and Rents

1. Except where a taxpayer has paid Kosovo income tax on dividends distributed to a resident, each taxpayer who pays dividends, interest or royalties to resident or non resident persons shall withhold tax at the rate of ten percent (10%) at the time of payment or credit and remit the tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo.
2. Except in the case of rent paid by natural persons, each taxpayer who pays rent to resident or non-resident persons shall withhold tax at the rate of ten percent (10%) at the time of payment or credit and remit the tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo.
3. Each taxpayer who pays dividends, interest, royalties or rent and who withholds tax under this Article during a tax period shall, upon request, provide by 1 March of the year following the tax period a certificate of tax withholding in the form specified by the Tax Administration.

CHAPTER VIII

SPECIAL PROVISIONS

Article 28

Treatment of Insurance Companies

In the case of any entity whose principal activity is the insurance or reinsurance of life, property, or other risks, the tax imposed by this Law shall be an amount equal to seven percent (7%) of the gross premiums accrued during the tax period.

Article 29
Treatment of Commercial Income of Non-Governmental Organizations

A non-governmental organization that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such unrelated business activity, reduced by any deductions that are directly related to the carrying on of such business and which are allowed by the Tax Administration.

CHAPTER IX
ADMINISTRATIVE PROVISIONS

Article 30
Tax Declarations

1. A taxpayer that is required or opts to calculate taxable income by adjusting the income and expenses in its financial statements is required to submit to the Tax Administration an annual tax declaration on or before 1 April of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Law. Such taxpayers are also required to submit, together with the tax declaration, the financial statements prepared in accordance with UNMIK Regulation No. 2001/30.
2. A taxpayer that claims an allowable deduction pursuant to Article 9 is required to submit to the Tax Administration an annual tax declaration on or before 1 April of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Law.

Article 31
Tax Payments

1. Each taxpayer under this Law shall make quarterly advance payments of tax to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo on or before 15 April, 15 July, 15 October, and 15 January with respect to the calendar quarter immediately preceding these dates.
2. The amount of each quarterly advance payment shall be as follows:
 - 2.1. taxpayers with annual gross income of five thousand (5.000) euro or less: 37.5 euro per quarter;
 - 2.2. taxpayers with annual gross income between five thousand and one (5.001) and fifty thousand (50.000) euro inclusive who are not required to,

- or do not opt to, prepare financial statements shall make the following payments per quarter:
- 2.2.1. three percent (3%) of gross income for the quarter from trade, transport, agricultural and similar commercial activities.
 - 2.2.2. five percent (5%) of gross income for the quarter from services, professional, vocational, entertainment and similar activities:
 - 2.2.3. ten percent (10%) of gross income for the quarter from rental activities, reduced by any amount withheld during that quarter pursuant to paragraph 2 of Article 27 of this Law;
- 2.3. taxpayers with annual gross income in excess of fifty thousand (50.000) euro and taxpayers who are required to, or opt to, prepare financial statements shall make the following payments per quarter:
- 2.3.1. one-fourth (1/4) of the total tax liability for the current tax period based on estimated taxable income reduced by any amount withheld during the quarter pursuant to Article 27 of this law; or
 - 2.3.2. for the second and subsequent tax periods that a taxpayer makes payment under this sub Article, one-fourth (1/4) of one hundred and ten percent (110%) of the total tax liability for the tax period immediately preceding the current tax period reduced by any amount withheld during the quarter pursuant to paragraph 2 Article 27 of this law.
3. A taxpayer who makes quarterly advance payments pursuant to subsection 2.2.3 of paragraph 2 of this article shall perform a final settlement of tax and pay the final amount due on or before 1 April of the year following the tax period.
4. The amount due for the final settlement shall be the total tax due for the tax period determined in accordance with this Law, less the amounts withheld pursuant to Article 27 of this law and paid to the Tax Administration and less the amounts paid in the quarterly installments and the foreign tax credit allowable under this Law.
5. If the amounts paid in the quarterly installments, plus the foreign tax credit and plus any amounts withheld pursuant to Article 27 of this law and paid to the Tax Administration is greater than the total tax due determined in accordance with this Law, the taxpayer shall be entitled to a refund of the excess tax paid.
6. If payments for the quarterly installments have been made on or before the due dates and a final settlement has been made as required by paragraph 3 of this Article, no interest or penalty shall be charged for insufficient payment if:
- 6.1. The difference between the amount due in each installment and the amount p each installment is not greater than ten percent (10%) of the amount due; or
 - 6.2. After the taxpayer's first tax period, the amount paid in each installment is ten percent (10%) higher than one-fourth (1/4) of the tax assessed by the Tax Administration for the preceding tax period.

CHAPTER X
FINAL PROVISIONS

Article 32
Implementation

The MFE may issue sub legal act for the implementation of this Law.

Article 33
Applicable Law

This law shall make void any provision which is inconsistent with it.

Article 34
Entry into Force

This law shall enter into force on 1 January 2009.

Law No. 03/L-113
18 December 2008
President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI

Law No. 03/L-114
ON VALUE ADDED TAX



Law No. 03/L-114

ON VALUE ADDED TAX Assembly of Republic of Kosovo,

According to paragraph (1) of Article 65 of Constitution of the Republic of Kosovo,
Approves:

THE LAW ON VALUE ADDED TAX

CHAPTER I

Article 1 Definitions

“Bad debt” means a payment due to a taxable person that is included in such person’s receipts, but despite the fact that all legal steps have been taken to collect the debt, remains uncollectible.

“Capital good” means a good (such as equipment or machinery) used for the production of other goods or services.

“Consideration” means any payment or act of forbearance in respect of a supply of goods or services, and shall include an amount that is payable, or goods received in a barter transaction.

“Credit note” means a document issued by a taxable person to a recipient of goods or services after a tax invoice has been issued, for the purposes of an adjustment, where the amount of tax charged on the tax invoice exceeds the actual tax due for that taxable supply.

“Customs Value” means the total value on which customs duties are calculated or applied in accordance with international practice.

“Debit note” means a document issued by a taxable person to a recipient of goods or services after a tax invoice has been issued, for the purposes of an adjustment, where the amount of tax charged on the tax invoice is less than the actual tax due for that taxable supply.

“Economic activity” means an activity entered into for the purpose of earning income.

“Exclusion” means those imports, inflows or supplies referred to in Article 11 that are excluded from the scope of the value added tax and for which, as a consequence, value added tax is not payable by the recipient.

“Exempt supply” means a supply, referred to in Article 12, for which the supplier does not collect value added tax.

“Export” means a supply exiting Kosovo country

“Financial services” means one or more of the following activities:

- 1.1. the exchange of currency by exchange of banknotes or coins, by crediting or debiting accounts, or otherwise;

- 1.2. the issuance, payment, collection or transfer of ownership of a credit instrument such as a cheque or letter of credit;
- 1.3. the provision of a credit facility, or renewal or variation of obligations under a credit facility contract;
- 1.4. the issuance, allotment, drawing, acceptance, endorsement, underwriting, renewal, variation or transfer of ownership of a security instrument;
- 1.5. the provision, taking, variation, or release of a guarantee, indemnity, security instrument, or bond in respect of the performance of obligations under a cheque, credit facility contract, equity security, debt security instrument or participatory security instrument or in respect of the activities specified in subsections 1.2 to 1.4 above;
- 1.6. the provision, or transfer of ownership, of a life insurance contract or the provision of re-insurance in respect of any such contract;
- 1.7. the payment or collection of any amount of interest, principal, dividend or other amount whatever in respect of any debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme or futures contract; and
- 1.8. agreeing to do, or arranging, any of the activities specified in sub paragraphs 1.1 to 1.8 above.

“Goods” means all property other than money.

“Import” means a supply entering into Kosovo from another country, either directly or after transiting through another country.

“Input tax” means the value added tax paid by a taxable person on the input to the person’s.

“Non-governmental organization” means a non-governmental organization registered under legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo.

“Open market value” means the price at which similar goods of comparable quality and quantity are sold by a supplier to an unrelated person in an arm’s-length transaction.

“Output tax” means the value added tax charged on a taxable supply made by a taxable person.

“Person” means any physical or legal person, public or private, including but not limited to personal business enterprises, partnerships and other business organizations, municipal and public authorities.

“Related person” means any person with special relations to another person that may affect arm’s-length transactions between them.

“Supply of services” means any supply that is not a supply of goods.

“Supply of goods” means the transfer of the right to dispose of tangible property as owner

“Taxable supply” means a supply of goods or services by a taxable person. A taxable supply includes a zero-rated supply but does not include an exempt supply.

“Taxable person” means any person who, in furtherance of an economic activity:

- 1.1. imports, exports,

- 1.2. not being a person referred to in section 1.25.1, supplies goods or services and has a turnover that exceeds the registration threshold set out in paragraph 4 of article 3 of this law.

“Tax Administration” means the Tax Administration of the Kosovo.

“Turnover” means gross receipts of a person from all supplies, including zero-rated supplies, exclusions and exempt supplies, made by such person in Kosovo.

“zero rated supply” means a taxable supply described in Article 10 for which the rate of the value added tax charged is zero percent (0%) of the taxable value.

CHAPTER II

IMPOSITION OF VALUE ADDED TAX AND REGISTRATION

Article 2

Value Added Tax

1. Value added tax or VAT, shall be charged, in accordance with the provisions of this law, on the taxable value of imports, intra inflows and taxable supplies.
2. The value added tax shall be chargeable at the rate of sixteen percent (16%) on the taxable value of imports, intra inflows and other taxable supplies except for zero-rated supplies.
3. The value added tax shall be chargeable at the rate of zero percent (0%) on the taxable value of a zero-rated supply as set out in Article 10.

Article 3

Obligation to Register

1. A taxable person shall apply to be registered for value added tax purposes with the Tax Administration within thirty (30) days of the entry into force of this Law.
2. Where a person becomes a taxable person after the entry into force of this law, the person shall apply to be registered for value added tax purposes within fifteen (15) days from the date that person becomes a taxable person.
3. The turnover for the purposes of determining whether a person is a taxable person as defined in section 1 to definitions shall be calculated based on the total consideration received by the person.
4. Registration threshold, which established at the level of fifty thousand (50,000) euro per calendar year.
5. A taxable person who imports, exports shall apply to be registered for value added tax purposes regardless of the threshold set out in paragraph 4 of this article.
6. Central Bank of Kosovo may, as required, issue an administrative instruction specifying the procedure by which any supplier, who is not required to register, may opt to be registered for value added tax purposes.

Article 4

Procedure for Registration

1. An application for registration for value added tax purposes shall be made in the format that shall be set out in an administrative instruction to be issued by the Central Bank of Kosovo.
2. When registering a person for value added tax purposes, the Tax Administration shall issue to the person a registration certificate containing a unique Taxpayer Identification Number. The registration shall take effect on the date stated on the registration certificate.
3. The Tax Administration may register any taxable person for value added tax purposes whether or not such person has applied to be registered effective on the date on which such person became liable for registration.

Article 5

Removal from VAT Register

1. Subject to paragraph 2 of this Article, a taxable person who closes their business, or no longer engages in economic activity, shall apply to be removed from the register not later than fifteen (15) days after the last day on which the person made or contracted to make imports.
2. A taxable person may apply to be removed from the register if, with respect to the most recent twelve (12) month period, such person's taxable supplies have not exceeded the threshold set forth in paragraph 4 of Article 3 of this law provided that no such application for removal can be made during a period of twelve (12) months from the date the registration took effect.
3. The Tax Administration may remove from the register any person who is not required to be registered under this law, unless such person is registered in accordance with the procedure referred to in paragraph 6 of Article 3 of this law and continues to opt to be registered.

CHAPTER III

SUPPLY

Article 6

Supply of Goods

1. A supply of goods shall include, inter alia, the following:
 - 1.1. a supply of electricity, water, gas, heating, refrigeration, air conditioning, commercial samples, by-products of manufacturing process, wastes, or scraps of products or assets;
 - 1.2. a supply of goods made by an agent on behalf of a principal, which shall be treated as a supply by the principal;
 - 1.3. a supply under an agreement for hire purchase or for sales of goods on deferred terms, which provides that the ownership shall pass on payment of the final installment;

- 1.4. a supply taken by a taxable person for the person's own use and a supply consumed in the person's business;
 - 1.5. a lease of goods;
 - 1.6. a supply of goods by a taxable person to the person's employees, including gratuitous supplies; and
 - 1.7. the transfer of a business or part of a business, subject to paragraph 2 of this article.
2. The supply by a taxable person of taxable goods as part of the transfer of a business or part of a business to another taxable person shall not be regarded as a taxable supply of goods if the transferee is or becomes registered under this Law within thirty (30) days of such transfer.

Article 7

Supply of Services

1. A supply of services shall include, inter alia, the following:
 - 1.1. a supply of sewerage, garbage and soil collection for a fee by a municipal or public authority; and
 - 1.2. a supply of services made by an agent on behalf of a principal, which shall be treated as a supply by the principal.
2. A supply of services shall not include work of any type where an employee renders to his or her employer services in the course of employment for wages.

Article 8

Taxable Value of Supply

1. The taxable value of a taxable supply in Kosovo shall be the total consideration payable for that supply.
2. The taxable value of an import shall be the customs value of the import plus customs duties, excise taxes or other applicable taxes and charges, excluding the value added tax.
3. The taxable value of an inflow shall be the total consideration payable for that supply.
4. The taxable value of a supply made to a related person for consideration that is less than the open market value for the supply shall be deemed to be the open market value of the supply. The procedure for establishing the open market value of a taxable supply shall be set out in an administrative instruction to be issued by the Tax Administration of Kosovo.
5. The taxable value of a supply made for one's own use, for leased goods, for goods transferred on barter or for gifts shall be the open market value of the supply.
6. Where the amount of value added tax is not itemized separately on the tax invoice, the taxable value shall be the stated amount less the value added tax included in the stated value.

7. Where consideration is given for both a taxable supply and a supply that is not a taxable supply, the taxable value shall be the portion of the consideration attributable to the taxable supply.
8. The taxable value of a taxable supply that has been reduced by a discount shall be the taxable value of the supply reduced by the discount.
9. The taxable value of a taxable supply that has been increased by a premium shall be the taxable value of the supply increased by the premium.

Article 9

Place of Supply

1. Except as otherwise provided in this Law, a supply of goods takes place at the location in Kosovo where the goods are made available to the purchaser by the supplier.
2. Except as otherwise provided in this Law, a supply of services, including transportation service, takes place at the place of business of the supplier or, if this cannot be ascertained, then the place where the services are rendered.
3. A supply in connection with lands and/or buildings takes place where the property is located.

CHAPTER IV

ZERO-RATE, EXCLUSION, EXEMPT SUPPLY AND REBATE

Article 10

Zero-rated Supply

1. The following supplies shall be zero-rated supplies:
 - 1.1. Exports and imports of goods;
 - 1.2. supply of goods and services in connection with:
 - 1.2.1. the international transportation of goods or passengers,
 - 1.2.2. irrigation of farming lands and
 - 1.3. imports and supply of goods marked in the Annex of this law
2. The proof required to ascertain presentation of an export shall be set forth in an administrative instruction to be issued by the Tax Administration of Kosovo.

Article 11

Exclusions

1. No value added tax shall be charged on the following:
 - 1.1. import of a traveler's personal effects as permitted under the applicable customs provisions;
 - 1.2. import of tourist duty-free goods as permitted under the applicable customs provisions;
 - 1.3. imports, or supplies funded from the proceeds of grants made to for Ministries and Departments governmental or non-governmental

organizations in support of humanitarian and reconstruction programs and projects in Kosovo;

- 1.4. imports or inflows made by, or supplies made to, diplomatic representatives or liaison offices.
- 1.5. imports or inflows made by, or supplies made to, the United Nations or any of its organs including UNMIK (as defined in UNMIK Regulation No. 2000/47 of 18 August 2000 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo), the specialized agencies of the United Nations, KFOR, the World Bank and international inter-governmental organizations and
- 1.6. imports or intra inflows of medicines, medical services, pharmaceutical products, or medical and surgical instruments and apparatus; and
- 1.7. a fine or penalty levied by public authorities.

Article 12

Exempt Supply

1. The following supplies shall be exempt supplies:
 - 1.1. a supply of medicines, medical services, pharmaceutical products, or medical and surgical instruments and apparatus;
 - 1.2. a supply of public education services;
 - 1.3. a supply of financial services;
 - 1.4. a transfer of title or lease of land or residential property;
 - 1.5. a supply made by a person who imports or makes inflows but whose turnover does not exceed the threshold set forth in Article 3.4; and
 - 1.6. a supply of permits or licenses for a fee by a municipal or public authority.

Article 13

Rebates

1. Where a person referred to in paragraph 2 of this Article, imports any good, the TAK shall, subject to paragraph 3 of this Article, pay a rebate to the person equal to the amount of value added tax paid by the person on such import.
2. Persons entitled to a rebate under paragraph 1 of this Article shall be the following:
 - 2.1. contractors for UNMIK, the specialized agencies of the United Nations, KFOR, the World Bank and international inter-governmental organizations, upon proof that the goods so introduced into Kosovo are used exclusively in connection with the performance of a contract with UNMIK, the specialized agencies of the United Nations, KFOR, the World Bank or international inter-governmental organizations; and
3. The proof required under paragraph 2 of this Article shall be specified in an administrative instruction to be issued by the MFE.
4. In order to claim the rebate allowed under the present Article, an eligible person shall make an application to the Tax Administration, within one (1) year of the

import or inflow on which rebate is claimed, in accordance with the procedure to be set out in an administrative instruction issued by the MFE.

CHAPTER V

TAX INVOICE, TIME OF LIABILITY AND REMITTANCE

Article 14

Tax Invoice

1. A taxable person who makes a taxable supply shall issue to the person receiving the supply a tax invoice in respect of that supply.
2. For a taxable supply in Kosovo, inflows and outflows, the tax invoice shall be the commercial invoice. The information required to be stated on such invoice shall be specified in an administrative instruction to be issued by the MFE.
3. For imports or exports the tax invoice shall consist of the unified customs declaration as required under applicable customs provisions.

Article 15

Adjustments

Where the amount of value added tax charged on the tax invoice is less or greater than the actual value added tax payable for that supply, the supplier shall issue a credit note or a debit note, as applicable.

Article 16

Time of Tax Liability

1. For a taxable supply in Kosovo the value added tax liability shall arise under the accrual method of accounting at the earlier of:
 - 1.1. when the invoice is issued;
 - 1.2. when the goods are made available or the services are rendered to the customer; or
 - 1.3. when the consideration is received.
2. For a taxable supply that is continuous, the value added tax liability shall arise each time a tax invoice is issued or, if payment is made earlier, at the time when payment is made.
3. Where the consideration is received on account before the taxable supply is made, the tax shall be charged at the time the consideration is received. Where two or more payments are made for a taxable supply, the value added tax liability shall arise at the time of each payment.
4. For imports, the value added tax liability shall arise at the time prescribed in accordance with the applicable customs provisions, or if there are no relevant customs provisions, at the time of importation.
5. For inflows, the value added tax liability shall arise at the time of the entrance into Kosovo of the supply.

6. For exports, the value added tax liability shall arise at the time prescribed in accordance with the applicable customs provisions, or if there are no relevant customs provisions, at the time of exportation.
7. For outflows, the value added tax liability shall arise at the time of the exit from Kosovo of the supply.

Article 17

Declaration and Remittance

1. A taxable person shall submit a tax declaration not later than the last day of the calendar month following the end of each tax period and shall remit the value added tax due for the tax period on or before the date the declaration is due.
2. The form of the declaration, the place at which the form shall be submitted and the place and manner of remittance of the value added tax shall be specified in an administrative instruction to be issued by the Central Bank of Kosovo.

Article 18

Tax Remittable

1. Except where otherwise provided in This law, the total value added tax to be remitted by a taxable person for the tax period is the total output tax as calculated pursuant to Article 20 less the total input tax as calculated pursuant to Article 21.
2. Where an import inflow of a capital good has been made by a taxable person who starts a new business, then the value added tax to be remitted for such import or inflow shall be deferred and set off against the output tax that the taxable person will remit for a period of up to six months from the date of such import or inflow. The procedure for such deferment shall be set out in an administrative instruction issued by the MFE.
3. The deferment shall be made only against a bank guarantee. Where the taxable person fails to set off the whole or a part of the deferred amount within a period of six (6) months from the date of import, inflow, the taxable person shall remit immediately thereafter the amount not set off. This remittance shall be deemed to be the input tax paid in respect of the capital good referred to in paragraph 2 of this Article.

Article 19

Tax Periods

1. For a taxable supply in Kosovo, including an inflow, the tax period shall be each calendar month, except where otherwise provided in this Law.
2. For imports, the tax shall be payable by the importer in the same manner and at such time as any other import duties prescribed in accordance with the applicable customs provisions.

3. When a taxable person is first registered for the value added tax, the tax period shall begin on the date the registration takes effect and ends on the last day of the same calendar month.
4. Where a person is removed from the register for value added tax, the relevant tax period begins on the first day of the calendar month in which the removal occurs and ends on the day the person is removed from the register.
5. Ministry of Finance and Economy may, through the issuance of an administrative instruction, vary the tax periods with respect to any category of taxable person.

Article 20

Output Tax

1. The total output tax due for a tax period shall be the sum of:
 - 1.1. taxable value of zero (0) rated supplies multiplied by zero percent (0%);
plus
 - 1.2. taxable value of taxable supplies other than zero-rated supplies, multiplied by sixteen percent (16%).

Article 21

Input Tax

1. Except where otherwise provided in this Law, the input tax that may be offset as a credit against the output tax for a tax period shall include:
 - 1.1. the total value added tax paid by a taxable person in respect of inputs, including capital goods, for taxable supplies during the tax period; and
 - 1.2. the total value added tax paid by a taxable person on imports and inflows during the tax period.
2. A credit of input tax shall not be allowed for value added tax paid in respect of supplies that are not used for the taxable supplies made by the taxable person.
3. A credit of input tax shall not be allowed for value added tax paid in respect of supplies unless the claimant is in possession of the following:
 - 3.1. for imports or exports, authentic customs documents that shall be specified in an administrative instruction to be issued by the MFE;
 - 3.2. for all other transactions, an authentic invoice issued by a taxable person;
or
 - 3.3. proof that the debt is a bad debt, pursuant to Article 22.
4. A credit of input tax shall not be allowed in respect of an exempt supply referred to in Article 12.

Article 22

Bad Debt

1. Where the whole or part of the payment for a taxable supply has not been received by the supplier and is a bad debt, a tax credit shall be allowed in accordance with this Article.

2. A tax credit shall be allowed in any one tax period after the debt has become a bad debt. A debt may become a bad debt not earlier than six months after the close of the tax period in which value added tax on the un-recovered amount was paid.
3. The amount of tax credit allowed under this Article shall be the value added tax paid in respect of the supply that is attributable to the un-recovered amount of the bad debt.
4. Where credit has been allowed for a bad debt and the whole or part of that debt is later paid, the taxable person shall repay to the Tax Administration the part of such credit attributable to the bad debt recovered.

Article 23 **Excess Tax and Refunds**

1. If the total input tax paid for a tax period exceeds the total output tax for that period, a taxable person shall carry forward the excess tax credit to the next tax period and to successive tax periods where applicable. Such excess tax credit carried forward may be applied against the output tax liability in the successive tax periods.
2. A taxable person may claim a refund of excess tax if:
 - 2.1. the taxable person has carried forward an amount of the excess tax credit for a continuous period of six months; and
 - 2.2. the amount of the excess tax credit exceeds five thousand (5.000) euro.
3. For exports and intra-outflows, a refund may be claimed even if an excess tax credit has not been carried forward for a continuous period of six (6) months, provided that all the following conditions are met:
 - 3.1. the taxable person's credit of input tax in relation to exports and outflows of goods consistently, for more than six months within a twelve (12) month period, exceeds their output tax liability;
 - 3.2. the taxable person complies with all applicable customs and tax provisions; and
 - 3.3. claims for refund are not made more than once per quarter, or where the tax credit is in excess of five thousand (5,000) euro, more than once per calendar month.

CHAPTER VI **POWERS AND DUTIES**

Article 24 **Tax Authorities**

1. The Tax Administration shall have the exclusive responsibility to administer the value added tax.
2. The Kosovo Customs Service shall, on behalf of the Tax Administration, assess, levy and collect the value added tax on imports and exports, as well as

undertake any other function relating to the administration of the value added tax, as may be required.

Article 25

Duty to Inform of Changes

A taxable person shall inform the Tax Administration in writing within fifteen (15) days of any change in the person's name, address, economic activities or other information provided to the tax authorities at the time of, or since, the application for registration was made.

Article 26

Duty to Keep Records

A taxable person shall keep such books and records for value added tax purposes as shall be specified in a subsequent administrative direction.

Article 27

Inspection of Records, Assessments, Interest, Enforced Collection

1. In administering the value added tax, the tax authorities may, inter alia, in accordance with the applicable law:
 - 1.1. require production of relevant documents or other information;
 - 1.2. issue a notice of assessment;
 - 1.3. issue a demand for payment;
 - 1.4. issue a demand for interest;
 - 1.5. carry out audit of documents and declarations; and
 - 1.6. enforce collection of tax owed.

Article 28

Violations and Penalties

Any person who commits a tax violation shall be subject to the penalties provided under the applicable law, including those set forth in Law No. 2004/48 on Tax Administration and Procedures.

Article 29

Appeals

1. Any person who contends that an official determination made under this Law is incorrect may make an appeal in accordance with the procedures set forth in Law No. 2004/48 on Tax Administration and Procedures.
2. Any action or decision by the tax authorities in administering the value added tax, including those listed in Article 27 above, shall be regarded as an official determination for the purposes of the taxpayer's appeal rights.

CHAPTER VII IMPLEMENTATION

Article 30 Implementation

The Minister of Economy and Finance issue sub- legal act for the implementation of this Law

Article 31 Applicable Law

This law shall make void any provision which is inconsistent with it.

Article 32 Entry into force

This Law shall enter into force 1 January 2009.

**Law No. 03/L-114
18 December 2008
President of the Assembly of the Republic of
Kosovo**

Jakup KRASNIQI

ANNEX

Description	Code
Live bovine animals, pure-bred breeding animals	0102 10
Live swine, pure-bred breeding animals	0103 1000
Live sheep, pure-bred breeding animals	0104 1010
Live goats, pure-bred breeding animals	0104 2010
Live poultry, that is to say, fowls of the species <i>Gallus domesticus</i> , ducks, geese, turkeys and guinea fowls, weighing not more than 185 g	0105 11 to 0105 19
Live trees and other plants; bulbs, roots and the like, as described within the headings listed in the following column.	0601 and 0602
Potatoes, seed	0701 1000
Onions, sets	0703 1011
Spelt for sowing	1001 9010
Common wheat and meslin, seed	1001 9091
Rye, seed ex	1002 0000
Barley, seed	1003 0010
Oats, seed ex	1004 0000
Maize (corn), seed	1005 10
Soya beans, for sowing	1201 0010
Sunflower seeds, for sowing	1206 0010
Seeds, fruit and spores, of a kind used for sowing	1209
Residues and waste from the food industries, as described within the headings listed in the following column	2301 to 2308
Preparations of a kind used in animal feeding (other than dog or cat food, put up for retail sale)	2309 90
Fertilisers, as described within the headings of the chapter listed in the following column	Chapter 31
Fungicides	3808 20
Herbicides, anti-sprouting products and plant-growth regulators	3808 30
Rodenticides	3808 9010

Law No. 03/L-115 -
ON PERSONAL INCOME TAX



Law No. 03/L-115

ON PERSONAL INCOME TAX

Assembly of Republic of Kosovo,

Pursuant to article 65 (1) of the Constitution of the Republic of Kosovo,
Approves:

LAW ON PERSONAL INCOME TAX

Article 1 Definitions

For the purposes of this law:

“Business activities” means any economic activity entered into for the purpose of making profit, including retail, manufacturing, trade, entertainment, transport, agricultural, vocational, professional and other services;

“Capital assets” means tangible property with a service life of one year or more;

“Dividend” means a distribution by a company to a shareholder:

- of cash or stock with respect to the shareholder’s equity interest in the company; and
- of property other than cash or stock, unless such property is distributed as a result of liquidation;

“Employee” means a 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. An employee includes all public officials and members of legislative, executive, and judicial bodies;

“Employer” means any natural person or entity that pays wages and includes:

- a public authority;
- a business organization;
- a permanent establishment of a non-resident person;
- a non-governmental organization;
- an international organization, with the exception of the United Nations, its Specialized Agencies and the International Atomic Energy Agency; and
- a natural person who pays wages in the course of carrying out business in Kosovo;

“Entity” means a corporation or other business organization that has the status of a legal person, a business organization operating with public and socially owned assets, a non-governmental organization registered under legislation on the Registration and Operation of Non- Governmental Organizations in Kosovo, and a permanent establishment of a non-resident. The term entity does not include a personal business enterprise or a partnership;

“Foreign source income” means gross income that is not Kosovo source income;

“Intangible property” means patents, copyrights, licenses, franchises, and other property that consists of rights only, but has no physical form;

“Kosovo source income” means gross income that arises in Kosovo, as follows:

- wages from work performed in Kosovo;
- income from business activity where such activity is located in Kosovo;
- income from the use of movable or immovable property in Kosovo;
- income from the use of intangible property in Kosovo;
- interest on a debt obligation paid by a resident or a public authority;
- dividends paid by a resident business organization;
- gain from the sale of immovable property located in Kosovo; and
- other income not covered by the above-mentioned subparagraphs arising from economic activity in Kosovo;

“Market value” means the price at which similar goods or services of like quality and quantity would be sold in an arm’s-length transaction;

“Natural person” means an individual;

“Non-resident” means any natural person or entity that is not a resident;

“Partnership” means a general partnership, a limited partnership or similar pass-through arrangement that is not a legal person and that proportionately shares items of capital, income, and loss among its partners;

1A.1 “Permanent establishment” means a fixed place of business through which the business of a non-resident person is wholly or partly carried on in Kosovo.

1A.2 “Permanent establishment” shall include:

- any place of management;
- any branch;
- any office;
- any factory;
- any workshop;
- Any mine; and
- any oil or gas source, quarry or other place of exploitation of natural resources.

1A.3 “Permanent establishment” shall also include:

- a) any building site, construction, assembly or installation project or supervisory activity in connection therewith, but only if such site, project or activity lasts longer than one hundred eighty three (183) days. Where the site, project or activity lasts longer than one hundred eighty three (183) days, including any preparatory activity, the site project or activity shall be deemed to have been or created a permanent establishment from the day such work commenced;
- b) the furnishing of any service, including any consultancy service but excluding any supervisory activity referred to in article 1A.3 (a), carried out in Kosovo by a non-resident person through employees or other personnel, but only if such activities continue within Kosovo for a period or periods of totaling ninety (90) days or more within any twelve-month (12) period. Where the activities do continue within Kosovo for a period or periods

totaling ninety (90) days or more within any twelve-month (12) period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced;

- c) any site used for the research for natural resources within Kosovo, where such activities within Kosovo continue for a period or periods totaling one hundred eighty three (183) days or more within any twelve-month (12) period. Where the activities do continue for a period or periods totaling one hundred eighty three (183) days or more within any twelve-month (12) period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced; and
- d) any immovable property situated in Kosovo and owned by a non-resident person.

1A.3 Notwithstanding subsections 1A.1 and 1A.2 of this section, where a person other than an agent of an independent status to whom section 1A.7 applies, acts in Kosovo on behalf of a nonresident person shall be deemed to have a permanent establishment in Kosovo in respect of the activities which that person undertakes for the non-resident person, if such a person:

- a) has and habitually exercises in Kosovo an authority to conclude contracts in the name of the non-resident person, unless the activities of such person are limited to those mentioned in section 1A.6 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that subsection; or
- b) has no such authority but habitually maintains in Kosovo a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the taxpayer.

1A.5 non-resident person who provides insurance shall, except in regard to re-insurance, be deemed to have a permanent establishment in Kosovo if it collects premiums in Kosovo or insures risks situated in Kosovo through a person other than an agent of an independent status to whom Section 1A.7 applies.

1A.6 Notwithstanding subsections 1A.1, 1A.2 and 1A.3 of this section “permanent establishment” shall be deemed not to include:

- a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to non-resident person;
- b) the maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of storage or display;
- c) the maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of processing by another tax payer;
- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the non-resident person;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the non-resident person, any other activity of a preparatory or auxiliary character; and
- f) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (a) to (e) of this

subsection, provided that the overall activity of the fixed place of business resulting from this combination is only of a preparatory or auxiliary character.

1A.7 non-resident person shall not be deemed to have a permanent establishment in Kosovo merely because it carries on business in Kosovo through a broker, general commission agent or any other agent of an independent status, provided that such person are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that taxpayer, and the conditions are made or imposed between that taxpayer and the agent in their commercial and financial relations which differ from those which would have been made between independent taxpayers, he will not be considered an agent of an independent status within the meaning of this subsection.

1A.8 The fact that a non-resident person controls or is controlled by a company which is a resident of Kosovo, or which carries on business in Kosovo (whether through a permanent establishment or otherwise), shall not of itself deem either company a permanent establishment of the other.

“Person” means a natural person or entity;

“Personal business enterprise” means a natural person engaged in business who is not an agent or employee of another business activity;

“Principal employer” means the employer the employee designates as such at a time and in the manner set out in an Administrative Instruction to be issued by the Ministry of Finance and Economy;

“Public authority” means a central, regional, municipal, or local authority, public body, ministry, department, or other authority that exercises public executive, legislative, regulatory, administrative or judicial power;

“Related person” means persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationships arise where:

- the persons are officers or directors of one another’s business;
- the persons are partners in business;
- the persons are in an employer-employee relationship;
- one person holds or controls 50% or more of the shares or voting rights in the other legal person;
- one person directly or indirectly controls the other person;
- both persons are directly or indirectly controlled by a third person; or
- the persons are husband or wife or relatives to the third degree inclusive or in law to the second degree inclusive.

“Representation costs” means all costs related to promotion of the business, or its products and includes costs for publicity, advertising, entertainment, and representation;

“Resident” means:

- a natural person who has a principal residence in Kosovo or is physically present in Kosovo for one hundred eighty three (183) days or more in any tax period; or
- an entity which is established in Kosovo or has its place of effective management in Kosovo.

“Self-employed” person means any natural person who works for personal gain, in cash or in kind, who is not covered by the definition of an employee under the present Regulation. A selfemployed person includes a personal business enterprise and a partner engaged in a business activity:

“Tax period” means the calendar year; and

“Wages” means financial and other kinds of compensation, including goods, favors, services, or barter, paid in connection with employment in Kosovo.

Article 2

Taxpayers

Taxpayers, for the purpose of this Law, shall mean resident and non-resident natural persons who receive or accrue gross income described in Article 6 of this law during the tax period.

Article 3

Object of taxation

- 3.1. The object of taxation for a resident taxpayer shall be taxable income from Kosovo source income and foreign source income.
- 3.2. The object of taxation for a non-resident taxpayer shall be taxable income from Kosovo source income.

Article 4

Taxable income

Taxable income for a tax period shall mean the difference between gross incomes received or accrued during the tax period and the deductions allowable under this Law with respect to such gross income.

Article 5

Tax rates

1. For each tax period, income tax shall be charged at the following rates;
 - 1.1. for taxable income nine hundred sixty (960) euro or less, zero percent (0%);
 - 1.2. for taxable income over nine hundred sixty (960) euro up to three thousand (3.000) euro, four percent (4%) of the amount over nine hundred sixty (960) euro;
 - 1.3. for taxable income over three thousand (3.000) euro up to five thousand four hundred (5.400) euro, eighty one point six (81.6) euro plus eight percent (8%) of the amount over three thousand (3.000) euro; and
 - 1.4. for taxable income over five thousand four hundred (5.400)euro, two hundred seventy three point six (273.6) euro plus ten percent (10%) of the amount over five thousand four hundred (5.400)euro.

Article 6

Gross income

1. Except for income that is exempted under the present Regulation, gross income means all income received or accrued from all sources including:
 - 1.1. wages;
 - 1.2. business activities;
 - 1.3. rents;
 - 1.4. the use of intangible property;
 - 1.5. interest;
 - 1.6. dividends;
 - 1.7. capital gains;
 - 1.8. lottery and other game of chance winnings
 - 1.9. pensions paid by a government, a previous employer, or pursuant Law on Pension Found of Kosovo; and
 - 1.10. any other income that increases the taxpayer's net worth.

