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ADMINISTRATA TATIMORE E KOSOVËS - PORESKA ADMINISTRACIJA KOSOVA - TAX ADMINISTRATION OF KOSOVO

TAX LEGISLATION OF KOSOVO

- LAW NO. 03/L-222 - ON TAX ADMINISTRATION AND PROCEDURES
- LAW NO. 03/L-146 - ON VALUE ADDED TAX
- LAW NO. 03/L-161 - ON PERSONAL INCOME TAX
- LAW NO. 03/L-162 - ON CORPORATE INCOME TAX

TAX ADMINISTRATION OF KOSOVO

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Table of Contents

INTRODUCTION	13
LAW NO. 03/L-222 - ON TAX ADMINISTRATION AND PROCEDURES	15
Article 1 - Definitions	16
Article 2 - The Tax Administration of Kosovo	22
Article 3 - Director General of TAK	23
Article 4 - Deputies of Director General	27
Article 5 - Senior Managers	27
Article 6 - Tax Officials	28
Article 7 - Delegation Power	29
Article 8 – Reporting	29
Article 9 - Public Rulings	30
Article 10 - Individual Rulings	31
Article 11 - Fiscal Number and obtaining the Fiscal Certificate	37
Article 12 - Deregistration of Taxpayers	55
Article 13 - Creating and Retaining Records	59
Article 14 - Access to books, records, computers and similar record storage devices	90
Article 15 - Collection of Information or Evidence	100
Article 16 - Obligations of legal representatives and asset managers	104
Article 17 - Tax Declarations	111
Article 18 - Self-Assessment	112
Article 19 - Director General’s Assessment of Tax	113
Article 20 - Time limits for assessment	124
Article 21 - Jeopardy Assessments	124
Article 22 - Assessment Notice	125
Article 23 - Cancellation of Tax Documents	126
Article 24 - Liability in cases of Criminal Tax Offense	129
Article 25 - Liability of responsible persons	129
Article 26 - Assessment of a third person’s liability	130
Article 27 – Payments	131
Article 28 – Interest	132
Article 29 - Order of Payments	136
Article 30 - Credits and Refunds	138
Article 31 - Use of Banks and other Licensed Financial Institutions	141
Article 32 - Tax that is Due and Payable	142
Article 33 - Liens	142
Article 34 – Levies	161
Article 35 - Enforcement of Levy	169
Article 36 - Sale at Public Auction	180
Article 37 - Other Provisions Related to Enforced Collection	180
Article 38 - Recovery of tax from partners and members of unincorporated associations	181
Article 39 - Jeopardy Orders	181
Article 40 - Embargo on imports and exports	182
Article 41 - Departure prohibitions	182
Article 42 - Transfers of Assets	183
Article 43 - Uncollectible Tax Debts	185

Article 44 - Illegal Acts	187
Article 45 - Director General may re-characterize arrangements.....	188
Article 46 - Transactions between Related Persons.....	188
Article 47 - Exchange Transactions and Third Party Information Reporting	189
Article 48 - Understatements of Income and Diverted Receipts.....	191
Article 49 - Sanctions for Non-Compliance	191
Article 50 - Administrative Penalty with respect to Fiscal Certification	192
Article 51 - Administrative Penalties with respect to Failure to File and Pay.....	192
Article 52 - Administrative Penalties Related to Understatements of Tax and Overstatements of Tax Refunds.....	192
Article 53 - Failure to Submit, Create or Provide Records.....	193
Article 54 - Penalties for failure to withhold tax	194
Article 55 - Failure to surrender property subject to levy and setting aside money.....	194
Article 56 - Administrative Penalty for errors by Taxpayer Representatives, Tax Advisors, r other Persons acting on behalf of a taxpayer.....	195
Article 57 - Administrative Penalty for Failure to Install Fiscal Electronic Device for capturing and recording transactions.....	195
Article 58 - Administrative Penalties with regard to VAT.....	195
Article 59 - Administrative Penalty for goods without origin.....	196
Article 60 - Penalty for Civil Fraud	197
Article 61 - Additional sanctions	197
Article 62 - Reduction in sanctions	197
Article 63 - Criminal Tax Offenses.....	236
Article 64 - Voluntary disclosure of criminal tax offenses.....	237
Article 65 - Failure to Report Criminal Tax Offenses.....	238
Article 66 - Application of the Criminal Procedure Code	238
Article 67 - Suspension of criminal proceedings for Criminal Offenses	238
Article 68 - Criminal proceedings and taxation procedure	238
Article 69 - Duration of an investigation of criminal tax offenses.....	239
Article 70 - Territorial jurisdiction.....	239
Article 71 - Participation of the TAK in pre-trial proceedings	239
Article 72 - Participation of the TAK in the court proceedings.....	240
Article 73 - Suspending proceedings.....	240
Article 74 - Tax investigation unit	241
Article 75 - Powers of the tax investigation unit in criminal proceedings.....	242
Article 76 - Responsibilities of tax officials.....	242
Article 77 - Appeals to the Tax Administration	243
Article 78 - Establishment of the Independent Review Board	252
Article 79 - Role of the Board.....	253
Article 80 - Procedures for the Board	255
Article 81 - Judicial Review	256
Article 82 - Obligation to Pay During Appeals Proceedings	256
Article 83 - Taxpayer Representatives	257
Article 84 - Confidentiality of Tax Information	257
Article 85 - Keeping the TAK integrity and Anti-Corruption	259
Article 86 - Temporary International Measures.....	261
Article 87 - Sub-Legal Act.....	262
Article 88 - Proposal, Nomination and Approbation of Director General of TAK following consent by the ICR	262
Article 89 - Applicable Law.....	262
Article 90 - Entry into Force	262

LAW NO. 03/L-146 - ON VALUE ADDED TAX.....	270
CHAPTER I - GENERAL PROVISIONS	271
Article 1 – Purpose.....	271
Article 2 – Definitions	271
Article 3 - Object of Taxation	276
CHAPTER II - TAXABLE PERSONS.....	277
Article 4 - Taxable persons.....	277
Article 5 - Certification for import and export	278
Article 6 - General provisions in respect of Requirement to be registered and issuance of registration certificate	279
Article 7 - Compulsory Registration – Compulsory communication of changes in registration data	282
Article 8 - Voluntary Registration.....	283
Article 9 - Cancellation of registration	284
CHAPTER III - TAXABLE TRANSACTIONS.....	286
Article 10 - Supply of goods	286
Article 11 - Application of goods of the business for non-business needs.....	286
Article 12 - Application of goods for business needs under certain VAT deduction circumstances.....	287
Article 13 - Transfer of business	288
Article 14 - Supply of services	292
Article 15 - The use of business goods for non-business needs	292
Article 16 - The use of self-supplied services for business needs	292
Article 17 - Services in respect of transfer of business	293
Article 18 - The supply of services in his own name but on behalf of another person	293
CHAPTER IV - PLACE OF TAXABLE TRANSACTIONS	294
Article 19 - Place of supply of goods	294
Article 20 - Place of supply of service	295
Article 21 - Place of importation of goods	301
CHAPTER V - CHARGEABLE EVENT AND CHARGEABILITY OF VAT	303
Article 22 - Chargeable event and chargeability of VAT in respect of supply of goods and services	303
Article 23 - Chargeable event and chargeability of VAT in respect of importation of goods	304
CHAPTER VI - TAXABLE AMOUNT	305
Article 24 - Taxable amount in respect of supply of goods and services	305
Article 25 - Taxable amount in respect of importation of goods. Converting the value of foreign currency into Euro	308
CHAPTER VII - RATES.....	310
Article 26 - The Rate	310
CHAPTER VIII - EXEMPTIONS WITHOUT RIGHT OF DEDUCTION OF INPUT VAT	311
Article 27 - Exemptions for certain activities in the public interest	311
Article 28 - Exemptions for other activities.....	314
CHAPTER IX - EXEMPTIONS ON IMPORTATION AND OTHER SPECIAL EXEMPTIONS IN RESPECT OF IMPORTATION	317
Article 29 - Exemption on importation	317
Article 30 - Other special exemptions in respect of importation	318
CHAPTER X - EXEMPTIONS ON EXPORTATION	323
Article 31 - Exemptions on exportation	323
CHAPTER XI - EXEMPTIONS RELATED TO INTERNATIONAL TRANSPORT	325
Article 32 - Exemptions related to international transport.....	325

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	326
Article 33 - Exemptions relating to certain transactions treated as exports.....	326
Article 34 - Exemptions for the supply of services by intermediaries	327
Article 35 - Customs warehouses and similar arrangements	327
CHAPTER XIII - DEDUCTIONS.....	328
Article 36 - The right to deduct VAT.....	328
Article 37 - Exercise of the right of deduction	330
Article 38 - The manner to exercise the right to deduct input VAT	333
Article 39 - Calculation of the deductible proportion of input VAT	334
Article 40 - VAT refund claims.....	335
Article 41 - Adjustment of deductions	340
Article 42 - Deduction of input VAT on commencement of economic activity as VAT registered taxable person.	345
CHAPTER XIV - BAD DEBTS.....	347
Article 43 - Bad debt for VAT purposes.....	347
CHAPTER XV - INVOICING AND ISSUANCE OF OTHER TAX DOCUMENTS	349
Article 44 - Issuance of invoices and other documents serving as invoices by a taxable person	349
Article 45 - Content of invoices issued by taxable persons to taxable persons	350
Article 46 - Content of an invoice issued by taxable persons to other persons	351
Article 47 - Debit and Credit Notes	351
Article 48 - Bad Debt invoice.....	352
Article 49 - Requirement to Provide Simplified Invoices and fiscal receipts	352
Article 50 - Issuance and sending invoices by electronic means and documents serving as invoices	354
Article 51 - Special provisions	354
CHAPTER XVI - PERSONS LIABLE FOR PAYMENT OF VAT	356
Article 52 - Persons liable for payment of VAT to TAK.....	356
CHAPTER XVII - TAX PERIODS AND VAT RETURNS	362
Article 53 - Tax Periods	362
Article 54 - VAT returns, remittance and payments	363
CHAPTER XVIII - BOOKKEEPING AND STORAGE OF VAT BOOKS, RECORDS AND RELATED DOCUMENTATION	365
Article 55 - Requirement to record information, retaining records and providing access.....	365
Article 56 - Storage of invoices, bad debt invoices, credit and debit notes, simplified invoices, coupons and documents serving as invoices, books and records.....	366
Article 57 - Period of storage of books and all VAT records.....	366
CHAPTER XIX - SPECIAL SCHEMES.....	368
Article 58 - Special schemes for travel agents	368
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	369
Article 60 - Flat rate scheme for farmers	371
Article 61 - Special scheme for electronically supplied services	371
Article 62 - Special scheme for investment gold.....	372
CHAPTER XX - FINAL PROVISIONS.....	374
Article 63 - Applicable Law and Tax Authorities.....	374
Article 64 - Transitional period – Transitional provisions.....	374
Article 65 – Implementation.....	375

Article 66 - Entry into force.....	375
LAW NO. 03/L-161 - ON PERSONAL INCOME TAX.....	385
CHAPTER I - GENERAL PROVISIONS	386
Article 1 – Purpose.....	386
Article 2 – Definitions	386
Article 3 – Taxpayers.....	391
Article 4 - Object of taxation.....	391
Article 5 - Taxable income	392
Article 6 - Tax rates.....	392
Article 7 - Gross income.....	393
Article 8 - Exempt income.....	396
CHAPTER II - EMPLOYMENT INCOME	401
Article 9 -Income from wages.....	401
Article 10 - Income from business activities	404
Article 11 - Income from rents.....	410
Article 12 - Income from intangible property	410
Article 13 - Interest income	411
Article 14 - Other income including gifts	411
CHAPTER IV - ALLOWABLE BUSINESS EXPENSES	412
Article 15 - Expenses General Provisions	412
Article 16 - Representation Expenses	413
Article 17 - Bad Debt Expenses	414
Article 18 - Business Travel Expenses	416
Article 19 - Payments to Related Persons.....	416
Article 20 – Depreciation	417
Article 21 - Depreciation of Livestock	421
Article 22 - Special Deduction for New Assets	422
Article 23 - Repairs and Improvements	423
Article 24 - Amortization.....	424
Article 25 - Costs for Research and Development	424
Article 26 - Tax Losses.....	426
Article 27 - Rental Expenses.....	427
Article 28 - Deduction for charitable contributions	427
Article 29 - Educational and Training Expenses	429
CHAPTER V - UNALLOWABLE EXPENSES.....	430
Article 30 - Unallowable Expenses	430
CHAPTER VI - CAPITAL GAINS AND LOSSES.....	432
Article 31 - Incomes from capital gains.....	432
Article 32 - Cash and Accrual Method of Accounting.....	435
CHAPTER VII - BOOKS AND RECORDS	437
Article 33 - Requirement for Books and Records.....	437
Article 34 - Requirements for Books and Records for Small Businesses	439
CHAPTER VIII - INTERNATIONAL PROVISIONS	440
Article 35 - Permanent Establishment	440
Article 36 - Prices of Transfer.....	442
Article 37 - Avoidance of Double Taxation.....	446
CHAPTER IX - WITHHOLDING PROVISIONS	447
Article 38 - Withholding tax on wages.....	447
Article 39 - Withholding Tax on Interest and Royalties.....	450

Article 40 - Withholding Tax on Lottery and Game of Chance Winnings	451
Article 41 - Withholding on certain payments to non-residents	453
CHAPTER X - PARTNERSHIPS AND GROUPING OF PERSONS	458
Article 42 - Partnerships and Grouping of Persons	458
CHAPTER XI - PAYMENTS, CREDITS, AND DECLARATIONS	460
Article 43 - Payment of tax for economic activities	460
Article 44 - Payment of tax for rents	464
Article 45 - Payment of tax for intangible property	465
Article 46 - Payment of tax for other taxable income, including capital gains	465
Article 47 - Credits against tax	467
Article 48 - Tax declarations and payments	467
Article 49 - Appeals and temporary measures	468
Article 50 - Implementation	469
Article 51 - Applicable Law	469
Article 52 - Entry into Force	470
LAW NO. 03/L-162 - ON CORPORATE INCOME TAX	471
CHAPTER I - GENERAL PROVISIONS	472
Article 1 - Purpose	472
Article 2 - Definitions	472
Article 3 - Taxpayers	477
Article 4 - Object of Taxation	477
Article 5 - Taxable Income	477
Article 6 - Tax Rate	485
CHAPTER II - INCOME EXEMPT FROM TAX	486
Article 7 - Exempt Income	486
CHAPTER III - EXPENDITURE	488
Article 8 - Disallowed Expenses	488
Article 9 - Allowable Expenses	489
Article 10 - Allowable Deductions	491
Article 11 - Representation Costs	493
Article 12 - Bad Debts	494
Article 13 - Reserve Funds	495
Article 14 - Payments to Related Persons	496
Article 15 - Depreciation	496
Article 16 - Depreciation of Livestock	500
Article 17 - Special Allowance for New Assets	501
Article 18 - Repairs and Improvements	502
Article 19 - Amortization	503
Article 20 - Exploration and Development Costs	504
CHAPTER IV - CAPITAL GAINS AND LOSSES, BUSINESS LOSSES	506
Article 21 - Capital Gains and Losses	506
Article 22 - Involuntary Conversions	509
Article 23 - Tax Losses	509
CHAPTER V - LIQUIDATION AND REORGANIZATION	511
Article 24 - Distribution of Property	511
Article 25 - Liquidation	511
Article 26 - Reorganization	511
CHAPTER VI - TRANSFER PRICES, AVOIDANCE OF DOUBLE TAXATION	515
Article 27 - Transfer Prices	515

Article 28 - Avoidance of Double Taxation.....	519
Article 29 - Permanent Establishments.....	519
CHAPTER VII - WITHHOLDING TAX	522
Article 30 - Withholding Tax on Interest, Royalties, Rents, Lottery Winnings, and Games of Chance	522
Article 31 - Withholding on certain payments to non-residents.....	525
CHAPTER VIII - SPECIAL PROVISIONS	531
Article 32 - Treatment of Insurance Activity	531
Article 33 - Treatment of Commercial Income of Non-Governmental Organizations.....	531
CHAPTER IX - ADMINISTRATIVE PROVISIONS	534
Article 34 - Tax Declarations	534
Article 35 - Tax Payments	535
Article 36 - Requirement for Books and Records	540
Article 37 - Requirements for Books and Records for Small Businesses	541
Article 38 - Temporary Provisions.....	542
CHAPTER X - FINAL PROVISIONS.....	543
Article 39 - Implementation.....	543
Article 40 - Appeals.....	543
Article 41 - Applicable Law.....	543
Article 42 - Entry into Force	544

INTRODUCTION

Respecting tax laws is essential citizen responsibility. In a modern country, that Kosovo is intending to be, from its citizens is required the payment of taxes and other obligations to finance government programs, to provide public services, and high standards of education, health, social welfare, protection, law enforcement and general infrastructure. All of these can be secured and are possible only through the proper collection of taxes. This is strongly emphasized in the Constitution of Republic of Kosovo:

“Every person is required to pay taxes and other contributions as provided by law.” – Article 119.

It is duty and obligation of every taxpayer to respect and to implement applicable tax legislation provisions.

“Public expenditure and the collection of public revenue shall be based on the principles of accountability, effectiveness, efficiency and transparency.” – Article 120.

It is a responsibility of Tax Administration, as Executive Agency, with full autonomy, to administer the implementation of every tax type applied by tax legislation of Republic of Kosovo.

In order to realize the responsibility given by the law the Tax Administration has focused all efforts on voluntary compliance by taxpayers. Voluntary compliance means filing and paying the tax liabilities and respecting legal provisions with regard of tax amount that are required to be paid and honoring the payment deadline of this amount without the intervention of TAK.

To achieve this objective, TAK always is serving taxpayers. At any time TAK is trying to create favorable conditions for taxpayer and as easy and simple procedures as possible to enable taxpayers to voluntarily comply with his tax obligation. Therefore, the mission of TAK is the development on the highest level of voluntary compliance in line with laws and regulations in effect, and also providing professional, transparent and effective services for taxpayer.

Tax Administration has the obligation and duty set by the law to ensure **the uniform implementation of legal provisions for all taxpayers in the same manner for similar situations.**

Because of this TAK has published this book in order to inform the taxpayer on the tax applicable legislation with rights and obligations that taxpayer has against Tax Administration, and rights and obligations that Tax Administration has against taxpayer. In order to make more understandable the implementation of law in this book are interacted the laws and administrative instructions for the implementation of the law.

Each taxpayer is entitled to be informed, assisted and heard in time, TAK shall try to treat with kindness and in normal circumstances shall try to provide you instruction, by issuing public and individual rulings to explain how to interpret and apply the provisions of tax legislation.

From the taxpayer we are asking to pay not more than correct amount of tax. In this case will act with integrity and impartiality in all the cases when we are dealing with You, in order that You pay only the appropriate tax amount and to see that all credits, benefits, compensations and others, are applied as required.

It is taxpayer's right and TAK's duty that taxpayer's records are kept with reliability and confidence. Taxpayer may release TAK for confidentiality rule and only then TAK is entitled to publish the information of that taxpayer.

Under the tax legislation, TAK has the right to make assessments with regard to your filing. But, it is taxpayer's right of to file appeal against such assessments. There are available comprehensive procedures for unhappiness and complaints for all taxpayers and we encourage you to use them if somehow you are unsatisfied with official assessment/decision and determination issued by TAK. Also, we will give our effort to fully explain your rights for review, dispute and appeal, if you are not certain, or you need explanations.

Every taxpayer is obliged to keep evidence (books, records, invoices, contracts, etc.), as provided in the tax legislation and the provisions of those laws that taxpayer must respect. It is the obligation of every taxpayer to be cooperative and honest by offering accurate and reliable information to TAK officials during the audit procedures or during the check of those documentations. Also, it is required that you have available these documents at the time required by TAK in order that we complete the verification at the optimal time possible.

We are asking from you to pay taxes in time, because as the consequence of failure of payment in time, there are penalties provided by special legal provisions. In the other side TAK it is not interested at all to collect penalties for the budget of Kosovo, but our primary goal is to collect revenues for the Kosovo budget from voluntary compliance. But, if you do not comply with your tax obligations at the appropriate amount and time, you should be aware that tax legislation can provide sanctions, penalties and/or imposition of interest. Tax legislation has provided TAK instruments to collect outstanding liabilities against TAK. Tax evasion and offenses can implicate criminal offenses and in more serious cases can be taken relevant procedures under legal provisions.

All what is said above with regard of procedures provided by the legislation, you may be informed widely with the laws, which are linked with administrative instructions for the implementation of these laws, where each article of the law is linked with relevant section of the administrative instruction, and the same you may find in electronic format on the TAK official website www.atk-ks.org.

Tax Administration of Kosovo
Compliance Department

**LAW NO. 03/L-222 - ON TAX ADMINISTRATION
AND PROCEDURES**

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON TAX ADMINISTRATION AND PROCEDURES

Article 1 - Definitions

(Law No. 03/L-222)

1. For the purposes of this law:

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. **TAK**-Tax Administration of Republic of Kosovo.

1.3. **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.

1.4. **Lien** - 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.

1.5. **Closing Balance Sheet** -a financial statement for suspension of a commercial activity.

1.6. **Independent Review Board**-the Board established under this law to hear tax appeals from taxpayers.

1.7. **CBK**-the Central Bank of the Republic of Kosovo established under Law 3/L-074, On the Central Bank of the Republic of Kosovo.

1.8. **Information statement** - means:

- 1.8.1 .an income tax withholding annual reconciliation statement;
- 1.8.2. a quarterly or annual statement of pensions contributions withheld and paid;
- 1.8.3. an annual statement of purchases in excess of five hundred (500) euro from single suppliers;
- 1.8.4. an application form to authorize use of a specified fiscal electronic device;
- 1.8.5. a receipt issued by a fiscal electronic device;
- 1.8.6. a tax invoice required under Kosovo's laws that relate to VAT;
- 1.8.7 .a manually prepared (not completed through a fiscal electronic device) sales invoice/receipt;
- 1.8.8. the periodic report required to be transmitted to the tax administration by a fiscal electronic device; and
- 1.8.9. any form designated by the Director General for the purpose of

persons applying for tax identification numbers and being registered for tax.

1.9. **Tax declaration** -means:

- 1.9.1. a personal income tax declaration;
- 1.9.2. a profit tax declaration;
- 1.9.3. a presumptive tax declaration;
- 1.9.4. a VAT declaration;
- 1.9.5. a hotel, food and beverage service tax declaration;
- 1.9.6. a pension contribution declaration; and
- 1.9.7. a corporate income tax declaration.

1.10. **Tax Document**-a document issued by the TAK to exercise the activities as defined by the law.

1.11. **Delivery**-the service of a relevant document on a taxpayer by:

- 1.11.1. 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);
- 1.11.2. leaving the document at the taxpayer's dwelling or usual place of business; or
- 1.11.3. sending the document by mail to the taxpayer's last known address.

1.12. **Director General**-the Director General of the Tax Administration of Kosovo.

1.13. **Entity**-shall have the same meaning as that term is defined in Law 03/L-161 on Personal Income Tax.

1.14. **Non-resident**-any person who is not a resident.

1.15. **Tax advisor**-a person who provides tax advice to a taxpayer in the course of a tax procedure.

1.16. **Undocumented Goods**-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).

1.17. **Levy**-the seizure or other taking of property for the payment of any tax due to the Tax Administration of Kosovo.

1.18. **Minister**-Minister of the Ministry of Economy and Finance (MEF)

1.19. **Personal business enterprise**-a natural person engaged in economic activity who is not an agent or employee of another economic activity.

1.20. **Permanent establishment**-shall have the same meaning as that term is defined in Law 03/L-162 on Corporate Income Tax.

1.21. **Partnership**-a general partnership, a limited partnership or similar pass-through arrangement that is not a legal person under Law 02/L-123 “On Business Organizations”, and that proportionately shares items of capital, income, profit and loss among its partners.

1.22. **Fiscal Electronic Device**-also known as FED or fiscal cash register, means an electronic computerized device or system, which is used for the safe recording and issuance of revenue receipts for retail transactions or wholesale transactions in which no invoice has to be issued in accordance with applicable legislation. The term “Fiscal Electronic Device” includes such electronic devices as fiscal electronic cash registers, fiscal printers, fiscal electronic signature devices, and similar devices.

1.23. **Generally Accepted Accounting Principles**-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;

1.24. **Tax period**-the period of time to which a specific tax liability relates established under legislation applicable in Kosovo.

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

1.26. **Person**-for purposes of this law shall include the following:

1.26.1. a natural person;

1.26.2.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;

1.26.3.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

1.26.4.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;

1.27. **Related persons**-persons that have a special relationship that may materially influence the economic results of transactions between them. Special relationships include:

1.27.1. the persons are officers or directors of one another's business;

1.27.2. the persons are partners in business;

1.27.3. the persons are in an employer-employee relationship;

1.27.4. one person holds or controls 50% or more of the shares or voting rights in the other legal person;

1.27.5. one person directly or indirectly controls the other person;

1.27.6. both persons are directly or indirectly controlled by a third person; or

1.27.7. the persons are husband or wife, or relatives to the third degree inclusive, or in law to the second degree inclusive

1.28. **Self-employed person**-any natural person who works for personal gain, in cash or in kind, who is not covered by the definition of an employee under this law. A self-employed person includes a personal business enterprise and a partner engaged in an economic activity.

1.29. **Legal person** -a corporation or other business organization that has the status of a legal person under Law 02/L-123 "On Business Organizations" and other legislation applicable in Kosovo.

1.30. **Taxable person**-has the same meaning as that term is defined in Law 03/L-146, "On Value Added Tax."

1.31. **Fiscal Representative**-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 the Republic of Kosovo.

1.32. **ICR**-International Civil Representative.

1.33. **Employer**-shall have the same meaning as that term is defined in Law 03/L-161 on Personal Income Tax.

1.34. **Employee**-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 agreements, whether in writing or not. An employee includes all public officials and members of executive, representative and judicial bodies.

1.35. **Beneficial Owner**-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.

1.36. **Taxpayer representative**-any person that represents a taxpayer in the course of a tax procedure within the terms of a written authorization.

1.37. **Principal Residence**-shall have the same meaning as that term is defined in Law 03/L-161 on Personal Income Tax.

1.38. **Resident**- means:

1.38.1. 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

1.38.2. an entity, personal business enterprise, partnership, or association of persons which is established in Kosovo or has its place of effective management in Kosovo.

1.39. **SIGTAS**-Standard Integrated Government Tax Administration System, which is the tax administration's data processing system.

1.40. **Tax**-includes any tax, contribution or other amount payable to TAK under legislation applicable in Kosovo.

1.41. **Taxpayer**-any person who is required to fulfill tax obligations imposed under legislation applicable in Kosovo, and includes a taxable person.

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

1.43. **Criminal tax offenses**-those as mentioned in Article 63 of this law.

1.44. **Assessment**-the determination of a taxpayer's liability for a specific tax and

a specific tax period. In the case of a self-assessed return submitted by a taxpayer, assessment means the entry into the tax administration's records the fact of filing, including a tax debt, if applicable.

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

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

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

Section 1 **Goal and Scope**

(Administrative Instruction or. 15/2010)

The goal of this Administrative Instruction is the establishment of procedures and requirements for implementation of provisions of Law No. 03/L-222, "On Tax Administration and Procedures" (hereafter referred to as the Law).

Section 2 **Definitions**

(Administrative Instruction or. 15/2010)

"**MEF**" – means Ministry of Economy and Finance;

"**Minister**" – means Minister of 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;

"**BRAK**" – means Business Registration Agency of Kosovo in MTI;

"**Business Registration Number**" – means the registration number that a business organization obtains from BRAK;

"**Business Organization**" – is a general term that means and includes any of the business organization types established in Kosovo under law currently in force: a personal business enterprise; a general partnership; a limited partnership; a limited liability company; and a joint stock company.

"**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. "TAK", means the Tax Administration of Kosovo; "FCR", means Fiscal Cash Registers;

"**FPRN**", means Fiscal Printers;

"**POS**", means any electronic Point Of Sale;

“**TT**”, means Tax Terminal;

“**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;

“**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;

“**Commission**”, means a body established by the Minister of Economy and Finance tasked to review and approve FED’s, FED Distributors, and authorized FED technicians;

“**Fiscal data network**”, means the communication network linking FED and TAK, related to the transmission of fiscal data.

Article 2 - The Tax Administration of Kosovo

(Law No. 03/L-222)

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

2. TAK shall be responsible for applying the provisions of this law, the Law on Personal Income Tax, the Law on Corporate Income Tax, the Law on Value-Added Tax and any other legislation applicable in Kosovo that requires it to administer.

3. In meeting its responsibility under paragraph of this Article it shall be the duty of TAK to collect over time revenue that is practicable within the law having regard to:

3.1. the resources available to TAK;

3.2. the importance of promoting compliance, especially voluntary compliance, by all taxpayers with Kosovo’s tax legislation; and

3.3. the compliance costs incurred by taxpayers;

Section 3

Tax Administration of Kosovo (TAK)

(Administrative Instruction or. 15/2010)

1. Paragraph 1 of Article 2 of the Law specifies that TAK shall have the status of an Executive Agency and it also attributes to TAK ‘full operational autonomy’ within MEF. The meaning of this expression is that MEF will continue to have an exclusive role in

formulating the overall revenue and tax policy for the government and TAK will continue to furnish data and assistance necessary for this formulation. The administration of taxes from the operational perspective will be totally autonomous and out of the control of the Minister of MEF, or any other person outside TAK, with certain exceptions which are specified in the Law such as:

1.1. involvement in the appointment of the Director of TAK; and

1.2. approving and publishing the interest rates for late tax payments and delayed refunds.

Article 3 - Director General of TAK

(Law No. 03/L-222)

1. TAK shall be headed by a Director General who shall be appointed by the Prime minister of the Government of Republic Kosovo based on a recommendation submitted by the Minister of Economy and Finance. Such recommendation shall be made following the completion of a recruitment process initiated by the Minister of Economy and Finance conducted in accordance with the provisions of the legislation and regulations in force with respect to the civil service of Kosovo.

2. The Director General may be removed by the Prime minister 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. The Director General shall have:

3.1. the duty to enforce the provisions of this law;

3.2. the duty to collect all taxes levied under legislation applicable in Kosovo that authorizes TAK to administer such tax;

3.3. the duty to prepare advertisements, notices, and other communications to ensure that all persons understand their obligations and rights under this law;

3.4. the duty to ensure the uniform application of the tax laws in Kosovo;

3.5. the power to appoint such persons as may be required to carry out the provisions of this law in conformity with the Kosovo Civil Service rules;

3.6. the power to establish an organizational structure within TAK appropriate for its functions;

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

3.8. the authority to enter into agreements with Central and Local Public Enterprises, subject to conditions to be established by a sub-legal act, whereby the tax administration will defer enforcing collection of taxes due from Public Enterprises, 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;

3.9. the authority to require all, or some, employees, managers, or Senior managers of the tax administration to provide financial disclosure statements in a form and format developed by the tax administration which are subject to verification by the Office of Professional Standards of the tax administration. Information provided on the form must be true and correct to the best belief and knowledge of the preparer. Provision of false, misleading, or purposely incomplete information is grounds for dismissal from the tax administration; and

3.10. the authority to engage experts as necessary, subject to confidentiality provisions of this law, to provide technical assistance in complex areas impacting tax administration for which the tax administration does not have expertise.

Section 4

Director General of TAK

(Administrative Instruction or. 15/2010)

1. Paragraph 1 of Article 3 of the Law provides that TAK shall be headed by a Director General appointed by the Prime Minister of Kosovo based on a recommendation submitted by the Minister. A recruitment process conducted under existing legislation governing appointments of senior government officials must be followed as part of the appointment process. Recruitment for a Director General shall begin only after the position has become vacant, or the existing Director General has presented an irrevocable resignation, or a proposal for dismissal of the existing Director General has been presented and sufficient evidence provided that the dismissal is in accordance with paragraph 2 of this Section.

2. The Director General of TAK may be dismissed only by the Prime Minister of the Government of Kosovo. As provided in paragraph 2 of Article 3, such dismissal is authorized only upon a finding of professional incompetence or misconduct, or if the Director General has been convicted of a criminal offense and sentenced to serve a prison term of six months or more.

3. Until the end of the international supervision of the implementation of the Comprehensive proposal for Kosovo status settlement, dated 26 March 2007, the appointment and dismissal of the Director General shall be in accordance with the provisions of Article 88 of the Law.

Section 5

Agreements with Public Enterprises

(Administrative Instruction or. 15/2010)

1. Sub-paragraph 3.8 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 Publicly-Owned Enterprises (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 POE's.

2. Under sub-paragraph 3.8 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.

Article 4 - Deputies of Director General

(Law No. 03/L-222)

1. The Director General shall be assisted by Deputies of Director General and/or Directors. The Deputies of Director General and Director's shall be proposed by a selection panel formed in accordance with the relevant legislation in force on the Kosovo Civil Service and chaired by the Director General. The Director General shall make the final decision on appointments based on the results of interviews and the Kosovo Civil Service appointment process.

2. Deputies of Director General and Directors shall be responsible for the functions that are assigned to them and will assist the Director General with these functions. The Director General shall determine the level of co-efficient of each of these positions in accordance with applicable law or sub-legal act.

3. The Deputy Director General and Directors may be removed only on the ground of corruption, malfeasance or incompetence. In order to remove a Deputy Director General or Director, a proposal for removal must be presented to a disciplinary committee nominated by the Director General. The Director General shall make the final decision on removal in accordance with the Kosovo Civil Service removal process.

Article 5 - Senior Managers

(Law No. 03/L-222)

1. Headquarters and Regional Managers shall be nominated by a panel formed in accordance with the relevant legislation in force on the Kosovo Civil Service. The Director General shall make the final decision on the appointment of the Headquarters and Regional Managers.

2. Headquarters and Regional Managers shall be responsible for the functions that are assigned to them and will assist the Director General and Deputies of Director General or Directors with these functions.

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 General. The Director General shall make the final decision on removal.

Article 6 - Tax Officials

(Law No. 03/L-222)

1. Within the rules established by relevant legislation in force on the Kosovo Civil Service, the Director General shall:

1.1. have the authority to employ such persons as may be reasonably required, taking into account the budgetary limits of TAK;

1.2. 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;

1.3. require tax officials to wear or carry an official TAK identification card while conducting business and to produce the card upon request.

2. With the purpose of detecting and preventing criminal tax offenses, the Director General shall have the authority to establish a Tax Investigation Unit.

3. Notwithstanding the reference in paragraph 1 of this Article to the legislation in force on the Kosovo Civil Service, the Minister may, through sub-legal act:

3.1. establish minimum recruitment standards that must be met by all prospective tax officials in order to ensure that TAK develops and retains a professional staff with high standards of integrity. Standards established must ensure that the selection process is transparent and selections are based on objective criteria, including testing of candidates as considered appropriate.

3.2. establish a pay scale that is separate and distinct from the pay scale established under the relevant legislation in force on the Kosovo Civil Service, which recognizes the complexity and strategic importance of the work which is required by the TAK; closely parallels salaries offered to private employees in similar occupations; and recognizes the need to retain a highly-trained, professional staff.

3.3. establish procedures to dismiss tax officials who do not perform their work at a necessary standard or other improper execution of duties.

3.4. develop procedures for tax officials to seek redress for grievances concerning promotions, dismissals, and related matters.

Section 6 **Tax Investigation Unit**

(Administrative Instruction or. 15/2010)

Paragraph 2 of Article 6 of the Law authorizes the Director General to establish a Tax Investigation Unit (hereinafter: TIU) for the purpose of investigating possible criminal tax offenses. The authorities, responsibilities, and applicable procedures are regulated in a separate Administrative Instruction.

Article 7 - Delegation Power

(Law No. 03/L-222)

1. The Director General may delegate to any officer of TAK any power or duty conferred or imposed on the Director General by this law other than this power of delegation.
2. The Director General may delegate powers, as deemed necessary for efficient tax administration, to members of the Kosovo Customs Service as agreed between the Director General TAK and the Director General Customs.
3. The Director General may revoke any power or duty delegated under paragraph 1 or 2 of this Article at any time.

Section 7 **Delegation of Authority**

(Administrative Instruction or. 15/2010)

Article 7 of the Law provides that that Director General of TAK may delegate any power or duty under the Law to any officer of TAK, except the specific power of delegation.

Article 8 – Reporting

(Law No. 03/L-222)

1. The Director General shall furnish periodic reports of TAK's operations and performance to the Minister of Economy and Finance.
2. The Director General shall produce an annual report on the operations of TAK and deliver the report to the Minister of Economy and Finance, the Government of Kosovo, and the ICR based in request within three months after the end of each calendar year.

3. The annual report of TAK shall include:

3.1. details of the budget of TAK;

3.2. details of the number and level of staff of TAK;

3.3. details of the revenues collected by TAK showing details of the amount of revenue from each type of tax and each region and such other details as may be requested by the Minister of Economy and Finance;

3.4. estimates of the cost of collection for each type of tax revenue collected;

3.5. details of all tax liabilities cancelled under Article 36, including the names of the persons whose liability has been cancelled and the amount cancelled;

3.6. details of all initiations of proceedings for criminal tax offenses, where the investigation was commenced by the tax administration. The name of each person who has been convicted, the sentence issued, and the amounts of tax involved shall be included only if the conviction has become final and appeals are no longer possible;

3.7. information on the use of the powers authorized by Article 14 of this law, including the number and nature of any complaints about the use of those powers, but not including the names of the persons involved.

Article 9 - Public Rulings

(Law No.03/L-222)

1. The Director General 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.

2. Public rulings shall be made available to the public and brought to the attention of persons affected by the rulings.

3. A public ruling issued under this Article is binding on the Director General for any tax liability arising in a tax period prior to the time such ruling is revoked by TAK.

4. A public ruling is not binding on a person liable to pay tax under the legislation applicable in Kosovo.

Article 10 - Individual Rulings

(Law No.03/L-222)

1. The Director General may issue a ruling to a particular person explaining how TAK shall interpret and apply the provisions of the tax legislation that it administers as it applies to a particular transaction or arrangement planned by the person seeking the ruling.
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.
3. The Minister shall issue a sub-legal act to prescribe the requirements for requesting an individual ruling; including the documents required the information to be included in the request, timeframes for requesting and issuing rulings, and the fees to be required for requesting an individual ruling.

Section 8 Individual Rulings

(Administrative Instruction or. 15/2010)

1. As provided in Article 10 of the Law, the Director General may issue a ruling to a particular person explaining how TAK shall interpret and apply the provisions of the tax legislation as it applies to a particular transaction or arrangement planned by the person seeking the ruling. A ruling may also be issued upon request of a taxpayer for a change in record-keeping or tax payment requirements as provided in the tax laws administered by TAK. Ruling requests must be accompanied by payment of a fee as prescribed in paragraph 10 of this Section.
2. An individual ruling is a written determination issued to a person by TAK in response to the person's written inquiry about its status for tax purposes or the tax effects of its acts or transactions as follows:
 - 2.1. A request for individual ruling relates to tax periods for which a tax declaration or document is not yet due. An individual ruling applies only to the tax period(s) for which it is requested and subsequent tax periods, so long as the facts and circumstances are the same in subsequent tax periods as they were for the tax period for which the individual ruling was issued.
 - 2.2. If a ruling cannot be issued prior to the time a declaration is due, TAK will issue the ruling at the earliest possible time. In such a case, the person to whom a ruling is issued may submit a corrected return (if applicable) as provided in the Law. An individual ruling interprets the tax laws and applies them to the taxpayer's specific set of facts. An individual ruling is issued when appropriate in the interest of sound tax administration.

2.3. Once issued, an individual ruling may be revoked or modified as deemed appropriate by the Director General. A revocation or modification of an individual ruling shall not have a retroactive effect unless both the Director General and the affected person agree to apply the revocation or modification retroactively.

3. Issues for which an individual ruling may be issued:

3.1. Requests for reorganization per tax laws administered by TAK;

3.2. In income tax (Corporate and Personal) matters related to transactions pending or completed, provided the ruling request is submitted before the applicable tax declaration or document is due;

3.3. Requests submitted in accordance with sub-paragraph 3.2 of Article 5 of the Law on Corporate Income Tax to reverse an option to pay tax based on full accounting for income and expenses;

3.4. Requests submitted in accordance with paragraph 4 of Article 35 of Law on Corporate Income Tax to return to computing tax and making payments on the basis of a percentage of turnover as provided in sub-paragraph 2.1 of Article 35 of the Law on Corporate Income Tax;

3.5. Requests submitted in accordance with sub-paragraph 3.2 of Article 33 of Law on Personal Income Tax related to change from keeping books and records per Article 33 of Law on Personal Income Tax to keeping books and records as required by Article 34 of Law on Personal Income Tax;

3.6. Requests submitted in accordance with sub-paragraph 2.2 of Article 43 of the Law to return to reporting income and paying tax in accordance with sub-paragraph 2.1 of Article 43 of Law on Personal Income Tax;

3.7. Requests submitted to change inventory method for both Corporate and Personal Income Tax purposes;

3.8 Requests to maintain centralized records per paragraph 8 of Section 17 of this Administrative Instruction;

3.9 VAT Certificates and credit co-efficient issues, or

3.10. Other issues for which a person requests an individual ruling which is not contrary to the provisions of paragraph 4 of this Section and which the Director General agrees to comply with the individual ruling request.

4. An individual ruling will generally not be issued in the following circumstances:

4.1. The request involves an issue under examination, under appeal, or in litigation;

4.2. The request is made on behalf of a business association or group concerning matters of interest to the members of the association or group. An individual ruling may be issued if the business association or group is the person directly impacted by the ruling;

4.3. The request relates to the consequences of proposed legislation;

4.4. The request relates to an issue that is deemed to be frivolous by TAK, because the issue has no basis in fact or in law;

4.5. The request relates to an issue that is clearly resolved in the law or implementing regulations;

4.6. The request relates to a transaction or matter in which the person making the request is not directly impacted;

4.7. The request relates to a hypothetical situation; or,

4.8. Any other matter for which, at his/her discretion, the Director General declines to issue an individual ruling.

5. A request for individual ruling must include the following (a sample format is provided in Annex A to this Administrative Instruction):

5.1. Name, address and fiscal number of person making the request, including the name, telephone number, and position of the person to contact if TAK has any questions or needs further information;

5.2. The nature of the request, including the specific point in paragraph 3 of this Section under which the request is being made;

5.3. An explanation of the issue or transaction for which a ruling is requested, including a complete statement of facts and other information relating to the transaction or issue for which a ruling is requested;

5.4. Copies of all applicable contracts, agreements, and other documents that are pertinent to the issues for which the ruling is requested. If any contract, agreement, or document is in a language not considered to be an official language of Kosovo, such contract, agreement or document must be accompanied by an official translation in an official language of Kosovo;

5.5. An analysis of the facts and circumstances related to the issue or transaction for which a ruling is requested, including the requestor's conclusion as to the expected tax treatment related to the issue or transaction. The requestor's conclusion must be based on a legal authority, such as a specific article of tax law,

which is cited in the analysis. Any determinations contrary to the conclusion reached by the requestor must be included in the analysis, to the extent that the requestor is aware of such contrary determinations. If documents included with the request support the conclusion reached, the reasons for which they are applicable must be included in the analysis submitted;

5.6. If the request relates to a corporate distribution or reorganization, the request must include, in addition to the above items, financial statements of the previous tax period and the current tax period including the month prior to the ruling request. Financial statements include those audited by an external auditor, if such audited financial statements are required by relevant law, and any associated explanatory notes to the financial statements;

5.7. A statement regarding any previous ruling requests made and the results of such request, including a statement as to whether the same or a similar issue was previously ruled on or whether a request involving it was submitted or is currently pending;

5.8. A statement as to whether any return of the person requesting the ruling will be impacted by the ruling;

5.9. A copy of bank receipt showing payment of the required fee for requesting a ruling; and

5.10. Any other information considered necessary to issue the individual ruling requested.

6. In addition to the information required by paragraph 5 of this Section, the following information is required:

6.1. For rulings related to sub-paragraphs 3.3 through 3.6 of this Section:

6.1.1. A statement regarding the expected economic activity and results for the current and subsequent calendar year with supporting statement or documentation explaining the basis for the economic activity and results anticipated;

6.1.2. Financial statements, as described in sub-paragraph 5.5 of this Section, for the three calendar years prior to the year for which the change is requested;

6.1.3. Copies of all tax declarations submitted during the three calendar years prior to the year for which the change is requested;

6.2. For requests made under sub-paragraph 3.7 of this Section:

6.2.1. Information required by sub-paragraph 6.1 above;

6.2.2. A complete and detailed inventory current as of the end of the month preceding the request;

6.2.3. A complete and accurate description of the inventory method for which authorization is requested;

6.2.4. The business reason for which the change in inventory method is being requested and the impact of that change on subsequent tax determinations; and

6.2.5. If the method of valuing inventory is being changed in connection with the change in inventory method, a complete description of the proposed inventory valuation method, the reasons for adopting that method and the impact of that change on subsequent tax determinations.

6.3. For requests under sub-paragraph 3.8 of this Section:

6.3.1. Identification of the central location at which the records are to be maintained;

6.3.2. A detailed description of how the information from each individual location will be captured at the central location (if data not captured at the central location electronically, a description of how the data will be transferred from each location to the central location and the method of ensuring that the data transferred is timely and correctly entered into the central system);

6.3.3. The frequency of data transmission, and a complete description of the files to be maintained at the central location, including a description of how the individual location data will be incorporated in the central files;

6.3.4. A description of the records to be retained at the local level, if any; and

6.3.5. A description of how the data from the individual locations will be identified in the central system.

7. Generally, a request for ruling must be submitted at least 90 days before the beginning of the tax period to which the ruling relates. Ruling requests made under sub-paragraphs 3.3 through 3.6 of this Section must be made no later than 1 March of the tax period for which the ruling is requested.

8. TAK will issue its response to rulings requested under sub-paragraphs 3.1, 3.2, 3.7, 3.8, 3.9, and 3.10 of this Section within 60 days after receiving all information necessary for issuance of a ruling. TAK will issue its response to rulings requested under sub-paragraphs 3.3 through 3.6 of this Section within 30 days after receiving all information necessary for issuance of a ruling.

9. If, due to lack of timely receipt of required information or submission of inadequate information, TAK is not able to respond to rulings requested under sub-paragraphs 3.3 through 3.6 of this Section prior to 31 March of the year for which such ruling is requested, TAK will issue a negative response to the requestor. In such cases, the requestor may submit a new request for ruling between 1 January and 1 March of the subsequent year if the requestor still wishes to change the method of determining or paying tax.

10. A request for ruling must be accompanied by payment of an administrative fee based on the type of ruling requested.

10.1. Rulings requested under sub-paragraphs 3.3 through 3.6 of this Section require payment of an administrative fee of €150;

10.2. Rulings requested under sub-paragraph 3.7 of this Section require payment of an administrative fee of €250.

10.3. All other requests for individual ruling require payment of an administrative fee of €1,000.

10.4. DG shall determine when TAK is prepared to administer the fees prescribed in this Section and shall issue a public notice announcing the date from which such fees shall be required.

11. Irrespective of whether an individual ruling is withdrawn or modified as provided in paragraph 1 of this Section, an individual ruling remains in effect only so long as the facts and circumstances under which it was issued remain unchanged. A change in facts and circumstances results in an immediate termination of the individual ruling without notice. A change in the law on which the ruling was based is a change in legal circumstances and therefore, will result in the ruling no longer having effect from the date the law enters into force. If a person wishes to confirm tax treatment following a change in law or other change in facts and circumstances, a new request for individual ruling will be necessary.

12. Notwithstanding the provisions of Article 77 of the Law, an individual ruling shall not be considered to be a determination of the Director General that is subject to the appeals procedures of the Law. If the recipient of the ruling disagrees with the application of the

law due to a misunderstanding of the facts or circumstances, it may submit a request for reconsideration through a letter to the Director General specifying the facts or circumstances that were not understood and the impact of that misunderstanding on the ruling issued. Such letter must be submitted within 30 days after the date the ruling was issued. Any request submitted after 30 days from the date the ruling was issued shall be considered to be a new ruling request, subject to the payment of administrative fees as described in paragraph 10 above. After considering the additional information, the Director General may advise the requestor in writing that the ruling remains unchanged, or the Director General may issue a modified ruling which supersedes the initial ruling. It is expected that the Director General, or his delegate, will be in regular communication with the person requesting an individual ruling in order to minimize any misunderstandings.

Article 11 - Fiscal Number and obtaining the Fiscal Certificate

(Law No.03/L-222)

1. Any person subject to any kind of tax administered by the TAK shall register with the TAK and obtain a fiscal number before engaging in any economic activity.
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 MEF. The sub-legal act shall include conditions under which the tax administration can refuse to issue a fiscal number or under which the tax administration has the right to deregister a taxpayer involved in economic activities from its active register where there is a poor history of compliance or there is reasonable suspicion of a criminal tax offense and where it can be reasonably expected based on the facts of the case that the taxpayer or the responsible person does not intend or will not be able to comply with his tax co-operation duties.
3. The TAK may deny registration of any entity that includes in its listing of officers or directors (including managing director) a responsible representative as described in Article 16 of this Law that has a history of non-compliance (non-submission of declarations or non-payment of tax obligations) in any previous entity for which he or she was a partner, owner, managing director, or other responsible representative. The Minister shall issue a sub-legal act to describe the basis for determining that a person has a history of non-compliance and the basis under which registration can be denied.
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 paragraph 2 of this Article.
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 five (5) days of being named. The form of registration and registration procedures shall be prescribed in the sub legal act to be issued per paragraph 2 of this Article.

6. Any person that changes a form of business, which results in a change of legal status of the business, such as, but not limited to, a change from individual enterprise to Limited Liability Company, must obtain a fiscal number for the new business. If the change is a reorganization or merger, as provided in the Corporate and Personal Income Tax laws of Kosovo, the reorganization or merger must be completed in accordance with the applicable provisions of those laws. Any transfer of business, or change in form of business, not in accordance with the provisions of this paragraph, or not supported by applicable contracts or other acceptable evidence of an actual sale, shall be considered to be a continuation of the prior business, with all consequences thereof.

Section 9 **Fiscal Numbers**

(Administrative Instruction or. 15/2010)

1. All business organizations must obtain a fiscal number from the tax administration before beginning any economic activity. Penalties, as described in Article 50 of the Law apply to persons conducting economic activity without a fiscal number. The fiscal number shall be a number of 8 digits, plus 1 check digit, randomly selected using an algorithm that will provide security against fraudulent numbers and duplication of numbers.

2. Unless provided otherwise in this Section, applications for fiscal number must be submitted to the TAK regional office in which the applicant is located. Generally, a business organization should first register with the BRAK and then within 15 days must apply for a fiscal number.

3. Any NGO, after registering with NGO Registration Office must apply to TAK within 15 days to obtain a fiscal number under the rules provided in paragraph 1 of this section.

4. All Budget Organizations of the central Government and local governments must obtain a “*fiscal number*”. Central or local institutions, must 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 personal business enterprises that an individual has registered with BRAK, it will receive only one “*fiscal number*”.. The income created from several businesses of an individual, shall be consolidated for purposes of determining liability to, and computing, VAT and Personal Income Tax. In requesting a fiscal number, an individual must provide his/her personal identification number and inform the tax administration of all personal business enterprises owned by that individual, including the trade name, address, and business registration number of each personal business enterprise

owned. If, after receiving a fiscal number from TAK, an individual establishes a new personal business enterprise, the individual must register the newly registered personal business enterprise with TAK prior to that personal business enterprise engaging in economic activity. No personal business enterprise will be registered until the individual has obtained a personal identification number and provided that number to the TAK.

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, or is obliged to, submit a tax declaration must apply for, and receive, a “*fiscal number*” from TAK, before submitting the declaration. The individual must provide TAK with his/her personal identification number in order to obtain a fiscal number.

8. TAK may make a visit to the business organization location prior to issuing a fiscal number. The visit must take place within 3 business days after receiving the fiscal number application. TAK must make a decision on whether to issue a number, or not, within 5 working days after receiving the application. If the TAK is not able to locate the business organization location after two attempts made within the 3-day period and documented with the activities in the field, it will not issue a fiscal number and inform the business organization and BRAK accordingly.

9. 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, it must have obtained a Business Registration Number from the BRAK. 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.

10. 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:

10.1. Fiscal Number issued to the taxpayer;

10.2. Reminder to the taxpayer that it must meet all filing and payment requirements in order to keep the fiscal number

10.3. Request that such document be held in the taxpayer’s premises

10.4. Request that it be available for review by TAK

10.5. Reminder that the fiscal number issued to the taxpayer must be included in any invoice issued and any contract made with any other entity.

11. 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 16 of this Administrative Instruction.

12. TAK may refuse to issue a fiscal number to a taxpayer when he/she:

12.1. gives inaccurate address information on the fiscal number application

12.2. cannot be located at the address given to BRAK after two attempts by TAK

12.3. Fails to provide information on the owner(s) of the entity to TAK officials upon their request.

12.4. fails to provide other information required by TAK

13. 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:

13.1. having previously owned a business that failed for two, or more, months to comply with VAT liabilities;

13.2. failed to report all employees on any one monthly Wage Tax Withholding and Remittance Statement;

13.3. 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;

13.4. failed to declare or pay one or more annual income tax (personal or corporation) declarations;

13.5. failed to withhold, or pay in full, for one or more monthly rental, dividend, interest, or other monthly withholding requirement;

13.6. failed to submit and pay two or more Quarterly Tax and Contribution Payment for small or large individual business;

13.7. failed to submit and pay two or more Quarterly Advance Payment Statements for small or large corporations.

14. 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.

15. 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 16 of this section. Any negative decision may be appealed in accordance with Article 77 of The Law.

16. 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 per paragraph 4 of Section 14 of this Administrative Instruction, may enter into an agreement with the tax administration whereby the business will post an irrevocable bank guarantee, or other security acceptable to the tax administration, 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, or other acceptable security, 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. The bank guaranty, or other security, must include a provision that TAK may exercise its rights under the bank guarantee, or other security, if the taxpayer subsequently fails to pay a tax debt after notice and demand to do so and other satisfactory payment arrangements cannot be made. Once a satisfactory bank guarantee, or other acceptable security, 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.

17. If any business organization 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

Section 10

Non-Resident Persons and Fiscal Representatives

(Administrative Instruction or. 15/2010)

1. In accordance with paragraph 4 of Article 11 of the Law, any resident person who will do business or conduct projects or programs in the 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 the 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 required by paragraph 2 of this Section must be submitted to Taxpayer Education Department, at the TAK headquarters. A copy of any written contract must be attached to the report. 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 economic activity, or expected to engage in economic 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, so long as it clearly reflects the length of time the activity is expected to continue. A copy of any written contract must be submitted with the report. The following examples are included to demonstrate the intent of this paragraph, as well as paragraphs 1 and 2 of this Section:

Example:

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 paragraph 1 of this Section to the TAK 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 TAK on or before 22 December 2009.

Example:

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 paragraph 1 of this Section 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:

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.

4. As provided in paragraph 5 of Article 11 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.

5. 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 Division. TAK 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.

6. At a minimum the fiscal representative must be authorized:

6.1. To submit invoices on behalf of the non-resident person to Kosovo persons for those transactions for which the fiscal representative is authorized.

6.2. 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.

6.3. 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

6.4. 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

6.5. 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.

6.6. To act instead of and to represent the non-resident person when audits are made by TAK

6.7. To fulfill all VAT-related import, export, and Customs obligations.

7. Along with the application for registration prescribed in paragraph 5 of this Section, the fiscal representative applicant shall attach to the letter of appointment a certified copy of the fiscal representation agreement between the fiscal representative 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.

8. 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.

9. TAK shall refuse to accept the Fiscal Representative when:

9.1. 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

9.2. the applicant has a history of making unlawful tax disputes

9.3. 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.

10. Termination of fiscal representation by the Tax Administration:

10.1. The appointment of a fiscal representative may be terminated by TAK when:

10.1.1. 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;

10.1.2. the fiscal representative fails to submit declarations or to make tax payments by the due date;

10.1.3. it is necessary to do so for the protection of the revenue.

10.2. 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.

10.3. 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.

11. Fiscal Representative liability:

11.1. A fiscal representative is considered to be a legal representative as described in Article 16 of the Law.

11.2. 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 a acceptable guaranty must be agreed.

11.3. 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, the tax administration shall issue an assessment in the name of the fiscal representative as referred to in paragraph 13 of this Section and as provided in Article 25 of the Law. The TAK shall collect such an assessment in the same manner as any tax according to the provisions of the Law. As provided in sub-paragraph 14.3 of this Section, the fiscal representative's liability may exist even though he or she has ceased to be a fiscal representative.

12. Notwithstanding the provisions of Paragraph 11 of this Section, 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:

12.1. The offense 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;

12.2. The fiscal representative has consented to, or conspired in, the commission of the offense of the non-resident person; or

12.3. The commission of the offense by the non-resident is attributable to any neglect on the part of the fiscal representative.

13. 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:

Example: Geosearch Austria, Arben Krasniqi Fiscal Representative
c/o Arben Krasniqi
Agim Ramadani, 42
Pristina

This will make him different from his own registration
Mr. Arben Krasniqi
Agim Ramadani, 42
Pristina

The numbers will thus be issued to (name of fiscal representative) acting on behalf of (name of non-resident person). When submitting the application described in paragraph 5 of this Section, the fiscal representative is applying for both a fiscal number and a VAT Registration Number.

14. Cessation of fiscal representation:

14.1. The appointment of a fiscal representative shall cease or be terminated:

14.1.1. When his representation agreement with the non-resident person expires or when he ceases the representation activities during the agreed representation period;

14.1.2. When a fiscal representative dies;

14.1.3. When the fiscal representative becomes bankrupt, insolvent or incapacitated.

14.1.4. When the non-resident person establishes a permanent establishment in Kosovo.

14.2 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 Division.

14.3. A fiscal representative is not released from his personal obligation by virtue of ceasing to act as a fiscal representative. The fiscal representative will be personally liable for all tax liabilities that accrue for the tax periods during which he acted as fiscal representative. If an additional assessment of tax is 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.

14.4. 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.

15. Notwithstanding paragraphs 4 through 14 of this Section, a non-resident person is not required to appoint a fiscal representative if:

15.1. 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.

15.2. 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, or

15.3. The non-resident person will carry out economic activities in Kosovo through a permanent establishment.

Section 11

Changes in Business Form and Other Registration Information

(Administrative Instruction or. 15/2010)

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 made on the Taxpayer Fiscal Number Application Form with the box checked to indicate that it 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 the address of the 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 9 of this Administrative Instruction. The old business must request de-registration in accordance with the procedures described in Section 12 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 as provided in Section 15 of this Administrative Instruction. The following are examples of the application of this paragraph:

Example 1

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 9 of this Administrative Instruction. Company A, must apply for de-registration in accordance with Section 12 of this Administrative Instruction. 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 13 of this Administrative Instruction. TAK 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 TAK, as provided in paragraph 12 of this Administrative Instruction 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 15 of this Administrative Instruction 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 2

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 TAK per paragraph 1 of this Section.

Example 3

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.

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 12 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.

6. As provided in paragraph 6 of Article 11 of the Law, any transfer of business, not in accordance with the provisions of this Section, shall be considered to be a continuation of

the prior business, with all the consequences thereof. This means that failure to apply for a fiscal number for the new business and failure to de-register the previous business will be treated as if no new business was created and all tax debts of the previous business will carry forward to the new business and the liability to VAT (if the previous business was a VAT registrant) will continue. If the previous business was not yet liable to VAT, the amount of turnover earned by the previous owner must be considered in determining when the VAT threshold is reached.

7. Paragraph 6 of Article 11 of the Law also provides that any transfer of business that is not supported by applicable contracts or other acceptable evidence of an actual sale shall be considered to be a continuation of the previous business. For purposes of the application of paragraph 6 of Article 11 of the Law, the term ‘sale,’ as used in the previous sentence, shall also be interpreted as including a transfer of business.

Section 15

VAT and Import/Export Certificates

(Administrative Instruction or. 15/2010)

1. Registration for VAT. 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 58 of the Law provides penalties for those persons who make taxable supplies without being registered for VAT. 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.

2. All persons who 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) are required to be registered for VAT.

3. The supplies made by persons whose turnover in a consecutive 12-month period does not exceed the threshold to be registered for VAT 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 registered for VAT purposes under applicable VAT legislation 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 effect 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 they have reached the threshold for registration.

8. All VAT registration forms must be submitted in person, or by an authorized person, to the TAK regional office responsible for the tax affairs 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 and certified copies of the certificate can be issued, which must be displayed in all locations of the business in an accessible location where they can be read by the public. 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 15 calendar 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.

14. Import/Export Certificates. All persons are required to obtain an Import/Export Certificate prior to undertaking any import or export activities if they:

14.1. import goods into Kosovo, if they are not otherwise registered for VAT purposes; or

14.2. export goods from Kosovo, if they are not otherwise registered for VAT purposes.

15. 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.).

16. 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.

17. Each Import/Export Certificate will have a unique serial number on its face.

18. Cancellation and Withdrawal of Certificates. As provided in Article 23 of the Law, 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. A violation of the law which may result in cancellation or withdrawal of a VAT certificate includes, but is not limited to:

18.1. Allowing a VAT Certificate to be used by another person;

18.2. Submitting false or fictitious invoices using the VAT Certificate;

18.3. Failing to timely submit two or more VAT declarations;

18.4. Failing to timely pay one or more VAT liabilities;

18.5. Failing to timely submit and pay two or more tax declarations which the taxpayer is required to submit; or

18.6. Failing to install FED, after having been fined three times, or more, for such failure.

19. 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:

19.1. description of reasons for the proposal to withdraw or cancel the VAT Certificate;

19.2. 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;

19.3. 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 Manger issuing the notification.

20. The appeal of the taxpayer must be made on the basis that TAK made an error in the facts described under paragraph 18 of this section. The taxpayer must prepare a statement with clear facts to prove that TAK's proposal for withdrawal or cancellation of the VAT Certificate is incorrect.

21. If a taxpayer has appealed under paragraph 20 of this section and the Regional Manager agrees with the submitted facts on the taxpayer's appeal, the Regional Manager must issue a letter to the taxpayer, stating that the proposal for withdrawal or cancellation of VAT Certificate is cancelled.

22. 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 Manger must prepare a letter to the taxpayer advising him/her 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.

23. 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.

24. A VAT Certificate shall be canceled without the potential of re-instatement, if:

24.1. 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); or

24.2. the taxpayer has issued false or fictitious invoices.

24.3. In addition to canceling the VAT Certificate, the Regional Manager shall prepare a report requesting criminal proceedings as provided in paragraph 4 of Article 58 of The Law.

25. 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/she 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.

26. Upon receipt of the written request for re-instatement of the VAT Certificate, and confirmation that the taxpayer has met the requirements for reinstatement, the Regional Manager shall re-instate VAT Certificate within 2 business days. The Regional Manager must give full effort to re-instate VAT Certificate the same day as the request is received, so the taxpayer can restart business activity.

27. 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.

28. 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.

29. 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.

30. 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 16 of this administrative instruction.

31. TAK will maintain a listing of all taxpayers with active VAT Certificates on its website (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 a particular taxpayer has a valid VAT Certificate. TAK must provide the public with instructions on accessing the information. TAK will also establish a listing of VAT certificates that are no longer valid with the date from which that certificate is no longer valid.

Article 12 - Deregistration of Taxpayers

(Law No.03/L-222)

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.
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.
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.
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.
5. If within sixty (60) days after receiving a notice from the taxpayer requesting deregistration, TAK has not notified the taxpayer per paragraph 3 of this Article, the taxpayer will be considered to be deregistered.
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.
7. Deregistration under paragraphs 1 and 5 of this Article and the deregistration from active register as defined in paragraph 6 of this Article 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.

Section 12 **De-Registration of Business**

(Administrative Instruction or. 15/2010)

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. The following information must be included in, or with, the written notification to TAK:

- 1.1. the taxpayer name and address;
- 1.2. the taxpayer fiscal number;
- 1.3. the personal number of the owner, if a personal business enterprise;
- 1.4. the amount of tax indebtedness, if any;
- 1.5. a statement that the business is ceasing and a request to de-register the business in accordance with applicable legal provisions;
- 1.6. the expected date of ceasing business activity;
- 1.7. 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;
- 1.8. 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;
- 1.9. copy of projected closing balance sheet and related financial statements; and
- 1.10. an authorization by the taxpayer for submission of such documents.

2. 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 BRAK 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.

3. If TAK determines that the business owes tax debts (either before or after audit), has not submitted all required declarations, or has any remaining inventory, TAK will notify the taxpayer that it does not meet the requirements for de-registration. A copy of the

notification will also be sent to the BRAK. The notification will include:

3.1. The name, address, and fiscal number of the taxpayer

3.2. A statement that the taxpayer does not meet the requirements for de-registration and the date that determination was made;

3.3. A statement of the reason(s) why requirements for de-registration are not met, to include a description of:

3.3.1. all outstanding tax debts including a copy of the audit report, if applicable;

3.3.2. all tax declarations not submitted; and

3.3.3. the right of taxpayer to appeal.

3.4. actions that must be taken by the taxpayer if it wants to de-register.

4. 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, or its successor.

5. 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 2 of this Section.

6. After making the decision to de-register the taxpayer, TAK shall remove the taxpayer from its database.

7. 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.

8. 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.

9. Upon placing a taxpayer in the register of inactive taxpayers, TAK will notify the BRAK

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.

10. If the taxpayer is subsequently returned to the database of active taxpayers, TAK will notify the BRAK 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.

11. If a taxpayer has notified TAK that it intends to cease business activities as provided in this Section, and TAK has determined that the business does not meet the criteria for de-registration because it owes taxes, has not submitted all declarations, or has any remaining inventory, TAK will take measures to secure all required declarations, per paragraphs 5 and 6 of Section 13 of this Administrative Instruction. TAK will also take all potential collection actions, per paragraphs 3 and 4 of Section 13 of this Administrative Instruction. Once all actions have been taken and it is confirmed that the taxpayer is no longer in business, TAK can place the taxpayer in the registry of inactive taxpayers, and follow the de-registration procedures provided in this Section. TAK also shall initiate the insolvency provisions established in Law 2003/4 on Liquidation and Reorganization of Legal Persons in Bankruptcy, or its successor.

Section 13

De-Activation of a Business

(Administrative Instruction or. 15/2010)

1. As authorized in Article 12.6 of The Law, TAK may place taxpayers in a special register of inactive taxpayers when a taxpayer has not carried out any economic activity during the previous fiscal year. This provision applies to those cases in which a taxpayer has no outstanding tax debt and TAK has determined to not pursue any tax declarations that may be due.

2. As provided in paragraph 1 of Article 43 of the Law, a taxpayer with an outstanding tax debt, or declarations that have not been submitted, may be placed in the register of inactive taxpayers at such time as TAK has determined that the debt cannot be collected because the taxpayer is unable to locate or is no longer active and has no assets from which collection can be made. If it is subsequently determined that the taxpayer is still actively engaged in economic activity, the taxpayer will be returned to active status.

3. If, as a result of efforts to collect an unpaid tax debt, TAK determines that a taxpayer cannot be located or is no longer actively engaged in economic activity, TAK may place the taxpayer in the register of inactive taxpayers once all required actions to locate the taxpayer or collect the tax debt have been taken. Prior to placing the taxpayer in the register of inactive taxpayers, 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.

4. 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.

5. If as a result of efforts to secure tax declarations that have not been submitted, TAK determines that the taxpayer is unable to locate or no longer actively engaged in economic activity, TAK may transfer the taxpayer to the register of inactive taxpayers when all required checks and verifications have been made and properly documented. Prior to transferring the taxpayer to the register of inactive taxpayers, 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. In cases of withheld or collected taxes, TAK must make assessments against responsible persons as provided in paragraphs 4 and 5 of Article 26 of the Law before transferring the taxpayer to the register of inactive taxpayers. If a determination has been made that collection of tax debts from responsible persons is not possible, and such determination is documented, the taxpayer may be transferred to the register of inactive taxpayers without securing the delinquent declarations and making the responsible officer assessment. Any case in which it has been determined to not pursue delinquent declarations because it is not in the Government's interest or a determination has been made to not make a responsible person assessment because such an assessment would not be collectible, requires the approval of the Deputy to the Director General (Operations), or higher TAK official.

6. As used in paragraph 5 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.

Article 13 - Creating and Retaining Records

(Law No.03/L-222)

1. Taxpayers are obliged to keep books and registers compatible with the tax legislation. A person who is liable to pay or withhold tax shall create records of account in written or

electronic form which determines 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.

2. Notwithstanding the recordkeeping requirements set out in other tax legislation and administrative instructions:

2.1. a person required to create records under this 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 General 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.

3. Books and records for businesses with annual turnovers over fifty thousand (50.000) euro shall be kept in conformity with generally accepted accounting principles of Kosovo as supplemented by International Financial Reporting Standards.

4. Each taxpayer, notwithstanding the annual turnover, in addition to keeping books and records 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.

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

6. TAK may require that all supplies made by all or certain types of persons be recorded by electronic means (fiscal electronic device) 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. All businesses engaged in economic activity who are required to utilize fiscal electronic devices for recording transactions related to their economic activity must issue a receipt to the customer that complies with the technical specifications for receipts as described in applicable administrative instructions.

7. Any transaction in excess of five hundred (500) euro, made between persons involved in economic activity, after 1 January 2009 is required to be made through bank account.

8. A sub-legal act shall be issued for further details regarding the implementation of this Article.

Section 17 **Requirement for books and records**

(Administrative Instruction or. 15/2010)

1. Paragraph 1 of Article 13 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 18 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 preparation of the annual income tax declaration and computation of the annual tax due;

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, as described in Section 18 of this Administrative Instruction 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. Subject to the provisions of paragraph 6 of this Section and sub-paragraph 2.2 of Article 13 of the Law, 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 organization 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 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. If required approvals/individual rulings have been obtained, 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 organization 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.

9. 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.

10. 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 organization must request an individual ruling from the TAK for authorization to deviate from these provisions.

11. 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.

12. Special additional requirements for activities related to suppliers of fuel:

12.1. 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.

12.2. 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.

13. 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 18

Registration of goods

(Administrative Instruction or. 15/2010)

1. Paragraph 4 of Article 13 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. quantity;
 - 1.4. price, and
 - 1.5. 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
 - 2.2.2 costs directly related to production units, such as manpower costs
 - 2.2.3 systematic allocation of indirect fixed costs and indirect variable costs of production arising during conversion of material into ready-made products
 - 2.2.4 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. 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 assists in calculating the reliable stock balance.