Article 7

Exempt income

1. The following income shall be exempt from personal income tax:
 - 1.1. wages of foreign diplomatic and consular representatives and foreign personnel of Liaison Offices in Kosovo, as defined in UNMIK Regulation No. 2000/42 of 10 July 2000 on the Establishment and Functioning of Liaison Offices in Kosovo;
 - 1.2. wages of foreign representatives, foreign officials and foreign employees of international governmental organizations, and international non-governmental organizations that have received and maintained public benefit status under legislation in force;
 - 1.3. wages of foreign representatives, foreign officials and foreign employees of donor agencies or their contractors or grantees carrying out humanitarian aid, reconstruction work, civil administration or technical assistance within Kosovo;
 - 1.4. wages received by foreign and locally-recruited officials of the United Nations and its Specialized Agencies, and the International Atomic Energy Agency, which for purposes of This Law shall be deemed to include foreign and locally recruited UNMIK personnel as defined in UNMIK Regulation No. 2000/47 of 18 August 2000 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo. The same exemption shall apply to entitled and duly authorized international inter-governmental financial institutions operating in Kosovo;
 - 1.5. wages of foreign personnel of KFOR;
 - 1.6. compensation for the damage or destruction of property;
 - 1.7. proceeds of life insurance policies payable as the result of the death of the insured person and

- 1.8. reimbursement or compensation for medical treatment and expenses, including hospitalization and medication, other than wages paid during the periods of absence from work due to sickness or injury.

Article 8

Income from wages

1. Gross income from wages shall include:
 - 1.1. salaries paid by or on behalf of an employer for work that the employee does under the direction of the employer;
 - 1.2. bonuses, commissions, and other forms of compensation that an employer, or some other person on behalf of the employer, pays to employees over and above salary;
 - 1.3. income from temporary work performed by an employee;
 - 1.4. income from prospective employment, such as a signing bonus;
 - 1.5. health and life insurance premiums that an employer pays for the employee;
 - 1.6. forgiveness of an employee's debt or obligation to the employer;
 - 1.7. payment by an employer of an employee's personal expenses; and
 - 1.8. except as otherwise provided in this Law, in-kind benefits given by an employer to an employee that exceed a de minimum amount to be specified in an sub – legal act issued by the Ministry of Finance and Economy.
2. Gross income from wages shall not include:
 - 2.1. reimbursement of actual business travel expenses up to the amounts to be specified in an sub– legal act issued by the Ministry of Finance and Economy;
 - 2.2. indemnity for work accidents; and
 - 2.3. in-kind benefits given by employers to foreign employees to facilitate their living in Kosovo, such as housing and school tuition.
3. With respect to pension contributions, gross income shall not include:
 - 3.1. contributions made by an employer on behalf of an employee to the Individual Savings Pension system, a supplementary employer pension fund, and a supplementary individual pension scheme under Law on Pension Found of Kosovo; and
 - 3.2. contributions made by an employee to the Individual Savings Pension system, a supplementary employer pension fund, and a supplementary individual pension scheme under Law on Pension Found of Kosovo.

Article 9

Income from business activities

1. Gross income from business activities means gross receipts generated by a natural person engaged in such activities.
2. Subject to the provisions of this Article, there shall be allowed as a deduction from gross income generated from business activities the expenses paid or

- incurred during the tax period that are wholly, exclusively, and directly related to carrying out such business activities.
3. Expenses that otherwise meet the requirements of paragraph 2 of this Article shall be allowed as a deduction subject to the following limitations;
 - 3.1. representation costs may be deducted up to a maximum amount of two percent (2%) of total gross income;
 - 3.2. a bad debt may be deducted only if the following three (3) conditions are met:
 - 3.2.1. the amount that corresponds to the debt has previously been included in income;
 - 3.2.2. the debt is written off in the taxpayer's books as worthless; and
 - 3.2.3. there is adequate evidence of substantial unsuccessful attempts made by the taxpayer to collect the debt;
 - 3.3. a bad debt that is subsequently collected shall be included in income at the time of collection;
 - 3.4. expenses for travel, meals, lodging, and moving shall be limited to the amounts to be specified in an Administrative Instruction to be issued by the Ministry of Finance and Economy; and
 - 3.5. compensation, interest, rent and other expenses paid to a related person shall be deductible in an amount equal to the lesser of the actual payment or the market value.
 4. Expenditures on capital assets, other than expenditures for land, works of art, and other property which are not subject to wear, owned by the taxpayer and used for the taxpayer's business activities shall be recovered over time through depreciation deductions under the reducing balance method at the following rates:
 - 4.1. buildings at the rate of five percent (5%);
 - 4.2. automobiles, office and computer equipment at the rate of twenty percent (20%); and
 - 4.3. other capital assets at the rate of fifteen percent (15%).
 5. To the extent that the amounts expended during the tax period to repair, maintain, or improve capital assets do not exceed five percent (5%) of the balance in the account at the beginning of the year, such amounts shall be allowed as a deduction for the year. To the extent that such amounts expended exceed five percent (5%), such excess shall be treated as improvements and added to the capital account.
 6. Expenditures on improvements to leaseholds used for the taxpayer's business activity shall be recovered through depreciation deductions calculated using the straight-line method with a period equal to the life of the leasehold.
 7. Taxpayers with income from the sale of goods who maintain inventories to determine the cost of goods sold, shall use the LIFO (last-in-first-out), FIFO (first-in-first-out) or such other method as may be set out in a sub – legal act issued by the Ministry of Finance and Economy.
 8. If the amount of the taxpayer's deductions from business activities for the taxable year exceeds the taxpayer's income from business activities for the year, the amount of such loss may be carried forward for up to five (5) successive tax

periods and shall be available as a deduction against any income in those years. If a taxpayer has a business loss in more than one (1) year, losses shall be deductible in the order in which they arose.

9. No deduction shall be allowed for:
 - 9.1. cost of acquisition of land;
 - 9.2. fines and penalties;
 - 9.3. income tax and value added tax for which the taxpayer claims a rebate or credit for input tax under legislation, on Value Added Tax;
 - 9.4. personal, living, or family expenses;
 - 9.5. any loss from the sale or exchange of property between related persons; and
 - 9.6. amusement or recreation expenses, unless they are incurred in connection with the taxpayer's business of providing amusement or recreation activities.
10. No deduction shall be allowed under this Regulation for any expense unless the taxpayer documents, in the manner prescribed by an sub – legal act issued by the Ministry of Finance and Economy, that such expense was incurred, the purpose of the expense and the amount of the expense.
11. A taxpayer with annual gross income from business activities for the tax period in excess of fifty thousand (50.000) euro shall keep the books and records identified in paragraph 14 of this article.
12. A taxpayer with annual gross income from business activities for the tax period of fifty thousand (50.000) euro or less may opt to prepare the books and records identified in paragraph 14 of this article.
13. A taxpayer who opts to prepare books and records identified in paragraph 14 of this article for any tax period shall be required to prepare such books and records for each subsequent tax period.
14. The books and records required under this Article are as follows:
 - 14.1. a sales book that includes the date of the sale of goods or services, the quantity of goods sold or services rendered, a description of the goods or services, and the total gross income;
 - 14.2. a purchase book that includes the date of the purchase of goods or services, the quantity of goods or services, a description of the goods or services, the amount of the purchase, the seller's name, and the seller's taxpayer identification number;
 - 14.3. an expense book that includes a list of all expenses not recorded in the purchase book such as wages, interest and rent;
 - 14.4. a capital account, if applicable, that includes the opening balance, additions to capital, expenses to be capitalized, depreciation rate, amount of depreciation, dispositions, and closing balance; and
 - 14.5. any other books or records required by a sub – legal act issued by the Ministry of Finance and Economy.

Article 10

Income from rents

1. Gross income from rents includes:
 - 1.1. income generated by rental of real estate such as buildings, land or apartments; and
 - 1.2. income generated by rental of equipment, transportation vehicles and other types of property.
2. It shall be allowed as a deduction from gross income from rent an amount equal to:
 - 2.1. actual costs paid or incurred wholly and exclusively for generating such rent, provided that records of such costs are kept in the manner prescribed in an sub – legal act issued by the Ministry of Finance and Economy; or
 - 2.2. ten percent (10%) of the rents received in order to cover the costs of repairs, collection charges and other expenses paid or incurred in generating the rent.

Article 11

Income from intangible property

1. Gross income from intangible property includes income generated from patents, copyrights, licenses, franchises, and other property that consists of rights only, but has no physical form.
2. There shall be allowed as a deduction from gross income generated from intangible property the expenses paid or incurred in connection with generating income from intangible property, provided that records of such costs are kept in the manner prescribed by an sub – legal act issued by the Ministry of Finance and Economy.
3. Expenditures on intangible assets that have a limited useful life (including patents, copyrights, licenses, drawings and models, contracts, franchises) are deductible in the form of amortization charges. The method of amortization shall be the straight-line method and the allowance shall be based on the useful life of the asset as determined by the legal agreement governing the acquisition and use of the intangible asset.

Article 12

Interest income

1. Gross income from interest includes:
 - 1.1. interest from loans made to natural persons or entities;
 - 1.2. interest from bonds or other securities issued by public authorities and business organizations; and
 - 1.3. interest from interest-bearing accounts maintained with banks and other financial institutions.

2. Gross income from interest does not include interest from the assets of the Kosovo Pension Savings Trust or any other pension fund defined under the Law on Pension Fund of Kosovo.

Article 13

Dividend income

1. Gross income from dividends includes dividends and other distributions of profit to a taxpayer.
2. Gross income from dividends does not include dividends earned from the assets of the Kosovo Pension Savings Trust or any other pension fund defined under Pension Fund of Kosovo.

Article 14

Income from capital gains

1. Gross income from capital gains means the gain that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
2. The amount of capital gain is the positive difference between the sales price of the asset and the cost of the capital asset as determined under paragraph 5 of this Article.
3. The sales price of the capital asset shall be the sum of any money received plus the market value of any property other than money received as consideration for the sale.
4. If the parties are related persons and the sales price is less than the market price, then the sales price will be adjusted to the market price in the manner prescribed in a sub – legal act issued by the Ministry of Finance and Economy.
5. The cost of the capital asset is the amount that the taxpayer paid for the acquisition of the asset, increased by the cost of improvements, and reduced by depreciation and other expenditures allowable under this Law.
6. Capital loss means a loss that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
7. The amount of capital loss is the negative difference between the sales price of the asset and the cost of the capital asset.
8. Capital losses shall be treated as ordinary losses from business activities that may be deducted from income in the current year. If the amount of the capital loss for the taxable year exceeds the taxpayer's income for that year, the amount of the excess of such loss over income in the current year may be carried forward for up to five (5) successive tax periods and shall be available as a deduction against any income in those years.
9. Gross income from capital gains does not include capital gains realized from the sale of the assets of the Kosovo Pension Savings Trust or any other pension fund defined under Law on Pension Found of Kosovo.
10. This article shall enter into force on 1 January 2010.

Article 15

Other income

Gross income includes any other income, from whatever source derived, such as income from lottery or other game of chance winnings or income from debt forgiveness.

Article 16

Deduction for charitable contributions

1. Contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under This Law up to a maximum of five percent (5%) of taxable income computed before the charitable contribution is deducted.
2. A charitable contribution under paragraph 1 of this Article must be made to:
 - 2.1. an organization registered under legislation on registration and function for NGO as a non-governmental organization that has received and maintained public benefit status;
 - 2.2. any other non-commercial organizations that directly perform not for profit activities in the public interest, such as:
 - 2.2.1. medical institutions;
 - 2.2.2. educational institutions;
 - 2.2.3. organizations to protect the environment;
 - 2.2.4. religious institutions;
 - 2.2.5. institutions that care for disabled or elderly persons;
 - 2.2.6. orphanages; and
 - 2.2.7. institutions that promote science, culture, sports or arts.
3. A charitable contribution shall not include a contribution that directly benefits the donor, or related persons of the donor.
4. Any taxpayer who claims a deduction for a charitable contribution must file an annual declaration and furnish a receipt in respect of such contribution, in the manner prescribed by a sub - legal act issued by the Ministry of Finance and Economy.

Article 17

Withholding tax on wages

1. Each employer shall be responsible for withholding tax from the gross income from wages of its employees during each payroll period.
2. An employer who is the employee's principal employer shall withhold an amount for the appropriate payroll period, in accordance with withholding tables as set forth in an sub – legal issued by the Ministry of Finance and Economy. The tentative tax for a given month shall be reduced by the amounts withheld by the principal employer for the previous month in the year.
3. An employer who is not the employee's principal employer shall withhold an amount equal to ten percent (10%) of the wages for each tax period.

4. Each employer shall submit a statement of tax withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with an sub legal act issued by the Ministry of Finance and Economy.
5. Each employer that makes wage payments during the tax period shall submit to the Tax Administration by 31 January of the year following the tax period an annual tax reconciliation statement with information about wages paid and tax withheld and remitted with respect to each employee in accordance with the form and procedures specified in sub legal act issued by the Ministry of Finance and Economy.
6. Each employer shall provide by 1 March of the year following the tax period to every employee (from whom wage tax has been withheld) a certificate of tax withholding in the form specified in a sub-legal act issued by the Ministry of Finance and Economy.

Article 18 **Withholding Tax on Interest**

1. Each public authority, business organization, bank or other financial institution that makes a payment of interest shall withhold tax in an amount equal to ten percent (10%) of each interest amount paid or credited.
2. Each public authority, business organization, bank or other financial institution shall submit a statement of tax withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with an sub legal act issued by the Ministry of Finance and Economy.
3. Each public authority, business organization, bank or other financial institution that pays interest during a tax period shall, upon request, provide by 1 March of the year following the tax period a certificate of tax withholding in the form specified in a sub legal act issued by the Ministry of Finance and Economy.

Article 19 **Withholding Tax on Dividends**

1. Each business organization that makes a payment of dividends shall withhold tax in an amount equal to ten percent (10%) of each dividend amount paid or credited.
2. Each business organization shall submit a statement of tax withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with an sub-legal act issued by the Ministry of Finance and Economy.
3. Each business organization that makes a payment of dividends during a tax period shall, upon request, provide by 1 March of the year following the tax

period a certificate of tax withholding (unpaid) in the form specified in a sub-legal act issued by the Ministry of Finance and Economy.

Article 20

Withholding Tax on Lottery or other Game of Chance Payments

1. Each organizer of a lottery or game of chance shall withhold tax in an amount equal to ten percent (10%) of each payment of winnings.
2. Each organizer of a lottery or game of chance shall submit a statement of withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Banking and Payments Authority in Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with an sub - legal act to be issued by the Ministry of Finance and Economy.
3. Each organizer of a lottery or game of chance during a tax period shall, upon request, provide by March 1 of the year following the tax period a certificate of tax withholding in the form specified in a sub – legal act issued by the Ministry of Finance and Economy.

Article 21

Payment of tax for business activities

1. Each taxpayer who receives income from business activities shall make quarterly payments of tax to an account designated by the Tax Administration in a bank licensed by Central Bank of Kosovo no later than fifteen (15) days after the close of each calendar quarter (15 April, 15 July, 15 October, 15 January).
2. The amount of each quarterly payment of tax under paragraph 1 of this Article shall be as follows:
 - 2.1. tax payers with annual gross income from business activities of five thousand (5.000) euro or less: thirty seven point five (37.5) euro per quarter;
 - 2.2. taxpayers with annual gross income from business activities of more than five thousand (5.000) up to fifty thousand (50.000) euro who are not required to, and do not opt to, keep the books and records listed in paragraph 14 of Article 9 of this law:
 - 2.2.1. three percent (3%) of each quarter's gross income from trade, transport, agricultural and similar commercial activities, and
 - 2.2.2. five percent (5%) of each quarter's gross income from services, professional, vocational, entertainment and similar activities.
 - 2.3. tax payers with annual gross income from business activities in excess of 50.000 euro, and taxpayers who are required to, or opt to, keep the books and records listed in paragraph 14 of Article 9 of this law:
 - 2.3.1. one-fourth (1/4) of the total tax liability for the current tax period based on estimated taxable income; or
 - 2.3.2. for the second and subsequent tax periods that a taxpayer makes payments under this sub-paragraph, one-fourth (1/4) of 110% of the

total tax liability for the tax period immediately preceding the current tax period.

3. If the payments of quarterly installments have been made on or before the due dates, and a final settlement has been made as required by paragraph 5 of Article 26 of this law, no interest shall be charged or penalties imposed for insufficient payments, if:
 - 3.1. the difference between the amount due in each installment and the amount paid for each installment is not greater than ten percent (10%) of the amount due; or
 - 3.2. After the tax period 2005 and after the taxpayer's first tax period, the amount paid in each installment is ten percent (10%) higher than one-fourth (1/4) of the tax assessed by the Tax Administration for the preceding tax period.

Article 22

Payment of tax for rents

1. Each taxpayer who receives income from rent shall make quarterly payments of tax to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo no later than fifteen (15) days after the close of each calendar quarter (15 April, 15 July, 15 October, 15 January).
2. The amount of each quarterly payment under paragraph 1 of this Article shall be ten percent (10 %) of the taxable rental income received in the calendar quarter immediately preceding the payment date reduced by any amount withheld during the quarter pursuant to paragraph 2 of Article 27 of Corporate Income Tax Law.

Article 23

Payment of tax for intangible property

1. Each taxpayer who receives income from intangible property shall make quarterly payments of tax to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo no later than fifteen (15) days after the close of each calendar quarter (15 April, 15 July, 15 October, 15 January).
2. The amount of each quarterly payment under paragraph 1 of this Article shall be ten percent (10%) of the taxable income from intangible property received in the calendar quarter immediately preceding the payment date.

Article 24

Payment of tax for capital gains and other income

Each taxpayer who receives income from capital gains or any other source not described in Articles 17 through 23 above shall make payments of tax on or before 1 April of the year following the tax period in accordance with the provisions set forth in Article 26 of this law.

Article 25

Credits against tax

1. Taxpayers may credit against the amount of tax owed under Article 5 of this law for the taxable year the following amounts:
2. amounts withheld during the same tax period under Articles 17 through 20 of This Law and paragraph 2 of Article 27 on Corporate Income Tax Law;
3. payments of tax under Articles 21, 22 or 23 of This Law and
4. income taxes paid to any foreign country if the income on which the foreign tax is paid is subject to tax under This Law. The amount of the foreign tax credit is limited to the amount of tax that would have been paid on such income under this Law.

Article 26

Tax declarations and payments

1. Except where paragraphs 2 and 3 of this Article apply, all taxpayers are required to prepare an annual tax declaration on or before 1 April of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income from all sources, allowable deductions, taxable income, and the tax due pursuant to Article 5 of this law.
2. Taxpayers who receive or accrue income only from one or more of the following sources are not required to submit an annual declaration:
 - 2.1. wages;
 - 2.2. business activities where tax is paid under sub-paragraphs 2.2 and 2.2 of paragraph 2 of Article 21 of this law;
 - 2.3. rent where a deduction has been made pursuant to sub-paragraph 2.2 of paragraph 2 of Article 10 of this law;
 - 2.4. interest;
 - 2.5. dividends;
 - 2.6. lottery or other game of chance payments; and
 - 2.7. income from intangible property
3. Taxpayers whose taxable income calculated under This Law is less than one thousand (1.000) euro are not required to submit an annual declaration.
4. Taxpayers who receive or accrue income only from the sources set forth in paragraph 2 of this Article or whose taxable income is less than one thousand (1.000) euro may opt to prepare and submit an annual declaration on or before 1 April of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income from all sources, allowable deductions, taxable income and the tax due pursuant to Article 5 of This Law. In computing taxable income on such declaration, taxpayers who paid tax on business income under sub-paragraphs 2.1 and 2.2 of paragraph 2 of Article 21 of this law shall be allowed a deduction in the amount of 25% of business gross income.

5. Taxpayers who are required to submit an annual tax declaration shall submit, together with such declaration, the final amount of tax due. The final amount of tax due shall be the difference between the total tax owed for the tax period determined in accordance with This Law and the total credits against tax under Article 25 of This Law.
6. If the total of the amount of credits against tax pursuant to Article 25 of this Law exceeds the total tax owed for the tax period, the taxpayer shall be entitled to a refund of the excess tax paid.
7. The location for submitting tax declarations, remitting tax, and claiming refunds shall be specified in a sub - legal act to be issued by the Ministry of Finance and Economy.

Article 27

Implementation

The Minister from Ministry on Economy and Finances shall issue a sub-legal act for the implementation of This Law.

Article 28

Applicable Law

1. This law shall make void any provision which is inconsistent with it.
2. This law shall enter into force on 1 January 2009, with the exception of section 14 which shall enter into force on 1 January 2010.

Article 29

Entry into Force

This law shall enter into force on 1 January 2009.

Law No. 03/L-115

18 December 2008

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI



LAW No. 03/L-146 -
ON VALUE ADDED TAX



LAW Nr.03/L- 146

ON VALUE ADDED TAX

Assembly of Republic of Kosovo,

In support of Article 65(1) of the Constitution of the Republic of Kosovo,
Approves,

LAW ON VALUE ADDED TAX

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

This Law establishes the system of Value Added Tax (VAT) in the territory of the Republic of Kosovo.

Article 2

Definitions

1. The terms used in this Law have the following meaning:
 - 1.1. **TAK**- the Tax Administration of Kosovo.
 - 1.2. **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.
 - 1.3. **Director** -General Director of Kosovo Tax Administration.
 - 1.4. **The right in rem** -essentially it is a right granted by her owner to use and gain benefits (goods) of the immovable property. Forms of rights in rem are usufruct and long term leasing and other similar rights as defined in Kosovo legislation. Mortgages and loads are not considered as right in rem.
 - 1.5. **Capital goods** - goods likewise equipment and machinery used for the production of other goods and services with a useful service life of one year or more and acquired for a cost price equal to or more than one thousand (1,000) €.
 - 1.6. **Tangible property** - any property which is not intangible property and shall include:
 - 1.6.1. interest in immovable property,
 - 1.6.2. rights in rem giving the holder of those rights a right of use over immovable property; and

- 1.6.3. shares or interests equivalent to shares giving the holder de jure or de facto rights of ownership or possession of immovable property or any part of immovable property.
- 1.7. **Intangible property** - patents, copyrights, licenses, franchises, and other property that consists of rights only, but are incorporeal.
- 1.8. **Consideration** - any act or act of forbearance in respect of a supply of goods or services, and shall include any amount that is payable or goods received in a barter transaction.
- 1.9. **Barter transaction** - a transaction that involves two parties, where one party provides for the other party goods, services or asset excluding the cash money, in exchange for the goods, service or mean excluding the cash money.
- 1.10. **Economic activity** - any activity of producers, traders or persons supplying goods or services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible properties for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.
- 1.11. **Employer** - any person who pays wages and includes:
- 1.11.1. A public authority,
 - 1.11.2. A business organization,
 - 1.11.3. A permanent establishment of a non-resident as defined in the Corporate Income Tax legislation,
 - 1.11.4. A non-governmental organization,
 - 1.11.5. An international organization,
 - 1.11.6. A foreign government; and
 - 1.11.7. A physical person who pays wages in the course of carrying on business in Kosovo,
- 1.12. **Employee** - a physical person bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer's liability, regardless of whether the work is performed under a contract, some other commercial agreement, or whether there is a written or an unwritten agreement. An employee includes all public officials and members of executive, representative and judicial bodies.
- 1.13. **Resident in Kosovo** - a person that has a business place or a fixed unit, or in a short fall of such business place or a fixed unit, has a place with permanent address or where he usually resides in Kosovo.
- 1.14. **Derogation** - for the purpose of implementation of this Law, derogation means non-implementation or exclusion from general or standard rule of this law's provision.
- 1.15. **Rebate** - paid reduction for purchasers after the transaction. Examples include total or partly repayment of money from the seller on returned goods or on misfit of the goods quality.
- 1.16. **Reductions (Sales)** - reduction from the list or the cost of advertised good or service that is available for buyers in specific conditions.

Examples include reduction of cash money, reduction for quick payments, reductions in volume, trade discounts.

- 1.17. **Fiscal Electronic Device (FED)** - for the purpose of this Law term "Fiscal Electronic Device" includes electronic devices such as fiscal cash registers and electronic devices on the sales points which shall be licensed and authorized from authorized bodies of the Ministry of Finances in order to be recognized as fiscal. These devices use electronic developed memories integrated in cash registers or developed systems with computer basis for registering the selling transactions, their printings through fiscal printers and their certification through fiscal electronic devices for endorsement and similar devices. Fiscal Electronic Device is used for issuance of fiscal vouchers for the incomes. Issuance of vouchers for incomes does not depend on the payment manner (payment with cash money, payment with credit card or any equivalent payment instrument ex. payment with cheque).
- 1.18. **Reimbursement for returned good** - for the purpose of this law means reimbursement of the total or partly selling cost of a good, which is returned when the selling cost is registered in Fiscal Electronic Device in compliance with this Law.
- 1.19. **Cash Back** - bank instrument through which the client after purchasing the goods uses debit card to pay the bought goods and at the same time withdraws cash money from his account through the cashier. These two actions are done with a card payment
- 1.20. **Output tax** - VAT on supplies which a taxable person makes or goods a taxable person exports.
- 1.21. **Input tax**- means:
 - 1.21.1. VAT due from or paid by a taxable person in respect of goods or services supplied or to be supplied to him by another taxable person; and
 - 1.21.2. VAT due from or paid by a taxable person in respect of imported goods.
- 1.22. **Taxable supply** - any supply of goods or services made in the furtherance of any economic activity developed in Kosovo, other than an exempt supply.
- 1.23. **Exempt supply and exempted supply** - any supply of goods or services made in the furtherance of any economic activity carried on in Kosovo, for which the taxable person – supplier is not entitled to charge VAT to the customer,
- 1.24. **Entity** :
 - 1.24.1. A corporation or other business organization that has the status of a legal person as defined by the Law on Business Organizations;
 - 1.24.2. A business organization operating with publicly and socially owned assets,
 - 1.24.3. A non-governmental organization; and
 - 1.24.4. A permanent establishment of a non-resident.

The term entity does not include a personal business enterprise or a partnership.

- 1.25. **Person** - a physical person, a legal person or an entity and shall, for the purposes of VAT, include a partnership and a grouping of persons.
- 1.26. **Legal person** - a corporation or other business organization that has the status of a legal person under the Law on Business Organizations and other legislation applicable in Kosovo.
- 1.27. **Partnership**- a general partnership and a limited partnership that is not a legal person under the Law on Business Organizations and that normally proportionately shares items of capital, income, profit and loss among its partners.
- 1.28. **Non-governmental organization** - any foundation, association or organization registered as a non-governmental organization under legislation regulating the registration and operation of Non-Governmental Organizations in Kosovo.
- 1.29. **Grouping of persons for VAT purposes** - an association of persons set up for a common purpose to develop a special economic activity, including consortiums but excluding partnerships.
- 1.30. **Chargeable event of VAT** - the occurrence through which the legal conditions necessary for VAT to become chargeable are fulfilled.
- 1.31. **Chargeability of VAT** - when the TAK becomes entitled under this Law, at a given moment, to claim VAT from the person liable to pay, even though the time of payment may be deferred.
- 1.32. **Tax invoice** - an invoice or any other document required by Chapter 15 of this Law to be issued by a taxable and non-taxable person in connection with the supply of goods and services.
- 1.33. **Credit note** - a document issued by a taxable person to a recipient of goods or services after a tax invoice or a document serving as an invoice has been issued, for the purposes of an adjustment, where the amount of VAT charged on the tax invoice or a document serving as an invoice exceeds the actual VAT due for that taxable supply.
- 1.34. **Debit note** - a document issued by a taxable person to a recipient of goods or services after a tax invoice or a document serving as an invoice has been issued, for the purposes of an adjustment, where the amount of VAT charged on the tax invoice or a document serving as an invoice is less than the actual VAT due for that taxable supply.
- 1.35. **Fiscal receipt, Coupon** - a document that has some, but not all, of the attributes of an invoice referred to in Chapter 15 of this Law and therefore cannot be used as evidence of entitlement to deduct input VAT referred to in Chapter 13 of this Law,
- 1.36. **Export and exportation** - goods going out of Kosovo.
For the purposes of the present law, the placing of goods into a free zone or customs procedures or arrangement having the same effect also means export,
- 1.37. **Import, imported and importation** – goods entering within Kosovo. For the purpose of this law import also means placement of goods on free movement from free zone in Kosovo or customs procedure or arrangements that have the same effect.

- 1.38. **Single Administrative Document** - a document as determined by Customs legislation in force which is used within the framework of trade of goods with third countries including Customs procedures connected to such trade. Customs procedure, Customs arrangements, customs warehouses and other Customs terminology such as free zone, temporary storage, suspension regimes, inward and outward processing, reimportation, international transport and others have the meaning given by the Customs legislation in force.
- 1.39. **Turnover or Total supplies** - the supplies made by a person and includes the taxable and exempt supplies as defined by this Law.
- 1.40. **Flat Rate scheme for farmers** - a taxation scheme tending to offset the value added tax charged on purchases of goods and services made by the flat rate farmers through adding an additional amount on the price of the supplies made by such farmers to their purchasers-taxable persons. That additional amount is calculated as a percentage of the price and is called flat rate percentage which varies according to the category of farming activity. The flat-rate percentages are defined on basis of relevant macro-economic statistical data which allow to calculate the compensation of input VAT on the purchases made by flat-rate farmers.
- 1.41. **Flat-rate farmer** - a farmer subject to the flat-rate scheme as referred to in Article 60 of this Law.
- 1.42. **Kosovo** – The Republic of Kosovo.
- 1.43. **Independent Review Board**- means the Board established under the Law on Tax Administration and Procedures, to hear tax appeals from taxpayers.

Article 3

Object of Taxation

1. VAT shall be charged in accordance with the provisions of the present Law, on:
 - 1.1. supply of goods and services made for consideration within the territory of Kosovo by a taxable person as meant by Article 4 of this Law and acting as such, and
 - 1.2. the importation of goods in Kosovo.
2. VAT on importation shall be charged and payable in accordance with the arrangements for Customs duties.

CHAPTER II **TAXABLE PERSONS**

Article 4 **Taxable persons**

1. Taxable person is any person who is, or is required to be registered for VAT, and who in Kosovo independently carries out any economic activity in a regular or non- regular manner, whatever the purpose or results of that economic activity. Any activity of producers, traders or persons supplying goods and services, including mining and agricultural activities of the professions, shall be

regarded as “economic activity”. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.

2. In paragraph 1 of this Article, the meaning of the term “independently” excludes employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer’s liability.
3. Authorities of Central and local level and other bodies regulated by Law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect duties, fees, contributions or payments in connection with those activities or transactions. However, when they engage in the activities or transactions as defined in Annex 1 to this Law, they shall be regarded as taxable persons in respect of these activities or transactions provided that those activities are not carried out on such a small scale as to be negligible or if carried out by natural or legal persons, where such persons would not have been obliged to register for VAT purposes as referred to in Article 6 of this Law.
4. Bodies of International organizations and foreign countries and their agencies shall not be regarded as taxable persons in respect of the activities or transactions similar or identical to those mentioned in paragraph 3 of this Article, even if they receive payments in connection with those activities. However, agencies of foreign countries shall be regarded as taxable persons in respect of those activities or transactions where their treatment in their own country would result in considering those activities as being carried out by a taxable person.

Article 5

Certification for import and export

1. Every person involved in economic activities, shall prior to making his first export or import, notify TAK in advance of such activity and request certification for this activity.
2. TAK will determine the procedure and the conditions for obtaining such certification.

Article 6

General provisions in respect of Requirement to be registered and issuance of registration certificate

1. Every person who meets all conditions of the definition of taxable person referred to in Article 4 of this Law, is required to register for VAT from the moment when total supplies in the previous twelve (12) month period, exceeds a threshold of fifty thousand (50,000)€. The month in which the threshold is exceeded counts for the twelve (12) months period calculation. Only that

proportion of the supply which results in surpassing the threshold will be taken into consideration for purposes of VAT.

2. When a person is registered for VAT purposes, TAK shall issue such taxable person with a registration certificate containing his name, his fiscal number and unique VAT registration number taxpayer and address or addresses where that person carries on business activity. The original, respectively a certified copy of the registration certificate shall be displayed at each place of business activity so that it can be easily seen and read by the public. The form of the registration certificate shall be provided by TAK.
3. A physical person conducting the same or different economic activities and has several places of economic activity within Kosovo, shall be identified by one individual and unique VAT registration number for the purposes of this Law. Where a physical person got registered for VAT purposes under his personal identification number, TAK shall issue to such person one registration certificate as meant by paragraph 2 of this Article, containing his name, his fiscal number and unique VAT registration number and the address or addresses of the places where that person carries on business.
4. A partnership and grouping of persons shall be identified by one single VAT registration number for the purposes of this Law. A general partner-representative, respectively member-representative shall be appointed by the partners or members for fulfilling the obligations and exercising the rights defined by this Law. Where the partners and members are not yet registered for VAT purposes, they may opt for being registered for these purposes prior to the registration of the partnership or grouping of persons.
5. The persons not established in Kosovo are subject to VAT registration, from the beginning of their economic activity in Kosovo, regardless of the threshold defined in paragraph 1 of this article. Such taxable persons not established in Kosovo shall appoint a tax representative as referred to in paragraph 5 of Article 52 of this Law except for those cases mentioned under sub-paragraph 4 of Article 52 of this Law. The taxable person shall be registered under his own name and the name of his tax representative within five (5) days after the appointment as tax representative and prior to the starting of economic activity in Kosovo.
6. TAK shall treat any person carrying on the economic activity of a taxable person who dies or becomes bankrupt or incapacitated as if he were registered for VAT purposes from the date on which the taxable person died or became bankrupt or incapacitated until some other person is registered.

Article 7

Compulsory Registration – Compulsory communication of changes in registration data

1. Every person, except otherwise provided in this Law, is obliged to register upon reaching the threshold referred to in paragraph 1 of Article 6 of this Law and shall notify the TAK within fifteen (15) calendar days from the date that the

registration obligation arises. The registration has effect from the date that the threshold is exceeded.

2. Every person who has not notified and has not been registered in due time shall be registered in a compulsory way by TAK with retroactive effect as of the date of exceeding the threshold as defined in paragraph 1 of Article 6 above.

Article 8

Voluntary Registration

1. Every person meeting the conditions of Article 4 of this Law, but not fulfilling the registration requirement referred to in Article 6 of this Law, has the right to exercise the option for being registered and shall notify TAK accordingly.
2. TAK shall register such person with effect from the date of receiving the request if the person making the request meets the conditions of Article 4 of this Law.
3. Voluntary registered taxpayers are subject to the same rules in respect of change and cessation of activity as other registered taxable persons in accordance with Article 6 of this Law.

Article 9

Cancellation of registration

1. Every registered taxable person may request that TAK cancel his registration for VAT purposes if his total supplies over the last twelve (12) calendar months, has fallen below the threshold referred to in Article 6 of this Law. The cancellation has effect twelve (12) months after the date of the submission of the request.
2. Every registered taxable person is obliged to require the cancellation from the moment of ceasing his activity. He shall notify TAK within fifteen (15) days after the cessation of his activity. Such cancellation has effect from the date of notification of the cessation of activity.
3. TAK may cancel the registration of a taxable person registered for VAT purposes where such person fails to comply with the provisions of this Law. TAK shall notify the person of the decision and provide the reasons for the decision.
4. The Minister of Economy and Finance shall issue a sub-legal act to determine the procedures in respect of the implementation of the articles 7, 8 and 9 of this Law. This sub-legal act shall also provide specific threshold calculation rules for categories of persons whose turnover is for the majority composed of exempt supplies.

CHAPTER III TAXABLE TRANSACTIONS

Article 10 Supply of goods

1. Supply of goods means the transfer of the right to dispose of tangible property as owner.
2. In addition to the transaction referred to in paragraph 1 of this Article, each of the following shall be regarded as a supply of goods:
 - 2.1. The transfer of the ownership of property against payment of compensation:
 - 2.1.1. By order made by a public Authority, or
 - 2.1.2. In the name of a public authority, or
 - 2.1.3. Pursuant to the provisions of the Law,
 - 2.2. The actual handing over of goods pursuant to a contract for the hire of goods for a certain period, or for the sale of goods on deferred terms, which provides that in the normal course of events ownership is to pass at the latest upon payment of the final instalment.
 - 2.3. The transfer of goods pursuant to a contract under which commission is payable on purchase or sale.
3. The handing over of certain works of construction as a supply of goods as will be defined in a sub-legal act issued by the Minister of Economy and Finance.
4. The following is treated as tangible property:
 - 4.1. Electricity, gas, heat, refrigeration and the like.
 - 4.2. The rights in rem giving the holder a right of use over immovable property and shares or interests equivalent to shares in respect of immovable property which gives the holder the right of ownership or possession over immovable property or a part of it.

Article 11 Application of goods of the business for non-business needs

1. The application by a taxable person of goods forming part of his business assets for his private use or for that of his staff, or their disposal free of charge or, more generally, their application for purposes other than those of his business, shall be treated as a supply of goods for consideration, where the VAT on those goods or the component parts thereof was wholly or partly deductible.
2. The application of goods for business use as samples or as gifts of small value shall not be treated as a supply of goods for consideration.
3. The Minister of Economy and Finance shall issue a sub-legal act for implementation of this Article.