Items that should be considered in stocks

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 which have not been removed from inventory, but were included in the inventoried amount	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	
- Goods destroyed or removed from inventory because they were perishable or out-dated	
Total stocks	275,000
Balance of stocks based on books	279,000
Corrections of stocks based on books	(4,000)

Example of the working list of stock balance

Items that should be considered in stocks

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 which have not been removed from inventory, but were included in the inventoried amount	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	
- Goods destroyed or removed from inventory because they were perishable or out-dated	
Total stocks	275,000
Balance of stocks based on books	279,000
Corrections of stocks based on books	(4,000)

Section 19 **Origin of Goods**

(Administrative Instruction or. 15/2010)

1. As used in this Section, the term, "Goods" refers to commercial goods - those which a person has the intention to sell or supply to another person. Except for goods to be used by a person in his/her business organization, the term, "goods" does not include an individual's personal belongings. Paragraph 5 of Article 13 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 of Kosovo for the importation of goods into Kosovo. A key document for TAK purposes is the SAD which is acceptable evidence that the goods have passed through the border and have undergone customs procedures.

1.1.1. The SAD applies as follows:

1.1.1.1. The SAD can be in the name of a person different than the purchaser of the imported item.

1.1.1.2. The SAD may be in the name of the person who purchased and is importing the goods;

1.1.1.3. the SAD may be in the name of a consignee of the imported goods; or,

1.1.1.4. the SAD may be in the name of the person for whom the goods are ultimately destined.

1.1.2. 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.

1.1.3. 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

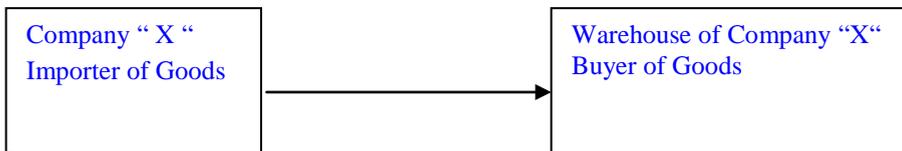
goods that have been imported and transported to their original destination and are now being distributed in Kosovo. Different evidence of origin (such as invoices or transport documents) must be provided with respect to such goods.

Example:

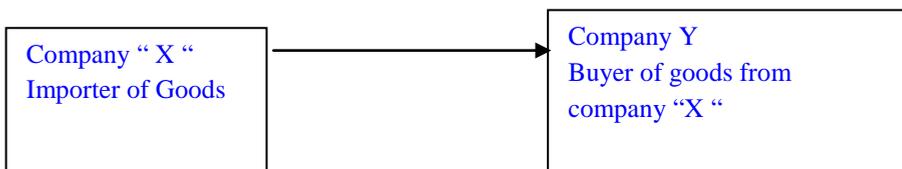
In cases where companies import goods into Kosovo and during domestic transport they are stopped by KP for documentation, the transporters must show the SAD which proves that the goods have passed through the border and undergone customs procedures. It is important to ascertain the recipient of goods who is mentioned in the SAD. In case when the goods underwent customs procedures in the border point in Mitrovicë 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 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 Mitrovicë 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 20 of this Administrative 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 sub-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 17 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 17 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 59 of The Law.

Section 20

Invoices and Cash Register Receipts

(Administrative Instruction or. 15/2010)

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 19 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 be 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, their Fiscal Identification Numbers, Address of buyer, Address of seller, their VAT registration numbers, Description of goods, Amount of the invoice, and the VAT amount.

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, who 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 this Administrative Instruction 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 1, 2, or 3 of this section, depending on the status of the seller and buyer. 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.

5. All invoices and receipts, whether issued from a fiscal cash register or otherwise, issued in the course of a person's economic activity after 18 August 2010 must include the fiscal number of the person issuing the invoice or receipt. Failure to include the fiscal number will subject the person to a penalty as prescribed in paragraph 2 of Article 53 of the Law. In addition, invoices issued after 1 October 2010 that do not have a valid FN shall not be recognized as a valid invoice per paragraph 2 of Section 23 of this Administrative Instruction.

Section 21 **Fiscal Devices**

(Administrative Instruction or. 15/2010)

1. Unaltered preservation in use

1.1. All persons who make supplies of goods and/or perform supplies of services at premises, units or locations accessible for public, in retail trade or wholesale trade where no invoice has to be issued in accordance with applicable legislation paid by bank transfer are obligated to use FED, FCRs or FPRNs and other obligatory equipment as described in this Administrative Instruction.

1.2. 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.

1.3. No change in FED use can be completed without the prior approval of the Tax Administration of Kosovo.

1.4. Director General of TAK, shall issue a public ruling describing the dates by which affected businesses must install and begin using authorized FED's.

2. General description of the FED.

2.1. 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:

2.1.1. 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;

2.1.2. A fiscal cash register will have an inviolable fiscal memory, along with a working memory;

2.1.3. 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.

2.2. 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;

2.2.1. PC based POS;

2.2.2. Special electronics systems for point of sales as liquid fuel (oil, gas) station, etc.

2.3. Fiscal Electronic Signature Device (FESD) and any other fiscal device approved by the Commission under paragraph 11 of this section, subject to the agreement of TAK. FED has a special Multilanguage status parameter. The parameter must have 3 language possibilities and must work in Albanian, English and Serbian languages.

2.4. There will be four types of fiscal systems which are classified as follows:

2.4.1. portable “*Stand Alone*” or *independent* fiscal cash registers;

2.4.2. non-portable “*Stand Alone*” fiscal cash registers;

2.4.3. fiscal Point of Sale Systems with Fiscal Printers as receipt printers;

2.4.4. fiscal Electronic Signature Device (FESD). Only the first three which are defined in paragraphs 3 and 4 of this Section, are authorized to operate in Kosovo.

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

3.1. 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.

3.2. 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.

3.3. 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.

3.4. Each FCR must have a unique serial number registered in TAK.

3.5. 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.

4. Fiscal Point of Sale Systems with Fiscal Printer as receipt printer.

4.1. Fiscal Point of Sale Systems (POS) must use a Fiscal Printer. In such system the FPRN must be connected to a control unit. It is typical and more flexible for the control unit to be a PC operated by a software program.

4.2. Each FPRN in the system must have a serial number, registered in TAK.

4.3. 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.

5. Built-in software and hardware.

5.1. 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.

5.2. 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.

5.3. 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.

6. External application software included in Fiscal POS Systems.

6.1. External application software included in Fiscal POS Systems supports the rest of the data management system functions (accounting, etc).

6.2. 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 Administrative Instruction, 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.

6.3. The written confirmation, which attests the proper functioning of the software, must include:

6.3.1. The full details on the manufacturer of the application software;

6.3.2. The exact distribution name and the current version number of this software.

6.3.3. A copy of a demo version of the specific software, saved in an appropriate magnetic or video format.

6.3.4. Full data on the software's requirements and operating conditions in a computer.

6.3.5. 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;

6.3.6. Functional and technical specifications of the software will be issued by the TAK General Director.

7. Communication network.

7.1. A communication network shall be established between FED's and the TAK for the purpose of electronically transmitting fiscal data on a predetermined interval.

7.2. This communications network, FDN, for communication between FED's and the TAK, must be:

7.2.1. **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.

7.2.2. **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.

7.2.3. **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.

7.3. Telecommunication providers must be authorized by TAK to provide service for the FDN.

8. TAK computerized integrated system.

The TAK IT system will receive the fiscal data and other periodical 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.

9. Establishment of Commission.

9.1. The Minister shall establish within MEF a responsible Commission, in charge of:

9.1.1. 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;

9.1.2. Reviewing prospective FED sellers of dealers to ensure that they meet criteria developed by the Commission for selling FED's;

9.1.3. Testing FED Models proposed for use in Kosovo to ensure that they meet (comply with) the technical and functional specifications;

9.1.4. Developing and implementing the security obligations and means of supervising of the authorized technicians' network with respect to installation and maintenance/repair of FEDs;

9.1.5. The Minister may attribute to the commission any other function which he considers to be necessary for the good functioning of the FED system.

9.2. 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.

9.3. 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

9.4. Commission's activity shall be carried out under a special regulation, adopted by the Minister.

10. Apply for Authorization.

10.1. 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.

10.2. 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 authorizing the first dealers of FED, the commission will consider each additional application at least every six months.

10.3. Installation and service of authorized FED's can be done only by designated employees/technicians of the license holder which has sold the FED.

10.4. 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.

10.5. 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.

10.6. The Commission is authorized to recall and cancel a given license:

10.6.1. in any case of serious problems faced by users;

10.6.2. in case that the dealer has violated any provisions of this, or any other sub-legal act issued with respect to FED's;

10.6.3. if the dealer is delinquent in submitting tax declarations or making timely payment of tax obligations, or,

10.6.4. in any case of major changes of the conditions under which the license was given.

10.7. 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 an independent IT expert.

10.8. Periodical regular tests: Checks for proper operation 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.

10.9. 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.

10.10. The Commission, acting through the Minister 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:

10.10.1. That the license holder guarantees its performance through a bank guarantee or 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;

10.10.2. 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;

10.10.3. 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;

10.10.4. 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;

10.10.5. 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;

10.10.6. 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.

10.11. 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 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.

11. 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. The Commission, on the basis of test results, must issue a decision on certification of the relevant equipment not less than 15 days after the dealer has applied for certification of the respective device.

12. Maintenance of Data Regarding Authorized Dealer, FED's installed, and users.

12.1. An electronic inventory will be kept by TAK of all FED's installed to include:

12.1.1. identification of the device installed – type of device, serial number;

12.1.2. date the device was installed and recognized in TAK;

12.1.3. name address, and Fiscal Number of the user;

12.1.4. location where the device is installed;

12.1.5. name of authorized dealer, his address, fiscal number and VAT number of the authorized person;

12.1.6. license Number issued for that dealer for that particular type of FED;

12.1.7. data on authorized persons selling and installing FED;

12.1.8. 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;

12.1.9. license number issued for each specific FED;

12.2. TAK shall maintain and refresh the database on the electronic inventory.

13. Authorized Technicians.

13.1. A licensed dealer must designate those persons who will be authorized to install or repair those FED's which it 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 non-employee shall not absolve the dealer from the responsibility of ensuring that repairs are done correctly and in accordance with established procedures.

13.2. 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.

13.3. 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.

13.4. 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 technician 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 paragraph 12 of this section.

13.5. The identification card must contain the following information:

13.5.1. individual's name;

13.5.2. unique identification number,

13.5.3. a statement that the individual is authorized and licensed to install (or repair, or both) designated FED's;

13.5.4. the identification card must list those FED's that the individual is authorized to install or repair;

13.5.5. validity term of the identification card.

13.6. 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.

13.7. 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 sub-paragraph 13.4 of this Section.

13.8. 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.

13.9. 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.

14. Secured Access to the Inside of the FED.

14.1. 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.

14.2. 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.

14.3. 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.

14.4. 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.

15. Authorized technicians – Access control code.

15.1. Opening and re-sealing of an FED can be carried out only by a technician authorized by the Commission in accordance with paragraph 13 of this Section.

15.2. 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).

16. Installation, Repairing, Maintenance and Service Booklet.

16.1. Every FED must be accompanied by an “*Installation, Repairing, Maintenance and Service Booklet*”, given by its provider.

16.2. The owner of the FED has the obligation to keep the booklet and to present it in every case to TAK.

16.3. 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.

16.4. 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.

16.5. 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.

16.6. 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.

16.7. Before leaving the premises following a repair, installation, or maintenance, the technician must verify that the FED is in service and operating properly.

16.8. 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.

17. 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 coupon book will be fiscalized and 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.

18. 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.

19. The Closure Mode (Z).

Each Fiscal System must comply with specifications published in a public ruling by the General Director of TAK, to include:

19.1. 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;

19.2. Allow the reading of the content of the fiscal memory through periodical tax reports in conformity with published specifications;

19.3. 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;

19.4. 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"

20. Programming Mode (P).

Each Fiscal Electronic Device System must, among other things:

20.1. allow registration in the fiscal memory of specified Taxpayer's data, which have to appear on the tax receipt;

20.2. 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 to the special manual for the change of the tax rates.

Section 22 Transactions Over Five-Hundred Euros

(Administrative Instruction or. 15/2010)

1. Paragraph 7 of Article 13 of The Law provides that all persons, who make transactions in the course of their economic activity in respect of the supply of goods or services between persons in excess of 500 (Five Hundred) Euro must make payment in respect of such transactions through a bank transfer.

2. For transactions made from 1 January 2009 up to 17 August 2010, paragraph 1 of this Section shall be applied only to VAT-registered persons (taxable persons). On, and after, 18 August 2010, transactions described in paragraph 1 of this Section apply to all persons.

3. For purposes of this Section, the term 'person' means a person as defined in paragraph 1.26 of Article 1 of the Law, who is involved in economic activity.

4. For purposes of this Administrative Instruction, a "*Transaction*" shall be considered to be the full price of a supply or contractual obligation where the amount of such supply or contractual obligation exceeds 500 (Five Hundred) Euro. 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:

Person “A” purchases goods for re-sale in his market. The full price of the goods purchased is €700. 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.

5. A “*Barter Transaction*”, with a value in excess of €500 conducted as provided in Article 47 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:

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

6. If a 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 53 of the Law related to failure to create and retain records for each transaction.

Article 14 - Access to books, records, computers and similar record storage devices

(Law No.03/L-222)

1. Subject to the limitations in this Article, the Director General or any officer authorized by the Director General in writing for this specific purpose shall have, at all times and with prior notice, unless in the opinion of the Director General exceptional circumstances warrant otherwise, full and free access to any premises where a business is conducted, or where books, records, computer or similar record storage devices are located when there are reasonable grounds for concluding that access may provide the Director General with materials relevant to any tax obligation. Notwithstanding the previous sentence, the Director General, or any officer authorized by the Director General may make visits, not including audits, to confirm compliance with tax laws in force, to obtain information pertinent to subsequent audit activity, and to collect past due tax debts as considered necessary without prior notice to the taxpayer. Failure to provide access in compliance with Articles 14 and 15 of this law will subject the person refusing access to the provisions of paragraph 5 of Article 53 of this law.

2. The information referred to in paragraph one (1) of this Article 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.

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

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

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

4. The powers under this Article shall be exercised only during a taxpayer's ordinary business hours, unless the Director General 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.

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 occupant, the officer does not produce an authorization in writing from the Director General showing that the officer is authorized to exercise such power under this Article.

6. Subject to the right to retain a document as evidence of a criminal offence, the Director General 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.

7. If a taxpayer does not submit requested information within the timeframes established under paragraph 1 of Article 15, he/she may do so up to the date on which the final assessment report is submitted if he/she is able to demonstrate that the requested

documents or information could not be timely submitted due to causes which are beyond his/her control.

8. Any document provided beyond the deadline in paragraph 7 of this Article shall not be considered by Appeals department in any subsequent appeal submitted by the taxpayer, if such document has been exist in the moment when the contest has acquired or at any other level of appeal available to the taxpayer such as Independent Review Board or competent court, if a specific written request for the information has been delivered to the taxpayer which describes with reasonable certainty the information or documents requested and the notice includes a warning to the taxpayer regarding the provisions of this paragraph.

9. Any audit conducted by TAK under the authority granted in this Article shall be based on a case selection method that minimizes the potential for abuse of the tax administration's authority. An audit shall be preceded by notice to the taxpayer of the pending audit as provided in paragraph 1 of this Article, which shall include a statement of the taxpayer's rights and obligations with respect to an audit. The Minister shall issue a sub-legal act to describe the procedures which must be followed in initiating, conducting, and finalizing an audit. Such sub-legal act shall describe, among other things: who can be audited; scope of audits (taxes and years); notification and content of notices; distinctions between full audit, partial audit, compliance checks, informational visits, spot checks, and cash register checks; place of audit; duties and obligations of audit staff during an audit; rights, including the right to be heard prior to the issuance of a final decision, and obligations of the taxpayer; conditions under which other entities or persons can be added to, or included in, an audit; actions to be taken prior to the issuance of the final report to the taxpayer; and content of the final report and notification of the final report to the taxpayer.

Section 27

Access to Business Premise/Audits of Taxpayers

(Administrative Instruction or. 15/2010)

1. Article 14 of the Law includes provisions under which the Director General, or his/her delegate, shall have full and free access to any premises where business is conducted, or where books, records, computers, or similar record storing devices are located when there are reasonable grounds for concluding that access may provide the Director General, or his/her delegate, with materials relevant to any tax obligation. The Director General, or his/her delegate shall have access to such premises or books and records whether they belong to the taxpayer or any other person that may have information of relevance to a tax obligation. Access may be sought for the purpose of collecting a tax debt or investigating alleged or potential criminal tax offenses, as well as investigating alleged misconduct of a TAK employee and threats to the security of TAK or TAK employees. Such access may also be sought in the case of an audit, which is an examination of a taxpayer's books and records to determine if the correct amount of tax has been reported or to confirm the correctness of a taxpayer's claim for refund.

2. As a general rule, TAK will give written notice to a taxpayer advising of TAK's intention to access the taxpayer's business premises for the purpose of initiating an audit.

Such notice will be provided at least three work days prior to beginning the audit, unless, in the opinion of the Director General exceptional circumstances exist that warrant accessing a taxpayer's premises without prior written notice, such as a jeopardy situation as provided in Article 21 of the Law. Exceptional circumstances include:

2.1. TAK possessing information that a taxpayer is attempting to hide, manipulate, destroy tax or other financial evidence such as books, records, stocks of goods, etc.;

2.2. TAK possessing information that gives TAK reasonable cause to believe that the inventory of goods maintained by the taxpayer is not accurate or that the taxpayer has goods in inventory that are not accompanied by documentary evidence of how they were acquired;

2.3. 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;

2.4. TAK possesses information that facts reported by the taxpayer are not 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 a correct tax liability.

3. Prior written notice is not required where the taxpayer invites or otherwise allows TAK to visit their business premises, e.g. for an educational visit.

4. Visits to the taxpayer premises by TAK officials for the following purposes are not audits and do not require prior notice:

4.1. visits to fiscal number applicants to verify information on their fiscal number application and to provide tax educational information to the taxpayer;

4.2. collection of a tax debt which has not been timely paid;

4.3. requesting the submission of a tax declaration which has not been timely submitted;

4.4. visits to applicants for license to operate games of chance, lottery, casino, etc. in order to verify the information in the license application and the suitability of the applicant for operation of such activities;

4.5. checking the compliance status of the taxpayer, including compliance with fiscal cash register requirements;

4.6. obtaining information pertinent to subsequent audit activity, such as checks

during and after hours to determine the estimated volume of customers at a business location;

4.7. similar spot checks to confirm a taxpayer's compliance with tax or game of chance laws; and,

4.8. visits by officials of the Tax Investigation Unit pursuant to an investigation regarding alleged or potential criminal tax offenses.

5. Paragraph 9 of Article 14 of the Law requires that any audit initiated by TAK be based on a case selection method that minimizes the potential for abuse of the tax administration's authority. Any case selected for audit, whether at a regional office or in the TAK headquarters must have a bona fide reason for its selection. The general case selection method to be used is based on the TAK audit risk selection system which is designed to identify those taxpayers with the greatest risk of having under-reported their income or turnover or having over-stated the amount of their refund claim. Other methods of objectively selecting cases for audit may also be used if information comes to the attention of TAK that indicates a reason for believing the tax declaration or refund may be inaccurate. The lack of a tax declaration having been received from a registered taxpayer or the discovery of a person engaged in economic activity without being registered are also valid bases for initiating an audit, as is a determination of a jeopardy situation per Article 21 of the Law.

6. The TAK has the right to audit any person, as defined in the Law, who has a tax obligation to the Government of Kosovo. As noted in paragraph 5 of this Section, generally persons to be audited will be selected based on information that causes TAK to believe that the person has under-reported or under-paid a tax obligation or has over-stated a refund amount. Depending on the circumstances, the scope of an audit may vary from an audit of all tax declarations for all tax periods covering a prescribed period of time (up to a maximum of six prior years), also known as a full audit, to an audit of only one, or more, tax periods of one, or more, types of tax, also known as a partial or short audit. Generally, except in the case of Jeopardy per Article 21 of the Law, TAK must inform the person being audited of the expected scope of audit during the first meeting with that person, although circumstances which develop during the course of the audit may result in either increasing or decreasing the scope. The TAK audit inspector will inform the person being audited of the change in scope as soon as practical after the scope has been revised. At the discretion of the TAK, additional persons may be added to the scope of the audit if TAK believes their transactions are pertinent to the audit being conducted or if TAK believes, based on information obtained during the current audit, that the additional business has under-reported income or over-stated expenses. In adding additional taxpayers to the scope of the audit, TAK must follow the notification procedures as described in paragraph 2 of this Section, unless a jeopardy determination has been made per Article 21 of the Law.

7. Except in a jeopardy situation per Article 21 of the Law, following case selection, an audit is generally initiated by issuing a written notice to the taxpayer of the intention to begin an audit as described in paragraph 1 of this Section. Such a notice must include:

7.1. Expected date that the audit will begin and location where the audit will take place;

7.2. Request for an initial meeting to begin the audit with proposed date, location, and time;

7.3. Tax type(s) and tax period(s) to be audited;

7.4. Request for records to be reviewed during audit, which identifies with reasonable accuracy the information or documents that will be required and is sufficiently specific for the taxpayer to understand what records must be provided, including a statement that an additional record request will be made if necessary. A statement requesting 'all books and records' is not sufficiently specific for the purposes of an audit. As an audit progresses and it becomes apparent that additional information or records are needed, a written request for the additional information or records must be issued which identifies with reasonable accuracy the information or documents required;

7.5. Statement that records must be provided to the inspector within 7 days of delivery of the notice requesting the records (30 days if the records are located outside Kosovo), and the address to which those records are to be delivered, or made available, to the TAK;

7.6. Statement of consequences, as described in Section 28 of this Administrative Instruction, of failure to provide records within the time frame provided in the notice, unless both parties agree to an extension of the time, as described in paragraph 3 of Section 28 of this Administrative Instruction;

7.7. A statement of the taxpayer's rights, including:

7.7.1. The right to privacy and confidentiality;

7.7.2. The right to professional and courteous service;

7.7.3. The right to be informed during the course of the audit, and to receive clear communications from TAK;

7.7.4. The right to be heard by the audit inspector in providing information pertinent to the period(s) under audit, particularly the right to be heard prior to the issuance of the final report of audit;

7.7.5. The right to receive clear communications from TAK, including an audit report that clearly explains the results of the audit and the legal basis for the conclusions reached; and,

7.7.6. The right to appeal as provided in Article 77 of the Law.

7.8. A statement of the taxpayer's obligations, including:

7.8.1. The obligation to provide full access to all books and records, including those acts noted in paragraph 3 of Article 14 of the Law;

7.8.2. The obligation to provide accurate information and documents on

time;

7.8.3. The obligation to cooperate fully with the TAK official(s) during the course of the audit; and,

7.8.4. The obligation to facilitate the finalization of the audit and accept the findings, unless the taxpayer has a valid basis for disagreeing with the findings.

8. An audit can take place at the location designated by the tax administration in the notice described in paragraph 6 of this Section. While an audit will generally take place at the taxpayer's place of business, it may also take place in the TAK office, the location of the taxpayer's representative, or other location designated by the tax administration.

9. It is the duty of TAK officials to complete an audit in the shortest time possible; however they should follow all audit procedures established and return all taxpayer documents as soon as possible.

10. During an audit, TAK officials have the obligation to:

10.1. Communicate to the taxpayer as clearly and completely as possible;

10.2. Conduct the audit in such a way as to minimize disruption to the taxpayer's business;

10.3. Maintain confidentiality of the taxpayer's tax records and business activities;

10.4. Treat the taxpayer, his/her representative, employees, and customers with courtesy and respect;

10.5. Conduct the audit in a professional manner and determine the correct tax obligation in accordance with the provisions of the tax legislation.

11. The procedures in this paragraph do not apply in the case of jeopardy under Article 21 of the Law. Prior to issuing the final written report of audit, TAK shall issue a preliminary written report of findings and potential tax adjustments at least 5 working days prior to the issuance of the final audit report. The preliminary written report shall advise the taxpayer of the right to a conference with the Audit Team Leader and the time period within which a conference must be requested. If the taxpayer disputes the findings and requests a conference with the Audit Team Leader responsible for the examination, the taxpayer must submit a written request to the Audit Team Leader which must be received at the TAK office within the time specified in the preliminary audit report. The taxpayer's request must include a statement of the issue(s) in dispute and the basis for the dispute. A conference shall be scheduled by the Team Leader within 5 working days after receiving the conference request. The Team Leader must officially advise the taxpayer of the date and time when the conference will be held. As provided in paragraph 3 of Section 28 of this Administrative Instruction, the only additional information or documents that can be provided at this conference is information or documents which, due to reasonable cause,

could not be provided within the prescribed timeframe for submitting information or information or documents which were not previously requested in writing.

12. The final audit report shall be issued in writing to the taxpayer and delivered to his/her business address as reflected in TAK records, or such other business address as the taxpayer has requested, and shall include the following:

12.1. Taxpayer name, address, and fiscal number

12.2. The tax type(s) and tax period(s) included in the audit and addressed in the report;

12.3. A summary statement which describes the amount of adjustments applicable to each tax period audited, the resulting adjustment to tax applicable to each tax period audited, and the legal basis for the adjustment. If the audit is the result of a jeopardy determination, the summary statement must include the basis for the determination that a jeopardy existed;

12.4. A narrative that describes:

12.4.1. The taxpayer's business;

12.4.2. The books and records maintained by the taxpayer;

12.4.3. The scope of the audit and the issues being addressed in the audit;

12.4.4. The findings of the audit with respect to the issues being audited;

12.4.5. The results of the conference held, if one was held, per paragraph 11 of this Section;

12.4.6. An analysis of the law as it applies to the findings and the issues;

12.4.7. Any facts or findings that are disputed by the taxpayer and the basis for the position taken by TAK with respect to those disputed facts or findings;

12.4.8. A concluding statement regarding the adjustments and the resulting tax liability, including applicable penalties and interest. If penalties are computed, the statement must include a description of the penalty and the legal basis for imposition of the penalty;

12.4.9. A statement of the taxpayer's right to appeal the decision, how and where to submit an appeal, and the timeframe within which an appeal must be submitted;

12.4.10. In the case of a jeopardy assessment under Article 21 of the Law, TAK shall assess the tax liability immediately after delivery of the final audit report to the taxpayer, without regard to the normal period between delivery of the final report and assessment.

12.5. The audit case file shall contain copies of all information requests issued to the taxpayer and the audit inspector's workpapers and other case documentation, including copies of taxpayer records.

Section 23

Allowable expenses and Credits

(Administrative Instruction or. 15/2010)

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

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

2. Such documents must be available for inspection upon request by the TAK as provided in Article 14 of the Law. Paragraph 5 of Article 17 of the Law authorizes TAK to disallow any VAT input credit which is not supported by a true and accurate invoice. Similarly, that paragraph authorized TAK to disallow any expense for income tax purposes that is not supported by a true and accurate invoice or contract. The required content of an invoice or receipt is described in Section 20 of this Administrative Instruction. Invoices issued after 1 January 2010 have been required to contain the fiscal number issued by TAK to the seller. Invoices issued after that date, which do not contain the fiscal number of the seller, will not be considered to be true and accurate invoices. TAK shall enforce this provision only with respect to invoices issued after 1 October 2010 as there had been inadequate publicity regarding this issue prior to that date.

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 subparagraph 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. As provided in paragraph 8 of Article 19, 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. As provided in paragraph 9 of Article 19 of the Law, no expense shall be recognized for income tax purposes, or VAT credit purposes, as a result of transactions with the following:

- 6.1. taxpayers who have never registered with TAK and have no fiscal number;
- 6.2. taxpayers who have been de-registered in accordance with the provisions of Section 12 of this Administrative Instruction;
- 6.3. taxpayers who have been de-activated in accordance with Section 13 of this Administrative Instruction;
- 6.4. businesses which registered with BRAK, but could not be located at the address used on that registration, or any registration document provided to TAK, resulting in the non-issuance of a fiscal number; or,
- 6.5. Taxpayers whose VAT certificate has been cancelled or withdrawn (relates only to VAT credit).

7. The date from which expenses shall not be recognized for income tax purposes, or VAT credit purposes, shall be that date on which TAK posts public notice of the fact that transaction will not be recognized for income tax expense or VAT credit purposes on its web site. The public notice will include a statement that transactions will not be recognized after the specified date.

8. 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.

Article 15 - Collection of Information or Evidence

(Law No.03/L-222)

1. Subject to paragraph 4 of this Article, the Director General may, by notice in writing, require a person whether that person is liable to pay tax or not, to:
 - 1.1. produce certain documents required by the notice within seven days of the delivery of the notice, or such longer period of time as may be agreed between TAK and the person from whom documents are requested. If documents are requested from a location outside Kosovo, the period for delivery of documents shall be extended accordingly for a period of thirty (30) calendar days, which may be extended based on the circumstances of the current case;
 - 1.2. 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 General or any officer authorized by the Director General 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.
2. Where the notice requires the production of documents or other records, such documents or records must be described with reasonable certainty.
3. Any person who fails to appear at the time and place specified, or to provide information, in response to the requests for information described in paragraph 1 of this Article, shall be liable for such fines, penalties five hundred (500) Euros.
4. This Article shall not apply to information contained in communications that may be privileged under applicable law.
5. Paragraph 4 of this Article, or any other provision related to bank confidentiality, is not applicable for banks and other financial institutions that are required to inform TAK with regard to bank accounts and related opening documents; bank transactions, including bank transfers, offsets, and deposits; loan documents; interest accruals related to deposits held by the bank in behalf of its customers; and other specified banking information upon request of TAK.

Section 28

Collection of Information or Evidence

(Administrative Instruction or. 15/2010)

1. As provided in Article 15 of the Law, the Director General of TAK may require any person, whether that person is liable to pay tax, or not, to produce records/documents, or

provide information, that the Director General believes may be applicable to the determination of a tax obligation, refund claim, or other matter under the jurisdiction of the TAK.

2. The requirement to produce records/documents, or provide information, must be in written form delivered to the person from whom records/documents are required or information is requested. The written notice must describe with reasonable certainty the records/documents or information requested. Sub-paragraphs 7.4, 7.5, and 7.6 of Section 27 of this Administrative Instruction describe the basic requirements for the written notice. Further requirements are described in paragraph 101 of Section 43 of this Administrative Instruction.

3. Article 15 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, sub-paragraph 1.1 of Article 15 requires that persons must provide requested records/documents within 7 days after delivery of a written notice that reasonably describes the records/documents requested. For records located outside Kosovo, the period for delivery of documents is extended for a minimum period of 30 days, or longer depending on the circumstances. As provided in paragraph 8 of Article 14 of the Law, records or documents not provided within the timeframes established in the written notice will not be considered in the examination, or any subsequent appeal, except as provided in paragraphs 7 and 8 of Article 14 of the Law. Similarly, a taxpayer may not submit an amended declaration to claim expenses that were not allowable because of the provisions of paragraph 8 of Article 14 of the Law. The written notice must also include the address to which the records/documents are to be delivered or made available, and a warning regarding the consequences of not providing the records/documents in a timely manner.

3.1. Paragraph 7 of Article 14 of The Law provides an exception to the rule established in Article 15 with respect to the requirement to provide requested records/documents within 7 days (30 days, or more, for records located outside Kosovo) after receipt of a written notice. Paragraph 7 of Article 14 of the Law indicates that a person may provide new evidence to the TAK up to the time that the final audit report is submitted to the taxpayer, if the taxpayer has previously been unable to provide those records/documents due to causes which are beyond the control of the taxpayer. For purposes of this paragraph, the final audit report is the final written report of proposed adjustments delivered to the taxpayer at the conclusion of an audit. Except in the case of jeopardy under Article 21 of the Law, 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 request a conference with the Audit Team Leader and 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 paragraphs 7 and 8 of Article 14 of the Law, or documentation not previously requested in writing by the TAK.

3.2. In those situations in which a taxpayer is unable to timely provide the requested documentation due to circumstances beyond his/her control, the

taxpayer must be able to demonstrate 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:

3.2.1. 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 (30 days, or more for records outside Kosovo) 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;

3.2.2. 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 (30 days, or more, for records outside Kosovo) 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;

3.2.3. 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.

3.2.4. 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.

3.3. If a person wishes to provide requested documentation in accordance with the provisions of paragraph 7 of Article 14 of the Law, 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 demonstrate that there were circumstances beyond the person's control which prevented the timely submission of the requested documents or information.

3.4. 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 subparagraph 3.2 of this Section.

4. Paragraph 1 of Article 15 of the Law also provides TAK the authority to require a person, whether that person is liable to pay tax, or not, to attend at the time and place designated in a written notice to give testimony or information concerning matters described in sub-paragraph 1.2 of Article 15 of the Law. In the case of requiring a person to appear, the notice must either be given directly to the person by a TAK official or left at the person's place of business or last known address by a TAK official at least 48 hours before the person is required to appear. The written notice must include:

- 4.1. The time and place at which the person is required to appear;
- 4.2. A description of the matter for which the testimony is required which is adequate to allow the person to prepare for giving the testimony;
- 4.3. A warning regarding failure to appear at the time and place designated;
- 4.4. In the case of a requirement to give both testimony and to provide records/documentation, the written notice must be given, or left, at least 7 days prior to the date on which the testimony and records/documentation are required.

5. In making requests for information or documentation, where it intends to apply the provisions of paragraphs 7 and 8 of Article 14 of The Law, the TAK must make such requests in writing. Paragraph 2 of Article 15 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 14 of The Law. Furthermore, as provided in paragraph 8 of Article 14 of the Law, the written document request must include a warning to the taxpayer that the information requested will not be accepted in any subsequent level of appeal if not provided within the timeframes provided. The warning will include the taxpayer's right to request an exception in the event of reasonable cause for failure to timely provide the information as described in paragraph 3.1 of this Section.

6. As provided in paragraph 5 of Article 15 of the Law, banks and financial institutions are required to provide bank or financial information upon request of TAK. Such information is not protected by any bank confidentiality or bank secrecy provisions. Information to be provided to TAK upon request includes, but is not limited to:

- 6.1. Documents submitted to the bank, or financial institution, for opening an account, including the bank signature card or other document that indicates the person(s) authorized to make deposits or withdrawals to or from the account;
- 6.2. Copies of bank statements or statements of financial accounts;
- 6.3. Copies of deposit documents, including documents related to deposits made through electronic means;
- 6.4. Copies of bank or financial account withdrawals, including withdrawals through electronic means;
- 6.5. Copies of any electronic funds transfers, including information regarding the

account into which funds were transferred, or the account from which funds were deposited;

6.6. Copies of loan applications, loan agreements, financing agreements, overdraft agreements, and similar documents; and

6.7. Any other bank or financial institution document specified in a written request from an authorized official of TAK.

7. Persons who fail to appear at the time and place required per paragraph 4 of this Section shall be subject to a fine of Five Hundred (500) Euros. Persons required to produce records/documentation required per paragraph 3 of this Section are also liable to a fine of Five Hundred (500) Euros if they fail to produce such requested records/documentation.

8. In addition to the provisions of this section, taxpayers who fail to appear to provide information or testimony or to timely provide access to books and records are subject to the penalty provided in paragraph 5 of Article 53 of the Law as described in paragraphs 99 - 101 of Section 43 of this Administrative Instruction, which also describes the additional steps beyond those required by this Section which must be taken in order to assess these penalties.

Article 16 - Obligations of legal representatives and asset managers

(Law No.03/L-222)

1. The responsible representatives of natural, legal persons and partnerships and the managers or directors of unincorporated associations or organizations have to fulfill the tax obligation for the persons, partnerships and associations or organizations they represent or manage. To the extent that unincorporated associations or organizations do not have a manager or director their members or partners have to fulfill the obligation under sentence 1 of this paragraph. In particular, they shall ensure that taxes are accurately and timely reported and paid from the funds they manage.