Article 12
Application of goods for business needs under certain VAT deduction
circumstances

1. The application by a taxable person for the purposes of his business of goods produced, constructed, extracted, processed, purchased or imported in the course of such business, where the VAT on such goods, had they been acquired from another taxable person, would not be wholly deductible, are considered as a supply of goods for consideration.
2. The application of goods by a taxable person for the purposes of a non-taxable area of activity, where the VAT on such goods became wholly or partly deductible upon their acquisition or upon their application in accordance with paragraph 1 of this Article, are considered as a supply of goods for consideration.
3. 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 became wholly or partly deductible upon their acquisition or upon their application in accordance with paragraph 1 of this Article, are also considered as a supply of goods for consideration.

Article 13
Transfer of business

1. No supply of goods takes place in the event of a transfer by a taxable person whether for consideration or not or as a contribution to a company, of a totality of assets or part of them.
2. The person to whom the goods are transferred is to be treated as the successor to the transferor and no VAT shall be charged on such transfer provided that the successor to the transferor is a taxable person who is registered or required to register for VAT purposes. The transferor and the transferee shall notify TAK of their intention to implement this Article at least thirty days before the transfer will occur.
3. Any outstanding liability and outstanding right of the transferor provided by, or by virtue of this law before the time of the transfer, become the liability and right of the transferee.
4. All information, books and records relating to the transferred business which are required to be kept by the current VAT law or previous VAT Law or Regulations, shall be kept by the transferee instead of the transferor unless the Director, at the request of the transferor, otherwise directs.
5. The Minister of Economy and Finance shall issue a sub-legal act providing the procedure and rules for applying this Article.

Article 14

Supply of services

1. Supply of services is any transaction which does not constitute a supply of goods.
2. A supply of services may consist, inter alia, in one of the following transactions:
 - 2.1. The assignment of intangible property, whether or not the subject of a document establishing title of ownership,
 - 2.2. The obligation to refrain from an act, or to tolerate an act or situation,
 - 2.3. The performance of services in dependence to :
 - 2.3.1. An order made by a public authority;
 - 2.3.2. In the name of a public authority ; or
 - 2.3.3. In pursuance of the Kosovo Laws.
3. The supply of services for sewerage, offscourings and soil disposal by the municipal and public bodies for consideration.

Article 15

The use of business goods for non-business needs

1. The use of goods forming part of the assets of a business for the private use of a taxable person or of his staff or, more generally, for purposes other than those of his business, where the VAT on such goods was wholly or partly deductible, shall be treated as a supply for consideration.
2. The supply of services carried out without consideration by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business, shall also be treated as a supply for consideration.

Article 16

The use of self-supplied services for business needs

1. The supply of a service by a taxable person for the purposes of his business, where the VAT on such a service if supplied by another taxable person would not be wholly deductible, shall be considered as a supply of a service for consideration.
2. Construction, reconstruction, repair, maintenance and cleaning work with respect of immovable property used or to be used for existing or future economic activity and rendered for free by a taxable person or his staff to himself, shall be treated as a supply of services for consideration.

Article 17

Services in respect of transfer of business

The provisions of Article 13 of this Law shall also apply to the supply of services in respect of transfer of business by replacing supply of goods with supply of services.

Article 18

The supply of services in his own name but on behalf of another person

Where a taxable person acting in his own name but on behalf of another person, takes part in a supply of services, he shall be deemed having received and supplied those services himself.

CHAPTER IV

PLACE OF TAXABLE TRANSACTIONS

Article 19

Place of supply of goods

1. Supply of goods without transport. Where goods are not dispatched or transported, the place of supply is deemed to be the place where the goods are located at the time when the supply takes place.
2. Supply of goods with transport:
 - 2.1. Where goods are dispatched or transported by the supplier, or by the customer, or by a third person, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods to the customer begins.
 - 2.2. Where goods dispatched or transported by the supplier, by the customer or by a third person are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place of supply shall be deemed to be the place where the goods are installed or assembled.
3. Supply of goods on board ships, aircraft or trains:
 - 3.1. Where goods are supplied on board ships, aircraft or trains during the section of a passenger transport operation effected within Kosovo, the place of supply shall be deemed to be at the point of departure of the passenger transport operation.
 - 3.2. In the case of a trip beginning in Kosovo, going to a place outside of Kosovo and then returning to Kosovo, only that part of the trip from Kosovo to that place outside of Kosovo shall be deemed to have taken place at the point of departure in Kosovo.
 - 3.3. In the case of a return trip, the return leg shall be regarded as a separate transport operation.
4. Supply of natural gas and electricity through distribution systems:
 - 4.1. In the case of the supply of gas through the natural gas distribution system, or of electricity, to a taxable dealer, the place of supply shall be deemed to be the place where that taxable dealer has established his business or has a fixed establishment for which the goods are supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides. For the purposes of this paragraph, **“taxable dealer”** means a taxable person whose principal activity in

respect of purchases of gas or electricity is reselling those products and whose own consumption of those products is negligible.

- 4.2. In the case of the supply of gas through the natural gas distribution system, or of electricity, where such a supply is not covered by sub-paragraph 1 of paragraph 4 of this Article, the place of supply shall be deemed to be the place where the customer effectively uses and consumes the goods.
- 4.3. Where all or part of the gas or electricity is not effectively consumed by the customer, those non-consumed goods shall be deemed to have been used and consumed at the place where the customer has established his business or has a fixed establishment for which the goods are supplied. In the absence of such a place of business or fixed establishment, the customer shall be deemed to have used and consumed the goods at the place where he has his permanent address or usually resides.

Article 20

Place of supply of service

1. Definition of taxable person for the purpose of this Article: For the purpose of applying the rules concerning the place of supply of services, the definition of taxable person for this article shall be:
 - 1.1. A taxable person shall be any person who, in the course of their economic activity as referred to in Article 4 of this Law:
 - 1.1.1. makes taxable and exempted supplies of goods and services where his turnover is exceeding fifty thousand (50.000) €.
 - 1.1.2. makes supplies of goods and services on which no VAT can be charged where his turnover does not exceed fifty thousand (50.000) €.
 - 1.2. Any person not included in sub-paragraph 1.1 of this Article shall not be considered as a taxable person with respect to all services offered to him.
2. General rule and particular rules in respect of supply of services to a taxable person acting as such.
 - 2.1. **General rule:** The place of supply of services to a taxable person acting as such shall be the place where that person has established his business. However, if those services are provided to fixed establishment of the taxable person located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the taxable person who receives such services has his/her permanent address or usually resides.
 - 2.2. **Particular rules:**
 - 2.2.1. Service supplies related to the immovable property: Service supply place, related to the immovable property including services of experts and agents for property sales, provision of accommodation in hotel's sector or in sectors of similar functions, such as resting camps or places created to be used as camping sites, issuing the right to use

immovable property and services for preparation and coordination of construction work, such as architects services and firms (enterprises) offering supervision of the place, is the place where the immovable property is placed. (Article 47)

2.2.2. supply place of passengers transport is the transport place in proportion with covered roads.

2.2.3. supply place shall be the place where in fact happen cases as following related to:

2.2.3.1. services related with allowance of entrance in cultural, artistic, sports, science, education events or similar, such as fairs and exhibition and related to assisting services that deal with allowance of the entrance;

2.2.3.2. services related to cultural, artistic, sports, science, education activities or similar such as fairs and exhibition, including service supply of organizers of such activities and assisting services related to certain services;

2.2.4. service supply place of the restaurant and supply services with other food from those developed physically in ships, aeroplanes or trains decks during the operation part of passengers transport in Kosovo, shall be the place where the services shall be conducted physically.

2.2.5. place for issuing short-term rent of transportation equipment shall be place where in fact the transportation equipment shall be at client's disposal. For the purpose of this sub-paragraph "short-term" shall mean continuous possession or use of transportation equipment during the period not longer than thirty (30) days and in case of boats no longer than ninety (90) days.

2.2.6. Starting point of transport operation where physically restaurant services are conducted and services of food supply in the ships, aeroplanes or trains decks, during the operation part of passenger transport conducted within Kosovo territory.

2.3. **In order to avoid double tax, non-tax or distortion of competition, Minister of Economy and Finances, regarding the services or for some of the services whose supply place shall be regulated with paragraph 2.2 and paragraph 2.3.5 of this Article may:**

2.3.1. consider that the supply place of any or all of these services if they happen within Kosovo territory, that are outside Kosovo if efficient use and if domain of these services happens outside Kosovo.

2.3.2. consider that the supply place of any or all of these services, if they happen outside Kosovo that have happened within their territory, if efficient use and if domain of services happens within Kosovo territory.

2.3.3. If the Minister of Economy and Finances determines conditions as described in paragraph 2.3, implementation of every change of provisions of sub-paragraphs 2.3.1 or 2.3.2. shall be conducted through sub-legal act issued after the approval of the Assembly.

3. **General rule and particular rules in respect of supply of services to a non taxable persons acting as such:**

3.1. **General rule:** The place of supply of services to a non-taxable person shall be the place where the supplier has established his business. However, if those services are provided from a fixed establishment of the supplier located in a place other than the place where he has established his business, the place of supply of those services shall be the place where that fixed establishment is located. In the absence of such place of establishment or fixed establishment, the place of supply of services shall be the place where the supplier has his permanent address or usually resides.

3.2. Particular rules:

3.2.1. Supplies of services connected with immovable property: The place of supply of services connected with immovable property, including the services of experts and estate agents, the provision of accommodation in the hotel sector or in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, the granting of rights to use immovable property and services for the preparation and coordination of construction work, such as the services of architects and of firms providing on-site supervision, is the place where the immovable property is located.

3.2.2. The place of supply of passenger transport is the place where the transport takes place, proportionate to the distances covered.

3.2.3. The place of supply of transport of goods is the place where the transport takes place proportionate to the distances covered.

3.2.4. The place of supply shall be the place where the following events actually take place in respect of:

3.2.4.1. The services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events, such as fairs and exhibitions, and of ancillary services related to the admission;

3.2.4.2. The services in connection with cultural, artistic, sporting, scientific, educational, entertainment or similar activities, such as fairs and exhibitions, and of ancillary services related to the respective services;

3.2.5. The place of supply shall be the place where the services are physically carried out:

3.2.5.1. In respect of supply of restaurant and catering services other than those physically carried out on board ships, aircraft or trains during the section of a passenger transport operation in Kosovo.

3.2.5.2. In respect of ancillary transport activities such as loading, unloading, handling and similar activities.

3.2.5.3. In respect of valuations and work on movable property.

3.2.6. The place of short-term hiring of a means of transport shall be the place where the means of transport are actually put at the disposal of

the customer-recipient. For the purpose of this sub-paragraph, “short-term” shall mean the continuous possession or use of the mean of transport throughout a period of not more than thirty (30) days and, in the case of vessels, not longer than ninety (90) days.

- 3.2.7. The place of supply of restaurant and catering services which are physically carried out on board ships, aircraft or trains during the section of a passenger operation effected within Kosovo, shall be at the point departure of the passenger transport operation.
- 3.2.8. The place of supply of electronically supplied services which are referred to in Annex II when supplied to non-taxable persons in Kosovo, or who have their permanent address or usually reside in Kosovo, by a taxable person who has established his business in a country outside of Kosovo or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside Kosovo, shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

Where the supplier of a service and the customer communicate via electronic mail, that shall not of itself mean that the service supplied is an electronically supplied service.

- 3.2.9. The place of supply of the following services to a non-taxable person who is established or has his permanent address or usually resides outside of Kosovo, shall be the place where that person is established, has his permanent address or usually resides:

- 3.2.9.1. transfers and assignments of copyrights, patents, licences, trade marks and similar rights;
- 3.2.9.2. advertising services;
- 3.2.9.3. the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information;
- 3.2.9.4. obligation to refrain from pursuing or exercising, in whole or in part, a business activity or a right referred to in this Article;
- 3.2.9.5. banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes;
- 3.2.9.6. the supply of staff;
- 3.2.9.7. the hiring of movable tangible property, with the exception of all means of transport;
- 3.2.9.8. the provision of access and of transport or transmission through, natural gas and electricity distribution systems and the provision of other services directly linked to these;
- 3.2.9.9. telecommunications services;
- 3.2.9.10. radio and television broadcasting services;
- 3.2.9.11. electronically supplied services, in particular those referred to in Annex II.

Where the supplier of a service and the customer communicate via electronic mail,

that shall not of itself mean that the service supplied is an electronically supplied service.

- 3.2.10. The place of supply in respect of telecommunications- and radio- and broadcasting services is Kosovo if those services are supplied to non-taxable persons who are established in Kosovo or who have their permanent address or usually reside in Kosovo, by a taxable person who has established his business outside of Kosovo or has his fixed establishment outside Kosovo from where the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside Kosovo.
- 3.2.11. The place of supply of services rendered to a non-taxable person by an intermediary acting in the name and on behalf of another person shall be the place where the underlying transaction is supplied in accordance with this Law.
- 3.3. In order to avoid double taxation, non-taxation or distortion of competition, the Minister of Economy and Finance may, with regard to services or for some of the services the place of supply of which is governed by the paragraph 2.1, 3.2.6 and 3.2.9, (a) till (j) :
 - 3.3.1. Consider the place of supply of any or all of those services, if situated within Kosovo, as being outside Kosovo if the effective use and enjoyment of the services takes place outside Kosovo.
 - 3.3.2. Consider the place of supply of any or all those services, if situated outside Kosovo, as being situated within their territory if the effective use and enjoyment of the services takes place within Kosovo.
 - 3.3.3. If the Minister of Economy and Finance determines that conditions exist as described in paragraph 3.3 implementation of any revisions of the provisions of sub-paragraph 3.3.1 or 3.3.2 shall be through a sub-legal act issued subject to the approval of the Assembly.

Article 21

Place of importation of goods

1. General rule:

The place of importation of goods shall be where the goods are located when they enter Kosovo.

2. Derogations:

- 2.1. By way of derogation from paragraph 1 of this Article, where, on entry into Kosovo, goods which are not in free circulation are placed under one of the Customs arrangements such as customs warehouses or other similar Customs arrangements or under temporary importation arrangements with total exemption from import duty, or under transit arrangements, the place of importation of such goods shall be that place in Kosovo where the goods cease to be covered by those arrangements or situations.

- 2.2. Similarly, where, on entry into Kosovo, goods which are in free circulation are placed under one of the arrangements or situations referred to in sub-paragraph 1 of paragraph 2 of this Article, the place of importation shall be that place in Kosovo where the goods cease to be covered by those arrangements or situations.
- 2.3. The Minister of Economy and Finance shall issue a sub-legal act in which the implementation of this paragraph shall be explained.

CHAPTER V

CHARGEABLE EVENT AND CHARGEABILITY OF VAT

Article 22

Chargeable event and chargeability of VAT in respect of supply of goods and services

1. General rule:
The chargeable event shall occur and VAT shall become chargeable when the goods or the services are supplied.
2. Specific rules in the case of successive statements of accounts or successive payments:
 - 2.1. Where it gives rise to successive statements of account or successive payments, the supply of goods, other than that consisting in the hire of goods for a certain period or the sale of goods on deferred terms, as referred to sub- paragraph 2 of paragraph 2 of Article 10, or the supply of services shall be regarded as being completed on expiry of the periods to which such statements of account or payments relate.
 - 2.2. The continuous supply of goods or services over a period of time is to be regarded as being completed at intervals of one month.
 - 2.3. Long term contracts including long term construction contracts and long term installation contracts shall be regarded as completed at regular intervals but at least at the end of each calendar year.
3. Payment on account before the goods or services, are supplied:
 - 3.1. Where a payment is to be made or made on account before the goods or services are supplied, VAT shall become chargeable on receipt of the payment and on the amount received.
 - 3.2. Invoice issued before the goods or services are supplied: Where an invoice is issued before the goods or services are supplied, VAT shall become chargeable when the invoice was issued.
4. Special cases:
 - 4.1. In the cases of supplies of goods or services referred to in the articles 11, 12, 15 and 16 of this Law, VAT shall become chargeable in the tax period in which the chargeable event has occurred.
 - 4.2. The Minister of Economy and Finance shall issue a sub-legal act in order to provide that VAT is to become chargeable from the date of the chargeable event in respect of certain transactions or certain categories of

taxable persons, where the time limit imposed for the issuance of the invoice as referred to in paragraph 4 of Article 44 of this Law is not respected.

Article 23

Chargeable event and chargeability of VAT in respect of importation of goods

1. General rule: The chargeable event shall occur and VAT shall become chargeable when the goods are imported.
2. Special rules:
 - 2.1. Where, on entry into Kosovo, goods which are not in free circulation are placed under one of the arrangements or situations referred to in Article 35 of this Law, the Customs transit procedure or under temporary importation arrangements with total exemption from import duty, or under external transit arrangements, the chargeable event shall occur and VAT shall become chargeable only when the goods cease to be covered by those arrangements or situations.
 - 2.2. Where imported goods are subject to customs duties, the chargeable event shall occur and VAT shall become chargeable when the chargeable event in respect of those duties occurs and those duties become chargeable.
 - 2.3. The provisions in force regulating Customs duties applies as regards the chargeable event and the moment when VAT is chargeable, where imported goods are not subject to Customs duties in Kosovo.

CHAPTER VI TAXABLE AMOUNT

Article 24

Taxable amount in respect of supply of goods and services

1. General rule:
 - 1.1. In respect of the supply of goods or services, other than as referred to in the paragraphs 2 and 3 of this Article, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply;
 - 1.2. if the supply is for a consideration in money, its value shall be taken to be such amount as is equal to the consideration;
 - 1.3. If the supply is for a consideration not consisting or not wholly consisting of money, its value shall be taken to the open market value of the supply.
2. For the purpose of this Law “open market value” shall mean the full amount that, in order to obtain the goods or services in question at that time, a customer at the same market level at which the supply of goods or services takes place, would have to pay, under conditions of fair competition, to a supplier at arm’s length within Kosovo in which the supply takes place.

3. Where no comparable supply of goods or services can be ascertained, “open market value” shall mean the following:
 - 3.1. In respect of goods, an amount that is no less than the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time of the supply;
 - 3.2. In respect of services, an amount that is not less than the full cost to the taxable person of providing the service.
4. The taxable amount includes the following factors:
 - 4.1. Taxes, duties, levies and charges, excluding the VAT itself,
 - 4.2. Incidental expenses, such as commission, packing, transport and insurance costs, charged by the supplier to the customer.
 - 4.3. For the purposes of sub-paragraph 2 of paragraph 4 of this Article, incidental expenses may be covered by a separate agreement.
5. Returnable packing costs are excluded from the taxable amount but this amount shall be adjusted if the packing is not returned.
6. The taxable amount shall not include the following factors:
 - 6.1. Price reductions by way of discount of early payment,
 - 6.2. Price discounts and rebates granted to the customer and obtained by him at the time of the supply,
 - 6.3. Amounts received by a taxable person from the customer, as repayment of expenditure incurred in the name and on behalf of the customer, and entered in his books in a suspense account.
7. Special rules:
 - 7.1. Where a taxable person applies or disposes of goods forming part of his business assets, or where goods are retained by a taxable person, or by his successors, when his taxable economic activity ceases, as referred to in Articles 11 and 12 of this Law the taxable amount shall be the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time when the application, disposal or retention takes place.
 - 7.2. In respect of the supply of services, as referred to in Article 15 where goods forming part of the assets of a business are used for private purposes or services are carried out free of charge and paragraph 2 of Article 16 with respect of certain self-supplied services, the taxable amount shall be the full cost to the taxable person of providing the services.
 - 7.3. In respect of the supply by a taxable person of a service for the purposes of his business, as referred to in paragraph 1 of Article 16 of this Law, the taxable amount shall be the open market value of the service supplied.
8. Measures to avoid tax evasion or tax avoidance: To prevent tax evasion or avoidance, the taxable amount is to be the open market value in any of the following cases in respect of the supply of goods and services involving family or other close personal ties, management, ownership, membership, financial or legal ties:
 - 8.1. Where the consideration is lower than the open market value and the recipient of the supply does not have a full right of deduction under article 36 of this Law;

- 8.2. Where the consideration is lower than the open market value and the supplier does not have a full right of deduction under article 36 of this Law and the supply is an exempt supply as referred to in paragraph 1 of article 27 and paragraphs 1 and 3 of article 28 of this Law.
- 8.3. Where the consideration is higher than the open market value and the “supplier” does not have a full right of deduction under article 36 of this Law.
9. The Minister of Economy and Finance shall issue a sub-legal act for the implementation of this article. This act shall in particular include the proof required from the taxable person of the actual amount of the repaid expenditure referred to sub-paragraph 3 of paragraph 6 of Article 24 of this Law.

Article 25

Taxable amount in respect of importation of goods. Converting the value of foreign currency into Euro

1. The taxable amount in respect of importation of goods:
 - 1.1. 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.
 - 1.2. The taxable amount shall include the following factors, in so far as they are not already included:
 - 1.2.1. Taxes, duties, levies and other charges due outside Kosovo, and those due by reason of importation, excluding the VAT to be levied,
 - 1.2.2. Incidental expenses, such as commission, packing, transport and insurance costs, incurred up to the first place of destination within the territory of Kosovo as well as those resulting from transport to another place of destination within Kosovo if that other place is known when the chargeable event occurs.
 - 1.2.3. For the purposes of 1.2.2. of this Article, “first place of destination” means the place mentioned on the consignment note or on any other document under which the goods are imported into Kosovo. If no such mention is made, the first place of destination shall be deemed to be the place of the first transfer of cargo in Kosovo.
 - 1.3. The taxable amount shall not include the following factors:
 - 1.3.1. Price reductions by way of discount for early payment,
 - 1.3.2. Price discounts and rebates granted to the customer and obtained by him at the time of importation.
 - 1.4. Where goods temporarily exported from Kosovo, are re-imported in Kosovo after having undergone outside Kosovo, repair, processing, adaptation, making up or re-working outside of Kosovo, the taxable amount shall be the value of the repair, processing adaptation, making up or re-working, as determined in accordance with the Customs legislation.
2. The Conversion of foreign currency into Euro:
 - 2.1. Where the value and factors used to determine the taxable amount on importation are expressed in a foreign currency, the conversion of this

amount into euro shall be made by applying the exchange rate determined in accordance with the Customs regulations governing the calculation of the value for customs purposes.

- 2.2. Where the value and factors used to determine the taxable amount of a transaction other than the importation of goods are expressed in a foreign currency, the conversion of this amount into the domestic currency Euro shall be the latest selling rate as defined by the Central Bank of Kosovo recorded at the time VAT becomes chargeable.

CHAPTER VII RATES

Article 26 The Rate

1. Standard rate:
 - 1.1. The VAT is charged at the rate of sixteen percent (16%).
2. The Minister of Economy and Finance may, upon decision of the Government of Kosovo after the approval of the Assembly, issue a sub-legal act for introducing a reduced rate not lower than five percent (5 %) for designated supplies of goods and services. Subject to the same procedure and as deemed necessary, the Minister may also introduce a temporary higher rate of VAT not higher than twenty-one (21 %) to be applied against designated supplies of goods and services. The reduced and increased rates may only apply to supplies of goods and services as listed in Annex III.

CHAPTER VIII EXEMPTIONS WITHOUT RIGHT OF DEDUCTION OF INPUT VAT

Article 27 Exemptions for certain activities in the public interest

1. The following transactions are exempted:
 - 1.1. Hospital services and medical care and closely related activities undertaken by bodies governed by Kosovo law in force or, under social conditions, in particular charging prices comparable with those applicable to bodies governed by Kosovo law in force, by hospitals, centres for medical treatment or diagnosis and other duly recognised establishments of a similar nature;
 - 1.2. The provision of medical care in the exercise of the medical and paramedical professions as defined by Kosovo laws in force and the supply of medicines, pharmaceutical products and medical and surgical instruments and apparatus;
 - 1.3. The supply of human organs, blood and mother milk.

- 1.4. The supply of services by dental technicians in their professional capacity and the supply of dental prostheses by dentists and dental technicians,
- 1.5. The supply of services by independent groups of persons, who are carrying on an activity which is exempt from VAT or in relation to which they are not taxable persons, for the purpose of rendering their members the services directly necessary for the exercise of that activity, where those groups merely claim from their members exact reimbursement of their share of the joint expenses, provided that such exemption is not likely to cause distortion of competition,
- 1.6. The supply of services and of goods closely linked to welfare and social security work, including those supplied to old people's homes, by competent bodies of Kosovo or by other bodies recognised by the competent Authority of Kosovo as being devoted to social welfare and become at comparable prices,
- 1.7. The supply of services and of goods closely linked to the protection of children and young persons by bodies governed by Kosovo laws or by other organisations recognised by the competent Authority of Kosovo as being devoted to social wellbeing and become at comparable prices,
- 1.8. The provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by Kosovo law having such as their aim or by other organisations recognised by the competent Authority of Kosovo as having similar objects and become at comparable prices,
- 1.9. Tuition given privately by teachers and covering school or university education within the context of schools or universities as referred to in sub-paragraph 8 of paragraph 1 of this Article.
- 1.10. The supply of staff by religious or philosophical institutions for the purpose of the activities referred to in sub-paragraphs 1, 6, 7, and 8 of paragraph 1 of this Article and with a view to spiritual welfare;
- 1.11. The supply of services, and the supply of goods closely linked thereto, to their members in their common interest in return for a subscription fixed in accordance with their rules by non-profit-making organisations with aims of a political, trade-union, religious, patriotic, philosophical, philanthropic or civic nature, provided that this exemption is not likely to cause distortion of competition;
- 1.12. The supply of certain services closely linked to sport or physical education by non-profit-making organisations to persons taking part in sport or physical education where the purpose of those services is directly necessary for that education,
- 1.13. The supply of certain cultural services, and the supply of goods closely linked thereto, by bodies governed by Kosovo law or by other cultural bodies recognised in Kosovo where the aim of such services is to promote the cultural events and potentials of Kosovo inside and outside its territory,
- 1.14. The supply of services and goods, by organisations whose activities are exempt pursuant to sub-paragraphs 1, 6, 7, 8, 9, 12, 13 of paragraph 1 of

this Article, in connection with fund-raising events organised exclusively for their own benefit, provided that exemption is not likely to cause distortion of competition. However the supply of goods is not granted exemption in the following cases:

- 1.14.1. Where the supply is not essential to transactions exempted,
- 1.14.2. Where the basic purpose of the supply is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.
- 1.15. The supply of transport services for sick or injured persons in vehicles specially designed for the purpose, by the authorised body,
- 1.16. The activities, other than those of a commercial nature, carried out by public radio and television bodies.
- 1.17. The activities carried out by institutions of religious communities which are having as direct and exclusive purpose the realization of religious convictions or beliefs including welfare and charitable objectives and the seminaries or other establishments for the training of religious ministers or teachers of religious education .
- 1.18. The supply of materials of the printing industry as defined hereafter in the course of retail trade, made to a final user, provided that such supply occurs to a person without VAT input right of deduction. These materials are the materials with the following Customs nomenclature codes TARIC:
 - 1.18.1. Code 4901: Printed books, brochures, leaflets and similar printed matter, whether or not in single sheets;
 - 1.18.2. Code 4903: Children's picture, drawing or colouring books.
 - 1.18.3. Code 4904: Music, printed or in manuscript, whether or not bound or illustrated. For the purposes of this paragraph, "supply to a person without right of deduction" means supply to a person who is using the printed material for private use or for application for purposes other than those of business. This exemption does not include the supply of pornographic or other printed materials considered to be of a pornographic nature.
2. Exemptions other than those provided for in the sub-paragraphs 1, 6, 7, 8, 9, 12 and 13 of paragraph 1 of this Article, may be granted to other bodies than those governed by Kosovo law in force. Such exemptions may be granted by sub-legal act and shall not be granted where the supply is not essential to the transactions exempted and where the basic purpose is to obtain additional income for the body in question through transactions which are in direct competition with those of commercial enterprises subject to VAT.
3. The Minister of Economy and Finance shall issue a sub-legal act with the rules and conditions for implementation of the paragraphs 1 and 2 of this Article and may limit the scope of these exemptions during a transitional period referred to in Article 64 of this Law. The Minister may as well impose measures needed to prevent distortion of competition to the disadvantage of taxable persons subject to VAT. He shall also define the competent authorities and bodies of Kosovo

mentioned in this article and the manner in which non-public bodies or organizations will be recognized by the public authorities for making exempt supplies or to which exempt supplies can be made.

Article 28

Exemptions for other activities

1. The following other activities are exempted:
 - 1.1. Insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents,
 - 1.2. The granting and the negotiation of credit and the management of credit by the person granting it,
 - 1.3. The negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit,
 - 1.4. Transactions, including negotiation, concerning deposit, current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection,
 - 1.5. Transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest,
 - 1.6. Transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in sub-paragraph 2 of paragraph of Article 10 of this Law,
 - 1.7. The management of special investment funds as defined by the competent Authorities of Kosovo,
 - 1.8. The supply at face value of postage stamps valid for use for postal services within Kosovo, fiscal stamps and other similar stamps,
 - 1.9. Betting, lotteries and other forms of gambling, subject to the conditions and limitations laid down by the competent Authorities of Kosovo.
 - 1.10. The supply of land or land on which a building or house stands.
 - 1.11. The supply of houses, apartments or other accommodation used for a relevant residential purpose.
 - 1.12. The leasing or letting of immovable property.
2. The following shall be excluded from the exemption provided for in sub-paragraph 11 of paragraph 1 of this Article:
 - 2.1. The provision of accommodation, as defined in the legislation of Kosovo, in the hotel sector or in sectors with a similar function, including the provision of accommodation in holiday camps or on sites developed for use as camping sites.
 - 2.2. The letting of premises and sites for the parking of vehicles.
 - 2.3. The letting of permanently installed equipment and machinery.
 - 2.4. The hire of safes.

- 2.5. The leasing or letting of immovable property for commercial purposes with the exclusion of land.
- 3. Special exemptions granted to eligible religions of Kosovo in conformity with the Law No. 02/L- 31 on Freedom of Religion in Kosovo and other applicable Laws:
 - 3.1. Supplies of goods and services to eligible religions of Kosovo for exercising economic activities specific to their self-sustainability, such as the production of embroidery and clerical vestments, candles, icon painting, woodcarving and carpentry, and traditional agricultural products, shall be exempted.
 - 3.2. For the purpose of this sub-article: “Religion” shall mean the Islamic Community of Kosovo, the Serbian Orthodox Church, the Roman Catholic Church, the Jewish Religious Community and the Evangelical Church,
 - 3.3. “Eligible religion” shall mean every religion which is entitled to have the benefit of the exemption as defined in this paragraph.
 - 3.4. The exemption also covers relevant products, materials, machinery, tools and livestock for exercising the economic activities referred to in sub-paragraph 3 of paragraph 1 of this Article.
 - 3.5. The Minister of Economy and Finance shall, in respect of each eligible religion as defined in the Law No. 02/L_31 or other applicable law, issue a sub-legal act in which, the keeping of records and journals, the submission of an annual statement for tax purposes and an agreed verification procedure in respect of the sub-paragraphs 1 and 2 of paragraph 3 of this Article, shall be defined.

CHAPTER IX

EXEMPTIONS ON IMPORTATION AND OTHER SPECIAL EXEMPTIONS IN RESPECT OF IMPORTATION

Article 29

Exemption on importation

- 1. The following shall be exempted from VAT:
 - 1.1. The release of goods for free circulation, if the supply of such goods effected on the territory of Kosovo by a taxable person were in all circumstances exempt from VAT.
 - 1.2. The reimportation by the person who exported them, of goods in an unchanged condition in which they were exported, provided that such goods are exempt from customs duties in accordance with Customs legislation,
 - 1.3. Imported goods exempt from customs duties and intended for:
 - 1.3.1. Official use of diplomatic and consular offices and special missions accredited to Kosovo. For consular offices headed by honorary consular officials an exemption in accordance with this sub-point shall only apply to goods sent by the dispatching state, other than

- means of transport, provided the Ministry responsible for Foreign Affairs issues approval for these goods,
- 1.3.2. Official use of international organisations, if these are laid down by international treaties or agreements which apply to Kosovo,
 - 1.3.3. Personal use of the foreign staff of diplomatic and consular special missions accredited to Kosovo, including their family members,
 - 1.3.4. Personal use of the foreign staff of international organisations, including their family members, if this is laid down by international treaties which apply to Kosovo,
 - 1.3.5. Armed Forces of the North Atlantic Treaty Organization and KFOR, for the use of such forces or the foreign civilian staff accompanying them or for the supply of their messes or canteens.
 - 1.3.6. Personal use of the foreign staff of contractors of international organizations or foreign governments and their organizations, including their family members, if this is laid down in bilateral agreements which apply to Kosovo.
- 1.4. Exemptions under 1.3.1. and 1.3.4 of this Article, shall not be exercised by nationals of Kosovo or foreign nationals with permanent address in Kosovo. Exemption under this sub-paragraph shall be implemented on the basis of certificates issued by the Ministry of Foreign Affairs. Goods exempt from VAT in accordance with this sub-paragraph shall not be alienated. They may be alienated only on condition that VAT is paid or after termination of a three-year period from the day of the import of goods.
 - 1.5. If, in accordance with an international treaty, exemption could be implemented only under condition of reciprocity, the Ministry responsible for foreign affairs shall confirm such reciprocity.
 - 1.6. The detailed conditions and the method for exercising a VAT exemption and setting of the quantitative restrictions for particular types of goods for which entitled beneficiaries under of this Article, may claim exemption from VAT, shall be prescribed by sub-legal act issued the Minister of Economy and Finance,
 - 1.7. Import of catches of fishing vessels and fishing boats used for the purpose of carrying out a fishing activity into a port, provided that the catch is either unprocessed or subject to only those procedures that are necessary to preserve its quality and that, prior to the importation, no supply was performed in accordance with this Law,
 - 1.8. Services related to the import of goods, provided that the value of such services is included in the taxable amount in accordance with sub-paragraph 1.2 of Article 25 of this Law,
 - 1.9. Gold and other precious metals, bank notes and coins imported by the Central Bank of Kosovo,
 - 1.10. Import of gas through natural gas distribution systems or import of electricity.
2. The import of the goods listed in the Annex IV of this Law are exempted during the transitional period referred to in Article 64 of this Law.

Article 30

Other special exemptions in respect of importation

1. In respect of imported goods and their release into free circulation, the following shall be exempted from VAT in accordance with the conditions and time limits set out in the Customs legislation:
 - 1.1. Consignments of insignificant value sent directly from abroad. This exemption shall not apply to tobacco and tobacco products, alcohol and alcoholic beverages, perfumes and toilet water. The total value of goods in an individual consignment deemed to be insignificant shall not exceed an amount determined by sub-legal act issued by the Minister of Economy and Finance,
 - 1.2. Used personal property belonging to a natural person who has lived abroad for an uninterrupted period of at least twelve (12) months and who moves to Kosovo. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, motor vehicles and equipment for the performance of an economic activity,
 - 1.3. Items belonging to a person who has lived abroad for an uninterrupted period of at least twelve (12) months and who moves to Kosovo. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, motor vehicles and equipment for the performance of an economic activity,
 - 1.4. Items acquired on the basis of inheritance by a natural person who lives permanently in Kosovo. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, means of transport, equipment, stocks of raw materials, semi-products and finished products, livestock and agricultural products exceeding normal family needs,
 - 1.5. Study aids brought for their own requirements by pupils and students coming to Kosovo for the purpose of study,
 - 1.6. Goods in the personal luggage of a traveller which are imported for non-commercial purposes and which are exempted from payment of customs duties in accordance with Customs Legislation,
 - 1.7. Goods in small consignments of a non-commercial character which are sent by a natural person residing abroad free of charge to a natural person on the customs territory of Kosovo up to the value, and for tobacco and tobacco products, alcohol and alcoholic beverages, perfumes and toilet water up to quantities, prescribed by sub-legal act issued by the Minister of Economy and Finance,
 - 1.8. Honorary decorations and prizes if their nature or individual value indicates that they are not being imported for commercial purposes, occasional gifts received within the framework of international relations, provided they do not reflect a commercial purpose, on the condition of reciprocity, items intended for foreign heads of state or their representatives for their requirements during an official visit to Kosovo.