2. The obligation of paragraph 1 of this Article also applies to any person who has dominion and/or operational control over a business or an asset and actually exercises the powers of a responsible representative as mentioned in paragraph 1 of this Article.

3. Termination of the authority to represent or to manage and the termination of dominion and/or operational control as defined in paragraph 2 of this Article shall not affect the obligations pursuant to paragraphs 1 and 2 of this Article, to the extent that these obligations apply to periods in which the authority to represent or to manage was valid or dominion and control were exercised.

4. The obligations of legal representatives and asset managers imposed by this article do not relieve natural persons, partners of partnerships, or members of associations from their obligation to accurately and timely report and pay their correct amount of tax.

Section 40

Assessments against Responsible Persons

(Administrative Instruction or. 15/2010)

1. Article 16 of the Law provides that responsible representatives of natural, legal persons, and partnerships and the directors of unincorporated associations or organizations (consortium, farmer cooperatives, etc) are required to fulfill the tax obligations for the persons, partnerships and associations or organizations they represent or manage. Responsible representatives include, but are not limited to, individuals who are named as managing directors or managing partners, individuals designated and given the necessary authority to act for and in behalf of a person with regard to that person's tax obligations, and other similar persons. If an unincorporated association or organization does not have a manager or director each member or partner bears responsibility for fulfilling the tax obligations of the unincorporated association or organization. The term responsible person also includes any person who has dominion and/or operational control over a business or an asset and exercises the powers of a responsible representative, whether specifically designated, or not.

2. The obligation to fulfill tax obligations includes the timely and accurate submission of all tax declarations required as well as timely payment of any tax liabilities that arise from the submission of the declaration or amended declaration or arising from an adjustment by TAK. The obligation to fulfill tax obligations applies to all tax types.

3. As provided in Article 25 of the Law, any responsible representative, or member or partner of an unincorporated association or partnership, who fails to fulfill the tax obligations imposed by paragraph 2 of this Section due to willful or grossly negligent breach of duty shall be jointly and severally liable for any tax obligation not fulfilled. Joint and several liability shall also exist in those cases in which a claim for refund is paid or tax credits are overstated without legal grounds. For purposes of this Section, the following applies:

3.1. **Gross Negligence** is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to the Budget of Kosovo.

3.2. **Ordinary Negligence** is a mere failure to exercise reasonable care.

3.3. **Willful Breach of Duty** is a breach which results from bad intent and bad faith as opposed to a breach in which the representative knowingly failed in his duty due to circumstances beyond his control.

4. Article 26 of the Law authorizes TAK to make an assessment against the responsible representatives described in paragraph 1 of this Section based on their gross negligence or willful breach of duty as described in paragraph 3 of this Section. However, as restricted by paragraph 3 of Article 26 of the Law, such assessments cannot be made until such time as enforcement against the taxpayer's movable or immovable property has not succeeded in satisfying the tax debt. Procedures prescribed in Articles 19 through 22 of the Law will be

followed in making the assessments.

5. Paragraph 4 of Article 26 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 personally liable from his or her own assets for 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.

6. 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.

7. 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 for the business' failure to pay the collected tax or withheld tax (responsible person(s)).

8. An assessment of responsible persons under paragraph 4 of Article 26 differs from an assessment of responsible representatives provided under Article 25 and paragraph 1 of Article 26 of the Law. While the responsible representative provisions of Article 25 of the Law can be applied to withheld and collected tax, the standard for making such an assessment requires a higher burden of proof. An assessment based on Article 25 of the Law requires a determination of gross negligence and willfulness as described in paragraph 3 of this Section. As described in subsequent paragraphs of this Section the responsible person assessment standard for responsibility and willfulness is lower. In addition, the responsible person criteria is broader in scope with respect to potential persons to be assessed.

9. 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 taxpayer 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 taxpayer. TAK officials should consider seizure and sale of the assets of the taxpayer prior to establishing personal liability of responsible persons, however, such action is not a pre-requisite to the responsible person assessment under paragraph 4 of Article 26 of the Law. If there is adequate equity in the assets of the taxpayer to fully satisfy the tax debt, seizure and sale of those assets should generally be made in lieu of making the responsible person assessment.

10. There are two primary requirements that must be determined in order to make an

assessment under the provisions of paragraph 4 of Article 26 of the Law: responsibility and willfulness. The person(s) against whom an assessment is made under paragraph 4 of Article 26 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.

11. 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:

- 11.1. 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);
- 11.2. Corporate Director or shareholder;
- 11.3. Partner;
- 11.4. Another corporation;
- 11.5. Accountant or tax representative;
- 11.6. Any other person who has authority to determine what creditors should be paid and exercises that authority;

12. A responsible person has:

- 12.1. A duty to perform;
- 12.2. The power to direct the act of collecting the withheld or collected taxes and paying them over to the TAK;
- 12.3. Accountability for and authority to pay the collected or withheld taxes;
- 12.4. Authority to determine which creditors will or will not be paid.

13. 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:

- 13.1. Are officers, directors, or shareholders of the corporation
- 13.2. Hire and fire employees
- 13.3. Exercise authority to determine which creditors to pay
- 13.4. Sign and file the VAT tax or withholding tax returns
- 13.5. Control payroll/disbursements
- 13.6. Control the corporation's voting stock

14. 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 paragraphs 11 to 13 of this section, must also be present.

15. Persons with ultimate authority over financial affairs of the company may generally not avoid responsibility by delegating that authority to someone else.

16. 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 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.

17. **Willfulness.** Willfulness means intentional, deliberate, voluntary, reckless, knowing, as opposed to accidental. Unlike the willful breach of duty as described in paragraph 3 of this Section, no evil intent or bad motive is required.

18. 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.

19. 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 4 of Article 26 of the Law.

19.1. 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.

19.2. 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.

19.3. The written report must be delivered 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.

19.4. 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 1:

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 2:

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 3:

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).

19.5. 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

19.6. After the 15-day period has expired, TAK will issue a Notice of Assessment to the taxpayer as described in Section 31 of this Administrative Instruction (per Article 22 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 paragraph 4 of Article 26 of the Law." The notice will include the taxpayer's appeal rights, as required by Section 22 of the Law.

19.7. 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.

20. In accordance with paragraph 4 of Article 26 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.

21. 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 overstated. 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.

22. 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.

23. Paragraph 5 of Article 26 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.

24. Procedures for implementation of paragraph 5 of Article 26 of the Law are the same as those for implementation of paragraph 4 of Article 26 of the Law as described in this section of this Administrative Instruction, except as described in paragraph 25 of this section.

25. 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). It does not include the amount of contribution that is matched by the employer.

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 pension contribution 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.

Article 17 - Tax Declarations

(Law No.03/L-222)

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.
2. Where circumstances indicate that a person should submit a tax declaration, but has not done so, TAK shall have the authority to require that such person submit a tax declaration. Where such a requirement is not met, TAK may exercise the authority provided in Article 19 of this law.
3. 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.
4. The tax declaration shall include the taxpayer’s identification number (fiscal number), a computation of the tax due, and all other information required by the applicable legislation

or administrative instructions issued pursuant to such legislation.

5. 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 (fiscal number). In addition to the potential criminal prosecution for providing false information on a tax declaration, TAK may disregard any input VAT credits which are not supported by true and accurate invoices. Similarly, TAK may disregard, for income tax purposes, any purchase expenses associated with goods or services which cannot be supported by true and accurate invoices or contracts.

6. The date for submitting a tax declaration shall be prescribed in the legislation imposing the tax.

7. If the filing date prescribed in legislation is not a business day in Kosovo, the filing date shall be the first business day thereafter.

Article 18 - Self-Assessment

(Law No.03/L-222)

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.

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 six years after the due date of the declaration being amended.

3. Where a taxpayer subsequently realizes before the period for an assessment has elapsed that a return submitted by him or her or for him or her is incorrect or incomplete and that this can lead or has already led to an understatement of tax or overstatement of tax refunds and credits, he or she shall be obliged to indicate this without undue delay and to effect the necessary corrections. This obligation shall also concern the taxpayer's universal successor and the persons acting for the universal successor or the taxpayer pursuant to Article 16 of this law. The notification obligation shall further apply where the conditions for tax exemption, tax reduction or other tax privileges subsequently cease to exist, whether in full or in part.

4. 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.

5. Except as provided in paragraph 1 of Article 62 of this law, for the purposes of determining sanctions under this law, no amended tax declarations for a tax period will have any effect after the Director General or officer authorized by the Director General has

exercised any power under Article 14 or 15 of this law and has commenced a tax investigation with respect to that tax period.

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

Article 19 - Director General's Assessment of Tax

(Law No.03/L-222)

1. Where the Director General 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 this law, the Director General may make an assessment of their tax liability, including, but not limited to, assessments resulting from use of false invoices or transactions. Except for cases involving criminal tax offenses or where the amount of tax due can be determined with reasonable certainty, assessments under this paragraph shall be made following the initiation of audit procedures as described in Article 14 of this law, if such procedures are required. The limitation imposed by this paragraph shall not apply to the provisions of Article 21 of this law.

2. The Director General'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:

- 2.1. books, records, receipts, invoices, or other relevant information of the taxpayer;
- 2.2. books, records, receipts, invoices, or other relevant information of third persons;
- 2.3. information from persons who can verify the accuracy of the taxpayer's declarations, books and records;
- 2.4. other objective information about a taxpayer's income or transactions relevant to its liability;
- 2.5. information obtained during visits to taxpayers as provided in paragraph 1 of Article 14 of this law;
- 2.6. application of this Law and/or the applicable income tax or VAT laws of Kosovo.

3. 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 General 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.

4. 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 General may make an assessment of pension contributions equal to the level of contributions due for the previous monthly or quarterly period.

5. 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.

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

7. Where the TAK data contain sufficient information on an unfiled liability for a tax period, TAK may make an 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. 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.

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

9. Where a taxpayer has been de-registered (voluntarily or otherwise), registration has been refused by TAK because the taxpayer was unable to be located, or the taxpayer's registration has been cancelled in accordance with the provisions of Article 23 of this law, such de-registration, registration refusal, or registration cancellation shall be publicized by TAK by posting notice in print media of general circulation in Kosovo and on the TAK website. Any expenses applicable to income tax, or VAT input credits, attributable to transactions using the fiscal number of those businesses that have been de-registered, registration has been refused, or registration has been cancelled will not be recognized by TAK and tax declarations will be adjusted accordingly upon audit or discovery by TAK.

10. 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.

11. The Tax Administration shall not re-audit a tax period involving the same tax type that has previously been audited for which a notice of assessment has been issued by the tax administration, where such re-audit will result in an unfavorable result to the taxpayer, except in the following circumstances:

11.1. new facts are discovered by the tax administration that were not known, and could not reasonably have been known, at the time of audit and failure to re-open the case would be a serious administrative omission;

11.2. there is evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of material fact;

11.3. the closed case involved a clearly-defined, substantial error based on an established tax administration position which existed at the time of the audit. Any re-opening of a closed audit is subject to the approval of the Director General of TAK based on documented evidence supporting the basis for the re-opening.

12. In the context of assessment of tax liability, the terms and requirements for acceptance of costs from paragraphs 8 and 9 of this Article, as well as the conditions for amendments of Director General assessments and re-opening of closed audits, shall be regulated by a sub-legal act.

Section 24

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

(Administrative Instruction or. 15/2010)

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 economic activity cost as provided in paragraph 10 of Article 19. Such costs are allowable in the relevant tax period under the following conditions:

1.1. The 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 economic activity cost 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 economic activity cost 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. As provided in paragraph 10 of Article 19, 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 25

Goods Destroyed or Damaged by Casualty or Lost Due to Theft

(Administrative Instruction or. 15/2010)

1. As provided in paragraph 10 of Article 19 of the Law, 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. 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 26 **Discounted Sales**

(Administrative Instruction or. 15/2010)

1. 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.
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.

Section 29 **Director General's Assessment of Tax**

(Administrative Instruction or. 15/2010)

1. Paragraph 1 of Article 17 of the Law requires that any person subject to tax under legislation applicable in Kosovo submit to TAK a completed tax declaration as required by such legislation. Where a person required to submit a declaration has not done so, TAK has the authority to require that such person submit a declaration as provided in paragraph 2 of Article 17. When a person does not meet this requirement, TAK may exercise its rights under Article 19 of the Law.
2. Article 19 of The Law provides authority to the Director General to assess tax when he/she believes that the information provided by a person on a tax declaration does not correctly disclose their correct tax liability, or where a person has not submitted a declaration required by law. Generally, an assessment made because a tax declaration did not disclose the correct tax liability, such as in the case of a person using fictitious invoices or a fictitious entity, will be made by the TAK following an audit as described in Section 27 of this Administrative Instruction. In those situations where a determination has been made that an undeclared tax is in jeopardy, as provided in Article 21 of the Law, the provisions of Section 27 of this Administrative Instruction will be followed except where an exception has been noted related to jeopardy determinations.

3. As provided in paragraph 7 of Article 19 of the Law, in the case of a tax declaration not submitted by the due date of the declaration, the Director General, or his delegate, may make an assessment of tax without an audit if the correct tax liability can be determined with reasonable certainty based on information available to the TAK. A TAK official must request submission of the delinquent tax declaration per paragraph 5 of this Section. Such a request under this paragraph must include a warning to the taxpayer that TAK will prepare a declaration and submit it for assessment if the declaration is not submitted within the time provided. If the taxpayer does not respond within the time provided, TAK shall prepare a substitute declaration that reflects the amount of income and expenses included in determining the tax obligation of the taxpayer. A final report of assessment, including the substitute declaration, will be sent to the taxpayer as provided in paragraph 12 of Section 27 of this Administrative Instruction and the assessment finalized in accordance with TAK operating procedures.

4. In the case of a tax liability determined through investigation conducted by the TAK Tax Investigation Unit, the Director General may make an assessment of tax based on the results of the criminal tax offense investigation without the need for an audit procedure.

5. The Director General, or his/her delegate, may prepare a substitute declaration in those cases in which a taxpayer has neglected or refused to submit a tax declaration as required by law and the amount of tax cannot be reasonably determined based on information available to the tax administration. A substitute declaration 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. TAK shall take the following actions:

5.1. Prior to preparing a substitute declaration, a tax official must have requested, in writing, 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);

5.2. 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 those provisions of paragraphs 6 through 12 of Section 27 of this Administrative Instruction;

5.3. 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.

5.4. 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 30 of this instruction;

5.5. 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 28 of this Administrative Instruction, any records, or information, not provided by the

taxpayer during the course of this audit within the timeframes provided will not be considered in the examination or any subsequent appeal by the taxpayer;

5.6. When submitting the final audit report to the taxpayer, TAK shall include a copy of the substitute declaration and request that the taxpayer sign the declaration as an indication of agreeing with the audit report.

6. Notwithstanding the provisions of paragraph 2 of Article 18 of the Law, the following restrictions apply to submitting amended declarations following an assessment made by the TAK:

6.1. an amended declaration cannot be submitted to correct an assessment made by the TAK under the provisions of paragraphs 2 and 4 of this Section which has been upheld by the Appeals Division, or at any other level of appeal, or the period for appeal has expired; and,

6.2. an amended declaration cannot be submitted to correct an assessment made by TAK under the provisions of Section 27 of this Administrative Instruction, which has been upheld by the TAK Appeals Division, or any other level of appeal, or the period for appeal has expired, except in the case of new information, or documents, being made available that were not requested in writing during the course of the audit or any subsequent level of appeal. In this situation, an amended declaration may be considered by the Director General if failure to do so would result in a gross injustice or inequity, or incorrect application of law leading to an unjust tax obligation. Information, or documents, that the taxpayer should have reasonably known was important to the issue but did not offer for consideration during the course of the audit or appeal, shall not be considered under this provision, even though the TAK may not have specifically requested it in writing during the course of the audit or appeal; unless such information was offered and not taken into consideration during the audit or appeal and there was no communication to the taxpayer of the reasons for not considering the information or documents.

7. Generally, TAK can audit a taxpayer only one time for the same tax type and tax period. For example, if TAK audits the VAT declaration for June 2008 and issues a final audit report, and makes an assessment of tax based on that audit, TAK is not authorized to audit that same VAT tax period a second time. If during the course of an appeal, at any level of appeals, additional information or documents are needed, which are not precluded from consideration because of the provisions of paragraph 3 of Section 28 of this Administrative Instruction, TAK may be required to submit a written request to the taxpayer, or any other person in possession of the information or documents needed. Such request for additional information is not a second audit within the meaning of this Section, or within the meaning of paragraph 11 of Article 19 of the Law.

8. Paragraph 11 of Article 19 of the Law provides 3 exceptions to the limitation of TAK's ability to re-audit a taxpayer without the Director General's authorization, where such a re-audit would have an unfavorable result for the taxpayer:

8.1. If facts become known to the TAK that weren't known, and could not reasonably have been known, at the time of the audit and failure to re-audit the

taxpayer would result in a serious breach of TAK's duty to collect the right amount of tax.

Example:

TAK has completed an audit of the August 2009 VAT declaration of Company A. In the course of an audit of Company B, TAK discovers invoices related to transactions with Company A that were not reported in the books of Company A. The invoices totaled 150,000 Euros. If TAK were to not re-open the August 2009 VAT declaration of Company A, it would be committing a breach of its duty to collect the correct amount of tax. It is appropriate for the Director General to authorize a second audit of the August 2009 VAT declaration.

8.2. If facts reveal that a taxpayer has omitted certain assets or other important information, resulting in fraud or malfeasance, the Director General may sign an authorization for TAK to conduct a second audit.

Example:

As a result of an inquiry by another investigative body of the Government, TAK becomes aware of a taxpayer having a bank account in Germany with deposits of more than 100,000 Euros having been made in 2008 and criminal tax offenses could not be brought. Under the general rule, TAK would not be able to audit the 2008 Corporate Income Tax declaration if it had already been audited previously. To allow such behavior to go without investigation by TAK would be a serious breach of TAK's duty. In such a situation, the Director General of TAK may authorize a second audit of the 2008 tax period, as the taxpayer concealed the existence of the German bank account.

8.3. If a review of a closed case shows that TAK has made a significant error in applying the tax law, the Director General may issue a written authorization for the initiation of an audit.

Example:

TAK erroneously allowed invoices valued at more than 100,000 Euros that did not have adequate documentation. The result is an audit with a significant incorrect application of law and TAK policy. In such a situation, the Director General may direct a re-audit of the tax period.

9. Provisions of paragraphs 8 and 9 of the Law related to allowable expenses and disallowance of expenses and VAT credits are regulated by Section 23 of this Administrative Instruction.

Section 30 Indirect Methods

(Administrative Instruction or. 15/2010)

1. As provided in paragraph 3 of Article 19 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. BDCEM 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 BDCEM 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 an indirect method that can overcome the weaknesses of the BDCEM, 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. 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 (hereafter: 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.

Article 20 - Time limits for assessment

(Law No.03/L-222)

1. Subject to paragraph 2 of this Article, all taxes must be assessed within six years of the date the tax declaration to which the assessment relates was due, or the date the declaration was submitted, whichever is later.
2. The Director General may make an assessment at any time where:
 - 2.1. a person has failed to deliver a tax declaration;
 - 2.2. a person has delivered a tax form with the intent of evading tax; or
 - 2.3. fraudulent behavior of a third person has led to an understatement of tax or overstatement of credits

Article 21 - Jeopardy Assessments

(Law No.03/L-222)

1. The Director General may make a jeopardy assessment of tax or penalty where the Director General considers that the collection of tax or penalty 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. A jeopardy assessment may also be made in the case of seizure of goods without origin as provided in Article 59 of this law, may be appealed directly to the Independent Review Board.
2. It is legally assumed that collection of tax that will become due is in jeopardy, if there is a reasonable suspicion that the tax was, or will be, evaded and if the circumstances of the evasion indicate that the tax liability will not be settled.
3. An appeal against the Director General's jeopardy assessment does not postpone the execution of the assessment according to paragraph 4 Article 22 of this law.

Article 22 - Assessment Notice

(Law No.03/L-222)

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 General shall deliver an Assessment Notice to the person liable for the tax.
2. The Assessment Notice shall contain the following information:
 - 2.1. the name of the taxpayer;
 - 2.2. the taxpayer identification number;
 - 2.3. the date of the notice;
 - 2.4. the matter and tax period or periods to which the notice relates;
 - 2.5. the amount of assessed tax, sanctions, and interest;
 - 2.6. a brief explanation of the assessment;
 - 2.7. a demand for payment of the amount due;
 - 2.8. the place and manner of payment of the amount due; and
 - 2.9. the appeal procedures.
3. The taxpayer shall, within ten (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.
4. In the event of a jeopardy assessment under Article 21 of this law, the Director General may demand immediate payment of tax and take enforced collection immediately to secure the payment of taxes due.

Section 31

Notice of Assessment

(Administrative Instruction or. 15/2010)

1. Article 22 of The Law, Assessment Notice, describes the requirements for issuance of a Notice of Assessment of tax. The term 'assessment' is defined in the Law
2. Issuance of Notice of Assessment
 - 2.1 The Director must issue a Notice of Assessment and deliver it to the taxpayer within 5 working days after making an assessment of tax. The Notice of Assessment must include the information contained in Article 22.2 of the Law. A tax liability will not be considered to be valid or enforceable until a Notice of Assessment has been issued and delivered. Paragraph 3 of this Section describes the notice requirements for a jeopardy assessment.
 - 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. In the case of a jeopardy assessment made under the provisions of Article 21 of the Law, the TAK must issue a Notice of Assessment as provided in paragraph 2 of this Section. However, the Notice of Assessment issued shall have the reference to the 10-day period removed and replaced with the word, 'immediately.' In jeopardy situations, the TAK is authorized to initiate immediate action to collect the tax without regard to the 10-day notice period required for a regular assessment of tax. Therefore, immediately upon issuance of the notice of assessment and its delivery to the taxpayer, the TAK may record tax liens and begin enforcement action to collect any balance of the assessment that is unpaid.

4. The assessment date for purposes of determining the six-year period for collection shall be the date that the assessment notice is delivered by the TAK as provided in subparagraph 12.8 of Article 33 of the Law.

Article 23 - Cancellation of Tax Documents

(Law No.03/L-222)

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

2. The Director General may publish a notice in newspapers of general circulation and on the tax administration website 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 11 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.

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.

Section 14

Cancellation of Documents Including Fiscal Number

(Administrative Instruction or. 15/2010)

1. The authority to cancel any tax document provided in Article 23 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, the TAK regional office responsible for the taxpayer 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 requests 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, who 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 16 of section 9 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 16 of section 9 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 competent court for placing the taxpayer into involuntary insolvency proceedings. Procedures established On Liquidation and Reorganization of Legal Persons in Bankruptcy, or its successor, will be followed for initiating this process.

Section 16

Publication of Taxpayer Names and Numbers

(Administrative Instruction or. 15/2010)

1. In accordance with Article 23 of the Law TAK is authorized to publicize the names, fiscal numbers, and VAT Registration Numbers of any taxpayer that meets the applicable provisions of Sections 9, 12, 13, 14, and 15 of this Administrative Instruction.

2. TAK will publish the names, fiscal numbers, and VAT Registration Numbers of those businesses listed in paragraph 1 of this Section within 5 working days after the decision has been made to take the actions specified in Article 23 of the Law. TAK will publish the

information on its web site and will issue notification of the publication in at least two newspapers of general circulation.

3. In addition to the information to be published per paragraph 2 of this Section, TAK must include a statement that TAK will not recognize any expense transactions, including VAT credits if applicable, with respect to those published businesses from the date of publication.

4. If a business is being reinstated, TAK will publish the information provided in paragraph 2 of this Section, confirming that the business has been reinstated and the effective date from which any transaction for expenses, or VAT credits, shall be recognized. Publication will include posting information on the TAK web site.

5. TAK will publish all taxpayers who have returned back their VAT Certificates because they are no longer taxable persons. Information to be published is that provided in paragraphs 2 and 3 of this Section.

6. After the publication provided in paragraphs 1, 2, 3, and 5 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 a VAT declaration, per paragraph 9 of Article 19 of the Law and paragraphs 6 and 7 of Section 23 of this Administrative Instruction.

Article 24 - Liability in cases of Criminal Tax Offense

(Law No.03/L-222)

Whoever commits a criminal tax offense, or participates in such by way of co-perpetration, incitement or assistance shall be jointly and severally liable for the evaded taxes. The liability shall also include interest according to Article 28 of this law.

Article 25 - Liability of responsible persons

(Law No.03/L-222)

The persons referred to in paragraphs 1 and 2 of Article 16 of this law shall be jointly and severally liable with respect to those tax obligations which are not fulfilled due to a willful or gross negligent breach of the duties imposed on them resulting in taxes which are not assessed or are not paid or are not assessed or paid on time. The same shall apply in cases where tax credits and refunds are paid without legal grounds under the conditions of sentence 1 of this Article. The liability shall also include interest according to Article 28 of this law.

Article 26 - Assessment of a third person's liability

(Law No.03/L-222)

1. The Director General may make an assessment of a third person's liability under Articles 24 and 25 of this Law, as well as against responsible persons described in paragraphs 4 and 5 of this Article. Articles 19, 20, 21 and 22 of this law shall apply *mutatis mutandis*.
2. The burden of proof for the correct assessment and the reasoning of a third person's liability shall be on the Director General.
3. The payment of the amount of a third person's liability may only be required where the enforcement against the taxpayer's movable or immovable property was not successful or where it can be reasonably assumed that enforcement against the taxpayer's movable or immovable property would not lead to a settlement of the tax liability. This restriction shall not apply where the liability is based on a person's commission of a criminal tax offense, or where the person's liability to tax results from the taxpayer's failure to collect, withhold or pay over such taxes as provided in paragraph's 4 and 5 of this Article.
4. 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 personally liable from his or her own assets for 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.
5. 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 personally liable from his or her own assets for the amount of the contribution not withheld or not paid over to the Trust. For the purposes 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 pension contributions had not been collected, withheld, or paid over.
6. The amount of the liability provided in paragraphs 4 and 5 of this Article is limited to the amount of tax not collected, withheld, or paid over. If, after assessing this liability 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. As defined in this law, the term 'tax' includes tax and contributions payable to

TAK.

7. The liability provided in paragraphs 4 and 5 of this Article 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 tax amounts due from responsible persons shall be abated and any liens filed shall be released. As defined in this law, the term 'tax' includes tax and contributions payable to TAK. The Minister shall issue a sub-legal act to describe the application of this Article and procedures to be followed in establishing third-person liability.

Article 27 – Payments

(Law No.03/L-222)

1. Any tax that is due and payable to TAK is a debt due to TAK.
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.
3. Any person who is made responsible by the taxpayer to withhold, account for and pay over any tax on behalf of that taxpayer 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.
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 legislation in force with respect to pensions in Kosovo shall pay such contributions at the time specified in such legislation or implementing rules.
5. Self-employed persons who are required to make pension contributions pursuant to legislation in force with respect to 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.
6. Unless otherwise specified in administrative instruction, all taxes shall be paid to a bank, or other financial institution, licensed by the Central Bank of the Republic of Kosovo (CBK).
7. Notwithstanding any other provision in this Article or in this law, where the amount of tax payable under a tax declaration is three (3) Euro or less, or such other small amount as determined by the Director General, TAK shall treat the tax payable as zero.

8. Unless designated to do so in writing by the Director General, tax officials are prohibited from receiving any payment in respect of any tax.

Article 28 – Interest

(Law No.03/L-222)

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.
2. Interest may also be calculated on those penalty amounts that are based on the underlying tax amount under conditions to be described in a sub-legal act to be issued by the Minister. Any interest to be computed shall not start until at least one hundred twenty (120) days after the tax on which the penalties apply has been assessed and the taxpayer has been notified that interest will begin to accrue on penalties if the tax balance remains unpaid. Such interest shall continue from the first day of the month following the one hundred twenty (120) day period, and the first day of each month thereafter, until the penalties to which the interest applies are paid.
3. 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.
4. The rate of interest shall be based on, but marginally higher than, the commercial bank interest rate on lending in Kosovo, and shall be determined by the Ministry of Economy and Finance at least once per calendar year and shall be published by TAK.
5. 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.
6. Notwithstanding paragraph 1 of this Article when taxpayers submit a request to TAK for payment of tax by installment agreements, interest shall not accrue from the month following the month in which the agreement is concluded until it is fully satisfied.
7. 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 paragraph 6 of this Article shall not apply. Procedures and the length of agreement under paragraph 6 of this Article shall be regulated by a sub-legal act.

Section 33 Interest

(Administrative Instruction or. 15/2010)

1. Article 28 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 5 of this Section.

2. Paragraph 2 of Article 28 of the Law provides that interest may be charged on those penalty amounts that are computed as a percentage of the underlying tax and not on those that are based on a fixed amount. In order to maintain simplicity in the TAK IT system, the only penalties on which interest shall be applied are those penalties provided by Articles 51, 54, and 60 of the Law. Interest will be imposed on the applicable assessed penalties only after a final notice is issued to the taxpayer advising that interest will begin to accrue on the specified assessed penalty amounts beginning on the first day of the month following the month in which the final notice is issued. Interest will accrue only on the penalty amount assessed as of the date that the final notice described in this paragraph is issued. The Final Notice shall be issued 120 days after the date on which the tax to which the penalties apply was assessed. The Final Notice shall include:

- 2.1. the name of the taxpayer;
- 2.2. the taxpayer fiscal number
- 2.3. the tax and tax period, or periods, to which the notice relates
- 2.4. the amount of assessed tax, penalties, and interest;
- 2.5. a demand for payment of the amount due;
- 2.6. the place and manner of payment of the amount due; and
- 2.7. notification that on the first of the month following the date of the notice interest will begin accruing on the penalties specified, in addition to that interest already accruing on the tax.

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. TAK shall issue a public notice advising of the date from which interest on penalties will begin to accrue. Immediately following the public notice, TAK shall issue the final notices provided in this paragraph to all active taxpayers with debts which have been in existence in TAK for more than 120 days.

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 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 paragraph 5 of Article 28 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 paragraph 6 of Article 28 of the Law, beginning from the month following the month in which an installment agreement is signed, 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 12 months, interest will continue to accrue for the duration of the agreement. Any agreement established under the provisions of paragraph 6 of Article 28 must meet the following conditions:

5.1 The agreement cannot be for a period of more than 12 months beginning from the date the agreement is signed;

5.2 The initial payment under the agreement must be at least 20% of the total tax debt included in the agreement;

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 which are fully paid 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 paragraph 6 of Article 28 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 20%. 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. As provided in paragraph 2 of Article 62 of the Law, where a taxpayer with a tax debt enters into an agreement as described in paragraph 5 of this Section, and fulfills all the provisions of the agreement, the penalties imposed under paragraphs 1 and 2 of Article 51 of this Law for late submission of a tax declaration and late payment of tax shall be reduced to 2% of the tax due. This provision will be implemented as follows:

6.1. the penalty imposed for late submission of a tax declaration shall be abated in full; and

6.2. the penalty imposed for late payment of tax shall be reduced to a maximum of 2% of the tax due as reported by the taxpayer on his/her self-assessed declaration,

or as may have been subsequently adjusted by TAK.

Example

Taxpayer submitted a declaration 9 months late with a tax debt of €1,000. Because the declaration was late and was submitted without payment, TAK assessed late filing penalty of €250 (25% of the tax due) and late payment penalty of €40 (4% of the tax due, since late payment penalty cannot be assessed during the same months for which the late filing penalty is assessed). Taxpayer enters into an installment agreement with TAK in accordance with the provisions of paragraph 5 of this Section, and fully complies with the terms of the agreement. When the agreement has been fully satisfied, TAK officials must take the following actions:

- Abate the late filing penalty of €250
- Reduce the late payment penalty from €40 to €20
- Refund back to the taxpayer any resulting overpayment, if any, in accordance with established procedures.

7. In accordance with paragraph 7 of Article 28 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 reestablish 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 which includes 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 (€1,000 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 of this Section if he incurs a new tax debt after 31 March 2010.

Article 29 - Order of Payments

(Law No.03/L-222)

1. The amount of any tax paid pursuant to this law shall be distributed in the following order:
 - 1.1. collection costs,
 - 1.2. the amount of any tax due,
 - 1.3. sanctions and fines, and
 - 1.4. interest
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 paragraph 1 of this Article.
3. Any payment received from the proceeds of enforced collection activity (such as levy on bank account, sale of seized property, etc.), may be applied in an order considered to be to the best advantage of the Government of Kosovo, notwithstanding the provisions of paragraphs 1 or 2 of this Article.

Section 34

Order of Payments

(Administrative Instruction or. 15/2010)

1. In accordance with Article 29 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 period and then to the next oldest, etc. An individual tax period will be fully paid before payments are applied to another tax period. 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. Generally, payments will be applied to the tax period that has the oldest assessment date first, regardless of the tax period involved. Once payments have been started to be applied to a particular tax period, the entire amount of that tax period, including penalty and interest, will be paid before beginning to apply payments to a subsequent tax period. The principle of payment of the entire balance due on a tax period applies even though there may be a subsequent assessment in that tax period with a more recent assessment date than the assessment date on other tax periods outstanding.

Example

If a taxpayer who owes Corporate Income tax, including both the original self-assessment and audit assessment, makes a €7,000 payment on 10 January 2010, the payment will be applied as follows:

<u>2004 Corporate Income Tax *</u>		<u>2005 Corporate Income Tax *</u>	
Self assessed tax with assessment		Self assessed tax with	
Date 8 April 2005:	1,000	assessment date 9 April 2006:	1,000
Penalty	240	Penalty	288
Interest	690	Interest	612
Audit Assessment dated			
10 January 2008	2,500	Payment applied:	270
Penalty	800	Balance	
Interest	1,500	Tax	730
Payment Applied:	6,730	Penalty	288
Balance	-0-	Interest	612

* Figures are for illustrative purposes only and do not represent an actual calculation of penalty and interest.

The full tax balance owed for 2004 is paid first, even though it includes an amount of tax that was assessed later than the date of the tax assessed for 2005. 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, TAK could opt to apply the payment manually to pay the oldest assessed amounts first since the audit assessment for 2004 does not expire until 9 January 2014, but that is an exception to the general rule to be exercised only when there is valid concern over the collection statute date.

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.

Article 30 - Credits and Refunds

(Law No.03/L-222)

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.
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 this Article, the taxpayer is entitled to claim a refund from TAK for the amount remaining overpaid.
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.
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 Economy and Finance or, in case of pension contributions, to the Kosovo Pension Savings Trust.
5. In case when a taxpayer is entitled to a refund under paragraph 2 of this 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 Economy and Finance. 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.
6. Interest under paragraph 5 of this Article shall begin to accrue on the 61st day following the receipt of the claim for refund.

Section 41

Credits and Refunds

(Administrative Instruction or. 15/2010)

1. Paragraph 1 of Article 30 of the Law provides TAK the authority to apply any overpayment resulting from a TAK assessment, or 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 may be applied to current tax liabilities by TAK.

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 credit against a tax debt until such credit has been carried forward for three months. If a taxpayer with a VAT credit that was carried forward for three months or more owes a tax debt of more than €5,000, TAK may 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.