This exemption shall not apply to alcoholic beverages, tobacco and tobacco products,

- 1.9. Therapeutic substances of human origin and reagents for determining blood groups and tissue types that are used for non-commercial medical or scientific purposes, pharmaceutical products for health care or veterinary use at international sporting events, laboratory animals, animal, biological and chemical substances sent free of charge which are intended for scientific research, and samples of reference substances intended for quality control of medical products approved by the World Health Organisation,
- 1.10. Goods acquired free of charge by state bodies, charitable and philanthropic organisations intended for free distribution to persons in need of help, or goods sent free of charge and without any commercial intent for the purpose of being used exclusively for meeting their work needs or for carrying out their tasks. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products, coffee and tea, and motor vehicles (except for rescue vehicles). This exemption shall apply only to organisations that keep appropriate accounts and enable the competent bodies to supervise their operations and which, where necessary, offer insurance of VAT payment,
- 1.11. Goods imported by state bodies and organisations, charitable and philanthropic organisations intended for free distribution to victims of natural and other disasters and wars, or goods which remain the property of these organisations but are made available to the aforementioned victims. This exemption shall not apply to material and equipment for the renovation of areas affected by natural and other disasters. This exemption shall apply only to organisations that keep appropriate accounts and enable the competent bodies to supervise their operations and which, where necessary, offer insurance of VAT payment,
- 1.12. Items that are specially made for the education, training or employment of the blind and deaf or other physically or mentally handicapped persons if they were acquired free of charge and imported by institutions or organisations whose activity is education or assistance to these persons and provided no commercial intent is expressed by the donors.
- 1.13. Equipment which is used by the owner for the performance of his economic activity where he is moving that activity to Kosovo. This exemption shall not apply to means of transport, fuel, stocks of goods, products and semi-products, and livestock owned by traders.
- 1.14. Plant and livestock products obtained by farmers who are Kosovo nationals on their property within the border region of a neighbouring country and young animals and other products obtained from livestock which they have on this property for the purposes of farm labour, pasture or wintering, seeds, fertiliser and similar products for cultivation of the soil used by farmers who are foreign nationals on their property in Kosovo,

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- 1.15. Samples of goods of insignificant value intended for obtaining orders for goods of the same type and which, with regard to their appearance and quantity, are not usable for any other purposes.
 - 1.16. Printed matter and advertising material of no commercial value and with a destination for promotion, sent by a person who established his business outside Kosovo.
 - 1.17. Goods intended for use at a trade fair, exhibition or similar event. This exemption shall not apply to alcoholic beverages, tobacco and tobacco products and fuels,
 - 1.18. Goods which in order to determine their composition, quality or other technical characteristics are intended for examination, analysis and testing and which are completely used or destroyed. This exemption shall not apply to goods used in examination, analysis or testing in order to promote sales.
 - 1.19. Items and accompanying documents which in connection with the acquisition or protection of trademarks, patents and models are sent to organisations for protection of intellectual property rights.
 - 1.20. Tourist informational documentation intended for distribution free of charge and whose main purpose is to present foreign tourist products and services.
 - 1.21. Documents sent to state bodies, the publications of foreign state bodies and international bodies and organisations, forms for exercising the powers of state bodies, items of evidence in court procedures, printed circulars sent as part of the normal exchange of information between public services or banking institutions, official printed matter received by the Central Bank of Kosovo, documents, archives and forms for use at international meetings, conferences or congresses, plans, technical drawings, models and similar documents for purposes of participation in an international competition organised in Kosovo, printed forms used in accordance with international conventions as official documents in international trade in vehicles and goods, photographs and slides sent to press agencies or newspaper companies, collectors' items and works of art not intended for sale which are imported free of charge by museums, galleries and other institutions and which are intended for viewing free of charge, wall maps, films (other than cinematographic films) and other audio-visual products of an educational nature produced by the United Nations or its specialised agencies.
 - 1.22. Material necessary for loading and securing goods during transport, litter and fodder for animals during transport, loaded onto a means of transport, which is used for the transportation of animals from a foreign country into Kosovo or through Kosovo,
 - 1.23. Fuels and lubricants in the factory preinstalled tanks of motor vehicles.
 - 1.24. Material for erecting, maintaining or decorating monuments, graves or the burial grounds of war victims from other countries, coffins containing the mortal remains and urns containing the ashes of deceased person and the funeral items that normally accompany coffins and urns.

- 1.25. Medicines, pharmaceutical products, medical and surgical instruments and apparatus.
2. Special exemptions which apply during the transitional period referred to in Article 64 of this Law:
 - 2.1. Imports 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 international inter-governmental organizations and their agencies, governments, government agencies, governmental or non-governmental organizations in support of humanitarian and reconstruction programs and other projects including European integration projects in Kosovo.
 - 2.2. Imports made by the United Nations or any of its agencies, the World Bank and international inter-governmental organizations.
3. Special exemptions granted to the religions of Kosovo in conformity with the Law No. 02/L_31 on Freedom of Religion in Kosovo or other applicable laws. The provisions of paragraph 3 of Article 28 of this Law shall also apply to imports in respect of this special exemption by replacing “supply of goods and services” with “imports”.

CHAPTER X

EXEMPTIONS ON EXPORTATION

Article 31

Exemptions on exportation

1. The following transactions are exempted:
 - 1.1. The supply of goods dispatched or transported to a destination outside Kosovo by or on behalf of the vendor,
 - 1.2. The supply of goods dispatched or transported to a destination outside Kosovo by or on behalf of a customer not established within the territory of Kosovo, with the exception of goods transported by the customer himself for the equipping, fuelling and provisioning of pleasure boats and private aircraft or any other means of transport for private use,
 - 1.3. The supply of goods to bodies recognized by the competent Kosovo Authority which export them out of Kosovo as part of their humanitarian, charitable or teaching activities outside Kosovo.
 - 1.4. The supply of services consisting in work on movable property acquired or imported for the purpose of undergoing such work within Kosovo, and dispatched or transported out of Kosovo by the supplier, by the customer if not established within Kosovo or on behalf of either of them,
 - 1.5. The supply of services, including transport and ancillary transactions, but excluding the services exempted in accordance with article 27 related to certain activities in the public interest and excluding the services meant by article 28 related to certain other activities, where these services are

- directly connected with the exportation or importation of goods covered by paragraph 2 of Article 21 of this Law.
2. Goods to be carried in the personal luggage of travelers:
 - 2.1. Where the supply of goods referred to in sub-paragraph 1.2 of Article 31 of this Law relates to goods to be carried in the personal luggage of travellers, the exemption shall apply only if the following conditions are met:
 - 2.1.1. The traveller is not established within Kosovo,
 - 2.1.2. The goods are transported out of Kosovo before the end of the third month following that in which the supply takes place,
 - 2.1.3. The total value of the supply, including VAT, is more than one hundred and seventy-five (175) €. A traveller who is not established within Kosovo shall mean a traveller whose permanent address or habitual residence is not located within Kosovo. In that case “permanent address or habitual residence” means the place entered as such in a passport, identity card or other document recognised as an identity document by the country within whose territory the supply takes place. Proof of exportation shall be furnished by means of the invoice or other document in lieu thereof, endorsed by the customs office of exit of Kosovo.
 - 2.2. The reimbursement of VAT paid under sub-paragraph 1 of paragraph 2 of Article 31 of this Law, shall be defined by sub-legal act to be issued by the Minister of Economy and Finance which shall also define the date from which the reimbursement shall begin.

CHAPTER XI

EXEMPTIONS RELATED TO INTERNATIONAL TRANSPORT

Article 32

Exemptions related to international transport

2. The following transactions shall be exempted:
 - 2.1. The supply of goods for the fuelling and provisioning of vessels used for navigation on the high seas and carrying passengers for reward or used for the purpose of commercial, industrial or fishing activities, or for rescue or assistance at sea, or for inshore fishing, with the exception, in the case of vessels used for inshore fishing, of ships’ provisions,
 - 2.2. The supply of goods for the fuelling and provisioning of fighting ships, falling within the combined nomenclature (CN) code 8906 1000, leaving their territory and bound for ports or anchorages outside Kosovo,
 - 2.3. The supply, modification, repair, maintenance, chartering and hiring of the vessels referred to in sub-paragraph 1.1. of this Article, and the supply, hiring, repair and maintenance of equipment, including fishing equipment, incorporated or used therein,

- 2.4. The supply of services other than those referred to in sub-paragraph 1.3 of this Article, to meet the direct needs of the vessels referred to in sub-paragraph 1.1 of this Article or of their cargoes,
- 2.5. The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for consideration chiefly on international routes,
- 2.6. The supply, modification, repair, maintenance, chartering and hiring of the aircraft referred to in sub-paragraph 1.5 of this Article, and the supply, hiring, repair and maintenance of equipment incorporated or used therein,
3. The supply of services, other than those referred to in sub-paragraph 6 of paragraph 1 of this Article, to meet the direct needs of the aircraft referred to in sub-paragraph 5 of paragraph 1 of this article or of their cargoes.

CHAPTER XII

EXEMPTIONS RELATING TO CERTAIN TRANSACTIONS TREATED AS EXPORTS, EXEMPTIONS FOR THE SUPPLY OF SERVICES BY INTERMEDIARIES, AND EXEMPTIONS RELATING TO CUSTOMS AND SIMILAR ARRANGEMENTS

Article 33

Exemptions relating to certain transactions treated as exports

1. The following transactions treated as exports are exempted:
 - 1.1. the supply of goods or services under diplomatic and consular arrangements;
 - 1.2. The supply of goods or services to international and inter-governmental bodies recognised as such by the public authorities of Kosovo, and to the members of such bodies, within the limits and under the conditions laid down by the international conventions establishing the bodies or by the competent Authority;
 - 1.3. the supply of goods or services to NATO and KFOR, intended either for the armed forces of NATO and KFOR for the use of those forces, or the civilian staff accompanying them, or for their messes or canteens when such forces take part in the common defence and peace keeping effort;
 - 1.4. The supply of gold to the Central Bank of Kosovo.
2. The irrigation of faring land and the supplies of the goods liste in the Annex IV of this Law are exempted during the transitional period referred to in Article 64 of this Law.
3. Special exemptions which apply during the transitional period referred to in Article 64 of this Law.
 - 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 authorithies and other bodies governed by law, by international inter- governmental organizations and their agencies, by

- governments, government agencies, governmental or non-governmental organizations in support of humanitarian and reconstruction programs and other projects including European integration projects in Kosovo;
- 3.2. Supplies of goods and services made to the United Nations or any of its agencies, the World Bank and international inter-governmental organizations.
 4. In cases where the goods are dispatched or transported out of Kosovo in which the supply takes place, and in the case of services, the exemption may be granted by means of a refund of the VAT.

Article 34

Exemptions for the supply of services by intermediaries

The supply of services by intermediaries acting in the name and on behalf of another person, where they take part in the transactions referred to in Chapters 10 and 11 and the transactions treated as exports of this Chapter 12, or of transactions carried out outside of Kosovo.

Article 35

Customs warehouses and similar arrangements

1. Imports of goods shall be exempt from VAT if they are intended to be:
 - 1.1. Presented to customs and, when allowed under custom legislation, placed in temporary storage;
 - 1.2. Placed into a free zone;
 - 1.3. Placed under customs warehousing arrangements or inward processing arrangements under suspension regime.
2. Exemption is also applicable to the supplies of services relating to the supplies of goods under paragraph 1 of Article 35 of this Law and to the supplies of goods and services carried out in free zones and customs warehouses.
3. Transactions under this paragraph 1 of Article 35 are exempt from VAT provided that goods are not released for free circulation or are not aimed at final consumption and that the amount of VAT due on cessation of the arrangements corresponds to the amount of VAT which would have been due had each of these transactions been taxed within Kosovo.
4. Goods intended for sale in “duty free shops” at an airport open to international air traffic or a port open to international traffic, are also exempt from VAT, on condition that travellers carry such goods as personal luggage in permitted quantities to another country by aircraft or ship. A traveller referred to in paragraph 4 of this Article is deemed to be a traveller who has a ticket on which the destination airport or port of another country is stated.
5. Goods intended for sale to travellers on board of an aircraft in the course of a flight are exempt where the place of arrival is situated outside of Kosovo.

CHAPTER XIII DEDUCTIONS

Article 36 The right to deduct VAT

1. The right to deduct input VAT shall arise at the time when the VAT becomes chargeable. A taxable person cannot deduct input VAT before the tax period in which he received invoices for goods or services supplied to him or in which he received customs declarations for imported goods.
2. 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:
 - 2.1. The input VAT due or paid within the territory of Kosovo in respect of goods or services supplied or to be supplied to him by another taxable person;
 - 2.2. The input VAT due or paid within the territory of Kosovo in respect of importation of goods;
 - 2.3. The input VAT due in accordance with paragraph 1 of Article 12 and Article 16 of this Law.
3. In addition to the deduction referred to in paragraph 2 of this Article, every taxable person shall also have the right to deduct the input VAT referred to therein in so far as the goods and services are used for the purposes of the following:
 - 3.1. Transactions relating to the activity from paragraph 1 of Article 4 of this Law carried out outside Kosovo in which that tax is due or paid, in respect of which VAT would be deductible if they had been carried out in Kosovo;
 - 3.2. Transactions which are exempt pursuant to Chapter 10 (Exemptions on exportation), Chapter 11 (Exemptions related to international transport) and Chapter 12 (Exemptions relating to transactions treated as exports, supply of services by intermediaries and exemptions relating to Customs and similar arrangements) of this Law.
 - 3.3. Any of the transactions exempt in accordance with sub-paragraph 1 till 6 of paragraph 1 of Article 28 of this Law, if the customer is established outside Kosovo or if such transactions are directly linked to goods intended for export to a country outside Kosovo.
4. 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. Such proportion of input VAT shall be determined in accordance with Article 39 of this Law for all transactions carried out by the taxable person.

5. A taxable person shall not deduct input VAT on:
 - 5.1. Yachts and boats intended for sport and recreation, private aircraft, cars and motorcycles only used for non business purposes, fuels and lubricants and spare parts and services closely linked thereto, other than vessels or vehicles used for leasing and renting and for resale, and vehicles used in driving schools for the provision of the driver's training programme in accordance with the regulations in force and combined vehicles for carrying out an activity of a public line and special line transport. If a vehicle is not used exclusively for carrying out an activity of a public and special line transport, a taxable person can claim a VAT deduction only in the part, related to carrying out of this activity;
 - 5.2. The total purchase costs and current expenditures as regards cars used for both private and business purposes. In such case, the right to deduct input VAT is only allowed to a maximum of fifty percent (50%);
 - 5.3. Costs for representation which shall include only costs for entertainment and amusement during business or social contacts, food costs including drinks and accommodation costs exception made for those costs which are made for the personnel charged with supply of goods and services;
 - 5.4. The Minister of Economy and Finance shall issue a sub-legal act to determine the implementation and the costs which are subject to restrictions.

Article 37

Exercise of the right of deduction

The right of deduction arises at the time the deductible tax becomes chargeable.

2. To exercise his right to deduct input VAT, a taxable person must at least:
 - 2.1. In respect of all deductions referred to in Chapter 13, hold an invoice or a document serving as an invoice in accordance with Chapter 15 of this Law. In respect of deductions pursuant to sub-paragraph 2.2 of article 36 of this Law, hold an import document "SAD document" on which he is stated as the consignee or importer and which states the amount or enables calculation of the amount of tax due,
3. The Minister of Economy and Finance shall issue a sub-legal act to determine additional rules and documents for proving the input VAT, in particular in respect of:
 - 3.1. The deductions of sub-paragraph 2.3 of Article 36 of this Law;
 - 3.2. The deductions pursuant to sub- paragraphs 2.1 and 2.2 of Article 37 of this Law;
 - 3.3. The deductions related to the transactions described in the Chapters 10, 11 and 12 of this Law;
 - 3.4. The cases referred to in Article 53 of this Law where a person is liable to pay VAT as a customer or purchaser;
 - 3.5. The deductions in respect of the application of the special schemes of Chapter 19 of this Law.

Article 38
The manner to exercise the right to deduct input VAT

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 has arisen in accordance with paragraph 1 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. The taxable person shall notify in advance the Head of the Regional Tax Office of such late deduction.
3. If a taxable person receives an invoice showing VAT from a person who is not entitled to claim VAT under this Law, he shall not deduct the VAT shown as input VAT, irrespective of whether he pays that VAT.
4. If a taxable person receives an invoice showing an amount of VAT which exceeds the amount of VAT that should be charged according to this Law, the taxable person shall not deduct this excess amount as input VAT, even though the VAT has been paid.

Article 39
Calculation of the deductible proportion of input VAT

1. In the case of goods and services used by a taxable person both for realizing transactions in respect of which VAT is deductible for the used goods and services, and for realizing transactions in respect of which VAT is not deductible for the used goods and services, only such proportion of the VAT is deductible as is attributable to those transactions in respect of which VAT is deductible. The taxable person may be authorised by TAK to make the deduction on basis of the real use made if he provides in his accounting records, data on the input VAT for which he is entitled and is not entitled to deduct input VAT for all used goods and services.
2. The deductible proportion shall be made up of a fraction comprising the following amounts:
 - 2.1. as a numerator: the total amount, exclusive of VAT, of annual turnover attributable to transactions on which the taxable person has the right to deduct input VAT,
 - 2.2. as a denominator: the amount included in the numerator and the amount of total annual turnover on which the taxable person does not have the right to deduct VAT, including subsidies other than those directly linked to the price of supplies of goods and services as referred to in paragraph 1 of Article 24 of this Law.
3. The calculation of the deductible proportion shall not include:

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- 3.1. The amount of turnover attributable to supplies of capital goods used by the taxable person for the purposes of his business;
 - 3.2. The amount of supply of financial services as referred to in paragraph 1 of Article 28 of this Law, if they are performed incidentally.
 4. The deductible proportion of VAT shall be determined on an annual basis as a percentage, and shall be rounded up to the next whole number.
 5. Provisional deductible proportion and actual deductible proportion:
 - 5.1. The deductible proportion for the current year shall be determined provisionally on the basis of the data on preceding year's transactions - hereinafter referred to as "provisional deductible proportion". In the absence of data on transactions in the preceding year, or where they were insignificant in amount, the provisional deductible proportion shall be determined by TAK on the basis of the taxable person's own forecasts;
 - 5.2. The deductible proportion shall be finally fixed when the actual volume of transactions in the year for which the deductible proportion is being determined – hereinafter referred to as "actual deductible proportion" – is known;
 - 5.3. If it is established that the deduction of input VAT on the basis of the provisional deductible proportion was higher or lower than it should have been with respect to the actual data on volume of transactions, the input VAT deduction shall be adjusted accordingly in the tax return of the tax period of January of the following year, being the year in which the actual deductible proportion is established.
 6. Notwithstanding paragraph 2 of this Article, a taxable person may determine the deductible proportion for each individual area of his activity separately, provided he maintains separate accounts for each individual area of his activity and provided he notifies TAK on the method of defining the deductible proportion. If TAK receives the notification at least fifteen (15) days before the start of the new tax period, the taxable person may start to calculate the deductible proportion pursuant to this sub-article in the first tax period following the tax period in which he informed the tax authority about his decision, otherwise with the beginning of the next tax period. The taxable person shall calculate a deductible proportion, chosen pursuant to this sub-article for at least twelve (12) months. If a taxable person wishes to change the method of calculating the deductible proportion again, he must notify again this change to TAK fifteen (15) days before the start of the tax period in which the new method is going to be used.
 - 6.1. Following the notification made in accordance in paragraph 6 of this Article, prohibit the taxable person from using the chosen method for determining a deductible proportion if the chosen method does not allow TAK to control adequately the deduction of input VAT.
 7. Authorize or require the taxable person to make the deduction on the basis of the real use made of all or part of the goods and services.

Article 40

VAT refund claims

1. A taxable person may either carry forward the excess VAT credit to the following tax period or submit a VAT refund claim, where, for a given tax period which is the last tax period of quarter of a calendar year, the VAT return of a taxable person reflects an amount of deductions that exceeds the amount of VAT due for that period. The excess VAT credit carried forward may be applied against the VAT liability in the succeeding tax periods.
2. VAT Refund claims: Without prejudice to article 24 of the Law No 2004/48 on the Tax Administration Procedures and for the purpose of ensuring the correct and straightforward application of this sub-article, the following shall apply in respect of VAT refund claims:
 - 2.1. A taxable person may claim a VAT refund if the VAT return for the last month of a quarter of calendar year reflects an amount of VAT credit that exceeds five thousand (5,000) € and provided that the taxable person was in credit status at the end of each tax period of such quarter and that all VAT returns and all other tax returns for all past tax periods have been submitted;
 - 2.2. For exports, a refund may be claimed after each tax period, provided that the following conditions are met:
 - 2.2.1. The export transactions represents at least twenty-five percent (25%) of the total transactions with entitlement of VAT input deduction and the amount of VAT credit exceeds five thousand (5000) € at the end of the tax period;
 - 2.2.2. The taxable person complies with all applicable customs and VAT provisions, and
 - 2.2.3. All VAT returns and other tax returns for all past periods are submitted.
3. Proof in respect of VAT refund claims:
 - 3.1. At the moment of making a refund claim, the taxable person must be in the possession of all evidences and documents defined in the sub-legal act to be issued by the Minister of Economy and Finance as referred to in paragraph 4 of this article;
 - 3.2. TAK shall retain the refund where the evidences and documents are not in the possession of the taxable person or if there are indications that the reported data in the VAT return in which the amount of the VAT refund is reported and previous VAT returns, are not correct. Such indications must be documented in an official - procès-verbal, established by a TAK officer or Customs officer. Such tax report provides evidence till the taxable person proves otherwise .TAK shall notify the taxable person that the refund will be retained and provide an explanation of the reasons for retaining the refund with a motivated decision;
 - 3.3. The refund shall be retained until the competent TAK office receives the necessary missing evidences, documents and tax returns.If the documentation is not provided within the required timeframes established

- by TAK ,the control of the VAT refund claim will be closed and a final report will be issued and provided to the taxpayer explaining the reasons for not approving the refund claim;
- 3.4. No interests for late refund as referred to in sub-paragraph 3 of paragraph 3 of this Article are incurred during the period that the VAT refund is retained;
4. The Minister of Economy and Finance shall issue a sub-legal act to determine:
- 4.1. The procedure and conditions in respect of VAT refunds related to periodic VAT returns; and
- 4.2. Alternative procedures for refunding VAT to persons not required to submit VAT returns; returns, to persons who are stopping their economic activity and to taxable persons and customers not established in Kosovo.

Article 41

Adjustment of deductions

1. The initial deduction shall be adjusted where it is higher or lower than the deduction to which the taxable person was entitled. In particular, adjustment shall be made where:
 - 1.1. It is subsequently determined that the deduction of input VAT has been calculated at a higher or lower amount than the amount to which the taxable person has been entitled; 1.2. After the VAT return is submitted, changes occur in the factors used to calculate the deductible amount of input VAT, where for example purchases are cancelled or price reductions are obtained after the supply takes place.
2. In the case changes occur within five years from the calendar year of the beginning of use of capital goods, changes occur in the conditions, which were decisive during that year for the deduction of input VAT, a correction of the input VAT shall be made for the period following the change. For immovable property, the period of twenty years instead of five years shall be applicable.
3. The tax period in which the deduction of input VAT was made or was not made shall be considered as the beginning of use of the capital good or immovable property mentioned under paragraph 2 of this Article.
4. The annual adjustment shall be made on the variations in the deductions entitlement in subsequent years in relation to that for the year in which the goods were used for the first time and shall be made in respect of one-fifth (1/5), respectively one-twentieth (1/20), in accordance with the type of capital asset, of the corresponding annual deduction originally made. However, if supplied during the adjustment period, capital goods shall be treated as if they had been applied to an economic activity of the taxable person up until expiry of the adjustment period.
5. An adjustment to the deduction of input VAT shall not be made if the difference of deducted VAT is less than twenty (20) €.
6. The Minister of Economy and Finance shall work out practical rules to record the VAT adjustments and to determine the deductible and non-deductible VAT in respect of these adjustments.

Article 42
**Deduction of input VAT on commencement of economic activity as VAT
registered taxable person.**

1. On the day that the registration for VAT purposes becomes valid, a taxable person shall acquire the right to a deduction of input VAT for goods which he has in stock on the day before such registration becomes valid on basis of what is defined in the Articles 6, 7 and 8 of this Law. The deduction of input VAT may be verified by TAK on the basis of the accounting information of the taxable person and data of stocks of goods.
2. A taxable person subject to implementation of this article, may deduct input VAT in proportion to the supply performed in so far as that right of deduction exists, but shall not have the right to a VAT refund on this basis.
3. The Minister of Economy and Finance shall determine practical rules for the implementation of this article.

CHAPTER XIV
BAD DEBTS

Article 43
Bad debt for VAT purposes

1. Where the whole or part of the payment for a taxable supply is not received by a taxable person-supplier, he may consider the amount of non payment a bad debt for VAT purposes. Such taxable person may apply to TAK for written permission to reduce the amount of output tax due from him by the amount of VAT paid in respect of the supply that is attributable to the whole or part of the payment for the taxable supply that has not been received. The application shall be accompanied by sufficient evidence of the taxable person to prove that the VAT on the debt has been paid to TAK and that the whole or part of the payment for the taxable supply has not been received.
2. An application under paragraph 1 of this Article, shall not be made less than six months after the end of the tax period in which the VAT on the whole or part of the payment for a taxable supply, which has not been received, was paid to TAK.
3. The Director or the authorised person may refuse an application made under paragraph 1 of this Article, where he considers that the evidence of the taxpayer is insufficient that the taxable person has paid the VAT on the taxable supply to TAK and that he has not received the whole or part of the payment for that taxable supply.
4. Where the Director or the authorised person is satisfied that the taxable person has paid the VAT on the taxable supply and has not received the whole or part of the payment for that taxable supply, he shall give written permission for the taxable person to deduct from the amount of output tax due from him for his

next tax period, the amount of VAT on the whole or part of the payment that has not been received.

5. Where a taxable person who made an application under paragraph 1 of this article, receives written permission from the Director to reduce his output tax in respect of a bad debt, he shall:
 - 5.1. Create a bad debt invoice and include this in his records, with the letter from the Director attached to that invoice;
 - 5.2. Send copies of that bad debt invoice and the Director's letter to the person to whom the taxable supply was made;
 - 5.3. Send copies of that bad debt invoice and the Director's letter to the competent regional Tax Office.
6. Where the person to whom the taxable supply was made and who is bad debtor, receives a copy of the bad debt invoice and the Director's or authorized person's letter, he shall increase the amount of output tax shown on his next VAT return by the amount shown on the bad debt invoice.
7. Where the output tax of a taxable person has been reduced as a result of an application made under paragraph 2 of this article and the whole or part of that debt is subsequently paid, the taxable person shall treat as further output tax due for the tax period in which the subsequent payment was made the part of the output tax reduced that is attributable to the part of the bad debt subsequently paid.
8. The Minister of Economy and Finance may authorise by sub-legal act a special scheme for the enterprises of public interest.

CHAPTER XV

INVOICING AND ISSUANCE OF OTHER TAX DOCUMENTS

Article 44

Issuance of invoices and other documents serving as invoices by a taxable person

1. A taxable person shall ensure that, in respect of the following cases, an invoice is issued, either by himself or by his customer or, in his name and on his behalf, by a third party:
 - 1.1. Supplies of goods or services which he has made to another taxable person,
 - 1.2. Any payment made on account to him before a supply of goods referred to in sub-paragraph 1 of this Article, was carried out,
 - 1.3. Any payment on account made to him by another taxable person before the provision of services was effected or completed.
2. A summary invoice may be issued if a taxable person carries out several separate supplies of goods or services during a tax period.

3. If an invoice is issued to another taxable person, it must contain the data prescribed in Article 45 of this Law, or if it is issued to other persons, it must at least contain the data defined in Article 46 of this Law.
4. An invoice shall be issued before the fifteenth (15th) day of the month following the month in which the chargeable event occurs. Invoices need to be signed in accordance with Kosovo practice during the transitional period defined in Article 64 of this Law.
5. Invoices drawn up by customers in respect of supplies made to him:
 - 5.1. Invoices may be drawn up by the customer-taxable person in respect of the supply made to him, by a taxable person, of goods and services. Invoices may as well be issued in the name and on behalf of the taxable person-supplier;
 - 5.2. TAK may impose conditions for such procedures and may also impose specific conditions on taxable persons with no establishment in Kosovo supplying goods or services in Kosovo.

Article 45

Content of invoices issued by taxable persons to taxable persons

1. A taxable person who issues an invoice to a taxable person shall indicate the following data on the invoice:
 - 1.1. The date of issue;
 - 1.2. A sequential number enabling the identification of the invoice;
 - 1.3. The VAT registration number as well as the fiscal number of the taxable person under which he supplies the goods or services;
 - 1.4. The VAT registration number as well as fiscal number of the customer or the purchaser, if the customer or the purchaser is liable to pay VAT on goods or services supplied to him;
 - 1.5. The full name and address of the taxable person and his customer;
 - 1.6. The quantity and nature of goods supplied, or the extent and nature of the services performed;
 - 1.7. The date on which the supply of goods or of services was made or completed, or the date of receipt of the payment on account, in so far as that date can be determined and differs from the date of the issue of the invoice;
 - 1.8. The taxable amount on which VAT is charged for each individual rate or for which the individual exemption applies, the unit price exclusive of VAT for the goods or services, and any price reductions and discounts not included in the unit price;
 - 1.9. The VAT rate applied;
 - 1.10. The amount of VAT, except where a special arrangement is applied under which, in accordance with this Law, such a detail, is excluded;
 - 1.11. In the case a taxable person supplies goods or services for which a VAT exemption is prescribed, the invoice must indicate the provision of this Law that stipulates such exemption;

- 1.12. If a taxable person supplies goods or services where the customer is liable for payment of VAT, reference to the applicable provision of this Law or any other reference indicating that the supply of goods or service is subject to the reverse charge procedure as referred to sub-paragraph 4 of paragraph 1 of Article 52 of this Law;
- 1.13. A taxable person who charges VAT on the margin scheme for travel agents as referred to in Article 58 of this Law, must state on the invoice the provision of this Law pursuant to which VAT on the price difference is charged;
- 1.14. Where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques as referred to in part A and part B of Article 59 of this Law, is applied, reference must be made to the relevant articles of these arrangements;
- 1.15. Where the person who issues the invoice is liable to pay VAT as a tax representative in terms of paragraph 5 of Article 52 of this Law, the fiscal number and the VAT registration number and his full name and address are obligatory details to be mentioned.

Article 46

Content of an invoice issued by taxable persons to other persons

1. A taxable person, who issues an invoice to persons others than those mentioned under Article 45 of this Law, shall at least indicate the following data on the invoice:
 - 1.1. The date of issuance;
 - 1.2. The time of the supply;
 - 1.3. A sequential number enabling the identification of the invoice;
 - 1.4. The VAT registration number and the fiscal number under which the taxable person supplies the goods or services;
 - 1.5. The full name and address of the taxable person;
 - 1.6. The full name and address of "the other person" and tax identification numbers of this person as defined by TAK;
 - 1.7. The total amount to pay including VAT;
 - 1.8. The sales value of the goods or services excluding VAT;
 - 1.9. The amount of VAT.
2. If a taxable person supplies goods and services at different tax rates, he must show the sales value including VAT separately for each tax rate and also show the value of VAT separately.
3. If a taxable person supplies goods or services for which VAT exemption is prescribed, the invoice must indicate the provisions of this Law which stipulate the exemption.
4. In any case, a recipient of goods or services who is a non-taxable person, carrying out economic activity in the sense of Article 4 of this Law, shall request that the taxable person issues an invoice to him. The time limit relating to the issuance of such invoice is the same as the time limit defined in paragraph 4 of Article 44 of this Law.

Article 47

Debit and Credit Notes

1. Where the taxable amount and the VAT on a tax invoice has to be corrected in accordance with Article 41 of this Law, the supplier shall issue a debit note or a credit note and shall treat that note as if it were a tax invoice.
2. Debit and Credit notes must at least contain the following information:
 - 2.1. Date of issuance;
 - 2.2. Sequence number;
 - 2.3. Reference to the original invoice;
 - 2.4. Identification of the supplier and the purchaser, namely the name, address and their fiscal numbers, and if applicable, their VAT registration numbers;
 - 2.5. The reason of correction, and
 - 2.6. The corrected taxable amount and the corrected VAT.

Article 48

Bad Debt invoice

1. The content of a bad debt invoice as referred to in Article 43, must contain the following information :
 - 1.1. Date of issuance;
 - 1.2. Sequence number;
 - 1.3. Reference to the original invoice and the letter of approval of the Director or the authorized person;
 - 1.4. Identification of the supplier and the purchaser-bad debtor, their fiscal numbers and their VAT registration numbers if existing;
 - 1.5. Taxable amounts and VAT of the original invoice and the corrected amounts of taxable amounts and VAT.

Article 49

Requirement to Provide Simplified Invoices and fiscal receipts

1. Any person who is not required to register for VAT but who is carrying out economic activity as referred to in Article 4 of this Law, issues to the recipient of the supply, the following:
 - 1.1. A simplified invoice as meant by Article 46 of this Law where the supply has a value of five hundred (500) € or more, or where the person receiving the supply is required to request such invoice in accordance with paragraph 4 of Article 46;
 - 1.2. “Fiscal receipts” which:
 - 1.2.1. Are automatically produced through the use of authorised Fiscal electronic devices (FED’s) giving details of the goods or services supplied at premises, units or locations accessible for the general public such as in retail trade or wholesale trade or more general

where no invoice has to be issued in a systematic manner to clients who are paying in cash or with other equivalent payment instrument;

1.2.2. Must have the following content:

1.2.2.1. The Header of the receipt:

1.2.2.1.1. The name, address of the supplier and the Fiscal Number and VAT registration number if applicable. This must allow a programmable header consisting of the name or trade name of the person, the business address, the Fiscal and VAT Registration + Number + Telephone/Mobile Phone;

1.2.2.1.2. The cash register identification number. The receipt must include the serial number of the fiscal cash register and internal POS identification if used by the user;

1.2.2.1.3. The identification on the network, i.e. if different sites of trade exist which are connected through one network;

1.2.2.1.4. The date and time of supply. The fiscal receipt must include the date and time of receipt issuance;

1.2.2.1.5. The serial number of the transaction with the customer/client which is the cumulative number of issued receipts;

1.2.2.1.6. The operator that has server.

1.2.2.2. The article details of the receipt:

1.2.2.2.1. A number indication per article of the goods or services supplied or other article indication as allowed by the Tax Administration;

1.2.2.2.2. An abbreviated description of each article of goods or services supplied and followed by the reference code if computerized product list is maintained;

1.2.2.2.3. The quantity and nature of the goods supplied or the extent and nature of the services rendered multiplied by the unit price;

1.2.2.2.4. Amount of rebates, discounts, refunds and cash backs indicated with minus sign and amount;

1.2.2.2.5. VAT rate with a specific code for each rate and per item;

1.2.2.2.6. The price inclusive of VAT for the items sold having the same quality inclusive of VAT if applicable (thus a total price for items sold of the same quality);

1.2.2.2.7. The price exclusive of VAT for the items sold of the same quality but without VAT for each item line;

1.2.2.2.8. The total, exclusive of VAT for the supplies of the transaction per rate to the klient;

1.2.2.2.9. The total of VAT per rate if applicable

1.2.2.3. At the bottom: The wording "Fiscal Receipt" and The Fiscal Logo and form

1.2.2.3.1. The fiscal logo is the identification mark that is placed at the bottom of each tax receipt that certifies that sales are registered into the fiscal memory and into the electronic journal/ control band of the FED's;

1.2.2.3.2. The graphic form of the fiscal logo is:

Republic of Kosovo MEF & TAK

The fiscal logo may be changed by Governmental decision.

1.2.2.4. The fiscal receipt may include the identification data of the customer if required by tax legislation.

- 1.3. Automatically produced tax information including turnover and VAT paid by customers, which can be made "on line" available to TAK for administering VAT and other taxes which are due by taxpayers or certain categories of taxpayers.
2. A taxable person who supplies goods and services to persons for Non-business purposes, issues to the recipient of the supply, the same simplified invoices and fiscal receipt as referred to in paragraph 1 of this Article.

Article 50

Issuance and Sending invoices by electronic means and documents serving as invoices

1. Invoices and other documents issued pursuant to this Chapter, may be sent on paper or, subject to acceptance by the recipient, may be sent or may be made available by electronic means. The authenticity of the origin and the integrity of their content must be guaranteed by means of an advanced electronic signature or by means of electronic data interchange EDI as defined by European arrangements and recommendations
2. The specific obligations or formalities relating to the issuance, the sending or making available of invoices or similar documents by electronic means and the electronic signature which are in accordance with the European Union arrangements and recommendations, shall be defined in the sub-legal act to be issued by the Minister of Economy and Finance.
3. Any document or message that amends and refers specifically and clearly to the initial invoice is treated as an invoice.

Article 51

Special provisions

1. The taxable amount and the amount of VAT on invoices must be expressed in euro.
2. TAK may require invoices or documents serving as invoices in respect of supplies of goods or services in Kosovo or to other countries, to be translated into an official language of Kosovo.
3. The Minister of Economy and Finance shall issue a sub-legal act to determine detailed explanations and obligations as to respect the implementation of

Chapter 15 of this Law. Minister may as well impose in accordance with European Union arrangements and in addition to the common used trade documents in Kosovo, other documents such as delivery notes, freight bills, transport documents, detailed accounts and records such as registers for contract and process work and other means of proof with respect of transactions and the movement of the goods in order to ensure the correct assessment and collection of VAT.

CHAPTER XVI PERSONS LIABLE FOR PAYMENT OF VAT

Article 52 Persons liable for payment of VAT to TAK

1. Persons liable to pay VAT are:
 - 1.1. Any taxable person carrying out taxable supply of goods and services, except where VAT has to be paid by another person in the cases referred to in sub-paragraphs 2 and 3 of paragraph 1 of this Article;
 - 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;
 - 1.3. Any person who is identified for VAT purposes of VAT in Kosovo in which the VAT is due and to whom goods are supplied through distribution systems referred to in paragraph 4 of Article 19 of this Law, if the supplies are carried out by a taxable person not established within Kosovo;
 - 1.4. The Minister of Economy and Finance may issue a sub-legal act to provide the person liable for payment of VAT is the taxable person to whom any of the following supplies are made:
 - 1.4.1. The supply of construction work, including repair, cleaning, maintenance, alteration and demolition services in relation to immovable property;
 - 1.4.2. The supply if staff engaged in activities covered by 1.4.1. of this Article;
 - 1.4.3. The supply of used material, used material which cannot be re-used in the same state, scrap, industrial and non industrial waste, recyclable waste, part processed waste and certain goods and serviles;
 - 1.4.4. The supply of goods provided as security by one taxable person to another in execution of that security;
 - 1.4.5. The supply of goods following the cession of a reservation of ownership to an assignee and the excercising of this right by the assignee;
 - 1.4.6. The supply of immovable property sold by a judgement debtor in a compulsory sale procedure. The Minister of Economy and Finance may, in the above mentioned sub-legal act, specify as well other

- supplies of goods and services and categories of suppliers or recipients to whom these measures may apply.
2. VAT shall be payable by any person who enters the VAT on an invoice.
 3. On importation, VAT shall be payable by any person or persons designated or recognised as liable in accordance with the Kosovo Customs legislation. The Minister of Economy and Finance may, by sub-legal act, determine the conditions that in the case of the importation of goods by taxable persons or certain categories thereof or by persons liable for payment of VAT or certain categories thereof, the payment of VAT due by reason of the importation may be deferred for a period of maximum six months or need not to be paid at the time of importation, on condition that it is entered as such in the VAT return to be submitted in accordance with Article 54 of this Law.
 4. VAT shall be payable by any person who causes goods to cease to be covered by customs warehouses, other warehouses and similar arrangements.
 5. A taxable person who is not established in Kosovo shall appoint a tax representative as the person liable for payment of the VAT, except for the cases defined by sub-paragraph 4 of paragraph 1 of this Article and for exercising all his rights.

CHAPTER XVII

TAX PERIODS AND VAT RETURNS

Article 53

Tax Periods

1. Subject to the paragraphs 2 and 3 of this Article, the tax period of all taxable persons shall be each calendar month.
2. Where a person is:
 - 2.1. Registered for VAT on a date which is not the first day of a calendar month, the first taxable period for that person shall begin on the date of his registration and shall last until the last day of that month, and
 - 2.2. Deregistered for VAT on a date which is not the last day of a calendar month, the last taxable period for that person shall end on the date of his deregistration, having begun on the first day of that month.
3. Liquidation and bankruptcy:
 - 3.1. For a taxable person against whom a liquidation or bankruptcy procedure is initiated, the tax period shall begin on the day of the opening of the liquidation or bankruptcy proceeding. This taxable period shall end on the date of the decision on the conclusion of the liquidation or bankruptcy procedure;
 - 3.2. VAT returns must be submitted on a monthly basis if the business activities are pursued by the liquidator or curator being nominated or appointed administering the liquidation or bankruptcy procedure according to Kosovo legislation.

- 3.3. The Minister of Economy and Finance shall regulate by sub-legal act practical implementation of this article. He may determine a tax period which is different from one month and may require advanced payments for such period for any category of taxable persons.

Article 54

VAT returns, remittance and payments

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.

The tax declaration shall contain:

- 1.1. The amount of all taxable and exempt supplies, exportations and supplies treated as exportations as well as the output tax due on taxable supplies made by him during that period;
 - 1.2. The amount of all purchases and importation as well as input tax for that tax period that the person is entitled to deduct;
 - 1.3. The amount of purchases with VAT which is charged on the recipient as referred to in sub-paragraph 1.4 of Article 52 of this Law;
 - 1.4. Any increase or decrease in respect of the amount mentioned under the sub-paragraphs 1, 2 and 3 of paragraph 1 of this Article, as a result of any adjustment of the taxable amount on basis of debit and credit notes, the adjustments of deduction of input VAT including capital goods or any adjustment as a result of bad debt invoices;
 - 1.5. The net amount of VAT to be paid to TAK or the net amount in excess for the tax period.
2. The form of the declaration, the information to be declared, the place where the declaration shall be submitted and the place and manner of payment of the value added tax due shall be specified by the Minister of Economy and Finance in a sub-legal act.

CHAPTER XVIII

BOOKKEEPING AND STORAGE OF VAT BOOKS, RECORDS AND RELATED DOCUMENTATION

Article 55

Requirement to record information, retaining records and providing access

1. A taxable person shall retain:
- 1.1. All the information contained in invoices, coupons, debit or credit note or in other documents serving for the same purposes, issued by him. Such information shall be recorded in the books and records to be kept by the taxpayer;
 - 1.2. Copies of any tax invoice and bad debt invoice, debit or credit note and any other document serving the same purpose, issued by him;

- 1.3. The originals of any tax invoice and bad debt invoice, debit or credit note and any other document serving the same purpose, issued to him;
- 1.4. All cash payment records and evidence, bank accounts and credit card records which relate to any economic activity carried on by him;
- 1.5. Copies of any contract for: Any importation, any supply of goods and services whether or not VAT was charged and any supply of goods and services which are treated for the purposes of the present law as having taken place outside of Kosovo;
- 1.6. Any Single Administrative Document or any other Customs document relevant to the importation, exportation or any other Customs arrangement.
2. All documents mentioned under paragraph 1 of this Article shall be kept in chronological order with cross reference to each other when having the same taxable event.
3. Retain copies of the Information Technology programs which are used or being used for the administration of the accounting and tax records, books and all other related documents and provide paper copies of these programs which allow reading. Producing and storing invoices and all other tax documents. books and records referred to in this Law in a suitable electronic format or similar system such as microfilms, microfiches and scanned formats, shall only be authorized by the Director General of TAK after receiving a written request thereto from the taxable person. Such request must be accompanied by a detailed description of the system and must contain the necessary evidence that all security in respect of producing and storage requirements for invoice, book and record keeping are met. The agreement between the taxable person and an outsourcing specialist must as well be added if this the supply of these services are outsourced, The taxable person and the outsourcing specialist are jointly and severally shall be severally liable for the payment of the tax.
4. Provide access within reasonable delay to all information as referred to in the paragraphs 1, 2 and 3 of this Article and in particular to the Information Technology systems used for the accounting and tax purposes and to provide all technical assistance for the reading and the understanding of the IT system and programs referred to in paragraph 3 of this Article.
5. The Minister of Economy and Finance shall issue a sub-legal act for the implementation of this article.

Article 56

Storage of invoices, bad debt invoices, credit and debit notes, simplified invoices, coupons and documents serving as invoices, books and records

1. Every person having obligations and rights imposed by this Law, shall ensure that copies of the invoices, bad debt invoices, credit and debit notes, simplified invoices, coupons and documents serving as invoices issued by himself, or by his customer or, in his name and on his behalf, and all the invoices which he has received as well as all books and records, registers and all other imposed proof documents. are stored for at least a period of six years which starts on the first of January after the year in which the taxable event took place.

The same rules are valid in respect of electronic storage of such documents, books, records and registers.

2. Every person having obligations and rights imposed by this Law, shall keep the documents referred to in paragraph 1 of this Article in ranking order of a sequential number. That sequential number shall figure as well on the original document issued to his customer.
3. Place of storage:
 - 3.1. Every person, having obligations and rights imposed by this Law, may decide the place of storage of all the documents referred to in paragraph 1 of this article. The taxable person shall inform TAK of that place;
 - 3.2. TAK shall have access to that place and all documents must as well be made available to TAK at the place where he has his business or has his fixed establishment, or, in the absence of such a place, the place where he has his permanent address or usually resides in Kosovo, without undue delay whenever TAK so request.

Article 57

Period of storage of books and all VAT records

1. By way of derogation from what is defined in Article 12 of the amended Law No. 2004/48 On Tax Administration and Procedures a taxable person shall:
 - 1.1. Keep his books required by this Law for a period of at least six (6) years which starts after the year in which such books are closed;
 - 1.2. Keep all other records and documents as required by the Articles 55 and 56 of this Law, for a period for at least six (6) years which starts after the year in which the VAT liability arose, the VAT deduction or the VAT adjustment occurred;
 - 1.3. Respect the same rules in respect of electronic storage of such books, records and registers.
2. The Minister of Economy and Finance shall issue a sub-legal act for the implementation of this Article.

CHAPTER XIX SPECIAL SCHEMES

Article 58

Special schemes for travel agents

1. Principle:
 - 1.1. The Minister of Economy and Finance, by a sub-legal act, provide for a special scheme for travel agents;
 - 1.2. Such special scheme may be applied to transactions carried out by travel agents who deal with customers in their own name and use supplies of goods or services provided by other taxable persons, in the provision of travel facilities;

- 1.3. The application of the special scheme shall not apply to travel agents where they act solely as intermediaries and to whom sub-paragraph 3 of paragraph 6 of Article 24 of this Law applies for the purposes of calculating the taxable amount.
2. Definitions:
 - 2.1. Tour operator means a person who acts in his own name and who organizes package tours with own means for travellers;
 - 2.2. Travel agent means a person who acts as an intermediary and arranges transportation, accommodations, and tours for travellers;
 - 2.3. For the purposes of this article, tour operators shall be regarded as travel agents.
3. Single service:
 - 3.1. The transactions made, in accordance with the conditions of paragraph 1 of this article, by the travel agent in respect of a journey, shall be regarded as a single service supplied by the travel agent to the traveller;
 - 3.2. The single service is taxable in Kosovo if the travel agent has established his business or has a fixed establishment in Kosovo from which he carries out the supply of services;
 - 3.3. The taxable amount and the price exclusive of VAT in respect of the single service provided by the travel agent shall be the travel agent's margin, being the difference between the total amount, exclusive of VAT, to be paid by the traveller and the actual cost to the travel agent of supplies of goods or services provided by other taxable persons, where those transactions are for the direct benefit of the traveller;
 - 3.4. If transactions entrusted by the travel agent to other taxable persons are performed by such persons outside Kosovo, the supply carried out by the travel agent shall be regarded as an intermediary activity exempted pursuant article 34 of this Law;
 - 3.5. If the transactions are performed both inside and outside Kosovo, only that part of the travel agent's service relating to the transactions outside of Kosovo may be exempted;
 - 3.6. VAT charged to the travel agent by other taxable persons in respect of transactions which are referred to in paragraph 3 of this Article and which are for the direct benefit of the traveller shall not be deductible or refundable.

Article 59

Special arrangements applicable to second-hand goods, works of art, collectors' items and antiques: Profit margin scheme and special arrangements for sales by public auction

Part A: Profit margin scheme

1. Principle: The Minister of Economy and Finance may, by sub-legal act, provide for special arrangements for taxing the profit margin of taxable dealers in respect of the supply of second-hand goods, works of art, collectors' items and antiques, as well as for simplifying the procedure for collecting the tax.

2. For the purposes of this arrangement, a taxable dealer means any taxable person who, in the course of his economic activity and with a view to resale, purchases, or applies for the purposes of his business, or imports, second-hand goods, works of art, collector's items or antiques, whether that taxable person is acting for himself or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale. "Second hand goods", "works of art", "collector's items", "antiques" and other specific terms used in the special scheme such as "selling price" and "purchase price" will be defined in the sub-legal act as referred to in paragraph 1 of this article.
3. The margin scheme applies to the supply by a taxable dealer of second-hand goods, work of art, collector's items or antiques where those goods have been supplied to him within Kosovo by one of the following persons:
 - 3.1. A non-taxable person;
 - 3.2. Another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to the Articles 27 and 28 of this Law;
 - 3.3. Another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.
4. The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price of these goods. The taxable amount in respect of the supply of second-hand goods, works of art, collector's items and antiques shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.
5. The taxable dealers shall be granted the right to opt for application of the margin scheme for the following transactions:
 - 5.1. The supply of works of art, collectors' items and antiques, which the taxable dealer has imported himself,
 - 5.2. The supply of works of art supplied to the taxable dealer by their creators or their successors in title;
 - 5.3. If a taxable dealer exercises the option under paragraph 5 of this article, the taxable amount shall be determined in accordance with paragraph 4 of this article.
6. In the case of import of work of art, collectors' items or antiques by the taxable dealer himself, the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable amount on importation plus the VAT paid on importation.
7. The chargeability for VAT, the entitlement of input VAT deduction in respect of supplies second-hand goods, works of art, collectors' item or antiques subject to the margin scheme and the records and accounts to be kept, shall be specified in the sub-legal act referred to in paragraph 1 of this Article.
8. Simplified procedures for collecting the VAT:
 - 8.1. The Minister of Economy and Finance may also apply simplified procedures for collecting the VAT for certain transactions or for certain categories of taxable dealers, in particular in respect of the taxable amount of supplies of goods subject to the margin scheme;

- 8.2. .The taxable dealer may also opt for the application of the normal VAT arrangements to any supply covered by the margin scheme with entitlement to deduct from the VAT for which he is liable, the VAT due or paid on the import or the VAT due or paid in respect of the work of art supplied to him by its creator, or the creator's successors intitle, or by a taxable person other than a taxable dealer;
- 8.3. .The right of deduction of input VAT shall arise at the time when the VAT due on the supply in respect of which the taxable dealer opts for application of the normal VAT arrangements, becomes chargeable.

Part B: Special arrangements for sales by public auction.

9. Principle: The Minister of Economy and Finance may apply special provisions different from paragraph 4 of this Article in respect of the determination of the taxable amount of supplies of second-hand goods, works of art, collectors' items or antiques effected by an organiser of sales by public auction, acting in his own name, pursuant to a contract under which commission is payable on the sale of those goods by public auction, on behalf of persons as will be determined by the Minister of Economy and Finance.
10. Special obligations shall be imposed on the organiser of the sale by public auction in respect of the issue of an invoice or a document in lieu to the purchaser as well as in respect of the content of such documents.

Article 60

Flat rate scheme for farmers

1. 1.Principle: The Minister of Economy and Finance may, by a sub-legal act provide for the application to farmers whose activities are carried out in an agricultural, forestry or fisheries undertaking, a flat-rate scheme in order to offset VAT charged on purchases of goods and services made by the flat-rate farmers,
2. The application for a flat-rate farmer who is entitled to flat-rate compensation, the flat-rate compensation percentages to be applied to the prices exclusive of VAT, of the following goods and services:
 - 2.1. Agricultural products supplied by flat-rate farmers to taxable persons not covered in Kosovo by the flat-rate sheme;
 - 2.2. Agricultural services supplied by flat-rate farmers to taxable persons not covered in Kosovo by the flat-rate sheme;
 - 2.3. The flat-rate compensation percentages may vary for forestry, for the different sub-sectors of agriculture and for fisheries.
3. Certain categories of farmers may be excluded from the flat-rate scheme as well as farmers for whom application of the normal arrangements is not likely to give rise to administrative difficulties.
4. Every flat-rate farmer may opt, subject to the rules and conditions laid down in the sub-legal act referred to in paragraph 1 of this article, for the normal VAT arrangements.
5. The sub-legal act to be issued by the Minister of Economy and Finance shall as well define:

- 5.1. Farmer, agricultural, forestry or fisheries undertakings, flat-rate farmer, agricultural products, agricultural services, input VAT charged, flat-rate compensation;
- 5.2. The flat-rate compensation percentages; and
- 5.3. The deduction of input VAT charged on capital goods.

Article 61

Special scheme for electronically supplied services

1. Principle: The Minister of Economy and Finance may permit by sub-legal act any non-established taxable person in Kosovo supplying electronic services to a non-taxable person who is established in Kosovo or who has his permanent address or usually resides in Kosovo, to use the special scheme for all electronic supplied services as meant by sub-paragraph 3.2.8 of Article 20 of this Law and enumerated in Annex II of this Law.
2. The non-established taxable person shall state to TAK when he commences or ceases his activity as a taxable person, or changes that activity in such a way that he no longer meets the conditions necessary for use of this special scheme. He shall communicate that information electronically and shall request a read receipt for this message.
3. The information that the non-established taxable person must provide to TAK when he starts taxable activity, shall contain the following details:
 - 3.1. Name;
 - 3.2. Postal address;
 - 3.3. Electronic addresses, including websites;
 - 3.4. National tax number, if any;
 - 3.5. A statement that the person is not identified for VAT purposes in Kosovo. The non-established taxable person shall notify TAK of any changes in the information provided.
4. The Minister of Economy and Finance shall, in the sub-legal act referred to paragraph 1 of Article 61 of this Law, provide in particular instructions in respect of:
 - 4.1. The registration and the cancellation of the registration;
 - 4.2. The VAT- return to be submitted by electronic means and the payments to be executed when submitting such VAT return on a quarterly basis;
 - 4.3. The manner how refunds can be made;
 - 4.4. The records to be kept of the transactions covered by this special scheme, how long the records must be kept and how the records must be made available electronically on request of TAK.

Article 62

Special scheme for investment gold

1. Principle:
The Minister of Economy and Finance may, by sub-legal act provide for the application of a special scheme for investment gold:

2. Definitions: For the purposes of this scheme, “investment gold” shall mean:
 - 2.1. Gold in the form of a bar or a wafer of weights accepted by the bullion markets of a purity equal to or greater than nine hundred and ninety-five (995) thousand, whether or not represented by securities, except for small bars or wafers of a weight less than one (1) gram,
 - 2.2. Gold coins which:
 - 2.2.1. Have a purity equal to or greater than nine hundred (900) thousand;
 - 2.2.2. Were minted after the year 1800;
 - 2.2.3. Are or have been legal tender in the country of origin; and
 - 2.2.4. Are normally sold at a price which does not exceed the open market value of the gold contained in the coins by more than eighty percent (80%). For the purposes of this scheme, such coins shall not be considered to be sold for numismatic interest.
3. Exemptions for investment gold transactions.
The following shall be exempt from VAT:
 - 3.1. Supplies and importation of investment gold, including investment gold represented by certificates for allocated or unallocated gold or traded on gold accounts and including, in particular, gold loans and swaps, involving a right of ownership or claims in respect of investment gold, as well as transaction concerning investment gold involving futures and forward contracts leading to a transfer of right of ownership or claim in respect of investment gold,
 - 3.2. Services of agents who act in the name and for the account of another who they intervene in supplies of investment gold for their principal.
 - 3.3. Taxation option:
 - 3.3.1. Notwithstanding the provisions of paragraph 3 of this Article, taxable persons producing investment gold or processing any gold into investment gold shall have the right to opt to tax investment gold if they supply it to another taxable person;
 - 3.3.2. Taxable persons who in their trade normally supply gold to another taxable person for industrial purposes shall also have the right to opt to tax investment gold from sub-paragraph 2.1 of this Article. The scope of the option may be restricted;
 - 3.3.3. If the supplier from 3.3.1 and 3.3.2 of this Article, decides to opt for taxation, the agent carrying out services as referred to in 3.3.2 of this Article shall also have the right to opt for taxation.
4. Special rights and obligations for traders in investment gold:
 - 4.1. Where his subsequent supply of investment gold is exempt pursuant to this article, the taxable person is entitled to deduct the following:
 - 4.1.1. The VAT due or paid in respect of investment gold supplied to him by a person who opted for taxation in accordance with paragraph 3 of this Article;
 - 4.1.2. The VAT due or paid in respect of a supply made to him or an importation of gold other than investment gold, carried out by him, which is subsequently transformed by him or on behalf of him, into investment gold;

- 4.1.3. The VAT due or paid for the services supplied to him consisting of change of form, weight or purity of gold including investment gold.
- 4.2. A taxable person who produces investment gold or transforms gold into investment gold may deduct VAT due or paid by him for the supply or importation of goods or services linked to the production or transformation of such gold as if the subsequent supply of the gold exempt under the scheme were taxed.
5. Special obligations for taxable persons trading in investment gold. Taxable persons shall keep records of investment gold transactions and keep documentation for ten (10) years after the end of the year to which such documents refer, regardless of what is defined in the Law No. 2004/48, on Tax Administration and Procedures.

CHAPTER XX FINAL PROVISIONS

Article 63 Applicable Law and Tax Authorities

This Law shall, subject to Article 64 of this Law, supersede the VAT Law No. 03/L-114 of 18 December 2008

2. Tax Authorities:

- 2.1. TAK shall have the exclusive responsibility to administer VAT;
- 2.2. The Customs Service of the Republic of Kosovo shall, on behalf of TAK, assess, levy and collect VAT on imports, exports and other Customs arrangements, and undertake as well any other function relating to the administration of VAT, as may be required.

Article 64 Transitional period – Transitional provisions

1. A transitional period enables the Kosovo VAT legislation in specific fields to be gradually adapted to the European Union VAT legislation.
- 1.1. During the transitional period certain provisions of these specific fields as referred to in paragraph 3 of this Article, will not be implemented during the transitional period. This is in particular valid for the move to the exemptions without right of deduction of input VAT as referred to in the Articles 27 and 28 of Chapter VIII; for the introduction of the special schemes as referred to in Chapter XIX, except for the special scheme for electronically supplied services as referred to in article 61; and for the signature obligation on invoices.
- 1.2. during the transitional period, certain provisions relative to import and supplies as referred to in paragraph 4 of this Article ,remain exempted during the transitional period. These provisions relate primarily to imports and supplies made within the context of projects and programs for

rebuilding Kosovo, as well as imports and supplies made within the context of the agricultural field.

2. The transitional period starts on 1 January 2010 and ends on 31 December 2012. This transitional period may be prolonged or reduced on a proposal made by the Minister of Economy and Finance, which is approved by the Assembly. Such a proposal must include an evaluation of the budgetary, economic and social effects of the implementation vis-a-vis the non-implementation of the provisions in question and fully justify the reasons for making the change.
3. The non-implementation on 1 January 2010 during the transitional period is put in place for:
 - 3.1. The sub-paragraphs 4; 5; 10; 11; 12 of paragraph 1; the part of sub-paragraph 14 of paragraph 1 which relates to sub-paragraph 12 of paragraph 1 of Article 27 of this Law;
 - 3.2. The paragraph 2 of Article 27 of this Law;
 - 3.3. The part of paragraph 3 of Article 27 which relates to paragraph 2 of Article 27 of this Law;
 - 3.4. The part of paragraph 4 of Article 44 of this Law which concerns the signature obligation of the invoice;
 - 3.5. The chapter XX in respect of the special schemes except for the special scheme for electronically supplied services as referred to in Article 61 of this Law.
4. The implementation on 1 January 2010 during the transitional period of provisions which have their equivalent in the VAT Regulation No. 2001/11 as amended and in the VAT Law 03/L-114:
 - 4.1. The paragraph 2 of Article 29 of this Law;
 - 4.2. The paragraph 2 of Article 30 of this Law;
 - 4.3. The paragraph 2 of Article 33 of this Law;
 - 4.4. The paragraph 3 of Article 33 of this Law.
5. TAK shall continue to apply the VAT Regulation No. 2001/11 as amended and the VAT Law No. 03/L-114, when considering any tax issues related to tax periods up to and including the tax periods before the entry into force of the present VAT Law that might arise on or after that date.

Article 65

Implementation

1. The Minister of Economy and Finance shall issue the sub-legal acts required by and referred to in this Law within a period of six months commencing on the date of entry into force of this Law.
2. The Director may also issue public rulings in accordance with Article 9 of the Law No. 2004/48 on Tax Administration and Procedures for administering this Law and for providing commentaries and additional explanations.
3. The present Law shall be applied from 1 January 2010.

Article 66
Entry into force

This law enter into force fifteen (15) days after publication in the Official Gazette of the Republic of Kosova.

Law No.03/L- 146

29 December 2009

President of the Assembly of the Republic of Kosovo

Jakup KRASNIQI

ANNEX I
LIST OF THE ACTIVITIES REFERRED TO IN THE THIRD PARAGRAPH
OF ARTICLE 4:

1. Telecommunications services;
2. supply of water, gas, electricity and thermal energy;
3. transport of goods;
4. port and airport services;
5. passenger transport;
6. supply of new goods manufactured for sale;
7. transactions in respect of agricultural products, carried out by agricultural intervention agencies pursuant to Regulations on the common organisation of the market in those products;
8. organisation of trade fairs and exhibitions;
9. warehousing;
10. activities of commercial publicity bodies;
11. activities of travel agents;
12. running of staff shops, cooperatives and industrial canteens and similar institutions;
13. activities carried out by radio and television bodies in so far as these are not exempt pursuant to subparagraph 1.16 of Article 27.
14. Service for sewerage, offscourings and soil disposal by the municipal and public bodies.

ANNEX II
INDICATIVE LIST OF THE ELECTRONICALLY SUPPLIED SERVICES
REFERRED TO IN POINT (K) OF SUB-PARAGRAPH 3.2.9 OF ARTICLE
20

1. Website supply, web-hosting, distance maintenance of programmes and equipment;
2. supply of software and updating thereof;
3. supply of images, text and information and making available of databases;
4. supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events;
5. supply of distance teaching.

ANNEX III:
LIST OF SUPPLIES OF GOODS AND SERVICES TO WHICH THE
REDUCED RATES REFERRED TO IN ANNEX III OF PARAGRAPH 2 OF
ARTICLE 26 MAY BE APPLIED:
Limited list of items subject to a reduced rate of VAT six percent (6%):

1. Foodstuffs (including beverages but excluding alcoholic beverages) for human consumption; seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs;
2. Supply of water; and
3. Supply of services provided in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Paragraph 3 of Article 4 of this Law.

Alternative list if there is a desire to further limit the six percent (6%) reduced rate:

Goods and Services to which a reduced rate is to be applied:

1. Rice, Cereal grains such as barley, corn, maize, oats, rye, and wheat
2. Products made from cereal grains intended for human consumption and containing at least fifty percent (50%) of the cereal grain, such as flour, breakfast cereals, pastas, bread, etc.
3. Soybeans and products intended for human consumption containing at least twenty-five percent (25%) soybeans or soybean extracts.
4. Sugar, refined and unrefined, including confectioners' sugar intended for human consumption
5. Vegetables, raw and processed, frozen or canned, intended for human consumption, including potatoes and potato products, tomatoes and tomato products, and similar vegetables and their products which include at least 50% of the vegetable in the product.
6. Fish – frozen, fresh and canned - intended for human consumption
7. Meat, including beef, chicken, lamb, and pork and their products intended for human consumption, so long as the respective product contains a minimum of 50% of the meat in the product.
8. Cooking oils made from grains or oil seeds intended for use in cooking for human consumption
9. Milk and milk products intended for human consumption
10. Beverages, excluding alcoholic and carbonated beverages, intended for human consumption
11. Fruits and fruit products intended for human consumption so long as the fruit product contains a minimum of 50% of a fruit or fruits

LIST OF SUPPLIES OF GOODS AND SERVICES TO WHICH THE REDUCED RATES REFERRED TO IN ANNEX III OF THE COUNCIL DIRECTIVE 2006/112/EC of 28 NOVEMBER 2006 PARAGRAPH 2 OF ARTICLE 26 MAY BE APPLIED

1. Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs.
2. Supply of water;

3. Pharmaceutical products of a kind normally used for health care, prevention of illnesses and as treatment for medical and veterinary purposes, including products used for contraception and sanitary protection;
4. Medical equipment, aids and other appliances normally intended to alleviate or treat disability, for the exclusive personal use of the disabled, including the repair of such goods, and supply of children's car seats;
5. Transport of passengers and their accompanying luggage;
6. Supply, including on loan by libraries, of books (including brochures, leaflets and similar printed matter, children's picture, drawing or coloring books, music printed or in manuscript form, maps and hydrographic or similar charts), newspapers and periodicals, other than material wholly or predominantly devoted to advertising;
7. Admission to shows, theatres, circuses, fairs, amusement parks, concerts, museums, zoos, cinemas, exhibitions and similar cultural events and facilities;
8. Reception of radio and television broadcasting services;
9. Supply of services by writers, composers and performing artists, or of the royalties due to them;
10. Provision, construction, renovation and alteration of housing, as part of a social policy;
11. Supply of goods and services of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings;
12. Accommodation provided in hotels and similar establishments, including the provision of holiday accommodation and the letting of places on camping or caravan sites;
13. Admission to sporting events;
14. Use of sporting facilities;
15. Supply of goods and services by organizations recognized as being devoted to social wellbeing by Member States and engaged in welfare or social security work, in so far as those transactions are not exempt pursuant to Articles 132, 135 and 136;
16. Supply of services by undertakers and cremation services, and the supply of goods related thereto;
17. Provision of medical and dental care and thermal treatment in so far as those services are not exempt pursuant to points (b) to (e) of Article 132(1);
18. Supply of services provided in connection with street cleaning, refuse collection and waste treatment, other than the supply of such services by bodies referred to in Article 13.

**LIST OF SUPPLIES OF GOODS AND SERVICES TO WHICH THE
INCREASED RATES REFERRED TO IN PARAGRAPH 2 OF ARTICLE 26
MAY BE APPLIED**

Goods and Services to which an increased rate it to be applied:

1. Passenger Vehicles sold in Kosovo to the initial user of the vehicle, which are sold for a price, including all options and normal services performed at the time of sale, of 25,000 euros or more;

2. Alcoholic beverages with an alcohol content of 8% (15%) or higher;
3. Tobacco and tobacco products; and
4. Perfumes and Eau de Cologne

ANNEX IV: AGRICULTURAL PRODUCTS

Description	Code
Live bovine animals, pure-bred breeding animals	0102 10 0103 1000
Live swine, pure-bred breeding animals	0104 1010
Live sheep, pure-bred breeding animals	0104 2010
Live goats, pure-bred breeding animals	
Live poultry, that is to say, fowls of the species <i>Gallus domesticus</i> , ducks, geese, turkeys and guinea fowls, weighing not more than 185 g	0105 11 to 0105 19
Live trees and other plants; bulbs, roots and the like, as described within the headings listed in the following column	0601 and 0602
Potatoes, seed	0701 1000
Onions, sets	0703 1011
Spelt for sowing	1001 9010
Common wheat and meslin, seed	1001 9091
Rye, seed	ex 1002 0000
Barley, seed	1003 0010
Oats, seed	ex 1004 0000
Maize (corn), seed	1005 10
Soya beans, for sowing	1201 0010
Sunflower seeds, for sowing	1206 0010
Seeds, fruit and spores, of a kind used for sowing	1209
Residues and waste from the food industries, as described within the headings listed in the following column	2301 to 2308
Preparations of a kind used in animal feeding (other than dog or cat food, put up for retail sale)	2309 90
Fertilisers, as described within the headings of the chapter listed in the following column	Chapter 31
Fungicides	3808 20
Herbicides, anti-sprouting products and plant-growth regulators	3808 30 3808 9010
Rodenticides	8419 3100

Dryers, for agricultural products.	
Mechanical appliances (whether or not hand-operated) for projecting, dispersing or spraying liquids or powders, agricultural or horticultural.	8424 8110 to 8424 8199
Pneumatic elevators and conveyors specially designed for use in agriculture.	8428 2030
Loaders specially designed for use in agriculture.	8428 9071 and 8428 9079
Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers	8432
Harvesting or threshing machinery, including straw or fodder balers; grass or hay mowers (other than mowers for lawns, parks or sportsgrounds); machines for cleaning, sorting or grading eggs, fruit or other agricultural produce, other than machinery of heading 8437.	8433 20 to 8433 90
Milking machines and dairy machinery .	8434
Other agricultural, horticultural, forestry, poultry keeping or bee- keeping machinery, including germination plant fitted with mechanical or thermal equipment; poultry incubators and brooders.	8436
Pedestrian-controlled tractors.	8701 1000
Agricultural tractors (excluding pedestrian-controlled tractors) and forestry tractors, wheeled	8701 9011 to 8701 9050



LAW No. 03/L-161 -
ON PERSONAL INCOME TAX



LAW Nr.03/L-161

ON PERSONAL INCOME TAX Assembly of Republic of Kosovo,

In conformity with the Article 65.1 of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON PERSONAL INCOME TAX

CHAPTER I GENERAL PROVISIONS

Article 1 Purpose

This Law sets the system of Personal Income Tax in the territory of the Republic of Kosovo.

Article 2 Definitions

1. Terms used in this Law have the following meaning
 - 1.1. **Economic activity** - any activity of producers, traders or persons supplying goods or services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purposes of obtaining income there from on a continuing basis shall in particular be regarded as an economic activity;
 - 1.2. **Capital Assets** - tangible and intangible property that costs more than one thousand (1,000) €, with the time of use of one or more years;
 - 1.3. **Intangible property** - patents, copyrights, licenses, franchises and other property that consists of rights only, but has no physical form.
 - 1.4. **Dividend** - a distribution by a company to a shareholder:
 - 1.4.1. Of cash or share with respect to the shareholder's equity interest in the company; and
 - 1.4.2. Of property other than cash or share, unless such property is distributed as a result of liquidation;
 - 1.5. **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.
 - 1.6. **Self-employed person** - any natural person who works for personal gain, in cash or in goods, that is not covered by the definition of an employee

under the present law. A self-employed person includes a personal business enterprise and a partner engaged in an economic activity.

- 1.7. **Employer** – any person or entity that pays wages among others:
 - 1.7.1. A public authority;
 - 1.7.2. A permanent establishment of a non-resident person;
 - 1.7.3. A non-governmental organization;
 - 1.7.4. An international organization, including KFOR, with the exception of the United Nations, its Specialized Agencies and the International Atomic Energy Agency;
- 1.8. **Principal employer** - the employer designated by the employee as such at a time and in the manner set out in a sub-legal act issued by the Minister;
- 1.9. **Wages** –financial and other kinds of compensation, including goods, bonuses, favors, services, or barter, paid in connection with employment in Kosovo.
- 1.10. **Taxable Wages** - wages paid per Article 9.1 of this law, discounting those amounts excluded from gross income from wages per Articles 9.2 and 9.3 of this law.
- 1.11. **Foreign source income** - gross income that is not Kosovo source income;
- 1.12. **Kosovo source income** - gross income that arises in Kosovo, as follows:
 - 1.12.1. Wages from work performed in Kosovo;
 - 1.12.2. Income from economic activities where such activity is developed in Kosovo;
 - 1.12.3. Income from the use of movable or immovable property in Kosovo;
 - 1.12.4. Income from the use of intangible property in Kosovo;
 - 1.12.5. Interest on a debt obligation paid by a resident or a public authority;
 - 1.12.6. Dividends paid by a resident business organization;
 - 1.12.7. Gain from the sale of movable and immovable property, or securities located in Kosovo; and
 - 1.12.8. Other income not included above.
- 1.13. **Person** - for purposes of this law shall include the following:
 - 1.13.1. a natural person,
 - 1.13.2. a legal person, which in a general term means any organization, including any business organization that has, as a matter of law, a legal identity that is separate and distinct from its members, owners or shareholders, such as, but is not limited to, joint stock company and limited liability company;
 - 1.13.3. A partnership, which means a general partnership, a limited partnership or similar pass-through arrangement that is not a legal person and that proportionately shares items of capital, income, and loss among its partners; and
 - 1.13.4. A grouping or association of persons, including consortiums, but excluding partnerships, set up for a common purpose of a specific economic activity. An association is two or more individuals, companies, organizations or governments (or any combination of

these entities) with the objective of participating in a common activity or pooling their resources for achieving a common goal.

Each participant retains its separate legal status and the association's control over each participant is generally limited to activities involving the joint endeavor, particularly the division of profits. An association is formed by contract, which delineates the rights and obligations of each member;

- 1.14. **Entity** - a corporation or other business organization that has the status of a legal person, a business organization operating with public and socially owned assets, a non-governmental organization registered in conformance with legislation on Registration and Operation of Non-Governmental Organizations in Kosovo, and a permanent establishment of a non-resident. The term entity does not include a personal business enterprise, grouping or association of persons, or a partnership;
- 1.15. **Personal business enterprise** - a natural person engaged in business who is not an agent or employee of another economic activity;
- 1.16. **Public authority** - a central, regional, municipal, or local authority, public body, ministry, department, or other authority that exercises public executive, legislative, regulatory, administrative or judicial power;
- 1.17. **Permanent Establishment** - a fixed place of business through which the business of a non-resident person is wholly or partly carried on in Kosovo, as described "in Article 35 of this Law."
- 1.18. **Related persons** - persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationship is considered when:
 - 1.18.1. The persons are officers or directors of one another's business;
 - 1.18.2. The persons are partners in business;
 - 1.18.3. The persons are in an employer-employee relationship;
 - 1.18.4. One person holds or controls fifty percent (50%) or more of the shares or voting rights in the other legal person
 - 1.18.5. One person directly or indirectly controls the other person;
 - 1.18.6. Both persons are directly or indirectly controlled by a third person;or
 - 1.18.7. The persons are husband or wife or relatives to the third degree inclusive or in-law to the second degree inclusive;
- 1.19. **Open Market value** - that amount that, in order to obtain the goods or services in question at that time, a customer at the same market stage at which the supply of the same or similar goods or services takes place, would have to pay, under conditions of fair competition, to a supplier at arm's length;
- 1.20. **Resident** - A natural person who has a principal residence in Kosovo, or is physically present in Kosovo for 183 days or more in any twelve-month period of time; or an entity, personal business enterprise, partnership, or association of persons which is established in Kosovo or has its place of effective management in Kosovo.