4. As provided in paragraph 2 of Article 30 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).

5. 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:

- 5.1. The taxpayer's name
- 5.2. The taxpayer's physical address
- 5.3. The taxpayer's Fiscal Number and, if applicable, the VAT Registration Number
- 5.4. The address to which the taxpayer wishes notices regarding the refund to be sent
- 5.5. 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
- 5.6. The type of tax, tax period, and amount of refund claimed
- 5.7. The cause of the overpayment or credit, or how the overpayment or credit came into existence.
- 5.8. Documentation required to support the refund claim

6. 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 5 of this Section, must include:

- 6.1. Statement of business regarding the cause of the overpayment of VAT, such as investments, large unusual purchases, etc.
- 6.2. 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

7. The following documentation must be kept available for verification upon request by TAK:

7.1. 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

7.2. 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

7.3. All contracts fulfilled during the period for which the refund claim is requested, or in process during that time

7.4. 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

7.5. Any other documentation or requirements established in the Law on VAT

7.6. Any other documentation requested by TAK during the processing of the claim.

8. As an exception to paragraph 5 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.

9. 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.

10. Even though TAK has approved a refund in accordance with paragraph 8 of this Section, TAK retains the right to audit any declaration submitted within the time period provided by applicable legislation in force.

11. 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 Corporate Income Tax (CIT)

or Personal Income Tax (PIT) shall be considered to have been paid on the date such declarations are due to be submitted to TAK.

12. 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 paragraph 1 of this Section, prior to making the refund payment.

13. 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 15 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.

14. 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. 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 13 of this Section, no interest shall be due.

15. 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.

16. If TAK subsequently audits a declaration for which a refund was received and determines that the taxpayer was not entitled to the refund amount, or should have received a refund for less than that actually approved, an adjustment to tax shall be made and applicable penalties and interest may be computed on the tax adjustment.

Article 31 - Use of Banks and other Licensed Financial Institutions

(Law No.03/L-222)

1. With the approval of the Ministry of Economy and Finance Treasury division, TAK may enter into agreements with CBK and other banks or financial institutions licensed by CBK for the banks, or other licensed financial institutions, to receive tax declarations and tax payments.
2. Under such agreements, the banks, or other financial institutions, shall be obliged:
 - 2.1. to send payments of tax to the CBK within a specified period of time;

- 2.2. to send tax declarations and other documents to TAK within a specified period of time;
- 2.3. 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;
- 2.4. to balance the daily collections with a balance control document.

Article 32 - Tax that is Due and Payable

(Law No.03/L-222)

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 General in his or her official name, where required by circumstances of the case.
2. In any proceedings under this Article, production of a certificate signed by the Director General 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.

Article 33 - Liens

(Law No.03/L-222)

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 ten (10) days after delivery of an assessment notice, as provided in Article 22 of this law, 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.
2. The lien described in paragraph 1 of this Article shall arise at 5 p.m. on the date the tax is assessed and shall continue until the liability is satisfied or becomes unenforceable.
3. The lien described in paragraph 1 of this Article must be registered with the municipal cadastre office of the Kosovo Cadastre Agency with respect to immovable property and any other office responsible for registering property, or security interests in property, in Kosovo in order for the lien to have priority against all subsequently recorded liens or security interests with respect to such property. For purposes of this law, the act of recording a lien shall not be considered to be an action to enforce collection of tax.
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.
5. The Director General may file a civil action in a court of competent jurisdiction to enforce any lien imposed by this Article.

6. In the event of payment of the debt to TAK, the lien shall be released.

7. The lien described in paragraph 1 of this Article, 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.

8. The lien described in paragraph 1 of this Article 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.

9. Any lien under paragraphs 7 and 8 of this Article so recorded will be enforceable in the same manner as any other lien provided in paragraph 1 of this Article. 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 paragraphs 7 and 8 of this Article.

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

10.1. 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.

10.2. 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. For the purposes of this Article, the liquidation fund of the Privatization Agency of Kosovo shall be considered to be a fund as that term is used in this sub-paragraph.

10.3. Any reasonable and necessary expenses incurred in connection with the sale of the property under sub-paragraph 10.2 of this Article 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. In addition, any mandatory payments to be made from the liquidation fund of the Privatization Agency of Kosovo which by law have priority over claims of secured creditors shall be paid from the proceeds of the sale prior to the satisfaction of any lien or claim of the TAK.

11. With respect to tax debts of Socially-Owned Enterprises:

11.1. 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 3 of this Article.

11.2. TAK will take no enforcement action, other than service of a Notice of Levy on third persons, with respect to the tax debts of the SOE, nor will it take action to otherwise 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. In cases in which TAK has recorded a lien which inhibits the sale of SOE property, TAK shall utilize the procedures provided in paragraph 10 of this article to discharge the property from the lien in order to assert its secured claim against the proceeds received by the PAK following the sale of the SOE assets by PAK. The TAK lien shall attach to the proceeds of the sale of property to which it attached with the same priority as it had in the property, itself, subject to the rules established in Law 03/L-067 on Privatization, or its successor, which govern the priority of claims in those liquidation proceedings.

11.3. 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.

12. The lien described in paragraph 1 of this Article shall lapse 6 years from the date of assessment and the tax due shall no longer be collectible after that date, except in the following circumstances:

12.1. 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;

12.2. 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;

12.3. 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;

12.4. 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;

12.5. 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 or her return to the Republic of Kosovo;

12.6. the taxpayer is a budget organization of the central or a municipal government, in which case the six-year period is extended indefinitely and the lien does not expire until the liabilities of the budget organization are paid;

12.7. 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 twenty four (24) months; or

12.8. the assessment date for computation of the six-year collection period shall be the date of the assessment notice issued per Article 22 of this law.

Section 32

Tax Lien

(Administrative Instruction or. 15/2010)

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 33 of The Law provides that a lien will arise in favor of the TAK. Paragraph 1 of Article 33 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 as provided in Article 22 of this law, 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), including property acquired by the tax debtor after the lien arises, 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 paragraph 1 of Article 33 of the Law: 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 paragraph 1 of this section.

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 tax lien may be recorded at any time after the 10-day period provided in the Notice of Assessment has expired, except it may be recorded immediately after delivery of the Notice of Assessment in the case of a jeopardy assessment. 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 un-recorded 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 paragraph 3 of Article 33 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. 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. Paragraph 7 of Article 33 of the Law provides:

The lien described in Paragraph 1 of this Article 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/fiscal 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 33.12 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/fiscal 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 (or fiscal 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 paragraph 8 of Article 33 of the Law, which reads:

The lien described in paragraph 1 of this Article 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 paragraph 12 of Article 33 of The Law is computed. The notice must include the following:

- 7.4.1 Name, address and personal number/fiscal 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 nominee 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 sub-paragraph 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/fiscal number) as nominee of Taxpayer D (Fiscal 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 subparagraphs 9.1.1 through 9.1.5 above is based on the need to protect landlords, storage persons, and repair persons from the necessity of verifying 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 Section.

10. Discharge of Property. Paragraph 10 of Article 33 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. Sub-paragraph 10.1 of Article 33 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-paragraph 10.1 of Article 33 of the Law. 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 General 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 €2,000.

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 General, 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. Sub-paragraph 10.2 of Article 33 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 subparagraph 10.2 of Article 33 of the Law. 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 General 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 sub-paragraph 10.1 above, 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 sub-paragraph 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 sub-paragraph 10.1.

11. Provisions Specific to SOE's. Sub-paragraph 10.3 and paragraph 11 of Article 33 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. Sub-paragraph 11.1 of Article 33 of the Law provides that TAK may record a tax lien against the assets of an SOE that owes a tax debt. Generally, that is the only action TAK is permitted to take against an SOE or its assets. 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. Sub-paragraph 11.2 of Article 33 of the Law 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 of this Section 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. If TAK has a lien on property that is to be liquidated under the provisions of that law, the PAK must apply to TAK for discharge of the property from the effects of the tax lien as provided in sub-paragraph 10.2 of Article 33 of the Law. 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, including those mandatory payments as referenced in sub-paragraph 10.3 of this Section. 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.

11.3. TAK will issue a Certificate of Discharge from the effects of the lien subject to the TAK lien retaining the same priority in the proceeds placed into the liquidation fund as it had in the property which was sold. Provided that all requirements are met, the TAK will issue its discharge of property within 5 days after receiving the contract of sale and evidence that the sale actually took place.

12. Statutory Period of a Lien and Re-Filing Requirement. As provided in paragraph 12

of Article 33 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.

Example:

Taxpayer C submits a VAT declaration for the September 2004 tax period on 25 October 2004 which includes an unpaid tax balance of €1,000 and that declaration is entered into the TAK data processing system on 31 October 2004. On that date TAK issues a Notice of Assessment to the taxpayer and the tax lien arises. Under paragraph 12 of Article 33 of the Law, TAK has 6 years in which to collect that tax as that is the period of time during which the lien is valid. Barring any action that would extend the 6-year period for collection, the TAK's authority to collect that tax debt expires on 30 October 2010. If TAK subsequently determines that Taxpayer C understated his tax obligation through an audit of the taxpayer and makes an additional assessment on 10 July 2007, in the amount of €5,000 and issues a Notice of Assessment on that date a new tax lien arises on 10 July 2007 for the amount of tax assessed on that date, €5,000. TAK has until 9 July 2013 in which to collect that additional tax assessment, unless there has been an act to extend the 6-year collection statute as described in paragraph 12 of Article 33.

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. As provided in Article 82 of the Law, TAK is prohibited from levy on immovable property while a case is in Appeals, although it can record tax liens, and take other enforced collection actions, 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. As provided in Article 82 of the Law, TAK is prohibited from levy on immovable property while a case is pending before the Independent Review Board, although it may record tax liens and take other enforced collection actions 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. Except those cases in which a taxpayer has been referred for criminal prosecution based on a criminal tax offense, TAK generally will not take enforced collection action while the case is under consideration by the court without the specific authorization of the court. Enforced collection action may continue with respect to those taxpayers that have been referred for criminal prosecution based on a criminal tax offense, unless there is an agreement within TAK or with the prosecuting authority otherwise.

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. If a taxpayer, who owes a tax debt, is outside the Republic of Kosovo for a period of more than 3 calendar months, the six-year period is extended for the period of time the taxpayer is outside Kosovo and for an additional six months after the taxpayer's return. The three month absence is computed beginning the first of the month following the month of departure and for the succeeding two full calendar months. If a taxpayer departs Kosovo on 20 March 2009 and returns on June 21, 2009, that taxpayer shall not be considered to have been outside the Republic of Kosovo for purposes of this provision since he/she was not outside Kosovo for three full calendar months following the month of departure.

13.7 As provided in sub-paragraph 12.7 of Article 33, there is no six-year period for tax debts of a budget organization. Tax debts of a budget organization remain

until such time as the tax debt is paid.

13.8. The TAK and the taxpayer may mutually agree to an extension of the collection statute by executing a written agreement per sub-paragraph 12.7 of Article 33 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 13 of this Section, the tax lien to which the extended collection period 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.

Article 34 – Levies

(Law No.03/L-222)

1. If a person who is liable to pay any tax neglects or refuses to pay within ten (10) days after delivery of an assessment notice, it shall be lawful for the Director General or officer authorized in writing by the Director General, to collect such amount (and such further amount as shall be sufficient to cover the expenses of the levy) by seizure on property belonging to such person (whether in the physical possession of the taxpayer or a third person).

2. In order to seizure on property, an authorized officer shall deliver a notice of seizure to any person (including, but not limited to, employers, banks, other financial institutions, or public authorities) 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. A levy served under the authority of this paragraph shall be considered to be a continuous levy if, at the time it is served, it is accompanied by a copy of a tax lien recorded at the Pledge Registry, or such registry as may be a successor to the Pledge Registry, and the receiver of the levy is advised in writing that the levy must be considered to be a continuous levy extending from the date the levy is first served until the date on which the tax, and all additions and accruals, is fully paid, or the levy is released, whichever is the earlier.

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.

4. The seizure notice shall state:

- 4.1. the taxpayer whose property is being seized;
- 4.2. the location of the property;
- 4.3. the type of liability;
- 4.4. the tax period for which the liability arose; and
- 4.5. the amount of tax assessed.

5. Subject to paragraphs 2 and 3 of Article 82 of this law, 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 thirty (30) days of the notice of seizure. This deadline is valid from the date of seized property until the sale of seized property.

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 ten (10) day period in paragraph 1 of this Article, the thirty (30) day period in paragraph 5 of this Article and the timeframes specified in to paragraphs 2 and 3 of

Articles 82 of this law.

7. Notwithstanding the provisions of paragraph 2 of this Article, 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.

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.

Section 35 **Actions Prior to Enforced Collection of a Tax Debt**

(Administrative Instruction or. 15/2010)

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 31 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 shall record its tax lien in the applicable registries as described in Section 32 of this Administrative Instruction.

2. To provide a final opportunity to make voluntary payment, and to ensure that the taxpayer is fully aware of the tax debt and the consequences of not paying or making arrangements to pay, 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. However, as provided in Article 82 of the Law, TAK is prohibited from taking enforcement action against immovable property while the taxpayer has the right of appeal to TAK Appeals or the Independent Review Board (hereinafter IRB), or while the taxpayer's appeal is pending before TAK Appeals or the IRB.

4. As provided in paragraph 6 of Article 34 of the Law, a final notice is not necessary in the case of a determination that collection of tax is in jeopardy. As described in paragraph 3 of Section 31 of this Administrative Instruction, recording of a tax lien and enforced collection may be taken immediately after delivery of the Notice of Assessment.

Section 36

Levy on Property Held by a Third Person

(Administrative Instruction or. 15/2010)

1. A levy is a seizure instrument through which property (whether movable, immovable, tangible, or intangible), of a tax debtor is transferred to the TAK. As used in this Section, the term 'property' includes any form of rights, present or future, to property; equity interests in property; and income. As used in this Section, unless otherwise noted, the term 'levy' refers only to a seizure of property of the tax debtor held by a third person.

2. Following expiration of the 10-day period provided in the Final Notice described in Section 35 above, and after the requirements of Section 35 above are met, 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, but not limited to, contract payments, accounts receivable, renters or leasers; public authorities; 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.

3. In order to seize property in the possession of a third person, an authorized officer of the TAK must deliver a Notice of Levy (also known as Order for Blocking and Transfer) to the person in possession of the property of the taxpayer. In addition, TAK must deliver to the taxpayer a copy of the Notice of Levy within 5 days after serving it on the recipient of the Notice of Levy. The Notice of Levy must be addressed to the person in possession of the property, and include:

- 3.1. The name and address of the taxpayer whose property is being seized, including the taxpayer's fiscal number;
- 3.2. Identification of the tax liability, including type of tax, tax period(s), the amount due for each tax period, and the total balance due;
- 3.3. The legal basis for TAK to issue a Notice of Levy
- 3.4. The obligation of the recipient of the Notice of Levy to execute the Notice of Levy, which includes the transfer of any funds held to the account designated by

TAK, or to block any other property held by the recipient;

3.5. Identification of the bank account into which any funds held are to be transferred and the timeframe within which such funds must be transferred;

3.6. Instructions on how to comply with the Notice of Levy, including the account number into which any payment shall be made; and,

3.7. Description of possible sanctions for failure to adhere to the legal requirements for processing and responding to a Notice of Levy.

4. 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 property subject to the levy be surrendered and, if the property is in the form of money owed to, belonging to, or held in behalf of the taxpayer, such money must be paid over to the TAK into 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 and accruals 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 and accruals due as indicated on the Notice of Levy.

5. As provided in paragraph 2 of Article 34 of the Law, 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. However, that paragraph also provides that the levy is a continuous levy under the following circumstances:

5.1. the Notice of Levy is accompanied by a copy of the tax lien recorded at the Pledge Registry and the Notice of Levy does not include tax debts which are not included on the tax lien; and

5.2. the Notice of Levy includes a statement that it is a continuous levy and attaches to all property currently in possession of the third person, as well as any further property of the taxpayer that may come into the possession of the third party until such time as the tax debt, including all accruals and additions is fully satisfied, or until such time as TAK issues a notice of release of the levy, whichever is earlier.

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 transferring the property, or by making payment, to any other person (including the taxpayer) of any amount subject to the levy. Any person in possession of money, or rights to money, 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. In addition to paragraphs 1 through 6 of this Section, special handling is required for service of Notices of Levy on banks or financial institutions. A Notice of Levy delivered to a bank or financial institution is a continuous levy under the conditions described in paragraph 5 of this Section. A bank may designate a single location for delivery of all TAK Notices of Levy, in which case the date and time received by the bank at its designated location shall be the date and time applicable to all Branches of the bank in terms of

compliance with the Notice of Levy. Banks shall respect the following procedures:

7.1. Immediately block all accounts belonging to the taxpayer named in the Notice of Levy;

7.2. Respond to TAK within 5 days of receipt of the Notice of Levy to advise TAK whether the bank has any obligations to the taxpayer (including, but not limited to, account(s) belonging to the taxpayer, account(s) held by a third person in behalf of the taxpayer, or any other obligation the bank has to the taxpayer) and the amount(s) for which the bank is obligated at the time the Notice of Levy was delivered to the bank;

7.3. Pay into the account designated by TAK the amount of any obligations blocked, up to the amount of tax and accruals due to TAK from the taxpayer;

7.4. Make the payment required in sub-paragraph 7.3 above within 10 days after the Notice of Levy is delivered to the bank;

7.5. If the Notice of Levy delivered to the bank meets the requirements for a continuous levy, as described in paragraph of this Section, the bank's obligation with respect to that Notice of Levy continues until the tax debt, including all accruals, is satisfied;

7.6. If the bank has an overdraft agreement with the taxpayer which is not recorded in the Pledge Registry, the bank shall have no right to offset an amount owed on an overdraft once TAK has served a Notice of Levy on the bank, until such time as the Notice of Levy has been fully satisfied;

7.7. If TAK becomes aware that more than one bank has an obligation with respect to the taxpayer, TAK may deliver a Notice of Levy to each such bank. Based on the responses from each bank regarding the amount to which they are obligated, TAK will pro-rate the amount each bank must pay in satisfaction of the Notice of Levy. This will mean that funds from each bank will be transferred and no one bank will be disadvantaged by having to turn over the full amount of its funds while another bank is required to turn over a lesser amount. If a bank does not respond, TAK will have no basis for prorating the amount from that bank and will collect the full amount of obligation held by that bank, and pro-rate any remaining balance among the other banks responding.

7.8. Where a bank has received a Notice of Levy from TAK and an order for execution from a court, the principle of first in time, first in right will apply. Under this principle, if the TAK Notice of Levy is received before the court order for execution, the bank shall respect the TAK Notice of Levy before the court order; if the court order is received before the TAK Notice of Levy, the bank shall respect the court order before the TAK Notice of Levy. Paragraph 1 of Article 35 of the Law provides that, "*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*"

7.9. Without regard to the continuous nature of the Notice of Levy, if a Notice of Levy is served on a bank which has no obligation to the taxpayer, such Notice of Levy is not a continuous levy and the bank shall be discharged from its obligation with respect to such Notice of Levy upon its response to TAK indicating that it

has no obligation to the taxpayer. If this is subsequently found to be untrue, the bank's obligation to TAK with respect to the Notice of Levy will be effective from the date the Notice of Levy was originally delivered to the Bank.

8. In addition to provisions of paragraphs 1 through 6 of this Section, Notices of Levy served on Kosovo Treasury Department also require special handling as follows:

8.1. TAK is authorized to communicate the accounts which Treasury Department should block electronically, so long as both parties agree to such an arrangement and the electronic transmission from TAK identifies the tax debtor, his/her fiscal number, and his/her total tax debt, notwithstanding the requirements for a Notice of Levy as described in paragraph 3 of this Section;

8.2. If such electronic transmission is utilized, the levy on Treasury shall be continuous so long as TAK advises Treasury that the levy is continuous and certifies to Treasury that liens for the tax debts subject to levy have been duly recorded in the Pledge Registry, notwithstanding the requirement described in paragraph 5 of this Section;

8.3. If a Notice of Levy is to be delivered via a means other than electronically, such Notice of Levy must meet all the requirements of paragraph 3 of this Administrative Instruction. Such Notice of Levy will be a continuous levy if it meets the requirements of paragraph 5 of this Administrative Instruction;

8.4. Officials of TAK and Treasury Department will establish the appropriate procedures to ensure compliance with the provisions of this Administrative Instruction.

9. 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 further 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.

10. Paragraph 2 of Article 35 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/lesser, 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 31 of this Administrative Instruction. In addition, it shall state that the assessment is made under authority of paragraph 2 of Article 35 of Law 03/L222 on Tax Administration and Procedures, 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 35 of the Law. An assessment made pursuant to the provisions of paragraph 2 of Article 35 of the Law shall be collectible in the same manner as tax. Payment of the amount assessed under paragraph 2 of Article 35 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.

11. Paragraph 3 of Article 35 of the Law provides that any person described in paragraph 10 of this Section shall be liable to sanctions as provided in paragraph 1 of Article 55 of the Law. The amount of the sanction to be imposed under this paragraph (per paragraph 3 of Article 35 of the Law) 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

10 of this Section. 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 32 of the Law.

ABC LLC 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.

12. 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 3 of Section 37 of this Administrative Instruction, 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.

13. 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 7 of Article 34 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, or the Notice of Levy is released, whichever is earlier. 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 37 of the Law.

Article 35 - Enforcement of Levy

(Law No.03/L-222)

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.
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. Imposition of this sanction does not relieve the person on whom the levy was served of their obligation to surrender property subject to the levy that was served on that person in accordance with paragraph 1 of this Article.
3. In addition to the personal liability imposed in paragraph 5 of this Article, if the failure or refusal to surrender is without reasonable cause, such person shall be liable for a sanction under paragraph 1 of Article 55 of this law.

Section 37

Levy on Property in Possession of the Taxpayer

(Administrative Instruction or. 15/2010)

- 1. Property in the Possession of the Taxpayer.** As provided in paragraph 1 of Article 35 of the Law, *“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).*
2. 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 Section 35 of this Administrative Instruction (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.
 - 2.1. 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.
 - 2.2. 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.

2.3. Any disputes regarding ownership of the taxpayer's property must be noted

2.4. 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.

2.5. 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.

2.6. 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.

3. 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:

3.1. The name and address of the taxpayer

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

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

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

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

4. In accordance with paragraph 1 of Article 37 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.

5. 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.

6. 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 delivered to the taxpayer. Delivery by post must include a requirement that the postal service must certify that the document was delivered to the address and the date and time of delivery.

6.1 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.

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

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

7. 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.

7.1. 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.

7.2. 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).

8. 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).

8.1. The starting point for determining the minimum bid price shall be the open market value determined in paragraph 8 of this Section.

8.2. 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.

8.3. 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.

9. 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 34 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.

9.1. In order to sell the property, TAK must prepare a Notice of Sale, which must contain:

9.1.1. Name of taxpayer

9.1.2. 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

9.1.3. The date of sale

9.1.4. The place of sale

9.1.5. 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).

9.1.6. Complete description of property being sold adequate to allow an interested buyer make an estimate of the value and worth of the property.

9.1.7. Location where property may be inspected and the dates and time when inspection can be made.

9.1.8. 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

9.1.9. 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

9.1.10. Form in which payment must be made (by bank transfer) and how payment is made by the successful bidder

9.1.11. Statement of the authority of the TAK for conducting the sale

9.2. 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

9.3. 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.

9.4. 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.

9.5. 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.

9.6. 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.

9.7. 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.

9.8. If it is necessary to adjourn a sale after it has been advertised, the sale must be rescheduled 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 subparagraphs.

10. 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.

11. 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.

11.1. 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.

11.2. 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.*

11.3. 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.

11.4. 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.

11.4.1. 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.

11.4.2. 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.

11.4.3. 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.

11.4.4. 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.

11.5. 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.

11.6. 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.

12. 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.

12.1. 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.

12.2. 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.*

12.3. 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.

12.4. 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.

12.5. 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).

12.6. 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.

12.7. 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.

13. 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.

14. 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.

14.1. 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 sub-paragraph 8.3 of this Section.

14.2. 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 9 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 9 of this Section.

15. A sale of seized property may be abandoned and seized property returned to the taxpayer in the following circumstances:

15.1. 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

15.2. 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.

15.3. 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 39 of this Administrative Instruction).

16. 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.

17. 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, or to the person named in the court order, TAK should do so, unless it believes it has good cause to appeal that decision. If TAK is required to turn the property over to the court, it should do so with the provision that 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.

18. 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.

19. 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.

19.1. An expedited sale may be authorized in writing by the Director General when circumstances in paragraph 19 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.

19.2. 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.

19.3. 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.

19.4. 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 34 of The Law and the provisions of this Administrative Instruction.

19.5. 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.

20. Property seized from a taxpayer may be released back to the taxpayer, in whole or in part, in the following circumstances:

20.1. 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.

20.2. 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.

20.3. Release of the seizure in whole, or in part, will facilitate the ultimate collection of the tax debt.

20.4. 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.

20.5. 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

20.6. TAK has determined to abandon a sale as provided in paragraph 15 of this Section.

Article 36 - Sale at Public Auction

(Law No.03/L-222)

1. TAK may sell at public auction any property seized pursuant to this law.
2. Procedures for selling at public auction shall be regulated under a sub-legal act.

Article 37 - Other Provisions Related to Enforced Collection

(Law No.03/L-222)

1. Only that property necessary and sufficient to meet the taxpayer's current tax obligations may be subject to enforced collection action.
2. The following forms of a taxpayer's property shall be exempt from levies and seizures:
 - 2.1. child support and social assistance payments;
 - 2.2. essential clothing;
 - 2.3. basic food;
 - 2.4. basic furniture;
 - 2.5. basic personal effects, excluding luxury items; and
 - 2.6. any other property specified in an administrative instruction.
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 33 of this Law. If collection action, other than recordation of a lien, has been initiated against a specific asset, the TAK is authorized to complete that collection action even though it may extend beyond the six-year statutory period or statutory period as extended per paragraph 12 of Article 33 of this law.
4. Without prejudice to any other provisions of this Law, authorized officials of the Tax Administration may require a taxpayer, or his or her authorized representative, to provide a statement of assets under oath at a time and place designated by the tax administration. Such statement of assets shall include the following:
 - 4.1. all assets currently owned by the taxpayer, either directly or indirectly;
 - 4.2. all assets in which the taxpayer has an ownership interest;
 - 4.3. all assets disposed of by the taxpayer within the six (6) months prior to the statement date, including the person to whom the asset was transferred, the

relationship to the taxpayer of the person to whom the asset was transferred, the date of the transfer, the compensation amount for which the asset was transferred;
4.4. description of all liabilities owed against the assets described in the statement and the time and place of recordation of any security interests in any of the assets;
4.5. all sources of current income, such as employers, bank accounts, accounts receivable, etc.

5. Without prejudice to any other provisions of this Law, authorized officials of the tax administration may require any person believed to have information relevant to the collection of a tax debt to provide a statement under oath related to the collection of such tax debt at a time and place designated by the tax administration.

6. Enforcement of paragraphs 4 and 5 of this Article shall be through presentation of facts and circumstances to a competent court, which may issue an order compelling the appearance and testimony of those persons described in paragraph 4 of this Article. Any person who fails to appear at the time and place specified, or to provide information, in response to the requests for information described in paragraphs 5 and 6 of this Article, shall be liable for such fines, penalties, or other sanctions (including incarceration) as may be prescribed by the competent court. Such fine, penalty, or sanction shall not be less than five hundred (500) Euros.

Article 38 - Recovery of tax from partners and members of unincorporated associations

(Law No.03/L-222)

The Director General may recover from any of the partners of a general partnership any tax, together with interest, sanctions and costs, due from the partnership, as provided in the Law on Business Organizations.

Article 39 - Jeopardy Orders

(Law No.03/L-222)

1. Where the Director General 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 General may notify any person:

- 1.1. owing money to the person who will be liable to pay tax;
- 1.2. holding money for the person who will be liable to pay tax;
- 1.3. having the authority from some other person to pay money to the person who will be liable to pay tax;
- 1.4. to set aside the money until such time as the Director General issues a notice under Article 21 of this law or withdraws the notice issued under this Article.

2. Any person who fails to set aside money as required under paragraph 1 of this Article shall be liable to a sanction under paragraph 2 of Article 55 of this law.

Article 40 - Embargo on imports and exports

(Law No.03/L-222)

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 General considers that payment of tax is in jeopardy under Article 39 of this law, it shall be lawful for the Director General or an officer authorized in writing by the Director General, 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.

2. Any request made to the Director General of the Customs of Kosovo under paragraph 1 of this Article shall remain valid until the Director General advises the Director General of the Customs Service in writing of a decision to terminate the request.

Article 41 - Departure prohibitions

(Law No.03/L-222)

1. The Director General of TAK may request that the Border Police of Kosovo or other authority take such steps as necessary to prevent a person from leaving Kosovo under the following conditions:

1.1. The Director General must have reason to believe that the person is about to depart Kosovo, and such departure presents an immediate danger to the budget of Kosovo because the person has failed to pay tax debts of more than five thousand (5,000) € or has failed to submit one or more required tax declarations representing an unknown amount of tax liability;

1.2. The Director General must submit a written request to the Head of the Border Police justifying the request to prevent the person from departing Kosovo; and

1.3. Without undue delay following the request to the Head of the Border police, the Director General of TAK must request a hearing before a competent court with jurisdiction over such matters and request a court order authorizing the Border Police to prevent the person's departure under the conditions described in the court order.

2. Upon receipt of the request described in sub-paragraph 1.2 of this Article, the Head of the Border Police shall take such steps as necessary to prevent the subject person from departing Kosovo pending the issuance of an order from the competent court as provided in sub-paragraph 1.3 of this Article. If such order has not been issued within forty eight (48) hours from the time the subject person was initially prevented from departing Kosovo, the person shall be allowed to depart Kosovo without further action by the Border Police.

3. Upon receipt of an order from a competent court, which authorizes the Border Police to prevent the departure of a person, the Border Police shall take such steps as necessary to prevent the person from leaving Kosovo until the conditions prescribed in the order have been met.

4. If before the expiration of the period of time authorized by the judge or prosecutor for preventing the person from departing Kosovo, the person may be allowed to depart Kosovo if that person:

4.1. makes payment in full; or

4.2. submits all past due declarations with payment in full;

4.3. makes an arrangement satisfactory to the Director General of TAK for payment of the tax or submission and payment of all past due declarations; or

4.4. provides a full statement of assets, under oath, as provided in paragraph 4 of Article 37 of this law, which indicates that the person has no ability to pay the tax debt, or assets from which the tax can be collected, or identifies assets from which collection of the tax debt, partially or in full, can be made.

5. Once the person has met the conditions for departure as provided in the court order, TAK must inform the Border Police without undue delay.

Article 42 - Transfers of Assets

(Law No.03/L-222)

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 right.

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.

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.

4. If the transfer of assets (movable or immovable) has been made after a tax administration lien as provided in Article 33 of this law 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 34 of the Law.

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.

Section 38 **Transfers of Assets**

(Administrative Instruction or. 15/2010)

1. Paragraph 1 of Article 42 of the Law authorizes the TAK to transfer an assessment of tax from one entity to another entity following a transfer of assets 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 1.1 through 1.3 of this Section has taken place, and in order to establish an assessment under Article 42 of the Law, TAK must follow the general principles provided in Articles 19 through 21 of the Law, as well as the provisions of this Section.

2. Paragraph 3 of Article 42 indicates that a transfer of assets made within 3 months (90 days) of incurring a tax debt shall be considered as having been made 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. A transfer of assets which takes place more than 90 days before receiving notice of a pending audit will generally not be considered to be a transfer in anticipation of incurring a tax debt unless there is evidence to support a determination that the transfer was in anticipation of incurring a tax debt.

3. 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.

4. 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 applicable Administrative Instructions for such an assessment are met.

5. Paragraph 1 of Article 42 provides that a transferee situation arises if the following conditions are met:

5.1. 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 paragraphs 2 - 4 of this Section),

5.2. The transfer of assets was for less than fair market value of the assets, or

5.3. The transfer of assets has left the taxpayer without the capability of paying tax debts.

For purposes of this Section, 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.

6. If the taxpayer has transferred assets as described in paragraph 5 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.

Article 43 - Uncollectible Tax Debts

(Law No.03/L-222)

1. TAK may transfer a tax debt to a passive file to remove it from the active collection data base when it has determined through documented efforts that the tax is not collectible at the time of the determination. Such determination may be made in cases such as, but not limited to, an inability to locate a taxpayer or his/her assets; business operations that have ceased with no remaining assets; a deceased taxpayer where there is no transfer of assets from which the tax debt may be collected; a business that has been adjudicated bankrupt and all collection measures have been undertaken; a taxpayer that has no ability to pay the tax debt based on a complete analysis of the taxpayer's financial situation; and determinations of a similar nature.

2. Placement of the tax debt in a passive file does not relieve the tax debt or disturb TAK's lien priority. If new collection sources become known, TAK shall return the tax debt to active collection status. In reporting outstanding tax debt amounts, TAK shall report only that amount of tax debt that is in an active collection status, retaining the ability to report the amount of passive debt upon request by an authorized official of the government.

3. Where a tax liability has become uncollectible as a result of the expiration of the collection statute as provided in Article 33 of this law, TAK may clear those liabilities from its records, and cancel the tax debt, when the provisions of Article 33 and paragraph 3 of Article 37 of this law have been met, without further authorization. TAK shall include in its annual report to the Minister and competent bodies the amount of debts cancelled because of this provision.

Section 39 **Involuntary Bankruptcy Petitions**

(Administrative Instruction or. 15/2010)

1. Law 2003/4 on "Liquidation and Reorganization of Legal Persons in Bankruptcy" (promulgated by Regulation 2003/7) or its successor, 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, except to the extent that such debts can be collected from responsible persons as provided in Articles 25 and 26 of the Law.

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.

Article 44 - Illegal Acts

(Law No.03/L-222)

1. Income shall be subject to taxation in cases where the receipt of income is considered illegal under any legislation in force in Kosovo.

2. The provision of inducements to obtain or retain business, or other form of advantage, and thereto related costs, shall not be treated as allowable expenses, if the provision of the inducement or advantage constitutes an unlawful act covered by a provision of the Criminal Code of Kosovo.

3. Any official of TAK shall inform the public prosecution office through official channels to the Head of the Tax Investigation Unit without undue delay about all findings of a suspected illegal act pursuant to paragraph 2 of this Article. However, officials of the TAK Office of Professional Standards shall follow their own channels for reporting such information to the public prosecution office.

4. The public prosecution office shall inform TAK about the evidence and the outcome of the criminal proceedings in cases of paragraph 2 of this Article.

5. Any official of any public authority (central or municipal), that, in the course of the exercise of their official duties, has become aware of facts that suggest that a tax offense has been committed, is obligated to report those facts to the TAK authorities responsible for criminal tax proceedings through the official channels of that public authority.

Article 45 - Director General may re-characterize arrangements

(Law No.03/L-222)

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

- 1.1. disregard a transaction that does not have substantial economic effect;
- 1.2. re-characterize a transaction where the form of the transaction does not reflect its economic substance; or,
- 1.3. re-characterize an element of a transaction that was entered into as part of a scheme to avoid a tax liability.

2. The Director General shall notify the taxpayer of any disregard or re-characterization under paragraph 1 or this Article.

Article 46 - Transactions between Related Persons

(Law No.03/L-222)

1. In any transaction between related persons, the Director General may adjust or 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.

2. In commercial or financial transactions between related persons, the Director General may adjust the sales price between such persons to reflect the market value that would have occurred if the persons had not been related.

Article 47 - Exchange Transactions and Third Party Information Reporting

(Law No.03/L-222)

1. Barter transactions shall be considered as a sale of goods or the result of work or services at market values.
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 General may adjust the value of the transaction to reflect market values.
3. All persons engaged in a trade or business, who are taxed on income real bases and making purchases of goods or services (or receiving goods or services in a barter transaction) from another taxable person totaling five hundred (500) Euros or more in any taxable year, shall render a true and accurate return reporting of 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 the following year.
4. When necessary to make effective the provisions of this section, the name, address and Taxpayer Identification Number (fiscal number) of the seller of goods or services shall be furnished upon demand of the purchaser.
5. 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.
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.