- 1.21. **Main residence** – also known as “Permanent residence”, - a place where a natural person has his/her usual place of residence or lives permanently; the place where the natural person is subject to income tax for the reason of residence or dwelling
- 1.22. **Non-resident** - any person or entity that is not a resident;
- 1.23. **Representation costs** - all costs related to promotion of the business and include business entertainment and representation costs;
- 1.24. **Involuntary conversion** - property, in whole or in part, that is destroyed, stolen, seized, or condemned, or the taxpayer is otherwise forced to dispose of it by reason of threat or imminence mentioned before;
- 1.25. **Immovable property** – for tax purposes, all the land and buildings or structures under and above land surface and related to the land, including the property that is additive (subsidiary) to immovable property; the rights to which there are applied the provisions of the general Law which respects land property; usufruct of the immovable property; and the rights to variable payments and fixed as consideration for working ,or the right to work, the mineral source, sources and other natural reserves.
- 1.26. **Royalty** - payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work including cinematograph films, and patent, trade mark, design or model plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
- 1.27. **Subcontractor** - any person performing a part of a comprehensive project which has been undertaken by a prime contractor. The subcontractor is directly engaged in the execution and realization of the comprehensive project and acts on behalf of the prime contractor. The period spent by a subcontractor working on a comprehensive project is considered as being time spent by a prime contractor on the project.
- 1.28. **Prime Contractor/ Contractor** – any business, whether an organization or individual, which has agreed to carry out operations under any legal binding document signed by the beneficiary, either by doing the operations itself or by arranging for them to be done by others
- 1.29. **Constructive acceptance** – for taxpayers with base in cash, that the income are accepted in a constructive way when they have been disposed for taxpayers without substantial restrictions, as credit in his amount, are put alongside for him, or otherwise they have been disposed in that way that he can withdraw them every time, or in that way that he could withdraw them during the taxable year if there has been given the notification for the purpose of withdrawal.
- 1.30. **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.
- 1.31. **Tax period** – calendar year or every other period of the reporting, foreseen by this Law.
- 1.32. **Financial evidences** – financial evidences with general purposes prepared in accordance with the legislation that regulates Kosovo Board on

Standards for Financial reporting and legislation that regulates financial reporting of business organizations (trading company);

1.33. **KTA** – Kosovo Tax Administration

1.34. **Minister** - Minister of the Ministry of Economy and Finance

1.35. **Kosovo** - shall include all the land, inland waters and airspace of Kosovo, as defined by the Constitution of the Republic of Kosovo.

1.36. **Operating leasing** – every leasing that is not a financial leasing.

1.37. **Financial leasing** – a leasing that transfers, in a substantial way, all casual risks and rewards for the ownership of a property item. The title can or can not be transferred to the end of leasing. A financial leasing fulfills one of the four following conditions:

1.37.1. if the longevity of the leasing exceeds seventy-five percent (75%) of the longevity of the property

1.37.2. if there exists a transfer of ownership in the leasing-receiver at the end of leasing term

1.37.3. if there exists a possibility to purchase the property in an “ agreed prize” at the end of leasing term if the actual value of leasing payments, decreased in an adequate decrease rate, exceeds ninety percent (90%) of the open market value for property.

Article 3

Taxpayers

According to this law taxpayers are resident and non-resident natural persons, personal business enterprise, partnerships, or associations of persons who receive or accrue gross income described in Article 7 of this Law during the tax period.

Article 4

Object of taxation

1. The object of taxation for a resident taxpayer shall be taxable income from Kosovo source income and foreign source income.
2. The object of taxation for a non-resident taxpayer shall be taxable income from Kosovo source income.

Article 5

Taxable income

Taxable income for a tax period shall mean the difference between gross income received or accrued during the tax period and the deductions allowable under the present law with respect to such gross income.

Article 6

Tax rates

1. For taxable income in tax period that begins on 1 January 2009 and following tax periods, personal income tax shall be charged at the following rates:
 - 1.1. For taxable income 960 euro or less, zero percent (0%);
 - 1.2. For taxable income over nine hundred and sixty (960) € up to three thousand (3.000) euro, including also the amount of three thousand (3.000) €, four percent (4%) of the amount over nine hundred and sixty (960) €;
 - 1.3. For taxable income over three thousand (3.000) € up to five thousand and four hundred (5.400) €, including also the amount of five thousand and four hundred (5.400) €, eighty-one euros and sixty cents (€81.6) plus eight percent (8%) of the amount over three thousand (3.000) €; and
 - 1.4. For taxable income over five thousand and four hundred (5.400) €, two hundred and seventy-three euros and sixty cents (€273.6) plus ten percent (10%) of the amount over five thousand and four hundred (5.400) €.
2. For income taxable in tax periods prior to 1 January, 2009, income is taxed at the following rates:
 - 2.1. For taxable income nine hundred and sixty (960) € or less, zero percent (0%);
 - 2.2. For taxable income over nine hundred and sixty (960) euro up to three thousand (3.000) €, including also the amount of three thousand (3.000) €, five percent (5%) of the amount over nine hundred and sixty (960) €;
 - 2.3. For taxable income over three thousand (3.000) € up to five thousand and four hundred (5.400) €, including also the amount of five thousand and four hundred (5.400) €, one hundred and two (102) € plus ten percent (10%) of the amount over three thousand (3.000) €; and
 - 2.4. For taxable income over five thousand and four hundred (5.400) €, three hundred and forty-two (342) € plus twenty percent (20%) of the amount over five thousand and four hundred (5.400) €.

Article 7

Gross income

1. Except for income that is exempted under the present law, gross income means all income actually or constructively received from the following sources:
 - 1.1. Wages
 - 1.2. Rents
 - 1.3. The use of intangible property
 - 1.4. Interest, except interest which is exempted under this law
 - 1.5. Replacement income, such as that mentioned in Article 8.1.8 of this Law;
 - 1.6. Capital Gains resulting from an increase or decrease in the value of shares
 - 1.7. . Capital Gains resulting from an installment sale of a capital asset
 - 1.8. Lottery Winnings and, in accordance with Article 49, winnings in Games of Chances.

- 1.9. Pensions paid by a previous employer, or according to the Law on Pensions in Kosovo
- 1.10. Economic activity generated by businesses with annual gross income of fifty thousand euros (50,000) € or less unless those businesses have opted to maintain books and records required in Article 33 of this law.
2. Except as provided in paragraph 1 of this Article, gross income also means all income accrued from the following sources:
 - 2.1. .Economic activity
 - 2.2. .Capital Gains, except those Capital Gains described in paragraph 1 of this Article
 - 2.3. .Any other income not described in the sub-law act issued by the Minister.

Article 8

Exempt income

1. The following income shall be exempt from personal income tax:
 - 1.1. .Wages of foreign diplomatic and consular representatives and foreign personnel of Embassies and foreign Liaison Offices in Kosovo, as defined in applicable legislation on the establishment and functioning of liaison offices and diplomatic services in Kosovo;
 - 1.2. .Wages of foreign representatives, foreign officials and foreign employees of international governmental organizations and international non-governmental organizations that have registered in accordance with applicable legislation in Kosovo and have received and maintained public benefit status under such legislation;
 - 1.3. Wages of foreign representatives, foreign officials and foreign employees of donor agencies or their contractors or grantees carrying out humanitarian aid, reconstruction work, civil administration or technical assistance within Kosovo;
 - 1.4. . Wages received by foreign and locally- recruited officials of the United Nations and its Specialized Agencies, and the International Atomic Energy Agency, which according to the present law shall include foreign and locally recruited UNMIK personnel as defined in legislation regarding the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo. The same exemption shall apply to entitled and duly authorized international inter-governmental financial institutions operating in Kosovo.
 - 1.5. Wages of foreign personnel of KFOR; ICO and EULEX.
 - 1.6. Compensation for the damage or destruction of property;
 - 1.7. Proceeds of life insurance policies payable as the result of the death of the insured person;
 - 1.8. Reimbursement or compensation for medical treatment and expenses, including hospitalization and medication, other than wages paid during the periods of absence from work due to sickness or injury;

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- 1.9. Interest on financial instruments which are issued or guaranteed by a public authority of Kosovo paid to resident or non-resident taxpayers;
 - 1.10. Income of a prime contractor or a subcontractor, other than a local person, generated from contracts for the supply of goods and services to the United Nations (including UNMIK), the Specialized Agencies of the United Nations, KFOR and the International Atomic Agency that are directly engaged in projects and programs of the organizations mentioned before;
 - 1.11. Income of a prime contractor or a subcontractor but other than a local person, generated from contracts with foreign governments, their organs and agencies, the European Union, the Specialized Agencies of the European Union; the World Bank, the IMF and international inter-governmental organizations for the supply of goods and services in support of programs and projects for Kosovo.
 - 1.12. Dividends received by resident and non-resident taxpayers;
 - 1.13. Wins from games of chance, except lottery winnings in accordance with the provisions of Article 49 of this Law;
 - 1.14. Pensions and social welfare payments paid by the Government;
 - 1.15. Assets received, or value of assets received, as a result of inheritance;
 - 1.16. . Educational expenses paid by an employer on behalf of an employee provided that such expenses are paid directly to an educational institution that is recognized in accordance with the applicable law in Kosovo and provided that onwards the employee to remain employed at the employer for at least twenty-four (24) months after the termination of the education for which the expenses are paid by the employer.
 - 1.17. Scholarships received by an individual to attend an institution of higher learning, trade school, or vocational school, so long as the scholarship is paid directly to the institution and no part of the scholarship is refundable to the student;
 - 1.18. Training expenses paid by an employer for an employee to attend formal training programs to acquire basic skills necessary for the employee to perform assigned tasks or necessary to provide updated skills to the employee which are job-related so long as such expenses do not exceed one thousand euros (€ 1,000) in that tax period.
 - 1.19. Expenses in excess of one thousand euros (1,000) € in any tax period shall be considered taxable income to the employee and subject to withholding in accordance with the provisions of this Law.
 - 1.20. Expenses for subsistence while attending a formal training program shall be allowable up to a maximum established by the Minister in a sub-legal act.
 - 1.21. Such sub-legal act shall also specify what kind of training expenses qualify for this exemption. Training expenses for this sub-paragraph will not include amounts equivalent to wages and salaries which are paid to beginners or apprentices.

CHAPTER II EMPLOYMENT INCOME

Article 9 Income from wages

1. Gross income from wages shall include:
 - 1.1. Salaries paid on behalf of an employer for work that the employee does under the direction of the manager or employer;
 - 1.2. Bonuses, commissions, and other forms of compensation that an employer or some other person, on behalf of the employer, pays to employees over and above salary;
 - 1.3. Income from temporary work performed by an employee;
 - 1.4. Income from prospective employment, such as signing of a salary bonus;
 - 1.5. Health and life insurance premiums that an employer pays for the employee;
 - 1.6. Forgiveness of an employee's debt or obligation to the employer;
 - 1.7. Payment of an employee's personal expenses by an employer; and
 - 1.8. Except as otherwise provided in the present Law, benefits in things given by an employer to an employee that exceed the minimum amount determined in a sub-legal act issued by the Minister.
2. Gross income from wages shall not include:
 - 2.1. Reimbursement of actual business travel expenses up to the amounts to be specified in a sub-legal act issued by the Minister;
 - 2.2. Indemnity for accidents at work; and
 - 2.3. Benefits in goods given by employers to foreign employees to facilitate their living in Kosovo, such as housing and school tuition.
 - 2.4. Gains in kind in form of meal provided by the employer to employee, exempting the compensation in money.
 - 2.5. Reimbursement, limited in less than the cost of public transportation or 0.16 Euro/KM, for the expenses in-and-out for the employees, whose distance of in-and-out from their main residence to the regular working place is longer than twenty (20) kilometers.
 - 2.6. Benefits in nature that are given to employees in the form of public transport tickets limited in transportation on public authorized transport from the main residence of the employees to the regular working place. Benefits in nature can be given to the employees whose distance of in-and-out from their main residence to the regular working place is longer than one (1) kilometer.
 - 2.7. 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.

- 2.8. The Minister will issue a sub-legal act in order to determine the requests of reporting regarding the giving of reimbursement or benefits in nature allowed by sub-paragraphs 2.5 and 2.6.
3. With respect to pension contributions, gross income shall include:
 - 3.1. . Contributions made by an employer on behalf of an employee to the Individual Savings Pension system, a supplementary employer pension fund and a supplementary individual pension scheme under legislation on Kosovo Pension Savings Trust; and
 - 3.2. .Contributions made by an employee to the Individual Savings Pension system, a supplementary employer pension fund and a supplementary individual pension scheme under legislation on savings pension in Kosovo.

CHAPTER III

INCOME OTHER THAN EMPLOYMENT INCOME

Article 10

Income from business activities

1. Gross income from economic activity means gross receipts generated by a person or entity, except legal persons for purposes of this Law, engaged in such activities. For taxpayers with annual gross income of more than fifty thousand euros (50,000) €, or those who opt to maintain books and records in accordance with Article 33 of this Law, income must be reported in the tax period during which it is received or accrued.
2. Businesses with annual gross income of fifty thousand euros (50,000) € or less, which do not opt to maintain books and records in accordance with Article 33 of this Law, shall report income from business activities in the tax period in which that income is actually or constructively received.
3. Businesses with annual gross income of more than fifty thousand euros (50,000) € shall report income from business activities in the tax period in which the income is received or accrued.
4. Taxpayers with income from the sale of goods who maintain inventories to determine the cost of goods sold, shall use the FIFO (first-in-first-out) or such other method as may be set out in a sub-legal act issued by the Minister.
5. When a registration method of goods is selected, that method shall be used for the year in which it has been selected plus at least for three additional tax periods. A taxpayer who aspires to change the registration method of goods, after that period of time should require an individual explaining decision by KTA in compliance with the applicable provisions of the Law on Tax Administration and Procedures amended with the Law 03/L-071.
6. Taxpayers who are charged in contracts and long-term constructive projects shall report the taxable income from those contracts and long-term projects in a descriptive way in a sub-legal act that is issued by the Minister.

7. The taxable income from operating and financial leasing will be determined and reported in a descriptive way in a sub-legal act that will be issued by the Minister. The sub-legal act shall describe operating and financial leasing.

Article 11 **Income from rents**

1. Gross income from rents include:
 - 1.1. income realized by rental of real estate such as buildings, land or apartments;
 - 1.2. income realized by rental of equipments, transport vehicles and other kinds of property.
2. Regardless of provisions of paragraph 1 of this Article, income of rent realized by persons charged in economic activities of rental of movable or immovable property for clients, shall be treated and taxed as income from economic activities.

Article 12 **Income from intangible property**

Gross income from intangible property includes income realized from patents, copyrights, licenses, franchises, and other property that consists of rights only, but are incorporeal. The right to use immovable property is intangible. That right, as well as other property comprised only by the rights, but is incorporeal, will be further defined in a sub-legal act issued by the Minister.

Article 13 **Interest income**

1. Gross income from interest includes:
 - 1.1. Interest from loans made to persons or entities;
 - 1.2. Interest from bonds or other securities issued by business organizations;
 - 1.3. Interest from (savings) accounts that bring interest, and are maintained in banks and other financial institutions.
 - 1.4. Gross income from interest does not include interest from the assets of the Kosovo Pension Savings Trust or any other pension fund defined under legislation on pension savings in Kosovo.

Article 14 **Other income including gifts**

1. Gross income includes every other form of income from whatever source, such as income from lottery wins or income from debt forgiveness, except those that are released from tax in compliance with the provisions of this Law.

2. Monetary gifts or gifts in things received by residents shall be included in other income, if the value of such gift amounts exceeds five thousand euros (5,000) € in a tax period.
3. Gifts, either monetary or in things, given between spouses, or by a parent to their natural born, or legally adopted, children, or by children to their parents are exempt from income irrespective to the amount or value of the gift.
4. Gifts given for educational purposes are exempt from taxation so long as the gift is given in the form of tuition paid directly to an educational institution recognized by public law, irrespective to the relationship between the donor and recipient.

CHAPTER IV

ALLOWABLE BUSINESS EXPENSES

Article 15

Expenses General Provisions

1. 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.
2. Pension contributions paid by an employer are deductible, limited in the amount of personal contributions that are really paid, as those pension contributions do not exceed the amount of pension contributions allowed by the applicable Law.
3. 3. No deduction shall be allowed for any accrued expense related to income which is subject to withholding (wages, dividends, interest, royalties, rents, lottery winnings, etc.) unless it is paid on or before 31 March of the subsequent tax period. Any expense not allowed by this sub-paragraph shall be deductible in the tax period in which it is actually paid.
4. Businesses with annual gross income of fifty thousand (50,000) € and more, and those businesses which have opted to maintain books and records as required in Article 33 of this Law, shall deduct the expenses that are allowed and paid or accrued during the tax period.
5. There shall not be allowed any deduction for any expense while it is not documented in the required way as foreseen by the sub-legal act issued by the Minister.
6. Expenses, including the expenses of depreciation, regarding the operating and financial leasing shall be reported in the way as foreseen in a sub-legal act that shall be issued by the Minister.

Article 16

Representation Expenses

Expenses incurred for representation shall be limited to fifty percent (50%) of the

amount invoiced for business entertainment. The maximum amount of all representation expenses shall not exceed two percent (2%) of annual gross income.

Article 17

Bad Debt Expenses

1. A bad debt shall be considered an expense if it meets all the following conditions:
 - 1.1. The amount that corresponds to the debt has previously been included in income;
 - 1.2. The debt is written off in the taxpayer's books as worthless for accounting purposes;
 - 1.3. There is no dispute of the legal validity of the debt;
 - 1.4. At least six months of the debt have exceeded of term;
 - 1.5. There is adequate evidence of substantial attempts made by the taxpayer to collect the debt, including any applicable actions to maximize collection of the debt, such as:
 - 1.5.1. Taxpayer has offset any undisputed debt owed to the debtor against the bad debt;
 - 1.5.2. Correspondence and contacts attempting to collect the debt;
 - 1.5.3. Legal action was considered to be uneconomical for documented reasons or legal action was unsuccessful, or
 - 1.5.4. a claim was filed in a bankruptcy/liquidation proceeding, if applicable, and the amount that will be taken is determined in a reasonable way by the administrator/executor. As long as those means deriving from the bankruptcy are applied in the unredeemed debt.
2. Bad debt deductions are limited to the non-recovered portion of the debt. Any bad debt deducted as an expense and then subsequently collected shall be included in income at the time of collection.
3. No bad debt deduction shall be allowed for debts between related parties.
4. The Minister shall issue a sub-legal act to describe the requirements for bad debt deductions as provided in this Article.

Article 18

Business Travel Expenses

1. Business travel expenses include transportation, various travel expenses (such as daily expenses) lodging and meals for business trip but do not include allowances for commuting to and from the place of work.
2. Expenses for travel, meals, lodging, and moving shall be limited to the amounts to be specified in a sub-legal act to be issued by the Minister.

Article 19

Payments to Related Persons

1. Compensation or emoluments paid to a related person shall be allowed as an expense in an amount equal to the minimal actual salary or the open market value.
2. Interest, rent, and other expenses paid to a related person shall be allowed as an expense in an amount equal to the minimal actual salary or the open market value.

Article 20

Depreciation

1. Expenditures on tangible property, other than expenditures for land, works of art, and other property which are not subject to wear, owned by the taxpayer and used for the taxpayer's economic activity, shall be recovered over time by depreciation deductions in the manner prescribed by the present Article.
2. Expenditures on improvements to leaseholds used for the taxpayer's economic activity shall be recovered through depreciation deductions calculated using the straight-line method with a period equal to the life of the leasehold.
3. All tangible property of the taxpayer that is subject to depreciation under this Article shall be placed in one of the following categories:
 - 3.1. **Category 1:** Buildings and other construction structures;
 - 3.2. **Category 2:** Automobiles and light trucks, heavy transport vehicles, earth moving equipment, bulldozers, scrapers and other heavy vehicles, computers, peripherals and other data processing equipment, office furniture and equipment, instruments, sundries and other accessories; and livestock used for production or breeding.
 - 3.3. **Category 3:** Plant and machinery; rolling stock and locomotives used for rail transport; airplanes; ships; perennial plants and trees used for viniculture or production of fruits such as apples, pears, walnuts, blueberries, etc.; and all other tangible assets not included in Category 1 or Category 2.
4. The amount allowed as a depreciation deduction for the tax period shall be determined by applying the following percentages individually to the individual tangible property under the straight line method at the close of the tax period according to the category to which the asset belongs:
 - 4.1. Category 1: five percent (5%);
 - 4.2. Category 2: twenty percent (20%); and
 - 4.3. Category 3: ten percent (10%)
5. According to this Article, an asset shall first be taken into account when it is first placed into service.
6. The initial amount to be depreciated shall be the purchase price or, in the absence of a purchase price, the cost price. The initial amount shall also include:
 - 6.1. taxes, duties, levies and charges, and

- 6.2. incidental expenses such as commission, packing, assembling , transport, and insurance costs charged by the supplier.
7. Individual depreciation of property of Category 2 and Category 3 shall be implemented only for those properties that have been taken in the date or after the date of entering into force of this Law.
8. The purchase of a property for a price of one thousand (1.000) € or less shall be allowed as a current expense.
9. Capital goods (assets) that were purchased and their depreciation has started under the pooling method prior to the entry into force of this Law , shall continue to be depreciated under the previous legislation until the value of the pool equals zero.
10. Tangible assets (property) with the purchase price of more than one thousand (1.000) € and less than three thousand (3.000) €, provided after the date that this Law enters into force, shall be disposed into a one group of assets and depreciated with the twenty percent (20%) rate of the value of the assets in group, not considering that in which category of assets it would be disposed according to the provisions of paragraph 3 of this Article. When the qualified assets are purchased, their purchase price shall be added to the value of group. When the assets are sold by the group, the purchase price of the sold asset will be reported as a usual business income in the year in which the asset has been sold, but the value of group will not be decreased as a result of the sale.

Article 21

Depreciation of Livestock

Depreciation of livestock is allowed only if such animals are used in the course of economic activity. Animals which breed offspring used only for personal use or dairy animals used only for personal use are not subject to depreciation.

Article 22

Special Deduction for New Assets

1. If a taxpayer purchases production lines for plant and machinery, rolling stock and locomotives used for railway transportation, airplanes, ships, heavy transport vehicles, earth moving equipment, bulldozers, scrapers and other heavy vehicles for the purpose of the taxpayer's economic activity between 1 January 2010 and 31 December 2012, a special deduction of ten percent (10%) of the cost of acquisition of the asset shall be deducted in the year in which the asset has been first placed into service.
2. This deduction shall be in addition to the normal allowable depreciation deduction.
3. The deduction shall be allowed only if the asset is new or is placed into service in Kosovo for the first time. A deduction shall not be allowed if the asset is transferred from an existing or a former business in Kosovo.
4. Other special allowances may only be granted if so provided by specific Law.

Article 23

Repairs and Improvements

1. In the case of any depreciable asset, amounts expended for repairs or improvements, excluding repairs of usual maintenance, shall be capitalized and added to the basis of the asset if the repairs or improvements extend the useful life of the asset for at least one (1) year and the amount of repair or improvement is greater than one thousand (1,000) € for that asset. If the repair or improvement is one thousand (1,000) € or less for any asset, the amount of the repair or improvement shall be an expense in the year that it has been paid or occurred.
2. If the repairs or improvements meet the criteria for capitalization according to paragraph 1 of this Article, the amount shall be capitalized and added to the remaining book value of the capital asset. The new book value of the asset will be used as the basis for depreciating the asset. The asset will be depreciated in accordance with the rules of the applicable category.
3. Minister shall issue a sub-legal act for implementation of this Article.

Article 24

Amortization

1. Expenditures on intangible assets that have a limited useful life including, but not limited to patents, copyrights, licenses for drawings and models, contracts and franchises are deductible in the form of amortization charges.
2. The method of amortization shall be the straight-line method and the allowance shall be based on the useful life of the asset as determined by the legal agreement governing the acquisition and use of the intangible asset.

Article 25

Costs for Research and Development

1. All research and development costs in respect of the natural reserves of minerals and other natural resources and interest attributable thereto shall be added to a capital account and amortized under the present Article.
2. The amount allowed as an amortization deduction with respect to the research and development costs referred to in paragraph 1 of this Article for the tax period shall be determined by multiplying the balance in the capital account by a fraction of:
 - 2.1. the numerator of which is the units extracted from the natural reserves during the year; and
 - 2.2. the denominator of which is the estimated total units to be extracted from the natural deposit over the life of the asset.
3. The estimated total units to be extracted referred to in paragraph 2 of this Article shall be determined in accordance with instructions concerning such estimates to be set out in a sub-legal act issued by the Minister.

Article 26

Tax Losses

1. A tax loss as defined by this Law is the negative difference between the taxpayer's income and expenses and allowances determined in accordance with this law.
2. The amount of the tax loss determined under the present Article may be carried forward for up to seven (7) successive tax periods and shall be available as a deduction towards any income in those years.
3. The amount of the carry forward taken into account for any tax period after the year of the tax loss shall be the entire amount of the loss, reduced for the aggregate amount previously allowed as a deduction.
4. If a taxpayer has a tax loss in more than one (1) year, the present Article shall be applied to the losses in the order in which they have arisen.
5. The provisions of this Article shall be allowable only to the business which incurred the loss. If the business has an ownership change of more than fifty percent (50%) or if a personal business enterprise is changed in any other form of business (legal entity, partnership, etc.) the loss carried forward shall not be allowed anymore. Minister may issue a sub-legal act in order to regulate the provisions of loss bearing regarding the change of the kind of business organization or the change of ownership, as well as every other necessary provision of loss bearing for the implementation of this Article.

Article 27

Rental Expenses

If a taxpayer, other than a taxpayer engaged in the business of renting movable or immovable property, opts to not maintain records of actual expenses incurred in the rental activity, such taxpayer shall be allowed a deduction from gross income from rent an amount equal to ten percent (10%) of the rents received in order to cover the costs of repairs, collection charges and other expenses paid or incurred in generating the rent.

Article 28

Deduction for charitable contributions

1. Contributions made by taxpayers who maintain records under Article 33.4 of this Law for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction up to a maximum of five percent (5%) of taxable income computed before the charitable contribution is deducted.
2. A charitable contribution according to paragraph 1 of this Article must be made to:
 - 2.1. An organization registered under Legislation on registration and operation of non-governmental organizations that has received and maintained public benefit status;

- 2.2. Any other non-commercial organizations that directly perform not for profit activities in the public interest, such as:
 - 2.2.1. Medical institutions;
 - 2.2.2. Educational institutions;
 - 2.2.3. Organizations to protect the environment;
 - 2.2.4. Religious institutions;
 - 2.2.5. Institutions that care for disabled or elderly persons;
 - 2.2.6. Orphanages; and
 - 2.2.7. Institutions that promote science, culture, sports or arts.
3. A charitable contribution shall not include a contribution that directly benefits the donor, or related persons of the donor.
4. Any taxpayer that is object of real tax, who claims a deduction for a charitable contribution must file an annual declaration and furnish a receipt in respect of such contribution, in the manner prescribed by a sub – legal act issued by the Minister.

Article 29

Educational and Training Expenses

1. Educational expenses paid by an employer to an educational institution for an employee shall be allowable in full in the year in which such expenses are paid, provided that:
 - 1.1. education expenses are paid directly to the educational institution;
 - 1.2. the educational institution is recognized by effective public Law in Kosovo;
 - 1.3. the education is relevant to the employee's position and does not qualify that employee for work in a different occupation; and
 - 1.4. the employee remains in the employment of the employer for at least twenty-four (24) months after completion of the education for which the expenses were paid by the employer.
2. Training expenses (expenses incurred by an employer to provide basic skills necessary for the employee to perform assigned tasks or necessary to provide updated skills to the employee) which are job-related shall be allowable in full in the year in which such training expenses are incurred. The amount of such expenses shall not exceed one thousand Euros (€1,000) per employee in any tax period. Any training expenses incurred above that amount will not be allowable in that tax period.

CHAPTER V

UNALLOWABLE EXPENSES

Article 30

Unallowable Expenses

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.
2. On general income are not included pension contributions, as follows:
 - 2.1. Pension contributions above maximum amount allowed by the Law on Pensions in Kosovo.
 - 2.2. Treatment of expenses which may be partially personal and partially business, or which may be subject to question as to whether they are personal or business, will be defined in a sub-legal act to be issued by the Minister.

CHAPTER VI CAPITAL GAINS AND LOSSES

Article 31 Incomes from capital gains

1. Gross incomes from capital gains means the gain that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
2. The amount of capital gain is the positive difference between the sales price of the asset and the cost of the capital asset as determined under paragraph 5 of this Article.
3. The sales price of the capital asset shall be the sum of any money received, plus any other compensation received for the sale.
4. If the parties are related persons and the sales price is lower than the open market price, then the sales price will be adjusted to the open market price in the manner prescribed in a sub-legal act issued by the Minister.
5. The cost of the capital asset is the amount that the taxpayer paid for the acquisition of the asset, increased for the cost of improvements and reduced by depreciation and other expenditures allowable by this Law.
6. Capital gains shall be recognized as business income and capital losses as business losses, if not foreseen otherwise by this Law.

7. Capital gains and losses shall not be recognized for pooled asset (asset in Category 2 and Category 3 acquired prior to the date of entry into force of this Law) referred to in Article 20 of this Law.
8. Capital loss means a loss that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
9. The amount of capital loss is the negative difference between the sales price of the asset according to paragraph 3 or 4 of this Article and the cost of the capital asset, according to paragraph 5 of this Article.
10. Capital loss means a loss that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities. The provisions of Article 26 of this Law shall apply to the losses described in this paragraph.
11. Gross income from capital gains does not include capital gains realized from the sale of the assets of the Kosovo Pension Savings Trust or any other pension fund defined under legislation on Pensions in Kosovo.
12. A capital gain shall not be recognized on the involuntary conversion of property to the extent that the consideration received from the conversion consists of either property of the same character or nature or money that is invested in property of the same character or nature within a replacement period of two (2) years.
13. If a sale of capital assets involves an installment agreement that lasts more than the tax period in which the sale is finalized (all applicable documents are signed by all parties and the sales agreement is legally enforceable), any gain must be amortized on a straight-line basis over the life of the installment agreement and the amount of gain attributable to any tax period must be reported on the tax declaration as income in that tax period. Further provisions related to installment sales shall be described in a sub-legal act.
14. The capital gain shall not be recognized in case of involuntary conversion of property if the consideration is received from the conversion consisting of either property of the same character or nature or money that is invested in property of the same character or nature within the replacement period of two (2) years.

Article 32

Cash and Accrual Method of Accounting

1. Taxpayers not engaged in economic activity shall report the income in accounting on the cash basis. Such income is reported on the actual year or is constructively received in the form of cash, it is equivalent of it or other property.
2. Taxpayers engaged in economic activity with an annual gross income of five thousand (5.000) € or less and the taxpayers with annual gross income from economic activities of more than fifty thousand (50.000) € up to, including, fifty thousand (50.000) €, who are not required and have not opted to keep books and records listed in Article 33.4 of this Law, shall report their various income components in accounting on the cash basis (income reported when actually or constructively received).

3. Taxpayers engaged in economic activity with an annual gross income in excess of fifty thousand (50,000) €, taxpayers who are required to keep the books and records listed in article 33.4 of this Law, and the taxpayers who opt to keep these books and records as well as general and limited partnerships and grouping of persons shall report their various income components on the accrual basis of accounting, except those items of income described in Article 7.1 of this Law.
4. Taxpayers described in paragraph 3 of this Article shall report their various components of expenses on the accrual basis of accounting, except if provided otherwise in paragraph 3 of Article 15 of this Law.

CHAPTER VII BOOKS AND RECORDS

Article 33 Requirement for Books and Records

1. A taxpayer with annual gross income of more than fifty thousand (50.000) €, from business activities for the tax period, as well as partnerships and groups of persons, shall keep the books and records identified in paragraph 4 of this Article.
2. A taxpayer with annual gross income of fifty thousand (50.000) € or less, from business activities for the tax period may opt to prepare the books and records identified in paragraph 4 of this Article.
3. A taxpayer who opts to prepare books and records identified in paragraph 4 of this Article for any tax period shall be required to prepare such books and records for the tax period in which the option is made plus at least three (3) succeeding tax periods, as provided in a sub-legal act issued by the Minister.
 - 3.1. A taxpayer wishing to opt the option described in paragraph three (3) of this Article shall submit a statement to the tax administration by 1 March of the tax period in which the taxpayer wishes to make the option and that the option is made. The statement to be submitted shall be in a format prescribed by the tax administration. Once such option is made, the taxpayer must continue to prepare financial statements and adjust income and expenses recorded in such statements for the tax period in which the option is made and, at least, for the next succeeding three tax periods as provided in paragraph 3 of this Article.
 - 3.2. A taxpayer eligible to opt the maintaining of books and records as required in paragraph 4 of this Article, must submit a request for explanatory ruling to TAK, in accordance with applicable provisions of the Law on Tax Administration and Procedures, and receive approval from TAK before maintaining books and records in accordance with Article 34 of the Law.

Approval must be received by 1 March of the year for which the taxpayer requests the explanatory ruling.

4. The books and records required under this Article, maintained in accordance with the Accounting Standards of Kosovo, are as follows:
 - 4.1. A sales book in which all sales and returns must be recorded;
 - 4.2. A purchase book in which all purchases and returns must be recorded;
 - 4.3. A Cash receipts diary and a cash payments diary that relate to the sales book and purchase book.
 - 4.4. A capital account, if applicable, that includes the opening balance, additions to capital, expenses to be capitalized, depreciation rate, amount of depreciation, dispositions, and closing balance; and
 - 4.5. Such other books and records as necessary to provide an accurate accounting of all income and expenses so that a correct determination of tax can be made;
 - 4.6. Notwithstanding the requirement in paragraph 1 of this Article that partnerships and groups of persons must maintain the books and records described in Paragraph 4 of this Article, partnerships and groups of persons with annual gross turnover of fifty thousand (50,000) € or less shall not be required to maintain income or financial statements as required by the Accounting Standards of Kosovo. They shall, however, be required to maintain the books and records described in sub-paragraphs 4.1 through 4.5, and any other records required in order to accurately determine the amount of profit, or loss, to be distributed to the separate partners.
 - 4.7. The content of books and records required by this paragraph and any other books or records required, including those maintained in an electronic format, shall be defined in a sub-legal act issued by the Minister.

Article 34

Requirements for Books and Records for Small Businesses

1. A taxpayer with annual gross income of fifty thousand (50,000) € or less, who does not opt to prepare the books and records required under paragraph 4 of Article 33, must maintain the following minimal books and records:
 - 1.1. A sales book in which all sales and returns must be recorded;
 - 1.2. A purchase book in which all purchases and returns must be recorded;
 - 1.3. A Cash receipts diary and a cash payments diary that relate to the sales book and purchase book.
 - 1.4. The content of books and records required by this paragraph and any other books or records required for small business, including those maintained in an electronic format, shall be defined in a sub-legal act issued by the Minister.