Section 42

Report of Transactions over €500

(Administrative Instruction or. 15/2010)

1. Paragraph 3 of Article 47 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 (or receiving goods or services in a barter transaction) from another taxable person totaling five hundred (500) Euros or more in any taxable year, shall render a true and accurate return reporting of 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 taxed on the real income basis 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. Included in, but not limited to, the persons required to submit reports under this Section are:

- 2.1. All persons engaged in trade or business activities with the requisites detailed in this Section;
- 2.2. The Government and the municipalities of Republic of Kosovo;
- 2.3. NGO’s, public institutions and similar organizations;
- 2.4. Universities, hospitals and similar institutions, public or private, are obliged to submit the declaration for all their purchases required under this Section, whether registered for VAT, or not registered.

3. The report must include all goods and services purchased from 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. These purchases should be declared, 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 also be included in the annual report required to be submitted to TAK. Other provisions related to reports include:

- 3.1. Advanced payments related to purchases subject to VAT are obliged to be included in the declaration in determining if purchases from a supplier exceeded 500 Euros;
- 3.2. Installments paid after the delivery of the goods or services should not be included in the value of the goods or services purchased as that value has already been included in the declaration;
- 3.3. Purchases of services, liable for VAT in the way of reverse charge for the recipient of the service, when the place of supply is Kosovo should be included in the declaration.
- 3.4. Renting of real estate should be included in determining the value of goods and services purchased, but should be declared separately.

4. As 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.

5. The report required by this Section of this Administrative Instruction must include:

- 5.1. the name of the supplier;
- 5.2. the address of the supplier;
- 5.3. the fiscal number of the supplier;
- 5.4. the VAT number of the supplier;

- 5.5. the total amount of supplies (in Euros) purchased from the supplier during the calendar year;
- 5.6. the amount of taxable supplies purchased;
- 5.7. the amount of exempt supplies purchased; and,
- 5.8. the VAT paid on the supplies purchased.

6. 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.

7. Persons making annual purchases totaling €500 or more from 10 or more suppliers must submit the annual report required by paragraph 2 of this Section in an electronic format based on a Public Ruling.

8. The first reports required by this section will be due on or before 31 March 2011.

9. As provided in paragraph 4 of Article 47 of the Law, sellers are required to provide their name, address, fiscal number, and VAT registration number upon request of the purchaser.

10. Except for Budget Organizations of the Central Government and Municipalities of the Republic of Kosovo, persons who fail to submit the annual report required by this Section shall be subject to a penalty of up to €500 (paragraph 5 of Article 47 of the Law). Notwithstanding the issuance of a penalty, the person remains liable to submit the annual report and may be subject to further penalty if the failure to submit the report continues after demand of TAK.

Article 48 - Understatements of Income and Diverted Receipts

(Law No.03/L-222)

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, or any other indirect method appropriate to the circumstances, taking into account income of previous periods.

Article 49 - Sanctions for Non-Compliance

(Law No.03/L-222)

Any sanction imposed under Articles 50 to 61 of this law shall be considered as duty to TAK.

Article 50 - Administrative Penalty with respect to Fiscal Certification

(Law No.03/L-222)

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 11 of this law shall be liable to a penalty up to five hundred (500) Euro.
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.
3. In addition, TAK shall provide the business registry of the details of the un-registered business.

Article 51 - Administrative Penalties with respect to Failure to File and Pay

(Law No.03/L-222)

1. When a person required to submit 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.
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).
3. The administrative penalty provided in paragraph 2 of this Article shall not be applied for any month or part of the month during which the administrative penalty provided in paragraph 1 of this Article is applied.

Article 52 - Administrative Penalties Related to Understatements of Tax and Overstatements of Tax Refunds

(Law No.03/L-222)

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:

1.1. 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; or

1.2. 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 52.1.1 is more than 10% of the correct tax amount.

2. For the purposes of paragraph 1 of this Article, 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.

Article 53 - Failure to Submit, Create or Provide Records

(Law No.03/L-222)

1. Unless otherwise provided in this law, any person who is required to submit an information statement with TAK and who fails to do so by the due date or who submits an inaccurate or incomplete statement shall be liable to a sanction of one hundred twenty five (125) Euros for each statement not submitted, or each inaccurate or incomplete statement, up to a maximum of two thousand five hundred (2,500) Euros.

2. Any person who is required to create or retain records, including the requirement to place the fiscal number of the business on all receipts and invoices issued, under the legislation applicable in Republic of Kosovo and who fails to do so shall be liable to an administrative penalty as follows:

2.1. entities with annual turnover in up to thirty thousand (30,000) Euros– an administrative penalty of one hundred twenty five (125) Euros;

2.2. 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;

2.3. entities with annual turnover from two hundred thousand (200,000) Euros up to 500,000 Euros – an administrative penalty of five hundred (500) Euros; or

2.4. entities with annual turnover of five hundred thousand (500,000) Euros and above – an administrative penalty of one thousand (1,000) Euros.

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

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 of this Article will be regulated with a sub-legal act.

5. Any person who is required to provide access to books or records or otherwise comply

with Articles 14 and 15 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 14 or 15 of this Law.

6. Any person who is required to utilize a fiscal electronic device for the recordation of transactions made in the course of their economic activity, and who fails to issue a receipt from such fiscalized equipment to their customer, shall be liable for a fine determined in accordance with the provisions of paragraph 2 of this Article. In the event of equipment or power failure, hand-written receipts which have been approved by the tax administration must be issued in lieu of a receipt issued by a fiscal electronic device, subject to the penalty prescribed in this paragraph.

7. All consumers making purchases of goods or services are required to request a receipt issued by a fiscal electronic device as described in paragraph 6 of this Article. The tax administration has the authority to verify consumer compliance with this requirement. Any consumer who leaves a business premises after making a purchase of goods or services without requesting a receipt reflecting the purchase of those goods or services shall be subject to a fine of twenty (20) €

8. The Minister shall issue a sub-legal act to prescribe the procedures through which the provisions of paragraphs 6 and 7 of this Article will be implemented. The Minister may establish such consumer incentives as appropriate to stimulate consumer compliance with these provisions.

Article 54 - Penalties for failure to withhold tax

(Law No.03/L-222)

1. Any taxpayer who fails to withhold and to pay over a withholding tax, shall be liable to an administrative penalty of twenty-five percent (25%) of the difference between the correct amount of tax required to be paid over and the amount of tax actually paid over.

2. Any taxpayer who fails to withhold or pay over a pension contribution, to the Kosovo Pension Savings Trust shall be liable to an administrative penalty of twenty-five percent (25%) of the difference between the correct amount to be paid over and the amount of tax actually paid over.

Article 55 - Failure to surrender property subject to levy and setting aside money

(Law No.03/L-222)

1. Any person who fails or refuses to surrender any property subject to seizure without reasonable cause under paragraph 3 Article 35 of this Law shall be liable for an

administrative penalty equal to fifty percent (50%) of the amount recoverable under paragraph 2 Article 35 of this law.

2. Any person who fails to set aside money as required under paragraph 1 of Article 39 of this law shall be liable to an administrative penalty equal to that amount of money in question.

Article 56 - Administrative Penalty for errors by Taxpayer Representatives, Tax Advisors, r other Persons acting on behalf of a taxpayer

(Law No.03/L-222)

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. The penalty will be imposed only if the error is the result of negligence or willfulness on the part of the person signing the tax declaration.

Article 57 - Administrative Penalty for Failure to Install Fiscal Electronic Device for capturing and recording transactions

(Law No.03/L-222)

1. Any person required to use a fiscal electronic device (FED) to record all transactions made in the course of their economic activity, who fails to install such an electronic device, shall be subject to an administrative penalty of one thousand (1,000) Euros for each such failure.

2. If a person required to install a FED repeatedly, after having been issued three or more fines for failure to install an FED, fails to install an FED, the tax administration shall be authorized to take such steps as necessary to cancel the taxpayer's fiscal number and VAT certificate, if applicable, followed by a request to the Business Registration Agency to de-register the business.

3. If a person described in paragraph 1 of this Article attempts to circumvent the FED, or tampers with the programming of the FED or data to be entered into the FED, in order to record incorrect data in the FED, such person shall be subject to an administrative penalty in the amount of one thousand (1,000) €

Article 58 - Administrative Penalties with regard to VAT

(Law No.03/L-222)

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:

1.1. 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) Euros; or

1.2. 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) Euros or more.

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:

2.1. 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

2.2. 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) Euros or issuing an incorrect invoice that is more than five hundred (500) Euros above or below the amount that should have been included in the invoice) of the taxable person.

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) Euros for each violation:

3.1. 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; or

3.2. failure to display a copy of the VAT registration certificate in the manner required by applicable law.

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 by the Tax Investigation Unit to the Public Prosecutor for criminal prosecution.

Article 59 - Administrative Penalty for goods without origin

(Law No.03/L-222)

Where a person engaged in economic activity possesses goods without origin, that person shall be liable to an administrative penalty of twenty-five percent (25%) of the market value of the goods. Such goods may be seized and taken into protective custody by TAK

for the settlement of the penalty liability. In such cases, the procedures for jeopardy assessment in Article 21 of this law shall be followed, and the procedures for seizure and sale of these goods shall be governed by the provisions of Articles 34, 35, and 36 of this law. The Director General may issue a jeopardy order as provided in Article 39 of this law.

Article 60 - Penalty for Civil Fraud

(Law No.03/L-222)

1. Where the Public Prosecutor is required to decline prosecution because of legal time constraints, the TAK, based on the assessment authority granted to the Director General, may assess if exist legal base for administrative penalty on the person(s) liable in the amount of fifty percent (50%) of the tax which was evaded. The assessment shall be made only after a determination has been made by the Legal Office of TAK that there is a basis for belief that the taxpayer had willfully evaded the tax which was the subject of the referral to the Prosecutor.

2. The determination of the Legal Office under paragraph 1 of this Article shall be transmitted to the Audit Department of TAK for use in assessment of the tax evaded.

Article 61 - Additional sanctions

(Law No.03/L-222)

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 five hundred (500) Euros and such additional sanctions do not duplicate sanctions already provided in this law. Imposition of additional sanctions must be accompanied by a statement justifying the necessity for the additional sanction(s).

Article 62 - Reduction in sanctions

(Law No.03/L-222)

1. Where a taxpayer who is liable to one or more of the sanctions set out in Articles 50 to 61 of this law, 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 TAK after the taxpayer is first notified of a pending tax investigation, but before TAK commences that investigation, the maximum financial sanction imposed shall be fifty percent (50%) of the sanction that would otherwise have applied.

2. Where a taxpayer with tax liability outstanding:

- 2.1. enters into a written agreement to pay the tax outstanding through two or more installments;
 - 2.2. fulfills the terms of that written agreement; and
 - 2.3. 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 submission and payment under Article 51 of this law will be reduced to two percent (2%) of the tax due and interest incurred under Article 28 of this law will remain payable, unless the provisions of paragraph 6 Article 28 of this law apply.
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, or proposed, penalty on a case-by-case basis.
 4. The Director General or his /her delegate shall consider requests for penalty reduction and issue a determination based on the review of all facts and circumstances.
 5. For the implementation of this article the Minister shall issue a sub-legal act.

Section 43 **Penalties and Penalty Relief**

(Administrative Instruction or. 15/2010)

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 Section is to provide guidance to all areas of TAK for all penalties imposed by the tax laws of Kosovo. This Section 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 Section and specific requirements for relief from certain penalties, where specific requirements exist. While this section of the Administrative Instruction is written as instructive material for the tax administration 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.

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 the TAK official appointed by the Director General in accordance with Article 62 of the Law, or the responsibility of Appeals through their decisions, 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 the Kosovo Budget. 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 additional costs; 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:

Ensure consistency

Ensure accuracy of results in light of the facts and the law;

Provide methods for the taxpayer to have his or her interests heard and considered;

Require impartiality and a commitment to achieve the correct decision;

Allow for prompt reversal of initial determinations when sufficient information has been

presented to indicate that the penalty is not appropriate;

Ensure that penalties are used for their proper purpose and not as negotiating points in the development or processing of cases.

5. The remainder of this Section will more fully explain this policy statement, the relief that can be granted, and the application of the specific penalties provided in the Law.

6. Penalties exist to encourage voluntary compliance by supporting the standards of behavior expected by the tax laws and sub-legal acts of Kosovo.

7. 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.

8. Penalties encourage voluntary compliance by:

- 8.1. Defining standards of compliant behavior,
- 8.2. Defining remedial consequences for noncompliance, and
- 8.3. Providing monetary sanctions against taxpayers who do not meet the standard.

9. 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.

10. 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.

11. 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:

- 11.1. Written materials that clearly explain the rules.
- 11.2. Forms that permit the self-computation of tax liability.

12. In a voluntary compliance/self assessment 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 Section or the Law.

13. In addition to paragraph 11 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.

14. 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.

15. 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 sub-legal acts. Penalties support voluntary compliance by assuring compliant taxpayers that tax offenders are identified and penalized.

16. TAK has the obligation to advance the fairness and effectiveness of the tax system. Penalties should:

- 16.1. Be severe enough to deter noncompliance.
- 16.2. Encourage noncompliant taxpayers to comply.

- 16.3. Be objectively proportioned to the offense.
 - 16.4. Be used as an opportunity to educate taxpayers and encourage their future compliance.
17. TAK personnel may educate taxpayers and encourage their future compliance by:
- 17.1. Discussing causes for the delinquency and listening to taxpayer's reasons and concerns for noncompliance,
 - 17.2. Ensuring that taxpayers understand their filing and paying responsibilities, and
 - 17.3. Ensuring that taxpayers understand their ability to request penalty relief in appropriate circumstances.
18. 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 achieved through audits or other programs
19. TAK's approach to penalty administration must ensure:
- 19.1. **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.
 - 19.2. **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.
 - 19.3. **Impartiality:** TAK employees are responsible for administering the penalty provisions in an even-handed manner that is fair and impartial to both the government and the taxpayer.
20. Paragraph 3 of Article 62 of the Law provides that a taxpayer may request relief from an assessed penalty if the taxpayer believes that reasonable cause, good faith, undue hardship, or other grounds exist for penalty abatement. TAK will consider that request and determine if there is sufficient evidence that the taxpayer's request should be accepted and that doing so will enhance the effectiveness of TAK.
21. Generally, relief from penalties falls into four separate categories. They are:
- 21.1. Reasonable Cause, including a good faith effort to comply with the law
 - 21.2. Statutory Exceptions
 - 21.3. Administrative Waivers, such as undue hardship or other grounds that will enhance the effectiveness of TAK
 - 21.4. Correction of TAK Error.
22. 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.

23. The Director General may delegate authority to receive and review penalty abatement requests as follows:

23.1. To an authorized official, such as the Taxpayer Advocate, who can make a recommendation to the Director General. The Director General may then forward the recommendation to a Deputy to the Director General, or to a Director, who is authorized to approve such recommendations; or,

23.2. To a commission authorized to receive, review and approve/deny penalty abatement requests.

23.3. In either case, the decision of the delegated official, or the commission, shall be acted upon by the TAK IT department upon receipt of a properly signed document specifying the action requested. The Director General shall issue instructions for the public on the procedures for submitting penalty abatement requests, as well as internal TAK procedures for receiving and approving/denying such requests, and the subsequent processing of requests after they have been approved/denied.

24. In making a decision regarding penalty relief, the official, or the commission, must consider the facts and circumstances of each case. The official or commission must consider the guidance provided in this Section in making a determination of granting or denying penalty relief. The official or commission may request input from the respective regional office in considering the abatement request.

25. The official, or the commission, will only consider requests for relief submitted before an appeal has been considered by TAK Appeals. A determination relative to penalty relief may be appealed to TAK Appeals, but a determination made by TAK Appeals cannot be subsequently considered for penalty relief, unless the application of penalties was not part of the appeals consideration.

26. Any penalty assessed as a result of tax fraud or other criminal tax offense is not eligible for relief.

27. 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, without prejudicing the taxpayer's right of appeal on the validity of the adjustment.

28. When the request is received, the official, or committee, will carefully analyze the taxpayer's reasons to determine if penalty relief is justified. The burden of proof is generally upon the taxpayer.

29. Each request must be evaluated on its own validity including:

29.1. The events or parties involved, and

29.2. 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.

30. Even though late, 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.

31. Determine if the taxpayer's explanation addresses the penalty imposed:

31.1. 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.

31.2. 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.

32. 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 record and the taxpayer's overall compliance history:

32.1. The same penalty, previously assessed, may indicate that the taxpayer is not exercising ordinary business care.

32.2. 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.

33. 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.

34. Consider if the taxpayer could have anticipated the event that caused the non-compliance.

35. The following are examples where penalty relief may not be appropriate.

35.1. 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.

35.2. 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.

35.3. 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.

36. If the taxpayer provides an explanation that supports his/her request, abate the applicable penalties. If the explanation applies to only a portion of the penalty, only that portion of the penalty should be abated.

37. 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.

38. 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 this Section as it relates to TAK errors should be applied.

39. If a final determination is made that the criteria for granting relief from the penalty was not established, the decision must be documented as in paragraph 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.

40. A written notification of the decision to not grant penalty relief must be delivered to the taxpayer. The notice should include:

40.1. A complete explanation of TAK's decision and the basis for denial;

40.2. Information on the appeal procedures to be followed if the taxpayer wishes to appeal the decision.

41. 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.

42. In the interest of equitable treatment of the taxpayer and effective tax administration, the abatement of administrative penalties based on reasonable cause or other relief provisions provided in this Section must be made in a consistent manner and should conform with the considerations specified in the applicable laws or administrative instructions in force.

43. For those penalties where reasonable cause applies, TAK will consider any reason which establishes that the taxpayer exercised ordinary business care and prudence, but was unable to comply with his/her tax obligations. Acceptable explanations are not limited to those in this Administrative Instruction.

44. 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:

44.1. What happened and when did it happen?

44.2. During the period of time the taxpayer was non-compliant, what facts and

circumstances prevented the taxpayer from submitting a declaration, paying a tax, or otherwise complying with the law?

44.3. How did the facts and circumstances prevent the taxpayer from complying?

44.4. How did the taxpayer handle the remainder of their affairs during this time?

44.5. Once the facts and circumstances changed, what attempt did the taxpayer make to comply?

45. 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. The taxpayer may have reasonable cause for noncompliance if:

45.1. A reasonable and good faith effort was made to comply with the law, or

45.2. The taxpayer was unaware of a requirement and could not reasonably be expected to know of the requirement.

46. **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.

46.1. 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.

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

46.2.1. **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.

46.2.2. **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.

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

46.2.3.1. When the act was required by law;

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

46.2.3.3. When the taxpayer complied with the law.

46.2.4. **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 has an obligation to continue making an effort to meet his/her tax obligations, even when he /she is late in doing so. Ordinary business care and prudence require that the taxpayer continue to attempt to meet the requirements, so that they can be met at the earliest possible time.

47. **Ignorance of the Law.** In some cases, 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. Reasonable cause should never be presumed, even in cases where ignorance of the law is used as a basis of the request for abatement. For example, consider:

47.1. The taxpayer's education,

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

47.3. If the taxpayer has been penalized, or

47.4. If there were recent changes in the tax forms or law which a taxpayer did not have an opportunity to know.

47.5. 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.

48. **Mistake was made.** The taxpayer may try to establish reasonable cause by claiming that a mistake was made.

48.1. Generally, this is not in keeping with the ordinary business care and prudence standard and does not provide a basis for reasonable cause.

48.2. 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.

49. **Forgetfulness.** The taxpayer may try to establish reasonable cause by claiming forgetfulness or an oversight by the taxpayer or another party caused the noncompliance. Generally, this is not in keeping with ordinary business care and prudence standard and does not provide a basis for reasonable cause. Information to consider when evaluating a request for abatement or non-assertion of a penalty based on a mistake includes, but is not limited to:

49.1. When and how the taxpayer became aware of the mistake.

49.2. The extent to which the taxpayer corrected the mistake.

49.3. If the taxpayer took timely steps to correct the failure after it was discovered.

49.4. The supporting documentation.

50. Reliance on another person. Relying on another person to perform a required act is generally not sufficient for establishing reasonable cause. It is the taxpayer's responsibility to file a timely and accurate return and to make timely payments. This responsibility cannot be delegated.

51. 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:

51.1. 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).

51.2. A legal entity: If there was a death, serious illness, or other unavoidable absence of the person responsible (or a member of such person's immediate family), and that person had sole authority to execute the return or pay the tax.

51.3. 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.

51.4. 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:

51.4.1. The relationship of the taxpayer to the other parties involved.

51.4.2. The date of death.

51.4.3. The dates, duration, and severity of illness.

51.4.4. The dates and reasons for absence.

51.4.5. How the event prevented compliance.

51.4.6. If other business obligations were impaired, and

51.4.7. If tax obligations were attended to promptly when the illness passed, or within a reasonable period of time after a death or absence.

52. 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:

52.1. 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.

52.2. Information to consider when evaluating such a request includes, but is not limited to an explanation as to:

52.2.1. Why the records were needed to comply.

52.2.2. Why the records were unavailable and what steps were taken to

secure the records.

52.2.3. When and how the taxpayer became aware that they did not have the necessary records.

52.2.4. If other means were explored to secure needed information.

52.2.5. Why the taxpayer did not estimate the information.

52.2.6. If the taxpayer contacted TAK for instructions on what to do about missing information.

52.2.7. If the taxpayer promptly complied once the missing information was received; and

52.2.8. Supporting documentation such as copies of letters written and responses received in an effort to get the needed information.

53. Advice. Taxpayers may request relief from penalty due to reasonable cause on the basis that they relied in good faith on advice received from TAK. Generally, to be considered for penalty relief, a taxpayer must have relied on written advice from TAK:

53.1. Information to consider when evaluating a request for abatement or non-assertion of a penalty due to reliance on written advice, includes, but is not limited to, the following:

53.1.1. Was the advice in response to a specific request and was the advice that was given based on the facts contained in that request?

53.1.2. Did the taxpayer reasonably rely on the advice?

53.1.3. Did the taxpayer provide TAK with adequate and accurate information?

53.1.4. Was the advice requested sufficiently in advance to reasonably expect a timely response from TAK?

53.2. The following examples address situations where a taxpayer relies on timely written advice from TAK regarding an item on a filed return:

53.2.1. The taxpayer did not reasonably rely on the advice regarding an item included on a return if the advice was received after the date the return was filed;

53.2.2. A taxpayer may be considered to have reasonably relied on advice received after the return was filed if he/she/it then filed an amended return that was in accordance with such written advice;

53.2.3. A taxpayer may not be considered to have reasonably relied on written advice unrelated to an item included on a return, such as advice on the payment of estimated taxes, if the advice is received after the estimated tax payment was due.

53.3. If a taxpayer is entitled to penalty relief based on receipt of written advice, such relief will apply for the period during which he/she/it relied on the advice. The period continues until the taxpayer is placed on notice that the advice is no longer correct or no longer represents TAK's position.

53.4. 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 in any of the following circumstances:

53.4.1. Written correspondence from TAK that its advice is no longer correct or no longer represents TAK's position;

- 53.4.2. Enactment of legislation or ratification of a tax treaty;
- 53.4.3. A Court decision;
- 53.4.4. The issuance of a sub-legal act related to the issue; or
- 53.4.5. The issuance of a ruling, or publication of any statement in the tax administration web site.

53.5. 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.

53.6. Even though the taxpayer may not qualify for relief based on considerations discussed in 53.2 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.

53.7. **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 credits/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 credits/refund was a reasonable position, and the taxpayer reasonably relied on that advice, a finding of reasonable cause may be possible depending on the facts and circumstances of each individual case. However, the taxpayer's responsibility to file and/or pay, taxes cannot be excused by reliance on the advice of a tax advisor.

54. 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 submit a declaration or pay a tax as the result of a fire, casualty, natural disaster, or other disturbance.

54.1. 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 submit the declaration or pay the tax.

54.2. Fire, casualty, natural disaster, or other disturbances are factors to consider. One of these circumstances by itself does not necessarily provide a basis for penalty relief, if it is not documented or it is not verified that the event caused the taxpayer's inability to comply with his/her tax obligations.

54.3. Penalty relief may be appropriate if the taxpayer exercised ordinary business care and prudence, but due to the circumstances beyond the taxpayer's control, the taxpayer was unable to comply with the law.

54.4. The determination to grant relief must be based on the facts and circumstances surrounding each individual case. Factors to consider include:

- 54.4.1. Timing.
- 54.4.2. Effect on the taxpayer's business activity.
- 54.4.3. Steps taken to attempt to comply.
- 54.4.4. If the taxpayer complied when it became possible.

55. **Administrative Relief.** TAK may formally interpret or clarify a provision to provide administrative relief from a penalty that would otherwise be assessed. Administrative relief 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.

56. An administrative waiver may be necessary when there is a delay by TAK in:

56.1. Printing or mailing of forms

56.2. Publishing guidance and other explanations, or

56.3. Other conditions.

57. When TAK has determined that one of the conditions in paragraph 56 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.

58. **Undue Financial Hardship.** Undue financial 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 financial hardship may establish reasonable cause for some penalties not related to submission of a declaration.

59. The term "undue financial hardship" means more than an inconvenience to the taxpayer. The taxpayer must be able to demonstrate that he/she would have sustained a substantial financial loss if he/she had made the required payment of tax on the date such payment was due.

Example

Taxpayer may have incurred a loss due to the sale of property at a price significantly below the fair market value, as a result of an unforeseen circumstance. Such loss could be considered as causing an undue financial hardship. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

60. Undue financial 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 he/she/it exercised ordinary business care and prudence in providing for the payment of the tax liability.

61. 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 comparison to his/her income (or other amounts) he/she 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.

62. A taxpayer's inability to pay may be a factor when considering penalty relief if the taxpayer shows that, had the payment been made on the payment due date, undue financial hardship would have resulted. In the case where a taxpayer files bankruptcy, consider inability to pay as a factor if the insolvency occurred before the tax payment date.

63. 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/her/its expenses, other than the payment of the tax liability arising from the obligation to withhold or collect the taxes in question.

64. Information to consider when evaluating a request for penalty relief based on undue financial hardship includes, but is not limited to, the following:

64.1. When did the taxpayer know they could not pay?

64.2. Why was the taxpayer unable to pay?

64.3. Did the taxpayer explore other means to secure the necessary funds?

64.4. What did the taxpayer supply in the way of supporting documentation, such as copies of bank statements?

64.5. Did the taxpayer pay when the funds became available?

65. **TAK Error.** 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 to the Director General for Information Technology (IT) 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.

66. The Deputy to the Director General (IT) should analyze the issue in conjunction with appropriate personnel from IT, 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.

67. 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.

68. 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.

69. 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:

69.1. A math error when manually computing a penalty,

69.2. Any other error, when it can be shown that:

69.2.1. the taxpayer did in fact comply with the law, and

69.2.2. TAK did not initially recognize that fact.

69.3. 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.

70. Adjustments under paragraph 69 above do not require consideration by the authorized official, or the commission if one is appointed, per paragraph 23 of this Section, but they must be documented and adjustments approved by the Deputy to the Director General (Compliance).

71. Administrative Penalty with Respect to Fiscal Certification. Per paragraph 1 of Article 50 of the Law, *“Any person who performs an activity without being provided with a Fiscal Certificate or without being registered with TAK, under criteria defined in Article 11 of this law shall be liable to an administrative penalty of five hundred (500) Euros.”*

72. Paragraph 2 of Article 50 of the Law further provides that TAK shall issue a previously unregistered taxpayer a fiscal number and assess the penalty provided in paragraph one of Article 50 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.

73. As provided in Article 50 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. For purposes of application of this penalty, any person that is engaged in economic activity after 1 October 2010 without obtaining a fiscal number is liable for this penalty.

74. TAK shall also provide BRAK with information regarding any person engaged in economic activity without having been registered in BRAK.

75. There will be no relief from this penalty based on reasonable cause. It is the responsibility of the taxpayer to know and understand the requirements for beginning an economic activity.

76. Administrative Penalties with Respect to Failure to File and Pay. Article 51 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.

77. **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 declaration. The penalty is assessed, up to a maximum of five months, for each month or part month that the declaration is late. Under this provision, the maximum penalty to be assessed is 25% of the tax due on the tax declaration, assuming that the tax declaration was submitted 5 months late (5% per month for 5 months).

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 (100X.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 31 March. A Corporate Income Tax Return for the year 2010 must be submitted by 31 March 2011. If the tax owed for the year is €1,000 and the taxpayer has made timely advance payments during 2010 (including the payment due 15 January 2011) of €950, the tax due on the declaration will be €50. If the declaration is submitted in August 2010, the penalty will be 25% (5% per month for 5 months) of €50, or €2.50.

78. 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.

79. If the taxpayer never submits a declaration and the tax administration prepares a declaration for the taxpayer, the failure to file penalty will be applied to the tax determined by TAK to be due in the amount of 5% per month for each month the declaration is not submitted, to a maximum of 25%.

80. **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.

81. Failure to Pay Penalty (also known as Late Payment Penalty) is charged for a maximum of 12 months, or a maximum penalty of 12%.

83. As provided in paragraph 3 of Article 51 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. 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%.

83. 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 this Section, 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 Section, consideration must be given to all facts and circumstances in determining if relief is appropriate.

84. 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 prevented him/her from making timely payment. It may also be possible to determine reasonable cause based on a finding of undue financial hardship as described in paragraphs 58 through 64 of this Section. 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.)

85. 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 criminal tax offense.

86. Administrative Penalties Related to Understatements of Tax and Overstatements of Tax Refunds. Article 52 of the Law provides a penalty for 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.

87. The amount of penalty described in paragraph 86 above is dependent on the amount of the understatement of tax or overstatement of refund as follows:

87.1. 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.

87.2. 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.

Example:

With regard to application of the 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 X 0.15)

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 X 0.25)
	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.

88. **Relief from Penalty.** There is limited basis for relief from the penalty described in paragraph 86 (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 value 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.

89. If the taxpayer has relied on written 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.

90. No penalty relief will be granted to a taxpayer who has been convicted of a criminal tax offense for the period for which the relief is claimed.

91. **Failure to Provide Information Statement or Providing Inaccurate Information Statement.** Paragraph 1 of Article 53 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 applies to each statement not submitted or each inaccurate statement to a maximum of €2,500.

91.1. Paragraph 3 of Article 47 of the Law provides a penalty of €500 for failure to submit the information statement relative to annual purchases of €500 or more from any one supplier. This penalty is a general penalty for the failure to submit the annual statement, whereas the penalty in paragraph 1 of Article 53 of the Law applies to each statement not submitted or each inaccurate statement submitted.

Example

If a taxpayer is obligated to supply only one information statement, the only penalty that will apply is the €500 penalty for failure to submit an information report.

If a taxpayer is required to submit two information statements, the penalty will be €500, plus €125 for failure to submit the second statement, or a total of €625. It would be possible to include a further penalty under the provisions of paragraph 2 of Article 53 of the Law for failure to create a record.

91.2. The penalty of €500 provided in paragraph 3 of Article 47 of the Law does not apply to inaccurate statements. The penalty of €25, paragraph 1 of Article 53 of the Law, does apply to each inaccurate statement submitted up to the maximum penalty of €2,500.

91.3. For purposes of the application of the penalty for providing an inaccurate information statement, the TAK, in order to minimize the burden on taxpayers has authorized taxpayers to report all information regarding qualifying suppliers on one form. However, a penalty of €25 shall be assessed for each omission of a qualifying supplier from the consolidated report or for each qualifying supplier for whom inaccurate information is reported, even though reported on one consolidated form, up to the maximum of €2,500 provided by law.

92. 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.

93. For purposes of the penalty described in this section, other statements or documents considered to be information statements to which this penalty applies include:

93.1. A tax invoice required to be provided by a VAT taxpayer is also considered to be an information statement subject to this penalty.

93.2. An application for tax administration to authorize an installation or repair person for fiscal electronic devices

93.3. Invoices required to be issued (currently, or in the future) by any business with respect to transactions conducted.

94. Table 1 in this section summarizes the information statements to which the penalty provided in this sub-paragraph apply.

Table 1

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; Maximum €2,500	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; Maximum €2,500	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; Maximum €2,500	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; Maximum €2,500	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 Income Tax	Statement of Interest Withholding	1 March	€125 for each late or inaccurate statement; Maximum €2,500	Statement of Tax Withheld from Interest 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 Royalty Withholding	1 March	€125 for each late or inaccurate statement; Maximum €2,500	Statement of Tax Withheld from Royalties paid to recipient	Annual Reconciliation Statement and copy of statement given to each recipient
Law on	Statement of	1 March	€125 for	Statement	Annual

Personal Income Tax and Law on Corporate Income Tax	Withholding on Foreign Persons		each late or inaccurate statement; Maximum €2,500	of Tax Withheld from certain payments made to foreign persons	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 general failure to submit: €125 for each inaccurate statement and each statement not submitted to a maximum of €2,500.		Annual Statement of purchases in excess of €500
	Application for tax administration to authorize technician to install or repair fiscal electronic devices.	Prior to installation or repair of fiscal electronic device	€125 for each late or inaccurate application		Application
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	

95. Penalty for Failure to Create or Retain Records. Article 13 of the Law, and Section 17 of this Administrative Instruction, 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.

96. Paragraph 2 of Article 13 of the Law provides that required records be retained for a minimum of 6 years from the end of the tax period to which they relate.

97. Paragraph 2 of Article 53 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, in which case 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.

97.1. Taxpayers with annual turnover from zero to €30,000 are subject to a penalty of €25 for failure to create or retain required books and records

97.2. 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

97.3. 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

97.4. 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.

98. 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. The penalty will not be applied separately to each book or record not created or maintained, however, it may be applied separately to other items considered to be a failure to create or maintain books and records.

Example

For example a taxpayer who has not maintained a sales book or a purchase book shall be penalized only for having not created or maintained required books. If in addition to not creating or maintaining required books, the taxpayer is not using the fiscal number on receipts issued, the taxpayer shall also be subject to a penalty for failing to create records (see sub-paragraph 98.7 of this Section).

Cases of penalty application include, but are not limited to, the following:

98.1. A failure to report employees, or similar circumstances under which withholding and reporting is required, and failure to make required payments through bank transfer. A failure to report employees or make required payments through bank transfer is the result of a failure to maintain or create adequate records.

98.2. A failure to include the fiscal number on all invoices and receipts (including cash register receipts) issued by the taxpayer (Paragraph 2 of Article 53 of the Law and Section 20 of this Administrative Instruction).

98.3. During the course of an audit covering multiple years, the penalty for failure to create or maintain adequate books or records as required by Article 13 of the Law may be applied to each year under audit.

98.4. During the course of a spot check or compliance check, the penalty may be applied to the current year if it is determined that the taxpayer does not have

adequate books or records as described in this paragraph.

98.5. It is possible to assess a penalty for failure to create books and records based on paragraph 2 of Article 53 of the Law and, at the same time, assess a penalty for failure to submit an information statement based on paragraph 1 of Article 53 of the Law.

Example

If a taxpayer has not created the necessary records for preparation of a withholding report, it would be certain that the taxpayer has not submitted the necessary withholding statements to the TAK or the recipients of the income. In that case, three penalties would be applicable with a possible maximum penalty of €3,650 (€1,000 for failure to create the report, maximum €2,500 for failure to submit individual withholding statements, and €125 for failure to submit the annual reconciliation statement to TAK).

98.6. The failure to enter transactions into books and records within the timeframes provided in paragraph 3 of Section 17 of this Administrative Instruction is also a failure to create or maintain books and records and is subject to the penalty provided in paragraph 2 of Article 53 of the Law.

98.7. A penalty for any year under audit may be applied for each of at least 5 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), failure to report all employees of the business, and failure to include the fiscal number on all receipts or invoices issued. 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 97.4 of this section could be subject to a maximum penalty of €5,000 if it failed to create required books and records, failed to report employees, failed to make payments via bank transfer after 11 February 2009, and failed to timely enter transactions in the books and records, in addition to failing to include the fiscal number on invoices and receipts issued after 1 October 2010.

98.8. Any distributor of an FED that fails to provide the TAK with information, including the source codes, of any software installed on an FED, as well as information on the operation of each FED distributed by that distributor shall be subject to the sanctions provided in this Section. The distributor shall also be subject to this penalty if the distributor fails to maintain adequate records related to the installation and repair of FED's installed and maintained/repared by such distributor or his/her authorized technician. The amount of the sanction shall be based on the annual turnover of the distributor, as provided in paragraph 2 of Article 53 of the Law.

98.9. In addition to the books and records required to be kept by a taxpayer in the normal course of his/her economic activity, persons required to install an FED (or FED's) are subject to the penalties provided in paragraph 2 of Article 53 of the Law, if such person fails to create or maintain a record of the installation and repairs of all FED's installed at his/her business premises. A loss of such records shall be treated as a failure to create the records.

99. Failure to Provide Access to Books and Records. Paragraph 5 of Article 53 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 TAK access to books or records, including the fiscal memory of an FED or other electronic 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. This penalty is in addition to the penalty of €500 provided in paragraph 3 of Article 15 of the Law.

100. 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 14 and 15 of the Law as well. A person who fails to appear on the date and time prescribed for providing information/testimony shall be subject to the basic penalty of €500, plus an additional penalty of €100 per day until the person appears to provide the information/testimony required. A person who appears, but does not provide the requested information or testimony shall be subject to the penalty, notwithstanding the fact that the person appeared at the time and place required. However, TAK may agree to suspend the penalty if the person was unable to provide the information or testimony at the time, but agrees to do so within a reasonable period of time. If a person appears to give testimony, but refuses to sign a written record of the testimony, affidavit, deposition, etc., the TAK official, and a TAK witness, shall enter the person's name in the space for signature and note on the document that the person refused to sign the document, and both TAK officials shall sign the document.

101. Requirements for imposition of this penalty include:

101.1. 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 27 of this Administrative Instruction. 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.

101.2. A request for books or records, or access to books or records, must relate to:

101.2.1. An on-going investigation related to tax matters conducted by the Tax Investigation Unit of TAK;

101.2.2. A tax audit conducted by a tax inspector, or other authorized official, of TAK;

101.2.3. Enforced collection action undertaken by an enforced collection officer, or other authorized official, of TAK; or,

101.2.4. An investigation of the conduct of a tax official undertaken by the Office of Professional Standards of TAK.

101.3. Except as provided otherwise in this section, and as described in Section 28 of this Administrative Instruction, 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 (30 days for books or records

located outside Kosovo), for the record holder to comply. If the record holder provides a reasonable explanation of the need for additional time beyond the 7-day, or 30-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.

101.4. 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 with reasonable accuracy the specific books and records requested.

101.5. The written notice described in 101.3 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 designated in the written notice.

101.6. The written notice must include reference to the legal authority for requesting access to the books and records.

101.7. 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 TAK 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. This additional notice is solely a preliminary requirement for assessing the penalty, it has no impact on the provisions of paragraphs 7 and 8 of Article 14 of the Law.

101.8. If the record holder does not comply with the final notice, the authorized TAK 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 basic penalty of €500, plus a daily 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 49 of the Law.

101.9. To assess the penalty against a record holder, the TAK must send a Notice of Assessment as described in Article 22 of the Law. A Notice of Assessment is required only for the first day that the penalty is applicable. The Notice of Assessment will be in the amount of €600 (€500 basic and €100 for first day) and must indicate that an additional €100 will accrue and be assessed for every day that the record holder fails to comply with the request for books, records, or fails to provide access to books or records.

101.10. 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.

101.11. Notwithstanding the above, and as provided in paragraph 4 of Section 27

of this Administrative Instruction, 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, an inquiry related to a matter under consideration by the Tax Investigation Unit, 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 TAK official can complete his/her official business.

101.12. If the taxpayer refuses to provide access to books and records under circumstances described in 101.11 above,, the taxpayer will be penalized €100 for the first day and given a written warning that any subsequent failure to provide access to the premises or books and records for the purposes noted in sub-paragraph 101.11 above will result in a penalty of €500 plus a penalty of €100/day, 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 101.8 of this section and an assessment will be made as provided in sub-paragraph 101.9 above. A second notice as provided in sub-paragraph 101.7 of this section is not required in these circumstances.

102. In addition to the penalty of €100 per day which is imposed by this section, paragraph 5 of Article 53 of the Law grants TAK 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 paragraphs 7 and 8 of Article 14 of the Law, records not produced within the deadline established in paragraph 7 of Article 14 of the Law shall not be considered in any subsequent appeals action.

103. Receipts from Fiscal Cash Registers. Paragraph 6 of Article 53 of the Law provides a penalty against any person required to use an electronic fiscal device that fails to issue a receipt from the fiscalized equipment to the customer. The amount of penalty to be assessed is based on the provisions of paragraph 2 of Article 53 of the Law.

103.1. In the first incident of failure to issue a receipt from the fiscalized equipment, the taxpayer shall be penalized as if only one receipt had not been issued.

103.2. However, in subsequent visits, the taxpayer will be subject to a penalty for each receipt not issued up to a maximum of €5,000 (€10,000 in the case of a taxpayer with turnover of €500,000 and above). The same penalty applies in the same manner in the case of failure to issue a manual receipt on a form approved by the TAK in the event of an equipment or power failure.

103.3. The issuance of an incorrect receipt as a result of tampering with the FED so that incorrect data is recorded in the FED shall be considered as a failure to issue a receipt and subject to the penalty described in this paragraph.

104. Consumer Obligations. Paragraph 7 of Article 53 of the Law requires each consumer

making a purchase of goods or services from a business required to use and install a fiscal electronic device to request a receipt at the point of sale. Failure to request such a receipt shall subject the consumer to a fine of €20 if they leave the business premises without a receipt. In order to enforce this provision, TAK officials are authorized to request consumers to show their receipts upon leaving the business premises.

104.1. If a consumer is found without a receipt after having made a purchase, the TAK official shall obtain the consumer's name, address, and personal identification number and issue a notice of the fine advising the consumer that the fine must be paid through bank transfer. If the fine remains unpaid for a period of 30 days, TAK shall issue a Notice of Assessment to the consumer and collect the fine using the enforced collection procedures provided in the Law. TAK shall establish a publicity campaign to inform consumers of this provision prior to beginning to issue fines. TAK may issue warning notices to consumers during the publicity campaign prior to starting to issue fines.

104.2. There shall be no enforcement of this provision until such time as the Director General has ensured adequate publicity, established appropriate internal controls to prevent abuse, and issued a directive that TAK is ready and prepared to enforce this provision.

Examples of the application of the penalties:

Example 1

Failure to provide information statements: During the course of an observation visit, the tax inspector determines that a taxpayer is not issuing invoices as required by law. The taxpayer is subject to a €25 penalty for the failure to issue an invoice. If the tax inspector observes more than one incidence of not issuing an invoice, the taxpayer is subject to the €25 penalty for each incidence observed in which an invoice was not issued during that visit up to a maximum of €2,500.

Example 2

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 €25 penalty.

Example 3

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, the date by which the information was needed, and the consequences of failure to comply. 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 TAK. The TAK 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 €600 and the penalty will continue to be accrued at the rate of €100 for each day that the information requested is not provided.

Example 4

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 101.12 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 a penalty of €600. During the second visit, the tax inspector will give the taxpayer a written notice as provided in sub-paragraph 101.8 of this section.

105. **Relief from Penalties.** Relief from the penalty for failure to submit information statements 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 required 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 paragraphs 46, 51, or 54 of this Section.

106. Penalties for failure to provide information statements described in paragraph 93 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.

107. 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.

107.1. If there were no efforts made to understand the requirements, no relief will be granted.

107.2. 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.

108. 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.

108.1 No relief will be granted if the taxpayer refuses to provide access to premises upon request from an authorized TAK official.

108.2. 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.

109. No relief will be granted from the penalty for failure to issue a receipt from fiscalized electronic equipment as described in paragraph 103 of this Section.

110. Relief from the penalty described in paragraph 104 of this Section (failure of a consumer to request a receipt for purchases of goods or services) may be granted if TAK has not undertaken necessary publicity to inform consumers of the requirement.

111. Penalty for Failure to Withhold and Pay Tax. Article 54 of the Law provides a penalty for failure to withhold and to pay over a withholding tax. The amount of the penalty is 25% of the difference between the correct amount of tax to be withheld and the amount actually withheld. A person required by law to withhold and pay over a tax is entrusted with the responsibility of withholding the tax amount in behalf of the Government and paying that amount over to the Government budget. The voluntary compliance system and the budget of Kosovo require that this obligation be faithfully fulfilled.

112. The penalty in paragraph 111 of this Section shall apply to each instance in which an amount was required to be withheld, but was not withheld, as well as each instance in which the amount withheld was not timely paid over to the Government budget. The penalty applies only after the withholding report and applicable payments are due, which is the 15th day of the following month.

Example 1:

Company B has five employees and pays each employee €500/month on the 1st of each month. Company B is required to withhold €50 from each employee each month for a total monthly withholding liability of €250/month. In the Month of May, Company B pays the employees their wages, but fails to withhold and pays the employees their gross wage. Taxes withheld in any month are required to be reported and paid by the 15th of the following month. Since Company B did not withhold taxes from its employees for the May payroll period, even though it paid its payroll, it is liable for the withholding tax, plus a penalty. In this case, TAK shall assume that the payroll paid was paid as net payroll and therefore deem the gross payroll to have been 555.50. Thus, the amount that should have been withheld is equal to 55.50 per employee or a total tax liability of €277.50. The penalty to be applied is 25% of €277.50, or €69.38.

Example 2:

If Company B had actually withheld the tax when it made its May payroll of €500 per employee, but not paid it when it was due to be paid on 15 June, the penalty would be 25% of €250, or €62.50. The penalty for failure to pay the withheld tax will be assessed at the

same time as the assessment is made for the unpaid tax. This penalty is in addition to the late payment penalty. The penalty for failure to withhold will be assessed during audit or at such other time as it is determined that a person has paid wages to another person, but has not withheld the income tax as required.

113. Failure to withhold and Pay Pension Contribution. Paragraph 2 of Article 54 of the Law provides a penalty of 25% for failure to withhold or pay the employee's portion of a pension contribution. This penalty will be applied in the same manner as described in paragraphs 111 and 112 above.

114. There is no basis for relief from this penalty which is imposed by paragraph 113 of this Section. Anyone who employs an individual and pays wages is obligated to know the tax requirements related to the payment of wages and the employment of individuals.

115. Administrative Penalty for Errors by Taxpayer Representatives, Tax Advisors, or Other Persons Acting on Behalf of a Taxpayer. Article 56 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. The penalty will be imposed only if the error is the result of negligence or willfulness on the part of the person signing the declaration.

116. Paid professionals (whether employed by the company or appointed as 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 to penalize those persons who sign declarations for another taxpayer for their carelessness (negligence), or deliberateness (willfulness), in making a mistake on the declaration, such as:

116.1. a math error in calculation ,

116.2. placing an incorrect fiscal number on the declaration,

116.3. using an incorrect form (such as a March VAT declaration form for submitting the April VAT declaration),

116.4. using an incorrect address,

116.5. entering information on the wrong line of the declaration,

116.6. omitting information from a declaration, statement, or document required by TAK,

116.7. erroneously duplicating information, etc.

116.8. submitting a declaration which has not been downloaded from the TAK web-site, or not submitted electronically in accordance with established procedures.

117. 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.

118. 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.

119. The liability established under Article 56 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.

120. If an explanation of the TAK 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.

121. 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 117, 118, and 119 of this Section, relief from the penalty may be appropriate.

122. Penalty for Failure to Install Fiscal Electronic Device (FED). Paragraph 1 of Article 57 of the Law establishes a penalty of €1,000 for failure to install a FED. The penalty applies to those persons who are required to install an FED to record transactions in the course of their economic activity. The penalty applies to the specific business premises at which the device is required to be installed. If a person has more than one business location and fails to install an FED at any of his/her locations, the person will be assessed a penalty of €1,000 for each location at which an FED is not installed.

123. Paragraph 2 of Article 57 of the Law authorizes TAK to withdraw a person's VAT Certificate and Fiscal Number if that person has been fined three times or more for having failed to install an FED. The three or more fines is cumulative for the person, such that a person with multiple businesses may have only received one fine at each of three business premises, but will have met the criteria for having his/her VAT Certificate or Fiscal Number withdrawn. The TAK must follow the provisions of Sections 14 and 15 of this Administrative Instruction in order to withdraw the VAT Certificate or Fiscal Number. Once the Fiscal Number has been withdrawn, TAK shall request that the BRAK de-register the business.

124. The TAK is also authorized to penalize a person who attempts to circumvent an FED, tamper with the programming of the FED or data to be entered into the FED, in order to record incorrect data in the FED. The penalty authorized by paragraph 3 of Article 57 is €1,000. In addition, the person may be subject to the penalties described in paragraphs 103 and 129 of this Section. This penalty shall also apply in the case of tampering with, or breaking, the seal of the FED without authorization.

125. Administrative Penalties with Regard to VAT - Penalty for making supplies

without being registered: Paragraph 1, Article 58 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.

126. The penalty amount to be assessed is directly related to the amount of taxable 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 (having failed to register) making him subject to an administrative penalty of 15% of the VAT due on the supplies 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:

$8,000 / 7.25 = 1,103.45$ - VAT due on the sales; $8,000 - 1,103.45 = 6,896.55$ – taxable value of sales
 $1,103.45 \times .15 = 165.51$ – amount of penalty to be assessed for making taxable supplies after meeting the requirement for VAT registration and not being registered.
The penalty provided in sub-paragraph 3.1 of Article 58 of the Law for failure to register for VAT (€250) will also be applicable.

127. If the taxpayer has made taxable supplies of 10,000 Euros or more after being required to register, the penalty shall be 25% of the VAT due on those taxable supplies.

Example

Computation would be:

$20,000 / 7.25 = 2,758.62$ VAT due on sales

$20,000 - 2,758.62 = 17,241.38$ taxable value of sales

$2,758.62 \times .25 = 689.65$ – amount of penalty to be assessed for making taxable supplies after meeting the requirement for VAT registration and not being registered.

128. **Penalty for failure to issue an invoice and/or issuing an incorrect invoice.** Paragraph 2 of Article 58 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. The penalty provided in this paragraph shall only be applied to a taxpayer who is registered for VAT.

129. 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 € or less.

Example:

A VAT-registered taxpayer made sales of €750, and €600 and did not issue invoices for those sales.

The penalty is computed as follows:

$750 \times .16 = 121$ VAT due on sale; $121 \times .15 = 18.15$ Penalty for failure to issue that invoice

$600 \times .16 = 96$ VAT due on sale; $96 \times .15 = 14.40$ Penalty for failure to issue that invoice

Total Penalty to be applied: 32.55

130. The penalty described in paragraph 129 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.

131. The penalty described in paragraphs 129 and 130 of this Section is not applicable at the same time as the penalty provided in paragraph 125 of this Section.

132. Failure to apply for VAT registration or properly display a VAT registration certificate. The Law on VAT requires persons who surpass a specified turnover threshold in any consecutive 12-month period of time 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.

133. Paragraph 3 of Article 58 of the Law provides a penalty of €250 for failure to register for VAT when required to do so and €250 for failure to display a VAT Certificate in the manner required by law.

Example

In the example in paragraph 126 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 €415.51 – making taxable supplies without being registered and failing to register.

134. 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.

135. Paragraph 3 of Article 58 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.

136. The penalty described in paragraph 135 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 sub-paragraph 3.1 of Article 58 of the Law.

137. Penalty for allowing another person to use an issued VAT registration certificate. As provided in paragraph 4 of Article 58 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.

138. Allowing another person to use an issued VAT registration certificate is a serious offense and the penalty imposed should indicate the seriousness of the crime.

139. Allowing another person to use an issued VAT Registration certificate, or using another person's VAT Registration Certificate, is a basis for withdrawing a VAT Registration Certificate as provided in Section 15 of this Administrative Instruction.

140. 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 Tax Investigation Unit for presentation 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 Tax Investigation Unit for investigation and for preparation of the prosecution recommendation.

141. **Penalty Relief.** Penalties assessed in accordance with the provisions of Article 58 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.

142. 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.

142.1. If the penalty is imposed for issuing an invoice in an incorrect format, relief may be possible based on the facts and circumstances involved.

142.2. 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. When, after a reasonable period of time the format has not been changed, then imposition of the penalty is appropriate.

143. There is minimal basis for relief from the penalty related to failure to properly display a VAT registration certificate. If the taxpayer has made a good faith effort to properly display 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 displayed the VAT certificate, imposition of the penalty is appropriate.

144. 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.

145. **Administrative Penalties for Goods Without Origin.** Article 59 of the Law provides the TAK with the authority to seize goods in the possession of a person if those goods cannot be documented as to their origin. In addition, the Law provides a penalty of 25% of the market value of the goods without origin.

146. The authority granted in Article 59 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.

147. Paragraph 5 of Article 13 of the Law provides that "Goods in possession of a taxpayer

must be documented as to origin.” Section 19 of this Administrative Instruction describes 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.

148. 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 TAK, Kosovo Police, or Kosovo Customs. The TAK official must contact his immediate superior and report the situation and request verbal authorization to proceed with the seizure/custody of the goods once appropriate assistance has arrived. Further action with respect to the goods will not be taken until assistance arrives. Under no circumstance should the TAK official attempt to interfere with the movement of the goods or attempt to seize the goods before appropriate assistance arrives.

149. When assistance arrives, the TAK official must prepare a notice of provisional seizure, identifying the goods that are without proper documentation. The notice must include:

149.1. a statement of the legal authority for taking the seizure action and clearly indicate the reasons for taking the protective seizure action;

149.2. 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).

149.3. The original of that notice must be given to the taxpayer as soon after the seizure action as possible, with the TAK official retaining a copy for the official record. When providing the notice of seizure to the taxpayer, the official must explain to the taxpayer that the goods are under the custody of TAK because they were not properly documented. The taxpayer must be advised that:

149.3.1. He has the right to appeal this action to the TAK Appeals staff,

149.3.2. An assessment of the penalty as provided in Article 59 of the Law, will be made based on the value of the goods seized,

149.3.3. Once the value of the goods has been determined and the amount of penalty has been assessed, some goods will be released and the TAK will retain an amount of goods sufficient to satisfy the penalty assessment at a public auction, if the penalty amount has not been paid, and

149.3.4. 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.

150. The TAK must immediately begin to determine the value of the goods seized in order to determine the penalty due on those goods. At the same time, the TAK 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.

151. The TAK must make a jeopardy assessment (under authority of Article 21 of the Law) of the penalty due on the seized goods. Upon determining the amount of penalty 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 22 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.

152. 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. The subsequent collection action does not prevent TAK from continuing any audit or criminal investigation activity that is appropriate.

153. Immediately upon receipt of the jeopardy assessment, the enforced collection official must record a lien at the Pledge Registry, as well as any other applicable registry.

154. Once liens have been registered, the enforced collection official 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. The Notice of Seizure must include:

- 154.1. The name of the taxpayer whose property is being seized,
- 154.2. The location of the property,
- 154.3. The type of liability,
- 154.4. The tax period for which the liability arose,
- 154.5. The amount of tax/penalty assessed,
- 154.6. A full description of the goods being seized

155. The sale of seized goods must be carried out in accordance with Article 36 of the Law, and the provisions of Section 37 of this Administrative Instruction.

156. All tax administration officials involved in actions with respect to administration of Article 59 of the Law 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 and custody, 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 Tax

Investigation Unit for necessary action.

157. Other Reductions in Sanctions. If a taxpayer voluntarily informs TAK of a tax liability, either through submitting an original declaration or an amended declaration, before TAK informs the taxpayer of a pending audit or other pending investigation, the maximum financial penalty (or fine) that is authorized is an amount equal to 25% of the financial penalty (or fine) that would have otherwise been assessed. In order for this penalty reduction to be applied, the taxpayer must submit a written request to TAK requesting a reduction in the sanction. The written request may be submitted with the declaration or amended declaration submitted, or it may be submitted after receiving a notice of assessment on which the full penalty amounts have been assessed. TAK shall review the taxpayer's request and process a penalty reduction, unless there is a factual dispute in which the TAK can prove that the taxpayer had been notified of a pending audit or investigation prior to submitting the declaration or amendment.

158. Where a taxpayer voluntarily informs TAK of a tax liability, either through submitting an original declaration or an amended declaration, after TAK notifies the taxpayer of a pending audit or investigation, but before that audit or investigation has begun, the maximum financial penalty (or fine) that is authorized is 50% of the financial penalty (or fine) that otherwise would have been assessed.

159. Paragraph 2 of Article 62 of the Law provides a reduction in sanctions for late submission and late payment of tax if a taxpayer enters into an agreement of two or more installments and fulfills the terms of that agreement, including keeping current in all other tax obligations during the term of that agreement. The reduction in sanctions shall take place after the agreement has been fulfilled, as described in paragraph 6 of Section 33 of this Administrative Instruction.

Article 63 - Criminal Tax Offenses

(Law No.03/L-222)

1. Whoever, with the intent that he or she or another person evade, partially or entirely, the payment of taxes or pension contributions provided for by the law or evade taxes by gaining unwarranted tax refunds or tax credits, provides false information or omits information regarding his or her income, economic wealth or other relevant facts for the assessment of such obligations or provides false information relevant for the collection of taxes shall be punished by a fine and by imprisonment of up to five (5) years.

2. In particularly serious cases, a punishment between six months and ten years imprisonment shall be imposed. A case shall generally be deemed to be particularly serious where the perpetrator:

- 2.1. evaded a sum exceeding twenty thousand (20.000) Euros per obligation and reporting period;
- 2.2. abuses his or her authority or his or her position as a public official,
- 2.3. uses the assistance of a public official, who abuses his or her authority or

position,

2.4. repeatedly commits acts of paragraph 1 of this Article by using falsified, forged, or fictitious documents;

2.5. acted as a member of a group formed for the purpose of repeatedly committing tax evasion, or

2.6. has repeatedly purposely circumvented the correct operation of a fiscal electronic device.

3. For criminal tax offenses according to paragraphs 1 and 2 of this Article, the general provisions of the Criminal Code of Kosovo shall apply.

4. This provision shall take precedence over Article 249 of the Criminal Code of Kosovo, or its successor article, with respect to criminal tax offenses or evasion of pension contributions.

Article 64 - Voluntary disclosure of criminal tax offenses

(Law No.03/L-222)

1. Whoever in the cases of Article 63 of this law corrects or supplements incorrect or incomplete information or furnishes previously omitted information for the assessment of taxes and pension contributions shall insofar not be punished in respect of such incorrect, incomplete or omitted information.

2. Paragraph 1 of this Article does not apply where

2.1. before the correction, supplementation or subsequent furnishing of omitted information:

2.1.1. a tax official has already appeared for the purpose of carrying out a tax audit or for the purpose of the investigation of a suspected criminal tax offense, or

2.2.2. the perpetrator or his representative has been notified of a commencement of a tax investigation; or

2.2. the commission of a criminal tax offense already has been fully or partially detected at the time of the correction, supplementation or subsequent furnishing of omitted information and the perpetrator was aware of this or could have reasonably expected this.

3. The waiver of punishment under paragraph 1 of this Article only applies where the taxes and pension contributions evaded to the benefit of the perpetrator, and a penalty of twenty-five percent (25%) of the difference between the correct amount of tax or pension contributions required to be declared and the amount of tax or pension contributions actually declared are paid within the reasonable period of time not exceeding six (6) months from the entry of the information voluntarily disclosed.

4. The decisions on the payment period and the waiver of punishment under paragraph 1 of this Article shall be taken by the Director of the TAK Legal office based on agreement with the Prosecutor's office. In the absence of any agreement between TAK and the Prosecutor's office, the decision shall be made by the Prosecutor's office.

Article 65 - Failure to Report Criminal Tax Offenses

(Law No.03/L-222)

1. Any tax official who fails to report a criminal tax offence, which he or she has discovered in the exercise of his or her duties shall be liable to punishment by imprisonment of up to five years according to the applicable provisions of the Criminal Procedure Code and Criminal Code of Kosovo.

2. Tax officials, who are not officials of the Tax Investigation Unit, are deemed to have complied with their reporting obligation, if they reported their findings without undue delay in writing through their team leader or regional manager to the designated Head of the Tax Investigation Unit.

Article 66 - Application of the Criminal Procedure Code

(Law No.03/L-222)

Unless otherwise specified in this law, criminal proceedings for criminal tax offenses shall be governed by the Criminal Procedure Code of Kosovo.

Article 67 - Suspension of criminal proceedings for Criminal Offenses

(Law No.03/L-222)

The Public Prosecutor may suspend, terminate, or refrain from prosecution of criminal tax offenses according to paragraph 1 Article 63 of this law under the conditions laid down in the applicable chapter of the Criminal Procedure Code of Kosovo, following consultations with the authorized representative of TAK.

Article 68 - Criminal proceedings and taxation procedure

(Law No.03/L-222)

1. If information obtained during evaluation a taxation procedure forms the basis for a grounds e suspicion that a specific person has committed a criminal tax offense, such person shall be treated as a defendant and shall be entitled to the rights of a defendant under the Criminal Procedure Code of Kosovo.

2. The date and time at which such information was obtained shall be recorded in the official TAK file without undue delay.

3. The suspect shall be informed about his or her rights at the latest when he or she is called upon to reveal facts or supply documents which are related to the criminal tax offense of which he is suspected.

4. The rights and obligations of taxpayers and the TAK in the taxation procedure and in criminal proceedings shall be determined by the regulations which apply to the proceedings in the particular case. Taxpayer's co-operation obligations in the taxation procedure are not suspended, if criminal proceedings are initiated. However, coercive measures against the taxpayer shall be impermissible where this would force him, or her, to incriminate himself, or herself, for a criminal tax offense which he or she committed. This shall invariably apply where an investigation commenced or criminal proceedings have been initiated against him or her for such an act whichever is the earliest. The taxpayer shall be advised of this as it becomes necessary.

5. Where during criminal proceedings the Public Prosecutor or the court receive information from the tax files, which the taxpayer has revealed in compliance with his or her tax obligations before he, or she, became entitled to the rights of a defendant under paragraph 1 of this Article, this information must not be used against him, or her, for the prosecution of a crime that is not a criminal tax offense under Article 63 of this law. This does not apply to offenses mentioned in paragraph 2 Article 84 of this law.

Article 69 - Duration of an investigation of criminal tax offenses

(Law No.03/L-222)

The period for the completion of the investigation of a criminal tax offense is one year with the possibility of a further extension of such additional time as necessary and justified by the complexity of the case upon the decision of the pre-trial judge.

Article 70 - Territorial jurisdiction

(Law No.03/L-222)

Territorial jurisdiction shall be vested in the court within whose territory in according with legislation in force.

Article 71 - Participation of the TAK in pre-trial proceedings

(Law No.03/L-222)

1. Where the public prosecutor or the police authorities conduct investigations concerning criminal tax offenses, officials of the Tax Investigation Unit shall be entitled to participate. The Head of the Unit should be informed in good time of the place and time of the

investigative actions. The designated official of the Tax Investigation Unit shall be permitted to pose questions to the suspected persons, witnesses and experts.

2. Paragraph 1 of this Article shall apply *mutatis mutandis* to court hearings.

3. The authorized representative of the TAK shall be informed of any indictment and any application for a punitive order.

4. Where the Public Prosecutor considers the termination of the investigation (Article 224, or applicable successor, of the Criminal Procedure Code of Kosovo) or suspending, terminating or refraining from prosecution according to Chapter 26, or applicable successor chapter, of the Criminal Procedure Code of Kosovo, he or she shall inform the authorized representative of the TAK.

Article 72 - Participation of the TAK in the court proceedings

(Law No.03/L-222)

1. The court shall give the TAK through an authorized representative the opportunity to present aspects which are from its perspective relevant to the decision. The TAK shall be informed of the date of the main trial and the date of an extraordinary investigative opportunity according to Article 238, or applicable successor Article, of the Criminal Procedure Code of Kosovo. In the main trial, the authorized representative of the TAK has the right to propose evidence, to put questions to the defendant, witnesses and expert witnesses, to make remarks and present clarifications concerning their testimony and to give other statements and to file motions. In accordance with the provisions of the Criminal Procedure Code of Kosovo the authorized representative of the TAK has the right to inspect the records and documents and objects that serve as evidence.

2. A certified copy of the judgment and other decisions closing the proceedings shall be served on the TAK.

Article 73 - Suspending proceedings

(Law No.03/L-222)

1. If a Public Prosecutor or court of jurisdiction is unable to determine whether an act fulfilled the objective legal requirements of a tax provision relevant for the application of Article 63 of this law, the criminal proceedings may be suspended until the taxation procedure is concluded and can no longer be appealed.

2. During pre-trial proceedings the competent public prosecutor shall rule on the

suspension. If an indictment has been filed by the public prosecutor the competent court shall rule on the suspension.

3. The period of statutory limitation and the period for the duration of the investigation according to Article 69 of this law do not run for the time during which criminal proceedings are suspended.

Article 74 - Tax investigation unit

(Law No.03/L-222)

1. The Tax Investigation Unit shall be the specialized unit within the TAK responsible for:
 - 1.1. the investigation of criminal tax offenses ,
 - 1.2. determining the tax base and carrying out assessments in the criminal tax offense cases,
 - 1.3. the investigation of cases of provision of assistance to perpetrators after the commission of a criminal tax offense according to Article 305, or applicable successor Article, of the Criminal Code of Kosovo and
 - 1.4. uncovering and investigating unknown tax cases prior to any determination that there are grounds for suspicion that a criminal tax offense has been committed.
2. In addition to the powers granted under Article 75 of this law, the officials of the Tax Investigation Unit shall have the powers and the responsibilities that any tax officer authorized by the Director General has in the taxation procedure, such as:
 - 2.1. access to books, records, computers and similar record storage devices as provided for in Article 14 of this law,
 - 2.2. collection of information or evidence as provided for in Article 15 of this law,
 - 2.3. preparations of jeopardy assessments according to Article 21 of this law,
 - 2.4. preparations of requests for embargos on import and export according to Article 40 of this law,
 - 2.5. preparations for the written information for the Border Police for departure prohibitions purposes according to Article 41 of this law.
 - 2.6. having direct access to Kosovo Customs Service during the assessment-clearance of goods of taxpayers.
3. Article 68 of this Law shall be applicable.
4. The Director General may assign or delegate other responsibilities to the Tax Investigation Unit as well he may assign or delegate the responsibilities of the Tax Investigation Unit according to sub-paragraph 1.2 of this Article to tax officials of the inspection units under the supervision of the Head of the Tax Investigation Unit.

Article 75 - Powers of the tax investigation unit in criminal proceedings

(Law No.03/L-222)

1. Any official of the Tax Investigation Unit shall have the same powers and responsibilities that police officers have who are authorized to carry out investigative and related functions under the supervision of the public prosecutor (Judicial Police). Any official of the Tax Investigation Unit shall proceed in cases of suspected criminal tax offenses in accordance with the Criminal Procedure Code of Kosovo. They have the right to make direct referrals to the competent public prosecutor.
2. A search order shall be executed by the Tax Investigation Unit, and where required, with the necessary assistance of police officers, generally within forty-eight hours of the issuance of the order. However, upon the request of the competent Public Prosecutor the pre-trial judge may authorize an extension of the execution period for up to four weeks, if this is justified by the complexity of the case.

Article 76 - Responsibilities of tax officials

(Law No.03/L-222)

1. If there is a reasonable suspicion that a criminal tax offense has been committed, any tax official dealing with the case has a duty to immediately contact the Tax Investigation Unit and to take all steps necessary to preserve traces and other evidence of a criminal tax offense and objects which might serve as evidence. Tax officials are obliged to follow the instructions of the designated Head of the Tax Investigation Unit concerning the further procedural steps to be undertaken until the proceedings are finally taken over by the Tax Investigation Unit.
2. In cases of immediate danger that a document or item that may serve as evidence in a subsequent criminal proceeding of a criminal tax offense will be concealed, destroyed or tampered with in some way, any tax officials may take any such document or item temporarily into possession.
3. At the time of taking into possession of the documents or items the tax official shall describe the objects in a record and a receipt which shall specify the document or item shall immediately be issued. A notification thereof shall immediately be sent through the Tax Investigation Unit to the public prosecutor so that he or she can initiate criminal proceedings. The objects taken into possession shall be returned immediately if the public prosecutor finds that there are no grounds for criminal proceedings.

Article 77 - Appeals to the Tax Administration

(Law No.03/L-222)

1. The Director General shall establish within TAK an Appeals Division responsible for considering appeals by persons who dispute an assessment or decision of the Director General under legislation administered by TAK.

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 thirty (30) 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. The Minister shall issue a sub-legal act to define those persons who may submit an appeal to the Appeals Division; the rights to appeal in case of a zero assessment of tax; the binding effects of a decision on other taxpayers that may be affected by the decisions; suspension and adjournment of the proceedings; form, content, and notification requirements of the appeals division; circumstances under which the appeals division is obligated to communicate with the taxpayer or taxpayer representative; the format of the decision document issued by the appeals division at the close of the appeals process; and right of participation in the appeals process by persons who are not the immediate taxpayer, but may be impacted by the appeal decision.

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 No. 02/L-28 On Administrative Procedures.

4. 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 sixty (60) days after the date of appeal.

5. A decision of the Appeals Division, issued in accordance with its delegated authority, shall be the final decision of the Director General and shall be binding on TAK. If new facts become known following a decision by Appeals, those facts may be used by TAK in making an assessment of any additional tax which may be due.

6. A person who does not agree with a decision of the Appeals Division may appeal to the Independent Review Board within thirty (30) days of receiving notification of the decision of the Appeals Division.

7. If the Appeals Division is unable to make a decision on the case based on the information provided by either the taxpayer or the TAK, it 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.

8. Where the Appeals Division has not delivered a decision within sixty (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.

Section 44

Appeals at the TAK Appeals Division

(Administrative Instruction or. 15/2010)

1. Appeals of tax assessments or official determinations made by TAK are exclusively governed by the appeal provisions provided in Article 77 of the Law.

2. A person who does not agree with a tax assessment, official determination or other tax document issued by the TAK or claims that his rights and obligations are not respected due to non-action of TAK may appeal to the Appeals Division (hereinafter AD) on any one or more of the following grounds:

2.1. that procedural violations were made;

2.2. that the tax document issued involved an error of fact or law, whether or not the error appears on the document;

2.3. that there was no evidence or other material to justify the assessment in cases of third person's assessment;

2.4. that the tax document was contrary to law.

The law defines tax document as a document issued by the TAK to exercise the activities as defined by the law.

3. A partnership (either general or limited), grouping of persons or other pass-through arrangement, which is not a legal person, can appeal a tax assessment or official determination issued by TAK only through the appointed representative acting on the basis of a written authorization provided by all partners, group members or persons belonging to the pass-through arrangement. The representative shall act in their name and on their behalf in cases of disputes with the TAK arising as a result of:

3.1. increases of the gross income,

3.2. change of allowable deductions or

3.3. other issues relevant to the partnership, grouping of persons or other pass-through arrangement itself.