CHAPTER VIII INTERNATIONAL PROVISIONS

Article 35 Permanent Establishment

1. “Permanent establishment” shall include:
 - 1.1. Any place of management;
 - 1.2. Any branch;
 - 1.3. Any office;
 - 1.4. Any factory;
 - 1.5. Any workshop;
 - 1.6. Any mine; and
 - 1.7. Any oil or gas source, quarry or other place of exploitation of natural resources.
2. “Permanent establishment” shall also include;
 - 2.1. Any building site, construction, assembling or installation project, or supervisory activity in connection herewith, but only if such site, project or activity lasts longer than one hundred and eighty-three (183) days. Where the building site, project, or activity lasts longer than one hundred and eighty-three (183) days, including any preparatory activity, the building site, project, or activity shall be deemed to have been or created a permanent establishment from the day such work was commenced;
 - 2.2. The furnishing of any service, including any consultancy service but excluding any supervisory activity referred to in paragraph 2.1 of this Article, carried out in Kosovo by a non- resident person through employees or other personnel, but only if such activities continue within Kosovo for a period or periods totaling ninety (90) days or more within any twelve -month period. Where the activities do continue within Kosovo for a period or periods totaling 90 days or more within a twelve –month period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced;
 - 2.3. Any site used for the search for natural resources within Kosovo, where such activities within Kosovo continue for a period or periods totaling one hundred and eighty-three (183) days or more within any twelve – month period. Where the activities do continue for a period or periods totaling one hundred and eighty-three (183) days or more within a twelve -month period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced; and
 - 2.4. Any immovable property situated in Kosovo and owned by a non-resident person.
3. Notwithstanding paragraph 1 of this Article, where a person, other than an agent of an independent status to whom paragraph 6 of this Article applies, acts in Kosovo on behalf of a non-resident person, the non-resident person shall be deemed to have a permanent establishment in Kosovo in respect of the activities which that person undertakes for the non-resident person, if such a person:

- 3.1. Has and usually exercises an authority in Kosovo to conclude contracts on the name of the non-resident person, unless the activities of such person are limited to those mentioned in paragraph 6 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that sub-article; or
 - 3.2. Has no such authority, but habitually maintains in Kosovo a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the taxpayer.
- 4. A non-resident person who provides insurance shall, except in regard to reinsurance, is deemed to have a permanent establishment in Kosovo if he/she collects premiums in Kosovo or insures risks situated in Kosovo through a person other than an agent of an independent status to whom paragraph.6 of this Article applies.
- 5. Notwithstanding paragraphs 1 and 2 of this Article, “permanent establishment” shall be deemed not to include:
 - 5.1. The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the non-resident person;
 - 5.2. The maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of storage or display;
 - 5.3. The maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of processing by another taxpayer;
 - 5.4. The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the non-resident person;
 - 5.5. The maintenance of a fixed place of business solely for the purpose of carrying on, for the non- resident person, any other activity of a preparatory or auxiliary character; and
 - 5.6. The maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs 1 to 5 of the present sub- article, provided that the overall activity of the fixed place of business resulting from this combination is only of a preparatory or auxiliary character.
- 6. A non-resident person shall not be deemed to have a permanent establishment in Kosovo merely because he/she carries on business in Kosovo through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that taxpayer, and conditions are made or imposed between that taxpayer and the agent in their commercial and financial relations which differ from those which would have been made between independent taxpayers, he will not be considered an agent of an independent status within the meaning of this sub-article.
- 7. The fact that a non-resident person controls or is controlled by a company which is a resident of Kosovo, or which carries on business in Kosovo (whether through a permanent establishment or otherwise), shall consider no company a permanent establishment of the other.”

Article 36

Prices of Transfer

1. The price used in conjunction with means transactions or contracting obligations between related persons shall be considered the price of transfer.
2. The price expected to be received in conjunction with asset transactions or contract obligations between parties that had worked according to market dominance shall be considered the open market value.
3. The open market value shall be determined under the comparable uncontrolled price method and, when this is not possible, there is used the resale price method or the cost-plus method, or any other method as defined by sub-legal act.
4. The difference between the open market value and the transfer price shall be included in taxable income.
5. A sub-legal act shall be issued by the Minister for implementation of this Article.

Article 37

Avoidance of Double Taxation

1. The resident taxpayer who receives income from economic activities outside of Kosovo and who pays income tax on that income to any other State, shall be allowed a tax credit under this Law for the amount of income tax paid to such State, that is attributable to the income generated from the other state.
2. The tax credit allowed in paragraph 1 of this Article is limited to the amount of foreign tax paid on the income earned outside Kosovo, and shall not exceed the amount of obligatory tax in Kosovo on that same income. To the extent that Kosovo tax on that income exceeds the foreign tax paid, the excess amount must be included in the computation of Kosovo obligatory tax.
3. Any applicable international agreement negotiated by Minister and ratified by the Assembly on the avoidance of double taxation shall supersede the provisions of the present Article as they relate to the parties to that international agreement.

CHAPTER IX

WITHHOLDING PROVISIONS

Article 38

Withholding tax on wages

1. Each employer shall be responsible for withholding tax from the taxable wages paid to its employees during any payroll period for in which wages are paid.
2. An employer who is the employee's principal employer shall withhold an amount for the appropriate payroll period, in accordance with the rates

established in Article 6 of this Law. Any tentative tax for a given month shall be reduced for the amount withheld by the principal employer for the previous month in the year.

3. 3. An employer who is not the employee's principal employer shall withhold an amount equal to ten percent (10%) of the wages for each tax period.
4. Pensions paid by, or on behalf of, Kosovo Pension Saving Trust, or by an authorized supplementary pension fund regulated by the law on pension contributions shall be subject to withholding by the payer of such pensions at the rates provided in Article 6 of this law.
5. Each employer, or person required to withhold according to paragraph 4 of this Article, shall submit a statement of tax withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank, or financial institution, licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with a sub-legal act issued by the Minister.
6. Each employer or person required to withhold according to paragraph 4 of this Article that makes wage payments during the tax period shall submit to the Tax Administration by 31 January of the year following the tax period an annual tax reconciliation statement with information about wages paid and tax withheld and remitted with respect to each employee in accordance with the form and procedures specified in a sub-legal act issued by the Minister.
7. Each employer or person required to withhold in principle according to paragraph 4 of this Article shall provide by 1 March of the year following the tax period to every employee from whom wage tax has been withheld, a certificate of tax withholding in the form specified in a sub-legal act issued by the Minister.

Article 39

Withholding Tax on Interest and Royalties

1. Each personal business enterprise, entity, public authority, partnership or grouping of persons, bank or other financial institution who pays interest or royalties, except interest that is exempt under this law, to resident or non-resident persons, shall withhold tax at the rate of ten (10%) at the time of payment or credit.
2. Notwithstanding paragraph 1 of this Article, interest on loans provided by financial institutions licensed by CBK to their customers shall be subject to withholding.
3. Each personal business enterprise, entity, public authority, partnership or grouping of persons, bank or other financial institution shall submit a statement of tax withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with a sub-legal act issued by the Minister.
4. Each personal business enterprise, entity, public authority, partnership or grouping of persons bank or other financial institution that pays interest or

royalties during a tax period shall, upon request by the recipient, provides a certificate of tax withholding by 1 March of the year following the tax period, in the form specified in a sub-legal act issued by the Minister.

5. Each personal business enterprise, entity, public authority, partnership or grouping of persons, bank, or other financial institution who withholds tax under this article during a tax period shall submit to the tax administration an annual reconciliation statement in the form and format specified by the Tax Administration no later than 1 March of the year following the tax period. Each personal business enterprise, entity, public authority, bank or other financial institution must include a copy of all withholding certificates, required by paragraph 4 of this Article, with the annual reconciliation statement submitted to the tax administration.

Article 40

Withholding Tax on Lottery and Game of Chance Winnings

1. Each organizer of a lottery shall withhold tax in an amount equal to ten percent (10%) of each payment for winners.
2. Subject to the provisions of Article 49 of this Law, each organizer of a game of chance shall withhold tax in an amount equal to ten percent (10%) of each payment for winnings
3. Each organizer of a game of chance and organizer of a lottery shall submit a statement of withholding and transfer the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with a sub-legal act issued by the Minister.
4. Each organizer of a game of chance and organizer of a lottery during a tax period shall, upon request by the winner, provide by March 1 of the year following the tax period a certificate of tax withholding in the form specified in a sub-legal act issued by the Minister.
5. Each organizer of a game of chance and organizer of a lottery who withholds tax under this Article during a tax period shall submit to the tax administration an annual reconciliation statement in the form and format specified by the Tax Administration no later than 1 March of the year following the tax period. Each organizer of a lottery must include a copy of all withholding certificates, required by paragraph three of this article, with the annual reconciliation statement submitted to the tax administration.

Article 41

Withholding on certain payments to non-residents

1. Income attributable to a non-resident of Kosovo as an entertainer, such as a theatre, motion picture, radio or television artiste, or a singer or musician, or as a sportsman, from his or her personal activities exercised in Kosovo shall be subject to withholding by the payer of that income, whether paid directly or

indirectly to the non-resident, so long as the gross compensation from such activities exceeds one thousand (1,000) € in a tax period.

2. Income, other than income described in paragraph 1 of this Article, earned from agreements or contracts, whether written or verbal, with Kosovo persons or entities by a non-resident person or entity from services performed in Kosovo shall be subject to withholding by the payer of that income, so long as the non-resident person or entity has no permanent establishment in Kosovo and the gross compensation paid to the non-resident is more than five thousand (5,000) € in any tax period.
3. Notwithstanding any other provisions in this Law, the amount of withholding according to paragraph 1 and 2 of this Article shall be five percent (5%) of the gross compensation. Each payer shall submit a statement of withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with a sub-legal act issued by the Minister.
4. Withholding under this Article shall be considered to be a final tax and the recipients of such income subject to the withholding shall not submit a declaration to the tax administration, notwithstanding the provisions of Article 48 of this Law.
5. Each payer who withholds under this Article during a tax period shall, upon request of the recipient of the income, by March 1 of the year following the tax period shall provide a certificate of tax withholding in the form specified in a sub-legal act issued by the Minister.
6. Each taxpayer who withholds tax under this Article during a tax period shall submit to the tax administration an annual reconciliation statement in the form and format specified by the Tax Administration no later than 1 March of the year following the tax period. Each taxpayer must include a copy of all withholding certificates, required by paragraph 5 of this Article, with the annual reconciliation statement submitted to the tax administration.
7. The Minister shall issue a sub-legal act which will specify those persons or entities who will be considered as „payers" under this Article and all other activities required for implementation of this Article.

CHAPTER X

PARTNERSHIPS AND GROUPING OF PERSONS

Article 42

Partnerships and Grouping of Persons

1. Each partnership and grouping of persons that receives or accrues gross income in accordance with the provisions of this Law, shall for personal income tax purposes, submit an annual income tax declaration on or before 31 March of the year following the tax period but will make no payment of income tax liability.

2. The tax declaration shall be made in the form prescribed by the Tax Administration of Kosovo and shall include, inter alia, gross income from all sources, allowable deductions, taxable income and each partner's or member's distributive share, along with their Kosovo fiscal number and their respective addresses. Each partner or group member shall report their distributive share of taxable income in their individual income tax declaration submitted in accordance with Article 48 of this Law.
3. The partnership and grouping of persons shall also submit the quarterly advance payments according to paragraph 2.2 of Article 43 and pay the amount obligatory for each partner or each member of the group in the name of each partner or member, using each partner's or member's fiscal number.
4. Partnerships and grouping of persons, as well as individual partners of partnerships and members of groups, must maintain books and records in accordance with paragraph 4 of Article 33 of this Law and must pay obligatory income taxes in accordance with paragraph 2.2 of Article 43 of this Law.
5. The partnership and grouping of persons is required to withhold tax and pension contributions from the wages of the employees of the partnership or grouping of persons and make payment in accordance with the requirements of this Law.
6. 6. The partnership, or grouping of persons, is responsible for submitting declarations and making payment of all taxes for which the partnership or grouping of persons becomes liable, except for income taxes which are to be declared in accordance with sub-paragraphs 1 and 2 of this Article.
7. The partnership and grouping of persons shall file all declarations and statements by using the fiscal number assigned by the tax administration.
8. Each partnership and grouping of persons shall appoint one of the general partners or one of the persons belonging to the grouping as representative. This representative shall, on basis of a written authorization provided by all partners or persons belonging to the grouping, act in their name and on their behalf and be authorized to fulfill all tax obligations of the partnership or grouping of persons, including the payment obligations, as defined by Law. However, the assignment of a representative shall not relieve the individual partners or members from their individual liability for their own income taxes or partnership or group debts as provided in the Law on Business Associations, if the partnership fail to meet its fiscal obligations

CHAPTER XI

PAYMENTS, CREDITS, AND DECLARATIONS

Article 43

Payment of tax for economic activities

1. Each taxpayer who receives or accrues income from economic activities shall make quarterly payments of tax to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo no later than

fifteen (15) days after the close of each calendar quarter (15 April, 15 July, 15 October, 15 January).

2. The amount of each quarterly payment of tax under paragraph 1 of this Article shall be as follows:
 - 2.1. Taxpayers with annual gross income from business activities of up to fifty thousand (€50,000) € who are not required and do not opt to keep the books and records listed in paragraph 4 of Article 33, must pay:
 - 2.1.1. Three percent (3%) of each quarter's gross income from trade, transport, agriculture and similar economic activities, and but not less than thirty seven euros and fifty cents (€37.50) per quarter.
 - 2.1.2. Five percent (5%) of each quarter's gross income from services, professional, vocational, entertainment and similar activities. but not less than thirty seven euros and fifty cents (€37.50) per quarter.
 - 2.1.3. If a taxpayer described in paragraph 2.1 of this Article has no income in a quarterly period, no payment shall be required, but the taxpayer must submit the quarterly installment declaration for the period with no tax obligation.
 - 2.2. Taxpayers with annual gross income from business activities in excess of fifty thousand (50,000) €; and taxpayers who are required, or opt as provided in paragraph 3 of Article 33, to keep the books and records listed in paragraph 4 of Article 33 must make advance payments:
 - 2.2.1. One-fourth (1/4) of the total tax liability for the current tax period based on estimated taxable income, deducted by any amount of tax withheld pursuant to Article 39 of this Law and Article 30 of the Law on Corporate Income Tax; or
 - 2.2.2. For the second tax period and those subsequent, for which a taxpayer makes payments under this Article, one-fourth (1/4), or more, of one hundred and ten percent (110%) of the total tax liability for the tax period immediately preceding the current tax period, deducted by any amount of tax withheld pursuant to Article 39 of this Law and Article 30 of the Law on Corporate Income Tax.
 - 2.2.3. A taxpayer who has exceeded annual gross income of fifty thousand (50,000) € in any year is required to report income and make payments in accordance with paragraph 2.2 of this Article for the tax period in which annual gross income exceeded fifty thousand (50,000) € and, at least, the three succeeding tax periods. If, after that time, the taxpayer's annual gross income has dropped below the fifty thousand (50,000) € threshold and the taxpayer wishes to return to reporting income and making payments in accordance with subparagraph 2.1 of this Article, such taxpayer shall submit a request for ruling to the tax administration in accordance with Article 10 of the Law on Tax Administration and Procedures prior to 1 March of the year in which the change is being requested.
3. If an advance payment is not made timely, or in an amount that is less than that required, the tax administration may impose a penalty in an amount equal to the

rate of interest in effect at the time the advance payment was obligatory to be made. There shall be no other additions to tax, for late or inadequate advance payments. If the payments of quarterly installments have been made on or before the due dates, and a final settlement has been made as required by paragraph 4 of Article 38 of this Law, no penalty shall be charged for insufficient payments, if:

- 3.1. The difference between the amount due in each installment and the amount paid for each installment is not greater than ten percent (10%) of the amount due; or
- 3.2. After the taxpayer's first tax period, the amount paid in each installment is a minimum of ten percent (10%) at least higher than one-fourth (1/4) of the tax liability on the tax declaration for the preceding tax period.
 - 3.2.1. If the tax administration performs an audit of any year and makes an adjustment to the tax of that year of more than twenty percent (20%), the relief from penalty provided in sub-paragraph 8.2 will not apply to the advance payment requirements for the succeeding tax period.
- 3.3. For the first tax period during which a taxpayer has been in business (the tax period in which the taxpayer requested a fiscal number, or if taxpayer conducted business prior to that time, the tax period in which economic activity started), there shall be no penalty charged if, including the fourth quarterly installment due on 15 January, the taxpayer has made quarterly advance payments equal to at least ninety percent (90%) of the final tax obligatory for that tax period.
- 3.4. A taxpayer that had a loss on the previous year Personal Income Tax declaration is not eligible to use the provisions of sub-paragraph 2.2.2 of this Article in making advance payments for the current year. Such taxpayer must make advance payments in accordance with the provisions of sub-paragraph 2.2.1 of this Article.
- 3.5. The penalty to be charged under this Article shall be applied only to the underpaid amount from the date of the underpayment until the date described in paragraph 3 of this Article for making the final settlement for the tax period, or, if earlier, the payment date on which the taxpayer's advance payment includes an amount sufficient to pay the advance payment for that quarter plus the underpaid amount.

Article 44

Payment of tax for rents

1. Each taxpayer covered by Article 27 of this law who receives income from rent, except those taxpayers whose economic activity is renting movable or immovable property, shall make quarterly payments of tax to an account designated by the Tax Administration in a bank or financial institution licensed

by the Central Bank of Kosovo no later than fifteen (15) days after the close of each calendar quarter (15 April, 15 July, 15 October, 15 January).

2. The amount of each quarterly payment, under paragraph 1 of this Article, shall be ten percent (10%) of the taxable rental income (gross rental income minus ten percent (10%) deduction provided in Article 27 of this Law) received in the calendar quarter immediately preceding the payment date reduced by any amount held during the quarter pursuant to Article 30.2 of the Law on Corporate Income Tax.

Article 45

Payment of tax for intangible property

1. Each taxpayer who receives income from intangible property shall make quarterly payments of tax to an account designated by the Tax Administration in a bank, or financial institution, licensed by the Central Bank of Kosovo no later than fifteen (15) days after the close of each calendar quarter (15 April, 15 July, 15 October, 15 January).
2. The amount of each quarterly payment under paragraph 1 of this Article shall be ten percent (10%) of the taxable income from intangible property received in the calendar quarter immediately preceding the payment date deducted by any amount that was withheld on royalties pursuant to Article 39 of this Law.

Article 46

Payment of tax for other taxable income, including capital gains

1. Each taxpayer who receives taxable income from capital gains or any other source not described in Articles 38 to 43 of this Law shall make payments of tax on or before 31 March of the year following the tax period in accordance with the provisions set out in Article 48 of this Law.
2. Taxpayers who receive taxable gifts according to Article 14 of this Law, must make an advance payment of ten percent (10%) of the amount of the gift which is in excess of five thousand (5,000) € by the last day of the month following the quarter in which the gift is received.

Article 47

Credits against tax

1. Taxpayers may credit against the amount of tax owed under this Law for the taxable year the following amounts:
 - 1.1. Amounts withheld during the same tax period under the provisions of this Law and Article 30.2 of Law on Corporate Income Tax;
 - 1.2. Payments of tax under Articles 42, 43, 44, 45, or 46 of the present Law;
 - 1.3. Income taxes paid to any foreign country as provided in Article 37 of this Law, if the income on which the foreign tax is paid is subject to tax under the present Law. The amount of the foreign tax credit is limited to the

amount of tax that would have been paid on such income under the present Law.

Article 48

Tax declarations and payments

1. Except where paragraph 2 of this Article applies, all taxpayers are required to prepare and submit an annual tax declaration on or before 31 March of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, inter alia, gross income from all sources, allowable deductions, taxable income, applicable credits, and the tax due pursuant to Article 6 of this Law.
2. Taxpayers who receive or accrue income only from one of the following sources are not required to submit an annual declaration:
 - 2.1. Wages;
 - 2.2. Economic activities where tax is paid under paragraph 2.1 of Article 43 of this Law;
 - 2.3. Rent where full payment has been made according to Article 44 of this Law;
 - 2.4. Interest;
 - 2.5. Lottery winnings, and being subject to Article 49 of this Law, Game of Chance winnings;
 - 2.6. Income from intangible property; or
 - 2.7. Income from gifts
3. Taxpayers who receive or accrue income only from the sources foreseen in paragraph 2 of this Article may opt to prepare and submit an annual declaration on or before 31 March of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, inter alia, gross income from all sources, allowable deductions, taxable income and the tax due pursuant to Article 5 of the present Law.
4. Any taxpayer who opts to submit an annual declaration under this Article shall be subject to the requirements established in paragraph 3 of Article 33 of this Law for making and reversing that option. Such taxpayers shall be required to submit annual declarations in the year in which the option is made plus the three succeeding tax periods.
5. Taxpayers who are required to submit an annual tax declaration shall submit, together with such declaration, the final owing amount of tax. The final owing amount of tax shall be the difference between the total tax unpaid for the tax period determined in accordance with the present Law and the total credits in tax under Article 47 of the present Law.
6. If the total of the amount of credits in tax pursuant to Article 47 of the present Law exceeds the total tax unpaid for the tax period, the taxpayer shall be entitled to a refund of the excess tax paid.
7. The location for submitting tax declarations, remitting tax, and claiming refunds shall be specified in a sub-legal act issued by the Minister.

Article 49

Appeals and temporary measures

1. Any person unsatisfied with the decision taken according to the provisions of this Law by the Kosovo Tax Administration has the Right of submitting the request for review in the department of Appeals of the Tax Administration.
 - 1.1. Taxpayers who do not accord with the decision of Department of Complaints may submit the complaint in the Independent Board for Reviews.
 - 1.2. Submission of the Complaint does not suspend the execution of decision issued by Kosovo Tax Administration.
 - 1.3. If a Taxpayer is not satisfied with the decision taken by Independent Board for Reviews, may submit a complaint in the competent Court.
2. The provisions relative to Games of Chance in sub-paragraph 1.8 of Article 7, sub-paragraph 1.13 of Article 8, Article 40, and sub-paragraph 2.5 of Article 48 shall become obsolete and superseded by provisions in the Law on Games of Chance and Lottery (or similar law related to the regulation and taxation of games of chance and lottery) relative to fixed quotes upon its date of entering into force.
3. In accordance with the Law on VAT, a taxpayer must register for VAT when reaching the threshold of fifty thousand (50,000) € of gross turnover in a twelve (12) consecutive month period. The Law on VAT includes provisions under which the registration threshold may be changed with the approval of the Assembly. If the VAT registration threshold is increased or decreased, the threshold for determining personal income tax liability based on an accounting for income and expenses (currently fifty thousand (50,000) € annual turnover) shall be increased or decreased accordingly.
 - 3.1. An increase or decrease in the threshold for determining personal income tax liability shall be reflected in the applicable provisions of Articles 7, 10, 15, 32, 33, 34, and 43 of this Law.
 - 3.2. Any increase or decrease in the personal income tax threshold shall be effective for the tax period beginning on 1 January of the year following the revision of the VAT threshold and each successive tax period thereafter. If the increase in the VAT threshold is effective as of 1 January of a tax period, revision of the personal income tax threshold shall be effective beginning with 1 January of that same tax period.
 - 3.3. Upon an increase or decrease in the threshold approved by the Assembly, the Minister shall issue a sub-legal act to implement the revised threshold level, which will reflect the necessary revisions to Articles 7, 10, 15, 32, 33, 34, and 43 of this Law.

Article 50

Implementation

1. The Minister shall issue the sub-legal acts required by this Law for the implementation of this Law.

Article 51
Applicable Law

This Law shall repeal Law No. 03/L- 115, date 18 December 2008, as well as any other provision that is in contradiction with this Law.

Article 52
Entry into Force

1. This Law shall enter into force fifteen (15) days after the publication in the Official Gazette of the Republic of Kosovo.
2. By the entry into force of this Law, its effects will be from 1 January 2010.

Law No.03/L-161

29 December 2009

The President of the Assembly of Republic of Kosovo

Jakup Krasniqi



LAW No. 03/L-162 -
ON CORPORATE INCOME TAX

LAW Nr.03/L- 162

ON CORPORATE INCOME TAX

Assembly of Republic of Kosovo,

In conformity with the Article 65 (1) of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON CORPORATE INCOME TAX

CHAPTER I

GENERAL PROVISIONS

Article 1

Purpose

This Law establishes the system of Corporate Income Tax in the territory of Republic of Kosovo.

Article 2

Definitions

1. For the purposes of the present law the following provisions have this meaning:
 - 1.1. **Capital assets** - tangible and intangible property costing more than one thousand (1,000) €, with a useful service life of one year or more;
 - 1.2. **Corporation** – a legal person, which has an identity that is separate and distinct from its members, owners or shareholders. A business organization, the capital of which is divided into a specified number of shares of the same par value. Shareholders are not liable for the obligations of the corporation. A corporation may be either a joint stock company or a limited liability company, which is so indicated in its company charter and company name.
 - 1.3. **Dividend** - a distribution made by a company to a shareholder:
 - 1.3.1. of cash or shares with respect to the shareholder's equity interest in the company; and
 - 1.3.2. of property other than cash or shares, unless the distribution is made as a result of liquidation;
 - 1.4. **Economic activity** - any activity of producers, traders or persons supplying goods or services including mining and agricultural activities and activities of the professions. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity;
 - 1.5. **Financial statement** - the general purpose financial statements prepared in accordance with legislation regulating the Kosovo Board on Standards

for Financial Reporting and legislation regulating the financial reporting of business associations;

- 1.6. **Kosovo source income** - means gross income that arises in Kosovo, which includes
 - 1.6.1. Income from economic activity where such activity is located in Kosovo;
 - 1.6.2. Income from the use of movable or immovable property located in Kosovo;
 - 1.6.3. Income from the use of intangible property in Kosovo;
 - 1.6.4. Interest on a debt obligation paid by a resident or a public authority;
 - 1.6.5. Dividends paid by a resident business organization;
 - 1.6.6. Gain from the sale of movable property, immovable property, and securities located in Kosovo; and
 - 1.6.7. Other income not covered by the above- mentioned sub-paragraphs arising from economic activity in Kosovo.
- 1.7. **Foreign source income** - gross income that is not Kosovo source income;
- 1.8. **Gross income** - all income received or accrued, including but not limited to, income from production, trade, financial, investment, professional or other economic activities;
- 1.9. **Tangible Property** – cash, equipment, machinery, plant, property— anything that has long-term physical existence or is acquired for use in the operations of the business and not for sale to customers. In the balance sheet of the business, such assets are generally listed under the heading 'Plant and equipment' or 'Plant, property, and equipment.
- 1.10. **Intangible property** - patents, copyrights, licenses, franchises, and other property that consists of rights only, but are incorporeal;
- 1.11. **Involuntary conversion** - property, in whole or in part, that is destroyed, stolen, seized, or condemned, or the taxpayer is otherwise forced to dispose of by reason of threat or imminence of any of the foregoing;
- 1.12. **Open Market value** - the amount that, in order to obtain the goods or services in question at that time, a customer at the same market stage at which the supply of the same or similar goods or services takes place, would have to pay, under conditions of fair competition, to a supplier at arm's length;
- 1.13. **Resident** - a person or group of persons that is established in Kosovo or that has its place of effective management in Kosovo;
- 1.14. **Non-resident** - any person or group of persons that is not resident in Kosovo;
- 1.15. **Permanent Establishment** - means a fixed place of business through which the business of a non-resident person is wholly or partly carried on in Kosovo, as described in Article 29 of this Law.
- 1.16. **Person** - for purposes of this law shall include the following:
 - 1.16.1. a natural person;
 - 1.16.2. a legal person, which is a general term meaning any organization, including any business organization that has, as a matter of law, a

- legal identity that is separate and distinct from its members, owners or shareholders, such as, but not limited to, joint stock company and limited liability company;
- 1.16.3. a partnership, which means a general partnership, a limited partnership or similar pass-through arrangement that is not a legal person and that proportionately shares items of capital, income, and loss among its partners; and
 - 1.16.4. a grouping or association of persons, including consortiums, but excluding partnerships, set up for a common purpose of a specific economic activity. An association is two or more individuals, companies, organizations or governments, or any combination of these entities with the objective of participating in a common activity or pooling their resources for achieving a common goal. Each participant retains its separate legal status and the association's control over each participant is generally limited to activities involving the joint endeavor, particularly the division of profits. An association is formed by contract, which delineates the rights and obligations of each member;
 - 1.17. **Public authority** - a central, regional, municipal, or local authority, public body, ministry, department, or other authority that exercises public executive, legislative, regulatory, administrative or judicial power;
 - 1.18. **Related person** - means persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationship shall mean:
 - 1.18.1. The persons are officers or directors of one another's business;
 - 1.18.2. The persons are legal partners in business;
 - 1.18.3. The persons are in an employer-employee relationship;
 - 1.18.4. One person holds or controls fifty percent (50%) or more of the shares or voting rights in the other person;
 - 1.18.5. One person directly or indirectly controls the other person;
 - 1.18.6. Both persons are directly or indirectly controlled by a third person; or
 - 1.18.7. The persons are husband or wife, or relatives to the third degree inclusive, or in law to the second degree inclusive;
 - 1.19. **Representation costs** - all costs related to promotion of the business and include business entertainment and representation;
 - 1.20. **Tax period** - the calendar year or any other reporting period provided in this Law.
 - 1.21. **Immovable property** - for tax purposes, all land and establishments and structures below or above the land surface and connected to the land, including property which is accessory to immovable property; rights to which the provisions of general Law respecting landed property apply; usufruct of immovable property; and rights to variable or fixed payments as consideration for the working of, or right to work, mineral deposits, sources and other natural resources;

- 1.22. **Royalty** - payment of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work including cinematograph films, and patent, trade mark, design or model plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
- 1.23. **Religion** - the Islamic Community of Kosovo, the Serbian Orthodox Church, the Roman Catholic Church, the Jewish Religious Community, and the Evangelical Church.
- 1.24. **Eligible religion** - every religion included in the definition of religion established in this Law.
- 1.25. **Kosovo** - shall include all the land, inland waters and airspace of Kosovo, as defined by the Constitution of the Republic of Kosovo.
- 1.26. **Operating Leasing** – any leasing that is not a financial leasing.
- 1.27. **Financial Leasing** - a leasing that transfers substantially all the risks and rewards incident to ownership of an item of property. Title may or may not be transferred at the end of the leasing. A finance leasing meets at least one of the following four conditions:
- 1.27.1. if the lease life exceeds seventy-five percent (75%) of the life of the asset;
- 1.27.2. if there is a transfer of ownership to the leasing-receiver at the end of the leasing term;
- 1.27.3. if there is an option to purchase the asset at a "agreed price" at the end of the lease term;
- 1.27.4. if the present value of the lease payments, discounted at an appropriate discount rate, exceeds ninety percent (90%) of the fair market value of the asset.
- 1.28. **Subcontractor** - any person performing a part of a comprehensive project which has been undertaken by a prime contractor. The subcontractor is directly engaged in the execution and realization of the comprehensive project and acts on behalf of the prime contractor. The period spent by a subcontractor working on a comprehensive project is considered as being time spent by a prime contractor on the project.
- 1.29. **Prime Contractor/ Contractor** – any business, whether an organization or individual, which has agreed to carry out operations under any legal binding document signed by the beneficiary, either by doing the operations itself or by arranging for them to be done by others.
- 1.30. **TAK** – the Tax Administration of Kosovo.
- 1.31. **Minister** - Minister of the Ministry of Economy and Finance.

Article 3

Taxpayers

1. The following persons shall be taxpayers under the present Law:
 - 1.1. A corporation or other business organization that has the status of a legal person under the applicable Law in Kosovo;
 - 1.2. A business organization operating with public or socially owned assets;

- 1.3. An organization registered as a non-governmental organization under Legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo;
- 1.4. A non-resident person with a permanent establishment in Kosovo, subject to the provisions of paragraph 2 of the Article 4.

Article 4 **Object of Taxation**

1. The object of taxation for a resident taxpayer shall be taxable income from Kosovo source income and foreign source income.
2. The object of taxation for a non-resident taxpayer shall be taxable income from Kosovo sources.

Article 5 **Taxable Income**

1. Taxable income for a tax period shall mean the difference between gross income received or accrued during the tax period and the deductions and allowances allowable under this law with respect to such gross income.
2. A taxpayer with annual gross income over fifty thousand (50.000) € shall calculate taxable income by preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in the present Law.
3. A taxpayer with annual gross income of fifty thousand (50.000) € or less shall calculate taxable income:
 - 3.1. In accordance with paragraph 2.1 of Article 35 of this Law; or
 - 3.2. By opting to prepare financial statements, adjust income and expenses recorded and maintained in the books and records required by Article 36 of this Law, and submit annual declarations in the manner prescribed in this Law.
 - 3.2.1. A taxpayer wishing to make the option described in sub-paragraph 3.2 shall submit a statement to the tax administration by 1 March of the tax period in which the taxpayer wishes to make the option that the option is being made. The statement to be submitted shall be in a format prescribed by the tax administration. Once such option is made, the taxpayer must continue to prepare financial statements and adjust income and expenses recorded in such statements for the tax period in which the option is made and, at least, for the next succeeding three tax periods.
 - 3.2.2. A taxpayer eligible to reverse the option made in sub-paragraph 3.2.1 of this Article, must submit a request for ruling to TAK, in accordance with applicable provisions of the Law on Tax Administration and Procedures, and receive approval from TAK before maintaining books and records in accordance with Article 37

of this Law. Approval must be received by 1 March of the year for which the taxpayer requests the ruling.

- 3.3. By preparing financial statements and adjusting income and expenses recorded in such statements in the manner prescribed in the present law, if such taxpayer has income from more than one economic activity, such as rental activities and trade activities.
- 3.4. In accordance with sub-paragraph 2.1.3 of Article 35 of this law if the taxpayer's only income is from rental activity, unless the taxpayer is engaged in the business of renting movable and immovable property. A taxpayer engaged in the business of renting movable and immovable property is required to follow the provisions applicable to taxpayers engaged in trade or business activities.
4. As an exception to the sub-articles above, any business licensed by CBK to insure or reinsure life, property or other risks shall calculate taxable income and pay income tax in accordance with Article 32 of this law.
5. As an exception to this Article, taxpayers engaged in long-term construction contracts and projects shall report the taxable income from those long-term contracts and projects in the manner prescribed in a sub-legal act issued by the Minister.
6. Taxable income from operating leasing and financial leasing shall be determined and reported in the manner prescribed in a sub-legal act to be issued by the Minister. The sub-legal act shall describe operating leasing and financial leasing.

Article 6

Tax Rate

1. The corporate income tax rate shall be ten percent (10%) of taxable income.
2. For income taxable in tax periods prior to 1 January 2009, the corporate income tax rate shall be twenty percent (20%) of taxable income in accordance with the legislation in force at that time.

CHAPTER II

INCOME EXEMPT FROM TAX

Article 7

Exempt Income

1. The following income shall be exempt from corporate income tax:
 - 1.1. Without prejudice to Article 33 of this law, the income of organizations registered under Legislation on the Registration and Operation of non-governmental organizations that have received and maintained public benefit status to the extent that the income is used exclusively for their public benefit purposes;

- 1.2. Income of the Central Bank of Kosovo, and of entitled and duly authorized international governmental financial institutions operating in Kosovo;
- 1.3. Dividends received by resident and non- resident taxpayers;
- 1.4. Interest on financial instruments which are issued, or guaranteed, by a public authority of Kosovo paid out to resident or non-resident taxpayers;
- 1.5. Income of eligible religions of Kosovo for exercising economic activities specific to their self-sustainability, such as:
 - 1.5.1. the production of embroidery and clerical vestments, candles, icon painting,
 - 1.5.2. woodcarving and carpentry, and
 - 1.5.3. traditional agricultural products, in accordance with the laws applicable to religion in Kosovo.
- 1.6. Income of a prime contractor or a subcontractor, other than a local person, generated from contracts for the supply of goods or services to the United Nations (including UNMIK), the Specialized Agencies of the United Nations, KFOR and the International Atomic Energy Agency under the condition that they are directly engaged in projects and programs of the organizations mentioned before.
- 1.7. Income of a prime contractor or a subcontractor but other than a local person, generated from contracts with foreign governments, their organs and agencies, the European Union, the Specialized Agencies of the European Union; the World Bank, the IMF and international inter-governmental organizations for the supply of goods or services in support of programs and projects for Kosovo.
2. The international inter-governmental organizations shall be determined in a sub-legal act issued by the Minister.

CHAPTER III EXPENDITURE

Article 8 Disallowed Expenses

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.

Article 9

Allowable Expenses

1. 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.
2. Educational expenses paid by an employer to an educational institution for an employee shall be allowable in full in the year in which such expenses are paid, provided that:
 - 2.1. education expenses are paid directly to the educational institution;
 - 2.2. the educational institution is recognized by Law in force in Kosovo;
 - 2.3. the education is relevant to the employee's position and does not qualify that employee for work in a different occupation; and
 - 2.4. the employee remains in the employment of the employer after completion of the education for which the expenses were paid by the employer for a period of time to be specified in a sub-legal act issued by the Minister.
3. Training expenses (expenses incurred by an employer to provide basic skills necessary for the employee to perform assigned tasks or necessary to provide updated skills to the employee) which are job-related shall be allowable in full in the year in which such training expenses are incurred. The amount of such expenses shall not exceed one thousand (1,000) € per employee in any tax period. Any training expenses incurred above that amount will not be allowable in that tax period.
4. If a taxpayer, other than a taxpayer engaged in the business of renting movable or immovable property, opts to not maintain records of actual expenses paid or incurred in the rental activity, such taxpayer shall be allowed a deduction from gross rental income in an amount equal to ten percent (10%) of the rents received in order to account for depreciation allowances and cover the costs of repairs, collection charges, and other expenses paid or incurred in generating the rental income.
5. No deduction shall be allowed for any accrued expense based on a withholding obligation unless such expense is paid on or before 31 March of the subsequent tax period. Any expense not allowed by this sub-paragraph shall be deductible in the tax period in which it is actually paid.
6. Expenses, including depreciation expenses, related to operating leasing and financial leasing shall be reported in the manner prescribed in a sub-legal act to be issued by the Minister.
7. No deduction shall be allowed for any expense unless those documented in the manner required by a sub-legal act issued by the Minister.

Article 10

Allowable Deductions

1. Contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as a deduction under the present Law up to a maximum of five percent (5%) of taxable income computed before the charitable contributions are deducted.
2. An allowable contribution under paragraph.1 of this Article must be made to:
 - 2.1. An organization registered under Legislation on the Registration and Operation of Non-Governmental Organizations in Kosovo that has received and maintained public benefit status;
 - 2.2. Any other non-commercial organizations that directly perform activities in the public interest and not for profit, such as:
 - 2.2.1. Medical institutions;
 - 2.2.2. Educational institutions;
 - 2.2.3. Organizations to protect the environment;
 - 2.2.4. Religious institutions;
 - 2.2.5. Institutions that care for disabled or elderly persons;
 - 2.2.6. Orphanages; and
 - 2.2.7. Institutions that promote science, culture, sports or arts
3. An allowable deduction shall not include a contribution that directly, or indirectly, benefits the donor or related persons of the donor.
4. Any taxpayer who claims an allowable deduction must file an annual tax declaration in accordance with Article 34.2 of this law and submit a receipt in respect of such deduction to the Tax Administration.
5. The Minister shall issue a sub-legal act for implementation of this Article.

Article 11

Representation Costs

Expenses incurred for representation shall be limited to fifty percent (50%) of the amount invoiced for business entertainment. The maximum amount of representation expenses shall not exceed two percent (2%) of annual gross income.

Article 12

Bad Debts

1. A bad debt shall be considered an expense if it meets these conditions:
 - 1.1. The amount that corresponds to the debt has previously been included in income;
 - 1.2. The debt is written off in the taxpayer's books as worthless for accounting purposes;
 - 1.3. There is no dispute of the legal validity of the debt;
 - 1.4. At least six months of the debt have exceeded of term; and

- 1.5. There is adequate evidence of substantial attempts made by the taxpayer to collect the debt, including any applicable actions to maximize collection of the debt, such as:
 - 1.5.1. taxpayer has offset any undisputed debt owed to the debtor against the bad debt;
 - 1.5.2. correspondence and contacts attempting to collect the debt;
 - 1.5.3. legal action was considered to be uneconomical for documented reasons or legal action was unsuccessful, or
 - 1.5.4. a claim was filed in a bankruptcy/liquidation proceeding, if applicable, and the amount to be received has reasonably been determined by the administrator/executor. To the extent that money has been received from the bankruptcy, it has been applied to the outstanding debt.
2. Bad debt deductions are limited to the non-recovered portion of the debt. Any bad debt deducted as an expense and then subsequently collected shall be included in income at the time of collection.
3. No bad debt deduction shall be allowed for debts between related parties.
4. The Minister shall issue a sub-legal act to describe the requirements for bad debt deductions as provided in this Article.

Article 13

Reserve Funds

1. Except as otherwise provided in this Law, contributions to reserve funds are not allowable as an expense.
2. Financial institutions licensed by Central Bank of Kosovo, other than those income is derived from insuring life, property or other risks, are entitled to an expense for the creation of a special reserve fund for the institution's doubtful assets, of an amount not to exceed the maximum amount allowable by the Central Bank of Kosovo. If a financial institution is engaged in both bank and insurance activities, the expenses for reserve fund are allowable only in relation to doubtful assets arising from bank activities.
3. Subsequent to the creation of the special reserve fund, any amount withdrawn from the fund shall be included in income and any amount placed back into the fund, to replenish it to the allowable amount that is allowed as a deduction.

Article 14

Payments to Related Persons

1. Compensation or emoluments paid to a related person shall be allowed as an expense in an amount equal to the lesser of the actual payment or the open market value.
2. Interest, rent, and other expenses paid to related persons shall be allowed as an expense in an amount equal to the minimum actual payment or the open market value.

Article 15

Depreciation

1. Expenditures on tangible property, other than expenditures for land, works of art, and other property which are not subject to wear, owned by the taxpayer and used for the taxpayer's economic activity, shall be recovered over time by depreciation deductions in the manner prescribed by the present Article.
2. Expenditures on improvements to leaseholds used for the taxpayer's economic activity shall be recovered through depreciation deductions calculated using the straight-line method with a period equal to the life of the leasehold.
3. All tangible property of the taxpayer that is subject to depreciation under this Article shall be placed in one of the following categories:
 - 3.1. Category 1: Buildings and other constructed structures;
 - 3.2. Category 2: Automobiles and light trucks, heavy transport vehicles, earth moving equipment, bulldozers, scrapers and other heavy vehicles, computers, peripherals and other data processing equipment, office furniture and office equipment, instruments, sundries and other accessories; and livestock used for production or breeding.
 - 3.3. Category 3: Plant and machinery; rolling stock and locomotives used for rail transport; airplanes; ships; perennial plants and trees used for viniculture or production of fruits (such as apples, pears, walnuts, blueberries, etc.); and all other tangible assets not included in Category 1 or Category 2 of this paragraph.
4. The amount allowed as a depreciation deduction for the tax period shall be determined by applying the following percentages to the individual capital asset under the straight line method at the close of the tax period according to the category to which the asset belongs:
 - 4.1. Category 1: five percent (5%);
 - 4.2. Category 2: twenty percent (20%); and
 - 4.3. Category 3: ten percent (10%)
5. According to this Article, an asset shall first be taken into account when it is first placed into service.
6. The initial amount to be depreciated shall be the purchase price or, in the absence of a purchase price, the cost price. The initial amount shall also include:
 - 6.1. taxes duties, levies and charges, and
 - 6.2. Incidental expenses such as commission, packing, transport, and insurance costs charged by the supplier.
7. The individual depreciation of the assets of Category 2 and Category 3 shall only apply for those assets acquired on, or after, the date of entry into force of this Law.
8. Capital goods (assets) that were purchased and their depreciation was started under the pooling method prior to the entry into force of this Law, shall continue to be depreciated under the previous legislation until the value of the pool equals zero.
9. Purchase of an asset for a price of one thousand (1,000) € or less shall be allowed as a current expense.

10. Tangible assets with a purchase price of more than one thousand (1,000) € and less than three thousand (3,000) €, acquired after the date on which this law comes into force, shall be placed in a single asset pool and depreciated at a rate of twenty percent (20%) of the value of the assets in the pool, irrespective of which category of assets it would be placed in under the provisions of paragraph 3 of this Article. As new qualifying assets are purchased, their purchase price shall be added to the value of the pool. As assets are sold from the pool, the purchase price of the asset sold shall be reported as ordinary business income in the year in which the asset is sold, but the value of the pool will not be reduced as a result of the sale.

Article 16 **Depreciation of Livestock**

Depreciation of livestock is allowed only if such animals are used in the course of economic activity of the agricultural entity. Animals which breed offspring used only for personal use or dairy animals used only for personal use are not subject to depreciation.

Article 17 **Special Allowance for New Assets**

1. If a taxpayer purchases production lines for plant and machinery, railway inventory and locomotives used for railway transportation, airplanes, ships, heavy transport vehicles, earth moving equipment, bulldozers, scrapers and other heavy vehicles for the purpose of the taxpayer's economic activity between 1 January 2010 and 31 December 2012, a special deduction of ten percent (10%) of the cost of acquisition of the asset shall be allowed in the year in which the asset has been first placed into service. This deduction shall be in addition to the normal allowable depreciation deduction. The deduction shall be allowed only if the asset is new or is placed into service in Kosovo for the first time. A deduction shall not be allowed if the asset is transferred from an existing or a former business in Kosovo.
2. This deduction shall be in addition to the normal allowable depreciation deduction.
3. 3. The deduction shall be allowed only if the asset is new or is placed into service in Kosovo for the first time. A deduction shall not be allowed if the asset is transferred from an existing or a former business in Kosovo.
4. Other special allowances may only be granted if so provided by specific Law.

Article 18 **Repairs and Improvements**

1. In the case of any depreciable asset, amounts expended for repairs or improvements, excluding day-to-day maintenance repairs, shall be capitalized and added to the basis of the asset if the repairs or improvements extend the useful life of the asset for at least one year and the amount of repair or improvement is greater than one thousand (1,000) € for that asset. If the repair or improvement

- is one thousand (1,000) € or less for any asset, the amount of the repair or improvement shall be an expense in the year paid or accrued.
2. If the repairs or improvements meet the criteria for capitalization per paragraph 1 of this Article, the amount shall be capitalized and added to the remaining book value of the capital asset. The new book value of the asset will be used as the basis for depreciating the asset. The asset will be depreciated in accordance with the rules of the applicable category.
 3. The Minister shall issue a sub-legal act for implementation of this Article.

Article 19 **Amortization**

1. Expenditures on intangible assets that have a limited useful life including patents, copyrights, licenses for drawings and models, contracts and franchises are deductible in the form of amortization charges.
2. The method of amortization shall be the straight-line method and the allowance shall be based on the useful life of the asset as determined by the legal agreement on the acquisition and use of the intangible asset.

Article 20 **Exploration and Development Costs**

1. Exploration and development costs in respect of a natural deposit of minerals and other natural resources and interest attributable thereto shall be added to a capital account and amortized under the present Article.
2. The amount allowed as an amortization deduction with respect to exploration and development costs referred to in paragraph 1 of this Article, for the tax period shall be determined by multiplying the balance in the capital account by a fraction of:
 - 2.1. The numerator of which is the units extracted from the natural deposit during the year; and
 - 2.2. The denominator of which is the estimated total units to be extracted from the natural deposit over the life of the asset.
3. The estimated total units to be extracted referred to in sub-paragraph 2.2 of this Article, shall be determined in accordance with instructions concerning such estimates or any other method, to be set out in a sub-legal act to be issued by the Minister.

CHAPTER IV **CAPITAL GAINS AND LOSSES, BUSINESS LOSSES**

Article 21 **Capital Gains and Losses**

1. Capital gain means income that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.

2. The amount of capital gain is the positive difference between the sales price of the capital asset and the cost of the capital asset as determined under paragraph 5 of this Article.
3. The sales price of a capital asset shall be the sum of any amount received, plus any other compensation received, as consideration for the sale.
4. If the parties are related persons and the sales price is less than the open market value, then, for purposes of the present Article, the sales price shall be adjusted to the open market value in the manner prescribed in a sub-legal act issued by the Minister.
5. The cost of the capital asset is the amount that the taxpayer paid for the acquisition of the asset, including expenses incurred in acquiring the asset that have not been previously expensed, increased by the cost of improvements, and reduced by depreciation and other expenditures allowable under this Law.
6. Capital gains shall be recognized as business income and capital losses as business losses, if not provided otherwise in this Law.
7. Capital gains and losses shall not be recognized for pooled assets (assets in Category 2 and Category 3 acquired prior to the date of entry into force of this Law) referred to in paragraph 8 of Article 15 of this Law.
8. Capital loss means a loss that a taxpayer realizes through the sale or other disposition of capital assets including real estate and securities.
9. The amount of capital loss is the negative difference between the sales price of the capital asset per paragraph 3 or 4 of this Article and the cost of the capital asset as determined under paragraph 5 of this Article.
10. Capital losses shall be treated as ordinary losses from economic activities that may be deducted from income in the current year. If the amount of the capital loss for the taxable year exceeds the taxpayer's income for that year, the amount of the excess of such loss over income in the current year may be carried forward for up to seven (7) successive tax periods and shall be available as a deduction against any income in those years. The provisions of Article 23 of this Law shall apply to the losses described in this paragraph.
11. Gross income from capital gains does not include capital gains realized from the sale of the assets of the Kosovo Pension Savings Trust or any other pension fund defined under legislation on pensions in Kosovo.
12. A capital gain shall not be recognized on the involuntary conversion of assets to the extent that the consideration received from the conversion consists of either property of the same character or nature or money that is invested in property of the same character or nature within a replacement period of two (2) years,
13. If a sale of a capital asset involves an installment agreement that lasts more than the tax period in which the sale is finalized (all applicable documents are signed by all parties and the sales agreement is legally enforceable) any gain must be reported on a straight-line basis over the life of the installment agreement and the amount of gain attributable to any tax period must be reported on the tax declaration as income in that tax period. Further provisions related to installment sales shall be described in a sub-legal act.

Article 22

Involuntary Conversions

A capital gain shall not be recognized on the involuntary conversion of property to the extent that the consideration received from the conversion consists of either property of the same character or nature or money that is invested in property of the same character or nature within a replacement period of two (2) years.

Article 23

Tax Losses

1. A tax loss as defined by this Law is the negative difference between the taxpayer's income and expenses and allowances determined in accordance with this law.
2. The amount of the tax loss determined under the present Article may be carried forward for up to seven (7) successive tax periods and shall be available as a deduction against any income in those years.
3. The amount of the carry forward taken into account for any tax period after the year of the tax loss shall be the entire amount of the loss, reduced by the aggregate amount previously allowed as a deduction.
4. If a taxpayer has a tax loss in more than one (1) year, the present Article shall be applied to the losses in the order in which they arose.
5. Except as provided in Article 26, the provisions of this Article shall be allowable only to the business which incurred the loss. If the business changes its type of business organization or has an ownership change of more than fifty percent (50%), the carry forward will no longer be applicable. The Minister may issue a sub-legal act to regulate loss carry forward provisions related to changes in types of business organizations or ownership change, as well as any other loss carryforward provisions necessary for implementation of this Article.

CHAPTER V

LIQUIDATION AND REORGANIZATION

Article 24

Distribution of Property

1. A company that distributes property other than shares to a shareholder with respect to the shareholder's interest shall recognize a gain or a loss as if such property had been sold to such shareholder at its open market value.
2. The property distributed to the shareholder shall be valued at the open market value of the property.
3. In the case of a distribution of shares dividends that does not change the share of participation of the recipient, the company shall not recognize a gain or a loss and the shareholder shall not realize income.

Article 25

Liquidation

1. In case a company is liquidated in accordance with applicable Laws of Kosovo, the company shall take into account any gain or loss as if it had sold the property distributed in the liquidation at its open market value.
2. Except as otherwise provided in this Law, the recipients of property distributed in a liquidation shall be treated as if they exchanged their equity interest in the liquidated company for an amount equal to the open market value of such property.
3. In the case of a liquidation of a subsidiary where the property of the subsidiary is distributed to a parent, the parent shall not recognize any gain or loss.

Article 26

Reorganization

1. Transfers of property pursuant to a written plan for a reorganization of a taxpayer, whether due to bankruptcy, merger, acquisition, division, exchange of shares or otherwise, which is approved by the Tax Administration, shall not be taxed under this Law.
2. In the case of a reorganization, the value of the property held by the reorganized taxpayer shall be determined by reference to the acquisition value of such property immediately before the reorganization.
3. In the course of a reorganization, a distribution to a shareholder in respect of the shareholder's equity interest shall not constitute taxable income to the shareholder.
4. Except as otherwise established in a sub-legal act issued by the Minister, the acquiring taxpayer shall succeed to and take the place of the acquired taxpayer with respect to inventories, loss carry forwards, dividend accounts, and all other such items. Loss carry forwards are allowable to the acquiring taxpayer only if provided in the plan of reorganization and approved by the Tax Administration according to the provisions established in the sub-legal referred to in this subparagraph.

CHAPTER VI

TRANSFER PRICES, AVOIDANCE OF DOUBLE TAXATION

Article 27

Transfer Prices

1. The price used in conjunction with asset transactions or contract obligations between related persons shall be considered the transfer price.
2. The price expected to be received in conjunction with asset transactions or contract obligations between parties that had been dealing according to market dominance shall be considered the open market value.

3. The open market value shall be determined under the comparable uncontrolled price method and, when this is not possible, the resale price method or the cost-plus method or any other method as defined by sub-legal act .
4. The difference between the open market value and the transfer price shall be included in taxable income.
5. A sub-legal act shall be issued by the Minister for implementation of this Article.

Article 28

Avoidance of Double Taxation

1. A taxpayer resident in Kosovo who receives income from business activities outside of Kosovo and who pays income tax on that income to any other State, shall be allowed a tax credit under this Law for the amount of income tax paid to such State that is attributable to the income derived from that other state.
2. The tax credit allowed in paragraph 1 of this Article is limited to the amount of foreign tax paid on the income earned outside Kosovo, not to exceed the amount of tax due in Kosovo on that same income. To the extent that Kosovo tax on that income exceeds the foreign tax paid, the excess amount must be included in the computation of Kosovo tax due.
3. Any applicable international agreement negotiated by the Minister, and ratified by the Assembly, on the avoidance of double taxation shall supersede the provisions of the present article as they relate to the parties to that international agreement.

Article 29

Permanent Establishments

1. Permanent establishment means a fixed place of business through which the business of a non-resident person is wholly or partly carried on in Kosovo. Permanent establishment shall include:
 - 1.1. Any place of management;
 - 1.2. Any branch;
 - 1.3. Any office;
 - 1.4. Any factory;
 - 1.5. Any workshop;
 - 1.6. Any mine; and
 - 1.7. Any oil or gas source, quarry or other place of exploitation of natural resources.
2. Permanent establishment shall also include;
 - 2.1. Any building site, construction, assembly or installation project, or supervisory activity in connection therewith, but only if such site, project or activity lasts longer than one hundred and eighty-three (183) days. Where the site, project, or activity lasts longer than one hundred and eighty-three (183) days, including any preparatory activity, the site,

- project, or activity shall be deemed to have been or created a permanent establishment from the day such work was commenced;
- 2.2. The furnishing of any service, including any consultancy service but excluding any supervisory activity referred to in sub-paragraph 2.1 of this Article, carried out in Kosovo by a non-resident person through employees or other personnel, but only if such activities continue within Kosovo for a period or periods totaling ninety (90) days or more within any twelve - month period. Where the activities do continue within Kosovo for a period or periods totaling ninety (90) days or more within a twelve -month period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced;
 - 2.3. Any site used for the search for natural resources within Kosovo, where such activities within Kosovo continue for a period or periods totaling one hundred and eighty-three (183) days or more within any twelve – month period. Where the activities do continue for a period or periods totaling one hundred and eighty-three (183) days or more within a twelve -month period, the activities shall be deemed to have created a permanent establishment from the day such activities commenced; and
 - 2.4. Any immovable property situated in Kosovo and owned by a nonresident person.
3. Notwithstanding paragraph 1 of this Article, where a person, other than an agent of an independent status to whom Article 29.6 applies, acts in Kosovo on behalf of a non-resident person, the non-resident person shall be deemed to have a permanent establishment in Kosovo in respect of the activities which that person undertakes for the non-resident person, if such a person:
 - 3.1. Has and habitually exercises in Kosovo an authority to conclude contracts in the name of the non-resident person, unless the activities of such person are limited to those mentioned in paragraph 5 of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that Article; or
 - 3.2. Has no such authority, but habitually maintains in Kosovo a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the taxpayer.
 4. A non-resident person who provides insurance shall, except in regard to reinsurance, be deemed to have a permanent establishment in Kosovo if it collects premiums in Kosovo or insures risks situated in Kosovo through a person other than an agent of an independent status to whom paragraph 6 of this Article applies.
 5. Notwithstanding paragraphs 1 and 2 of this Article, —permanent establishment□ shall be deemed not to include:
 - 5.1. The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the non-resident person;
 - 5.2. The maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of storage or display;

- 5.3. The maintenance of a stock of goods or merchandise belonging to the non-resident person solely for the purpose of processing by another taxpayer;
 - 5.4. The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information for the non-resident person;
 - 5.5. The maintenance of a fixed place of business solely for the purpose of carrying on, for the non- resident person, any other activity of a preparatory or auxiliary character; and
 - 5.6. The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs 1 to 5 of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is only of a preparatory or auxiliary character.
6. A non-resident person shall not be deemed to have a permanent establishment in Kosovo merely because it carries on business in Kosovo through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that taxpayer, and conditions are made or imposed between that taxpayer and the agent in their commercial and financial relations which differ from those which would have been made between independent taxpayers, he will not be considered an agent of an independent status within the meaning of this Article.
 7. The fact that a non-resident person controls or is controlled by a company which is a resident of Kosovo, or which carries on business in Kosovo (whether through a permanent establishment or otherwise), shall not of itself deem either company a permanent establishment of the other.

CHAPTER VII WITHHOLDING TAX

Article 30

Withholding Tax on Interest, Royalties, Rents, Lottery Winnings, and Games of Chance

1. Each taxpayer who pays interest, except as provided in paragraph 4 of this Article, or royalties to resident or non-resident persons shall withhold tax at the rate of ten percent (10%) at the time of payment or credit and remit the tax withheld to an account designated by TAK in a bank or financial institution licensed by the Central Bank of Kosovo. The withheld tax must be paid to the bank, or financial institution by the 15th day of the month following the month in which the account is credited or the payment is made.
2. Each taxpayer who pays rent to resident or non-resident persons shall withhold tax at the rate of nine percent (9%) at the time of payment or credit and remit the tax withheld to an account designated by the Tax Administration in a bank, or financial institution, licensed by the Central Bank of Kosovo. The withheld

tax must be paid to the bank, or financial institution by the 15th day of the month following the month in which the payment is made or credited.

3. Each organizer of a lottery, or game of chance subject to the provisions of Article 38 of this Law, who pays lottery, or game of chance, winnings to resident and non-resident persons shall withhold tax at the rate of ten percent (10%) at the time of payment or credit and remit the tax withheld to an account designated by the Tax Administration in a bank, or financial institution, licensed by the Central Bank of Kosovo. The withheld tax must be paid to the bank, or financial institution by the 15th day of the month following the month in which the payment is made, or the recipient is credited with the winnings.
4. Interest on loans provided by financial institutions licensed by CBK to their customers in the ordinary course of their business and interest on financial instruments which are issued or guaranteed by a public authority shall not be subject to withholding.
5. Each taxpayer, or organizer of a lottery, or organizer of a game of chance subject to the provisions of Article 38 of this Law, who pays interest, royalties, rent, lottery winnings, or game of chance winnings during a tax period shall provide a certificate of tax withholding in the form specified by the Tax Administration to the recipient by 1 March of the year following the tax period.
6. Each taxpayer, organizer of a lottery, or organizer of a game of chance subject to Article 38 of this Law, who pays interest, royalties, rent, lottery winnings, or game of chance winnings, and who withholds tax under this article during a tax period shall submit to the tax administration an annual reconciliation statement in the form and format specified by the Tax Administration no later than 1 March of the year following the tax period. Each taxpayer must include a copy of all withholding certificates, required by paragraph 4 of this article, with the annual reconciliation statement submitted to the tax administration.

Article 31

Withholding on certain payments to non-residents

1. In accordance with a sub-legal act to be issued by the Minister, income attributable to a non-resident of Kosovo as an entertainer, such as a theatre, motion picture, radio or television artiste, or a singer or musician, or as a sportsman, from his or her personal activities exercised in Kosovo shall be subject to withholding by the payor of that income, whether paid directly or indirectly to the non-resident.
2. Income, other than income described in paragraph 1 of this Article, earned from agreements or contracts, whether written or verbal, with Kosovo persons or entities by a non-resident person or entity from services performed in Kosovo shall be subject to withholding by the payor of that income, so long as the non-resident person or entity has no permanent establishment in Kosovo and the gross compensation paid to the non-resident is more than five thousand (5,000) € in any tax period.

3. Notwithstanding any other provisions in this Law, the amount of withholding under in paragraph 1 and 2 of this Article, shall be five percent (5%) of the gross compensation. Each payor shall submit a statement of withholding and remit the amount of tax withheld to an account designated by the Tax Administration in a bank licensed by the Central Bank of Kosovo within fifteen (15) days after the last day of each calendar month, in accordance with a sub-legal act issued by the Minister.
4. Withholding under this article shall be considered to be a final tax and the recipients of such income subject to the withholding shall not submit a declaration to the tax administration, notwithstanding the provisions of Article 34 of this Law.
5. Each payor who withholds under this article during a tax period shall provide a certificate of tax withholding to the recipient of the income, by March 1 of the year following the tax period in the form specified in a sub-legal act issued by the Minister.
6. Each taxpayer who withholds tax under this article during a tax period shall submit to the tax administration an annual reconciliation statement in the form and format specified by the Tax Administration no later than 1 March of the year following the tax period. Each taxpayer must include a copy of all withholding certificates, required by paragraph 5 of this Article, with the annual reconciliation statement submitted to the tax administration
7. The Minister shall issue a sub-legal act which will specify those persons or entities who will be considered as ‘payors’ under this article and all other activities required for implementation of this article.

CHAPTER VIII SPECIAL PROVISIONS

Article 32 Treatment of Insurance Activity

1. In the case of any person that is licensed by CBK to insure or reinsure life, property, or other risks, the tax imposed by this Law shall be an amount equal to five percent (5%) of the gross premiums accrued during the tax period.
2. If an insurance company has income, other than income generated by the insurance or reinsurance of life, property, or other risks, such other income shall be subject to taxation at the established corporate tax rate and taxable income shall be determined according to the income and expense rules established under this Law.
3. Any business that engages in insurance activity and other economic activity shall maintain separate accounts and records for the insurance activity and other economic activity.

Article 33
Treatment of Commercial Income of Non-Governmental Organizations

1. A non-governmental organization that conducts any commercial or other activity that is not exclusively related to its public purpose shall be charged income tax at the rate of ten percent (10%) on income derived from such unrelated business activity, reduced by any deductions that are directly related to the carrying on of such business and which are allowed by this Law.
2. The Tax Administration shall have the authority to audit any NGO to determine its compliance with the income rules that govern NGO's. In cases that NGO profits are deemed to exceed a reasonable level of profits for an organization that is established as a non-profit organization, the tax administration shall have the authority to treat such excessive profits in accordance with the provisions of paragraph 1 of this Article.
3. Any NGO that engages in activities exempt from tax under sub-paragraph 1.1 of Article 7 of this law and other commercial activity, shall maintain separate accounts and records for the public benefit activity and other commercial activity.
4. The Minister shall issue a sub-legal act which will describe the meaning of —excessive profits□ under this Article.

CHAPTER IX
ADMINISTRATIVE PROVISIONS

Article 34
Tax Declarations

1. A taxpayer that is required or opts to calculate taxable income by adjusting for tax purposes the income and expenses reported in its financial statements is required to submit to the Tax Administration an annual tax declaration on or before 31 March of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Law. Such taxpayers are also required to submit, together with the tax declaration, the financial statements prepared in accordance with Kosovo Accounting Standards and applicable legislation.
2. A taxpayer that claims an allowable deduction pursuant to Article 10 of this Law, is required to submit to the Tax Administration an annual tax declaration on or before 31 March of the year following the tax period. The declaration shall be made on the forms prescribed by the Tax Administration and shall include, among other things, gross income, allowable deductions, taxable income and the tax due under this Law.

Article 35

Tax Payments

1. Each taxpayer under the present Law shall make quarterly advance payments of tax to an account designated by the Tax Administration in a bank, or financial institution, licensed by the Central Bank of Kosovo on or before 15 April, 15 July, 15 October, and 15 January with respect to the calendar quarter immediately preceding these dates.
2. The amount of each quarterly advance payment shall be as follows:
 - 2.1. Taxpayers with annual gross income of fifty thousand (50.000) € or less who are not required to, or do not opt to, submit an annual tax declaration as per Article 34 of this Law shall make the following payments per quarter:
 - 2.1.1. Three percent (3%) of each quarter's gross income from trade, transport, agricultural and similar commercial activities, but not less than thirty seven euros and fifty cents (€37.50) per quarter.
 - 2.1.2. Five percent (5%) of each quarter's gross income from services, professional, vocational, entertainment and similar activities, but not less than thirty seven euros and fifty cents (€37.50) per quarter.
 - 2.1.3. Ten percent (10%) of net rental income for the quarter (gross rental income less the ten percent (10%) allowance provided in paragraph 2 of Article 9 of this Law), reduced by any amount withheld during that quarter pursuant to paragraph 2 of Article 30 of this Law;
 - 2.2. Taxpayers with annual gross income in excess of fifty thousand (50.000) € and taxpayers who are required to, or opt to, prepare financial statements shall make the following payments per quarter:
 - 2.2.1. One-fourth (1/4) of the total tax liability for the current tax period based on estimated taxable income reduced by any amount withheld during the quarter pursuant to Article 30 of this Law or Article 40 of the Law on Personal Income Tax; or
 - 2.2.2. For the second and subsequent tax periods that a taxpayer makes payment under this subArticle, of at least one-fourth (1/4) of one hundred and ten percent (110%) of the total tax liability for the tax period immediately preceding the current tax period reduced by any amount withheld during the quarter pursuant to Article 30 of this law or Article 40 of the Law on Personal Income Tax; .
3. A taxpayer who has opted to prepare financial statements and report on the real basis must continue on that basis for the year in which the option is made plus at least the three succeeding tax periods as noted in sub-paragraph 3.2 of Article 5 of this law.
4. A taxpayer who has exceeded gross turnover of fifty thousand (50.000) € in any one year is required to report income and make payments in accordance with paragraph 2 of Article 5 of this law and sub-paragraph 2.2 of this Article for the tax period in which gross turnover exceeded fifty thousand (50.000) € and, at

least, the three succeeding tax periods. If, after that time, the taxpayer wishes to return to reporting income and making payments in accordance with sub-paragraph 3.1 of Article 5 and sub-paragraph 2.1 of this Article, such taxpayer shall submit a request for ruling to the tax administration in accordance with Article 10 of the Law on Tax Administration Procedures prior to 1 March of the year in which the change is being requested.

5. A taxpayer who makes quarterly advance payments pursuant to sub-paragraph 2.2 of this Article shall perform a final settlement of tax and pay the final amount due on or before 31 March of the year following the tax period.
6. The amount due for the final settlement shall be the total tax due for the tax period determined in accordance with this Law, minus:
 - 6.1. The amounts withheld and paid to the Tax Administration pursuant to Article 30 of this law and Article 40 of the Law on Personal Income Tax;
 - 6.2. The amounts paid in the quarterly instalments;
 - 6.3. The foreign tax credit allowable under this Law.
7. If the amounts paid or credited according to Article 6 of this Law are greater than the total tax due determined in accordance with this Law, the taxpayer shall be entitled to a refund of the excess tax paid.
8. If an advance payment is not made timely, or in an amount that is less than that required, the tax administration may impose a penalty in an amount equal to the rate of interest in effect at the time the advance payment was due to be made. There shall be no other additions to tax, for late or inadequate advance payments. If payments, or corrected payments, for the quarterly instalments have been made on or before the due dates and a final settlement, or final corrected settlement, has been made as required by paragraph 5 of this Article, no penalty shall be charged for late, or insufficient advance payments, if:
 - 8.1. The difference between the amount due in each instalment and the amount paid in each instalment is not greater than ten percent (10%) of the amount due; or
 - 8.2. After the taxpayer's first tax period, the amount paid in each instalment is at least ten percent (10%) more than one-fourth (1/4) of the tax liability on the tax declaration for the preceding tax period.
 - 8.2.1. If the tax administration performs an audit of any year and makes an adjustment to the tax of that year of more than twenty percent (20%), the relief from penalty provided in sub-paragraph 8.2 will not apply to the advance payment requirements for the succeeding tax period.
 - 8.3. For the first tax period during which a taxpayer has been in business (the tax period in which the taxpayer requested a fiscal number, or if taxpayer conducted business prior to that time, the tax period in which economic activity started), there shall be no penalty charged if, including the fourth quarterly installment due on 15 January, the taxpayer has made quarterly advance payments equal to at least ninety percent (90%) of the final tax obligatory for that tax period.
 - 8.4. A taxpayer that had a loss on the previous year Personal Income Tax declaration is not eligible to use the provisions of sub-paragraph 2.2. of

this Article in making advance payments for the current year. Such taxpayer must make advance payments in accordance with the provisions of sub-paragraph 2.1. of this Article.

- 8.5. The penalty to be charged under this Article shall be applied only to the underpaid amount from the date of the underpayment until the date prescribed in paragraph 5 of this Article for making the final settlement for the tax period, or, if earlier, the payment date on which the taxpayer's advance payment includes an amount sufficient to pay the advance payment for that quarter plus the underpaid amount..
9. The Minister shall issue a sub - legal act for implementation of this Article.

Article 36 **Requirement for Books and Records**

1. A taxpayer with annual gross income from business activities for the tax period in excess of fifty thousand (50.000) €, shall keep the books and records identified in paragraph 4 of this Article.
2. A taxpayer with annual gross income from business activities for the tax period of fifty thousand (50.000) €, or less may opt to prepare the books and records identified in paragraph 4 of this Article in accordance with sub-paragraph 3.2 of Article 5 of this Law.
3. A taxpayer who opts to prepare books and records identified in paragraph 4 of this Article for any tax period shall be required to prepare such books and records for the tax period in which the option is made plus at least three succeeding tax periods as provided in sub-paragraph 3.2 of Article 5 of this law.
4. The books and records required under this Article, maintained in accordance with the accounting standards of Kosovo, are as follows:
 - 4.1. A sales book in which all sales and returns must be recorded;
 - 4.2. A purchase book in which all purchases and returns must be recorded;
 - 4.3. A Cash receipts journal and a cash payments journal that relate to the sales book and purchase book.
 - 4.4. A capital account, if applicable, that includes the opening balance, additions to capital, expenses to be capitalized, depreciation rate, amount of depreciation, dispositions, and closing balance; and
 - 4.5. . Financial statements and balance sheets as required for establishing the starting point for computation of the annual corporate income tax declaration.
 - 4.6. The content of books and records required by this paragraph and any other books or records required, including those maintained in an electronic format, shall be defined in a sub-legal act issued by the Minister.

Article 37
Requirements for Books and Records for Small Businesses

1. A taxpayer with annual gross income of fifty thousand (50.000) €, or less, who does not opt to prepare the books and records required under paragraph 4 of Article 36, must maintain the following minimal books and records:
 - 1.1. A sales book in which all sales and returns must be recorded;
 - 1.2. A purchase book in which all purchases and returns must be recorded;
 - 1.3. A Cash receipts journal and a cash payments journal that relate to the sales book and purchase book.
 - 1.4. The content of books and records required by this paragraph and any other books or records required, including those maintained in an electronic format, shall be defined in a sub-legal act issued by the Minister.

Article 38
Temporary Provisions

1. 1.The provisions relative to Games of Chance in sub-paragraphs 1, 3, 5, and 6 of Article 30 of this Law shall become obsolete and superseded by provisions in the Law on Games of Chance and Lottery (or similar law related to the regulation and taxation of games of chance and lottery) relative to fixed quotes upon the date of its coming into force.
2. In accordance with the Law on VAT, a taxpayer must register for VAT when reaching the threshold of fifty thousand (50.000) €, of gross turnover in a twelve (12) consecutive month period. The Law on VAT includes provisions under which the registration threshold may be changed with the approval of the Assembly. If the VAT registration threshold is increased or decreased, the threshold for determining corporate income tax liability based on an accounting for income and expenses (currently more than fifty thousand (50.000) €, annual turnover) shall be increased or decreased accordingly.
 - 2.1. An increase or decrease in the threshold for determining corporate income tax liability based on accounting for income and expenses shall be reflected in the applicable provisions of Articles 5, 35, 36, and 37 of this Law.
 - 2.2. . Any increae or decrease in the corporate income tax threshold shall be effective for the tax period beginning on 1 January of the year following the revision of the VAT threshold and each successive tax period thereafter. If the increase in VAT threshold is effective as of 1 January of a tax period, revision of the corporate income tax threshold shall be effective beginning with 1 January of that same tax period.
 - 2.3. Upon an increase or decrease in the threshhold having been approved by the Assembly, the Minister shall issue a sub-legal act to implement the revised threshold level, which will reflect the necessary revisions to Articles 5, 35, 36, and 37 of this Law.

CHAPTER X FINAL PROVISIONS

Article 39 Implementation

1. The Minister of Economy and Finance shall have the authority to promulgate, in writing, implementing regulations of general applicability as may be necessary to further the proper, reasonable and uniform interpretation and application of the present law. Such implementing regulations shall be administered and applied by the TAK. No such implementing regulation shall have any legal effect until properly published in the Official Gazette of Kosovo and otherwise made publicly available by the TAK in accordance with the Law on Access to Official Documents.
2. Without limitation or prejudice of the above paragraph, the Minister shall issue sub-legal acts for implementation and interpretation of Articles 5, 7, 9, 10, 12, 18, 20, 23, 26, 27, 31, 33, 36, and 37 within one hundred and twenty (120) days after the promulgation of this law. Article 15 of the Law no. 03/L-113 applies for the period 1 January 2009 to 31 December 2009.

Article 40 Appeals

1. Any person unsatisfied with the decision taken according to the provisions of this Law by the Kosovo Tax Administration has the Right of submitting the request for review in the department of Appeals of the Tax Administration.
2. Taxpayers who do not accord with the decision of Department of Complaints may submit the complaint in the Independent Board for Reviews.
3. If a Taxpayer is not satisfied with the decision taken by Independent Board for Reviews, may submit a complaint in the competent Court.

Article 41 Applicable Law

This Law shall abrogate Law on Corporate Income Tax, No. 03/L- 113 of 18 December, 2008

Article 42
Entry into Force

1. This law shall enter into force fifteen (15) days after being published in the Official Gazette of the Republic of Kosovo.
2. With the entry into force of this Law, its effects will be from 1 January 2010.

Law No.03/L- 162

29 December 2009

The President of the Assembly of Republic of Kosova

Jakup Krasniqi

COUNTRY WIDE ORGANIZATION BY TAK