4. Individual partners, members of grouping or other pass-through arrangement can appeal in their capacity as such only the TAK assessments relevant to their tax liability for their own share of income or loss. Any subsequent changes made by TAK as a result of the control or with the decision issued by the AD shall consider their respective distributive share of income and loss.

5. Where as a result of the control there is no change in the tax due (zero assessment) the taxpayer still has the right to appeal, although no additional tax was assessed, if a loss was reported in the tax return and the amount of loss to be carried forward was changed.

6. An appeal of a TAK tax assessment or other official determination made by TAK must be submitted to the AD 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:

6.1. 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);

6.2. leaving the document at the taxpayer's dwelling or usual place of business; or

6.3. 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.

7. The 30-day period in which a taxpayer must submit an appeal, as provided in paragraph 6 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.

8. According to paragraph 3 of Article 77 of the Law, the time period for submitting an appeal under paragraph 6 of this Section 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 22 March 2010, which was the last date for submitting an appeal, submitted his appeal on 23 March 2010. 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.

9. 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.

10. 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.

11. An appeal of an assessment notice or official determination must be submitted in writing. The written appeal must include:

- 11.1. the name, address and fiscal number of the taxpayer;
- 11.2. 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);
- 11.3. the determination or part of determination that is being appealed;
- 11.4. the legal basis for the appeal;
- 11.5. 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
- 11.6. the signature of the taxpayer, the designated official of the taxpayer, or the taxpayer's authorized representative.

12. An appeal that does not satisfy the formal requirements for acceptance provided in Paragraph 11 of this Section shall be rejected, if the appellant has been duly notified in writing to remedy the deficiencies within 7 days of serving the notification and has been particularly cautioned with this notice that non-remedy of the deficiencies will result in rejection of the appeal. If the appellant remedies the deficiencies within the set term, the appeal shall be regarded as duly submitted from the beginning.

13. As per paragraph 4 of Article 77 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. If the appeal is submitted by post, the date of submission shall be considered to be the date that the appeal was postmarked by the postal service.

14. The appeals decision shall contain the following information:

- 14.1. the name of the taxpayer;
- 14.2. the taxpayer fiscal number;
- 14.3. the appeal registration number (case reference number);
- 14.4. the date of the decision;
- 14.5. tax amount for each tax and tax period prior to adjustment;
- 14.6. tax amount for each tax and tax period following adjustment;
- 14.7. summary of the case, including appealed issues and taxpayer's reasons/grounds for appeal;
- 14.8. the proposed tax amounts upheld and tax amounts not sustained with the decision (by tax type and tax period);
- 14.9. legal basis on which the decision is reached;
- 14.10. factual and legal analysis of the case;
- 14.11. concluding statement;
- 14.12. further appeal procedures and timeframe to appeal;
- 14.13. reference to any delegation of competences to the person who is empowered to sign the decision;
- 14.14. signature of the person competent to sign the decision.

15. **Authority of the AD.** If the appeal is impermissible, untimely or submitted by an unauthorized person the AD shall reject it by issuing a decision for rejection of the appeal on procedural grounds.

16. AD shall consider the appeal and shall issue a reasoned decision within 60 days after submission of the appeal or, respectively, within 60 days after remedy of the non-conformities for which the appellant was duly notified.

17. The AD may:

17.1. uphold the assessment notice, or official determination, or other tax document, and reject the appeal;

17.2. modify the assessment notice, or official determination, or other tax document, by partially endorsing the appeal;

17.3. cancel the assessment notice, or official determination, or other tax document, and endorse the appeal;

17.4. instruct the TAK responsible official that unlawfully refused to issue a tax document to issue this document.

18. A decision shall be sent by AD to the relevant regional office for a review and continuation of the audit with mandatory guidance on the issuance of a new report, in the cases of:

18.1. incomplete evidence, where the AD cannot collect evidence in the course of the appeal proceeding, or

18.2. material breach of the procedural rules occurred during the audit, which cannot be remedied in the appeals proceeding.

18.3 When the relevant regional office has issued its report, this report shall be sent to the AD, who will issue a new assessment with their decision which advises the taxpayer of his/her/its further appeal rights.

18.4. The issuance of the decision to the relevant regional office for review shall suspend the period for issuance of a final appeal decision as provided in paragraph 7 of Article 77 of the Law.

18.5. The AD will notify the taxpayer of its request for review, and applicable suspension of time for issuance of its final decision, within 3 working days after it sends its decision to the relevant regional office. The notice should also include advice to the taxpayer that the final decision of the AD will be issued within 45 days from the date of the notice.

18.6. The relevant regional office must complete its review and issue its report to the AD within the time specified by the AD

Example

Taxpayer appealed a tax assessment to the TAK AD. TAK AD was unable to understand the basis for the assessment made in the case because the audit report of the audit inspector did not meet the procedural requirements and it was not able to issue a decision based on the information available. TAK AD returns the case to the initiating regional office with instructions on the actions to be taken. At the same time, the TAK AD will send notice to

the taxpayer of the suspension and the reasons for the suspension as provided in subparagraph 18.5 of this Section. The appeals case is not closed by appeals, but is suspended for a maximum of 15 days as provided in paragraphs 43 – 46 of this Section. The regional office must prepare a new audit report that meets the procedural requirements and return it to TAK AD. Upon receiving the new audit report, the TAK AD will issue its decision in the case.

19. A second referral of the case file for a new audit shall not be allowed. Cases referred to in paragraph 18 for review and issuance of a new assessment shall not be considered to be a second audit, but is only a review based on the decision of the AD.

20. In the cases covered under Paragraph 18 the proceeding for the issuance of a new assessment shall continue in accordance with the instruction from the AD and shall not cause a re-start of the audit procedure from the beginning.

21. Where before the expiry of the time limit for decision regarding the appeal by the AD, additional appeals have been submitted by other persons for obligations arising from the audit assessment being appealed, the AD may join the case files so they can be considered at the same time. In such cases, the AD, shall notify all parties and the 60-day period for consideration of the appeal shall begin on the date that the most recent appeal was submitted.

22. Once a decision of the AD has been issued, such decision may be modified only with the consent of the Director General subject to the provisions of paragraph 54 of this Section. Once the AD has issued a decision, the appealed act shall not be modified to the detriment of the appellant.

23. **Right to fair hearing.** The appellant may request the Appeals Division to organize a hearing session. At the request of the AD, the tax inspector is required to be present at the hearing of the appeal and give reasons in support of the assessment.

24. If a hearing is requested, such hearing shall be held by the AD without any delays and, to the extent practicable, within 20 days after the request has been submitted.

25. The date set for the hearing shall not be earlier than (8) eight days from serving of the hearing notice. The appellant has to be provided enough time to prepare for the hearing and to appear at the hearing on time and without extraordinary expenses.

26. At the hearing the appellant gives his statements orally but may also give it in writing, if instructed or allowed to provide a written statement. Statements in writing may only be required if the matter is complex and more elaborate details are needed by the AD for the resolution of the case. If the appellant was instructed or allowed to provide a written statement, he may not for that reason be denied the right to give his statement orally, as well. Prior to giving testimony, the appellant, or his designee, must confirm that the information to be presented is true and correct to the best of his/her knowledge.

27. The appellant shall be entitled to only one hearing with respect to the taxable period to which the tax under appeal relates.

28. The hearing shall not be public and shall be conducted by appeals officers who have had no prior involvement with respect to the tax assessment.

Example:

TAK has audited a partnership and determined that it incorrectly accounted for certain expenses. This resulted in additional taxable income of the partnership. Because the partners of the partnership are liable for their share of the tax based on the taxable income of the partnership, the audit adjustment impacts their tax liability. If the partnership appeals the TAK audit assessment, the individual partners may also appeal their individual tax liability. Since the issues are all inter-related and a better decision will be reached by considering all the appeals at the same time, TAK AD may join the appeals into one appeal and consider all issues at the same time. In this case, the 60-day period for responding to the appeal is based on the appeal that was most recently submitted to the TAK AD.

29. As a rule, the oral hearing shall be held at the headquarters of the TAK. The TAK may determine another location for the oral hearing whenever necessary to significantly decrease expenses and to resolve the matter more thoroughly, quickly or easily.

30. The person may raise at the hearing all legal and factual issues relevant to the issue under appeal, including:

- 30.1. objection of the procedures performed applicable to the tax administration
- 30.2. objection on the existence or amount of the underlying tax liability for any tax period under dispute;
- 30.3. objection on the appropriateness of collection actions, to the extent such collection actions are not in accordance with provisions of the Law or the procedures of this Administrative Instruction;
- 30.4. other relevant issues.

31. An issue may not be raised at the hearing if:

- 31.1. the issue does not affect the interests of the appellant;
- 31.2. the issue was decided in previous administrative or judicial proceeding.

32. Minutes shall be kept about oral hearings or other important actions in the procedure, as well as about important oral statements of the parties or third parties in the procedure.

33. If the appellant does not appear at the oral hearing, although duly notified, the TAK can proceed with solving the case.

34. If the AD can decide the appeal based on the facts presented and there is no request for a hearing by the taxpayer the review can proceed without a hearing. The AD review of the appeal shall be made by considering the evidence lodged with or provided to the AD and

without holding a hearing.

35. **Withdrawal.** The taxpayer may withdraw the appeal by a written request submitted to the TAK.

36. Upon the withdrawal the TAK shall issue a decision on termination of the administrative proceedings.

37. Until the TAK issues a decision on termination of the administrative proceedings and delivers it to the taxpayer, the taxpayer may revoke his withdrawal.

38. The withdrawal may not be revoked if the 60-day deadline for issuance of the decision on the appeal as specified in paragraph 4 of Article 77 of the Law has already expired.

39. **Suspension and Adjournment of the Proceedings.** The AD may upon the written request of the taxpayer suspend or adjourn the hearing of the appeal for such time as may be deemed appropriate, if such postponement is necessary due to death or illness, or any other unavoidable or urgent reason.

40. The written request shall be accompanied by documents justifying the grounds for postponement.

41. If no suspension or adjournment of the hearing is requested and the appellant or his representative does not appear at the hearing, the matter will be disposed off on the basis of the facts available.

42. **Communication with the Taxpayer or the Taxpayer Representative.** 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 14 of The Law and the provisions of Section 28 of this Administrative Instruction.

43. 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 AD requests the additional information until the information is received in AD, per paragraph 7 of Article 77 of the Law.

44. AD may establish additional facts and collect new evidence about facts not established during the control. If the new evidence is not presented by the appellant, copies of this evidence shall be served to the appellant together with the decision.

45. The appeals officer conducting the procedure shall obtain additional information (information not requested during the audit) from the taxpayer, the taxpayer representative, the TAK or from third parties, including another state agency or institution.

46. In case of a request for provision of additional information sent to:

- 46.1. another TAK unit (regional offices or other departments within TAK headquarters), the suspension shall be for a maximum of 15 additional days;
- 46.2. other parties, the suspension shall be for a maximum of 30 additional days;
- 46.3. the taxpayer, the suspension shall be for a maximum of 45 days.

47. Where the taxpayer is unable to provide the additional information requested within the timeframe specified by the AD a written request for resetting of the deadline may be filed. Any such request has to be justified and may be accepted by the AD where there are reasons outside the taxpayer's control that impede the provision of the information within the timeframe set but it can be reasonably expected that the information can be provided within the requested extension of the deadline.

48. If there is no request for resetting the deadline and the information is not received within the required timeframe the AD shall make its decision on the case based on the information available.

49. **Communication of Decision.** The written decision of the AD shall be notified to the appellant. The notification shall be done through delivery of the decision by:

- 49.1. 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);
- 49.2. leaving the document at the taxpayer's dwelling or usual place of business;
- or
- 49.3. sending the document by mail to the taxpayer's last known address.

50. The decision delivered is prima facie evidence of the change of the assessment and of giving of the notice for the amended tax, however, such delivery does not relieve TAK of the requirement to issue a Notice of Assessment to the taxpayer as provided in Section 31 of this Administrative Instruction.

51. The decision of the AD becomes final and conclusive for the taxpayer if no further appeal is made to the IRB and/or court.

52. Paragraph 5 of Article 77 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 making such adjustments as necessary in the TAK IT system.

53. If the Director General of TAK determines that a decision of TAK AD 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.

54. Notwithstanding the provisions of Paragraph 5 of Article 77 of the Law, if the Director

General of TAK subsequently becomes aware that the AD decision was not correct and to not correct that decision would result in a manifest injustice to the taxpayer, the Director may request TAK AD 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.

55. Correction of AD decision containing visible inaccuracies and mistakes (for example technical mistakes) may be done at any time. Such correction can be done at the discretion of the Director General or his/her authorized official or by such authorized official at the request of the taxpayer. Any such change is intended to correct material mistakes or visible inaccuracies of the decision without changing its content.

56. In processing a taxpayer's appeal, paragraph 8 of Article 14 of the Law provides that the AD of the TAK shall not consider any document or information submitted to the TAK, if:

56.1. the TAK has issued a written request reasonably describing the requested document or information;

56.2. the request includes a warning to the taxpayer regarding the consequences of noncompliance with the request;

56.3. the requested information is submitted beyond the deadline provided in paragraph 7 of Article 14 of The Law; and

56.4. the document existed at the time the written request for the document or information was issued.

This sub-paragraph should not be interpreted as meaning that AD or subsequent appeal levels should consider subsequent information or documents prepared after the time for responding to the written request had expired. Rules for determining allowable expenses require that supporting documentation be obtained, or prepared, contemporaneously with the time the expenses are incurred or within the timeframes allowed by applicable provisions of the tax laws.

57. The provisions of paragraph 56 of this Section also apply to subsequent appeals to the Independent Review Board and/or the court.

58. As provided in paragraph 7 of Article 77 of the Law, if AD does not issue its decision within the 60-day time period (or the extended time period due to the suspension provided in Paragraph 7 of Article 77 of The Law), the taxpayer may submit an appeal directly to the Independent Review Board.

Article 78 - Establishment of the Independent Review Board

(Law No.03/L-222)

1. The Independent Review Board will be established under this law.
2. Members of the Board shall be proposed by the Government solely on their fitness to perform their functions, and appointed by the Assembly. The term for each of the members

shall be two years. One-half of the members shall be replaced at the end of each calendar year.

3. The Board shall consist of a Chief Member and sixteen other members, all of whom are independent of the Ministry of Finance and Economy. At least seven of the members shall be from the Kosovo business community.

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.

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 their functions or is in a position of conflict of interest.

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.

Article 79 - Role of the Board

(Law No.03/L-222)

1. The Board shall have jurisdiction to receive appeals against:

- 1.1. a decision of the Appeals Division;
- 1.2. a jeopardy assessment under Article 21;
- 1.3. an assessment or other official determination of the Director General where the Appeals Division has not delivered a decision within sixty (60) days under paragraph 8 Article 77 of this law;
- 1.4. official determinations under other legislation in Kosovo that provides for appeals to such Board.

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.

3. In reviewing the decisions, assessments and determinations under paragraph 1 of this Article, the Board shall, subject to paragraphs 4 and 5 of this Article, 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.

4. 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 paragraph 1 of this Article. No evidence or documentation shall be considered by the Board that is contrary to the provisions of paragraph 8 Article 14 of this law.

5. 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 General unless amended or reversed by a

Court. A decision of the Independent Review Board regarding the matter under appeal is a final decision. Any further appeal must be made to a competent court of jurisdiction within the time specified in Article 81 of this law. If new facts become known following a decision of the Independent Review Board, those facts may be used by TAK in making an assessment of any additional tax that may be due.

Section 45 **Independent Review Board**

(Administrative Instruction or. 15/2010)

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.
2. IRB shall have the authority to consider the following appeals:
 - 2.1. An appeal against a decision of the AD;
 - 2.2. An appeal of a jeopardy assessment made in accordance with the provisions of Article 21 of the Law;
 - 2.3. An appeal in which the AD did not render a decision within the timeframe provided in paragraph 8 of Article 77 of the Law;
 - 2.4. Official determinations under other legislation in Kosovo that provides for appeals to such Board.
3. As provided in Paragraph 2 of Article 79 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 2 of this Section was incorrect.
4. The taxpayer is not allowed to introduce new evidence as provided in paragraph 8 of Article 14 of the Law in the hearing before the Board. The Board is required to make its determination based on the information previously considered by TAK AD. As provided in Paragraph 4 of Article 79 of the Law, “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 79” of The Law. This limitation shall also apply to those cases on which TAK AD rendered a decision because the taxpayer did not provide additional information requested within the time provided.
5. As provided in Article 81 of the Law, a decision of IRB may be appealed to a court of competent jurisdiction within 60 days of receiving notification of a decision by IRB.
6. Per paragraph 2 of Article 82 of the Law, TAK is prohibited from collection through levy on immovable property 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.

Article 80 - Procedures for the Board

(Law No.03/L-222)

1. The Minister of Economy and Finance may at the request of the Board establish a user fee for persons bringing appeals before the Board.
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. Each panel shall consist of one member of the business community, one member with legal qualifications, and one member with economic/accounting/auditing qualifications.
3. In the event that, due to attrition of members, there are an inadequate number of members to establish an appeal panel from among these categories of members, the Chief Member shall be authorized to establish an appeal panel with fewer than three members, but no fewer than two members, each of whom must be from a different category of member.
4. 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.
5. Within sixty (60) days from the date of receipt of an appeal, an appeal panel must be appointed and must review the documentation as provided in paragraph 3 of Article 79, including holding any hearings necessary to consider the matter under appeal. The appeal panel shall issue its decision not later than thirty (30) days from the date any review hearing was held, but not later than ninety (90) days after the appeal was received by the Board. If a Board decision is not made within the ninety (90) day period provided by this paragraph, the appellant may submit an appeal directly to the competent court through administrative conflict provisions.
6. The provisions of paragraph 5 of this Article apply only to cases received after the effective date of this law. Cases, in existence in the Board on the date that this law came into effect, shall be dealt with and closed as expeditiously as possible. All cases in existence in the Board on the date this law comes into effect must be resolved no later than 1 September 2011.
7. 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.
8. 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.

Article 81 - Judicial Review

(Law No.03/L-222)

1. Decisions of the Board may be appealed to a court of competent jurisdiction provided that such appeals are initiated within sixty (60) days of receiving notification of the decision of the Board. A decision of the court of competent jurisdiction regarding the matter under appeal is a final decision. If new facts become known following a decision of the court, those facts may be used by TAK in making an assessment of any additional tax that may be due.

2. At the discretion of the Court, if it appears that the appeal to the court is not reasonable, or has little or no legal basis, the Court may require the person making the appeal to post a bank guarantee or other acceptable form of guarantee, prior to the Court's consideration of the Appeal. If the Court is satisfied that the appeal has a reasonable legal basis, no payment or guarantee will be required.

Article 82 - Obligation to Pay During Appeals Proceedings

(Law No.03/L-222)

1. Whether or not a person has lodged an appeal to the Appeals Division or the Independent Review Board, tax due under this law shall remain due and payable.

2. Notwithstanding paragraph 1 of this Article, tax collection through levy on immovable property is prohibited until the time within which a taxpayer may appeal to the Independent Review Board under paragraphs 6 of Article 77 of this law, or until the Independent Review Board has made a decision under paragraph 5 of Article 80 of this law, whichever is later. Any taxpayer wishing to forestall collection action prior to making an appeal to the Independent Review Board, may submit a bank guarantee, or other form of security acceptable to the tax administration, in an amount sufficient to cover the tax, penalty, and interest due at the time of obtaining the required security, plus such additional tax, penalty, and interest as may accrue during any subsequent proceeding.

3. Unless the property seized is perishable, property seized by TAK shall not be sold or otherwise disposed of until the expiry of the thirty (30) day period after delivery of notice of seizure under paragraph 5 Article 34 of this law, or until the conclusion of the appeal procedures (other than Article 81) 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 paragraph 4 of this Article, or deducted from the amount outstanding under paragraph 5 of this Article, as appropriate.

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 Economy and Finance 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 Economy and Finance for payment.

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.

Article 83 - Taxpayer Representatives

(Law No.03/L-222)

1. Taxpayers may participate in any aspect of a tax proceeding through a taxpayer representative.

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.

3. For physical persons, taxpayer representatives may be an attorney, certified accountant or other agent with written authorization to represent the taxpayer.
The authority and duties of a taxpayer representative shall be limited to the terms of the written agreement.

4. 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.

5. 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.

Article 84 - Confidentiality of Tax Information

(Law No.03/L-222)

1. Any tax official or any other person who has, in the execution of his or her official duties, access to taxpayer information is prohibited from disclosing such information to any other person except as needed in tax proceedings, in criminal proceedings related to criminal tax offenses, or otherwise provided in this Article. In addition to any other sanctions which may be imposed, such person shall be punishable in accordance with the applicable provisions of the Kosovo Criminal Code.

2. Notwithstanding paragraph 1 of this Article, a tax official may disclose information

concerning a taxpayer to the following persons:

- 2.1. the Ministry of Finance and Economy, where that information is needed for the official work of the Ministry. Such taxpayer information shall be subject to the same confidentiality requirements and sanctions as established by this Article.
- 2.2. the Kosovo Statistical Office 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. If, at the direction of the Minister, information is to be provided to the Kosovo Statistical Office that includes taxpayer identification information, the Kosovo Statistical Office must provide a written certification that the individual identity of taxpayers will not be disclosed in any reports issued and that the information regarding individual taxpayers will not be used for any purpose other than statistical analysis. The Kosovo Statistical Office must include with its certification an acknowledgement that the confidentiality requirements and sanctions provided in paragraph 1 of this Article apply to officials of that office with respect to the taxpayer information provided. If it is determined that the individual information provided to the Kosovo Statistical Office has been abused, TAK may refuse to provide such information in future years.
- 2.3. the Kosovo Pension Savings Trust for a purpose authorized by legislation and regulations in force regarding pensions in Kosovo;
- 2.4. the Ombudsperson Institution established under legislation and regulations in force regarding the Establishment of the Ombudsperson Institution in Kosovo, for use in resolving taxpayer complaints;
- 2.5. the Public Prosecution office or the competent law enforcement agencies for the prosecution and or investigation of cases of suspected money laundry and terrorist financing and, except as provided in sub-paragraphs 2.13 and 2.14 of this Article, for the investigation of other criminal offenses in Kosovo where prior approval from the Court has been obtained;
- 2.6. the Courts for use in tax cases;
- 2.7. the Business Registration Agency for maintenance of the business registry. TAK may disclose individual identification information to the Kosovo Business Registry for the purposes of de-registration or for the purposes of advising the Kosovo Business Registry of taxpayer information that could not be verified through personal visitation. Disclosure to Kosovo Business Registry is also authorized as necessary to verify the registration details of businesses registered with Kosovo Business Registry.
- 2.8. the Audit Office of Kosovo for the purpose of auditing TAK pursuant to legislation and regulations in force regarding the Auditor General in Kosovo;
- 2.9. other agents or employees of TAK in the course of and for the purpose of carrying out their official duties;
- 2.10. the tax authorities of a foreign country in accordance with international treaties or agreements;
- 2.11. the Customs authorities, for purposes of administering the customs legislation;
- 2.12. 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; or any person, where the information consists of a list of persons, including their fiscal number, registered with the tax administration in order to conduct economic activity.

2.13. the public prosecution office or the competent law enforcement agencies for criminal proceedings for a criminal offense other than a criminal tax offense, if such information was obtained in the course of proceedings for a criminal tax offense . However, this does not apply to such information, which a taxpayer disclosed under his tax co-operation obligations before he became entitled to the rights of a defendant under Article 69 of this Law apart from suspected crimes as mentioned under sub-paragraphs 2.5 and 2.13 of this Article.

2.14. the public prosecution office or the competent law enforcement agencies for criminal proceedings for a criminal offense other than a criminal tax offense punishable by imprisonment of at least five years or by long-term imprisonment or for an economic criminal offense which by the way of perpetration or by the extent of the damage caused is likely to disrupt substantially the economic order of Kosovo or is likely to substantially undermine the general confidence in the integrity of business or the orderly functioning of authorities and public institutions.

2.15. the public prosecution office or the competent law enforcement agency by officials of the Professional Standards Office as necessary for the fulfillment of their responsibilities and authority as established under Article 85 of this law.

2.16. the public where the disclosure is necessary to correct publicly disseminated incorrect facts which are likely to substantially undermine the confidence in the administration of the TAK. The decision on the disclosure shall be taken by the TAK after the taxpayer was heard.

2.17. the public when necessary to provide information regarding the de-registration, denial of registration, removal of registration, or placing in an inactive status of any taxpayer or former taxpayer as provided in this law.

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.

Article 85 - Keeping the TAK integrity and Anti-Corruption

(Law No.03/L-222)

1. The Office of Professional Standards (OPS) 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.

2. For the implementation of paragraph 1 of this Article the OPS will have those authorities granted to tax officials under Articles 14 and 15 of this law in addition to the authority to:

- 2.1. interview witnesses both inside and outside the Tax administration;
- 2.2. interview any third person who may have information that will assist in an investigation;
- 2.3. compel testimony, or other information which will assist in an authorized investigation, including the production of bank records;
- 2.4. prepare reports of investigation with recommendations for prosecution in appropriate cases and submit those reports through the TAK legal office to the Public Prosecutor's office;
- 2.5. determine whether the matter under investigation should be dealt with administratively or through criminal proceedings;
- 2.6. 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;
- 2.7. request information from police, courts, registries, municipalities, and other bodies to verify employment application data, financial status and assets, and other purposes related to anticorruption and internal security investigations of TAK;
- 2.8. conduct investigations under the supervision of a Public Prosecutor enjoying the status and authorities granted to judicial police and to 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;
- 2.9. assist police and other law enforcement agencies in investigations which they have initiated related to alleged criminal code violations of TAK employees;
- 2.10. liaise and exchange information with police and law enforcement agencies for the purpose of ensuring the integrity and security of the tax administration.

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 OPS may request authorization for assistance from the competent Public Prosecutor.

4. Any official of the OPS 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 Procedures Code of Kosovo, or its successor. Officials of the OPS are authorized to investigate those offenses enumerated in Chapter 29 (Criminal Offenses against Public Duty) of the Criminal Code of Kosovo, or its successor.

5. The Office of Professional Standards shall have the authority to conduct administrative background investigations of prospective and current employees of the tax administration to verify information on their job application, such as, but not limited to, their educational status; whether they have a criminal record, or not; prior experience, to include contact with previous employers; other employment or self-employment activities; and such other verifications as deemed appropriate. Such administrative investigations are authorized whether there is a suspicion of a crime having been committed, or not. Such investigations may be undertaken without the authorization of a prosecutor, until the investigator develops a suspicion of a crime having taken place. If the investigation determines that the

employee has provided incorrect or false information, the Office of Professional Standards shall report the facts and circumstances to the TAK Disciplinary Committee for actions as they deem necessary.

6. The OPS shall have the authority to review the financial disclosure statements of any TAK employee, except the Director General, and to conduct such inquiries as necessary to confirm information on the statements. Such inquiries shall be considered to be administrative in nature, unless the OPS has reason to believe that the information provided is false or has purposely been misstated, in which case their suspicions must be reported to the Public Prosecutor a subsequent inquiries made under the guidance of the Public Prosecutor. Information obtained by the OPS in the course of their implementation of this paragraph shall be confidential and not subject to disclosure to any person, except as necessary for disciplinary or criminal prosecution purposes. Unauthorized disclosure shall be punishable by a prison term not to exceed five (5) years.

7. Procedures and functions of OPS shall be regulated by a sub-legal act.

Article 86 - Temporary International Measures

(Law No.03/L-222)

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 on Income and on Capital.

2. Where the existing tax laws relative to the international juridical double taxation of in command 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.

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

4. In accordance with Article 9 of this 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 paragraphs 1 through 3 of this Article. 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.

Article 87 - Sub-Legal Act

(Law No.03/L-222)

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 this 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.

Article 88 - Proposal, Nomination and Approbation of Director General of TAK following consent by the ICR

(Law No.03/L-222)

1. Until the end of the international supervision of the implementation of the Comprehensive status proposal for Kosovo status settlement, dated 26 March 2007, the appointment procedure of the Director General of Customs should be the following:
2. Director General of the TAK shall be proposed by Minister of Economy and Finance, based on recommendations of established committee, and shall be appointed by the Prime minister of Government of Republic following consent by the International Civilian Representative (ICR).
3. The Government shall have the power to dismiss, suspend or restore the Director General following consent by the International Civil Representative (ICR).

Article 89 - Applicable Law

(Law No.03/L-222)

1. This law shall replace Law 2004/48 as amended by Law 03/L-071 on Tax Administration and Procedures and it shall supersede any provision in the applicable law which is inconsistent with it.
2. The provisions of the Law on Tax Administration and Procedures shall have priority over the provisions of the Law on Administrative Procedures to the extent of procedures regulated by the Law on Tax Administration and Procedures.

Article 90 - Entry into Force

(Law No.03/L-222)

This Law shall enter into force in the day of its publication by the President of Republic of Kosovo.

Law No. 03/L-222

12 July 2010

Promulgated by the Decree No. DL-032-2010, dated 15.07.2010, of the President of Republic of Kosovo, Dr. Fatmir Sejdiu

Section 46 **Implementation and Entry into Force**

(Administrative Instruction or. 15/2010)

1. This Administrative Instruction shall supersede the following administrative instructions 05/2005; 11/2006; 03/2008; 07/2009; 12/2009; 13/2009, and 16/2009 previously issued with respect to The Law 2004/48 on Tax Administration and Procedures and Law 03/L-071 on Amendments and Supplements to the Law No. 2004/48 on Tax Administration and Procedures.

Ahmet SHALA

Minister of Ministry of Economy and Finance

Date: 19/11 /2010

SAMPLE FORMAT OF AN INDIVIDUAL RULING REQUEST

(Insert the date of request)

TAX ADMINISTRATION OF KOSOVO

Bill Clinton & Dëshmorët e Kombit

10000 Prishtinë, Kosovo

Re: INDIVIDUAL RULING REQUEST

Dear Sir or Madam,

(Insert the name of the taxpayer) requests an individual ruling under Article 10 of the Law on the Tax Administration and Procedures on the issue specified below:

Mark the nature of the request on which an individual ruling is requested by checking the relevant box (See sub-paragraph 5.2 of Section 8 of administrative instruction No 15/2010:

- Request for reorganization per Article 26 of Law on Corporate Income Tax. *See sub-paragraph 3.1 of Section 8 of administrative instruction No 15/2010*
- Request on income (Corporate and Personal) tax matters related to transactions pending or completed, provided the ruling request is submitted before the applicable tax declaration or document is due. *See sub-paragraph 3.2 of Section 8 of administrative instruction No 15/2010*
- Request submitted in accordance with sub-paragraph 3.2 of Article 5 of the Law on Corporate Income Tax to reverse an option to pay tax based on full accounting for income and expenses. *See sub-paragraph 3.3 of Section 8 of administrative instruction No 15/2010*
- Request submitted in accordance with paragraph 4 of Article 35 of Law on Corporate Income Tax to return to computing tax and making payments on the basis of a percentage of turnover as provided in sub-paragraph 2.1 of Article 35 of the Law on Corporate Income Tax. *See sub-paragraph 3.4 of Section 8 of administrative instruction No 15/2010*
- Request submitted in accordance with sub-paragraph 3.2 of Article 33 of Law on Personal Income Tax related to change from keeping books and records per Article 33 of Law on Personal Income Tax to keeping books and records as required by Article 34 of Law on Personal Income Tax. *See sub-paragraph 3.5 of Section 8 of administrative instruction No 15/2010*
- Request submitted in accordance with sub-paragraph 2.2 of Article 43 to return to reporting income and paying tax in accordance with sub-paragraph 2.1 of Article 43 of Law on Personal Income Tax. *See sub-paragraph 3.6 of Section 8 of administrative instruction No 15/2010*

- Request submitted in accordance with paragraph 5 of Article 10 of Law on Personal Income Tax related to change in inventory method. *See sub-paragraph 3.7 of Section 8 of administrative instruction No 15/2010*
- Request to maintain centralized records. *See section 17, paragraph 8 and sub-paragraph 3.8 of Section 8 of administrative instruction No 15/2010*
- VAT Certificate and credit co-efficient issues *provided in sub-paragraph 3.9 of Section 8 of administrative instruction No 15/2010*
- Other issues on which an individual ruling may be issued. *See sub-paragraph 3.10 of Section 8 of administrative instruction No 15/2010.* Note that the Director General has the discretion to decline the issuance of an individual ruling in certain cases.

Please describe in a concise way the nature of the ruling requested:

(Administrative Instruction or. 15/2010)

A. STATEMENT OF FACTS

Provide the information required by sub-paragraph 5.1 of Section 8 of administrative instruction No 15/2010

1. Information for the person making the request

Name: _____

Address: _____

Fiscal Number: _____

2. Person to contact if TAK has any questions or needs further information

Name: _____

Telephone: _____

Position: _____

3. Information for the person(s) that will be impacted by the ruling.

Name: _____

Address: _____

Fiscal Number: _____

Extend the list if necessary.

B. DESCRIPTION OF FACTS AND OTHER INFORMATION RELATING TO THE TRANSACTION OR ISSUE FOR WHICH A RULING IS REQUESTED

(Administrative Instruction or. 15/2010)

General information relevant to all requests. *See paragraph 5 of Section 8 of administrative instruction No. 15/2010*

An explanation of the issue or transaction for which a ruling is requested, including a complete statement of facts and other information relating to the transaction or issue for which a ruling is requested. *See sub-paragraph 5.3 of Section 8 of administrative instruction No 15/2010*

An analysis of the facts and circumstances related to the issue or transaction for which a ruling is requested, including the requestor's conclusion as to the expected tax treatment related to the issue or transaction. The requestor's conclusion must be based on a legal authority, such as a specific article of tax law, which is cited in the analysis. Any determinations contrary to the conclusion reached by the requestor must be included in the analysis, to the extent that the requestor is aware of such contrary determinations. If documents included with the request support the conclusion reached, the reasons for which they are applicable must be included in the analysis submitted. *See sub-paragraph 5.5 of Section 8 of administrative instruction No 15/2010.*

Specific information relevant to requests under sub-paragraphs 3.3 to 3.6 of Section 8 of administrative instruction No 15/2010

In addition to the above general information the ruling request must contain a statement regarding the expected economic activity and results for the current and subsequent calendar year with supporting statement or documentation explaining the basis for the economic activity and results anticipated. *See sub-paragraphs 6.1.1 of Section 8 of administrative instruction No 15/2010*

Specific information relevant to requests under sub-paragraph 3.7 of Section 8 of administrative instruction No 15/2010

In addition to the above general information the ruling request must contain the following:

a statement regarding the expected economic activity and results for the current and subsequent calendar year with supporting statement or documentation explaining the basis for the economic activity and results anticipated. *See sub-paragraph 6.2.1 of Section 8 of administrative instruction No 15/2010*

a complete and accurate description of the inventory method for which authorization is requested. *See sub-paragraph 6.2.3 of Section 8 of administrative instruction No 15/2010*

the business reason for which the change in inventory method is being requested and the impact of that change on subsequent tax determinations. *See sub-paragraph 6.2.4 of Section 8 of administrative instruction No 15/2010; and*

if the method of valuing inventory is being changed in connection with the change in inventory method, a complete description of the proposed inventory valuation method, the reasons for adopting that method and the impact of that change on subsequent tax

determinations. See sub-paragraph 6.2.5 of Section 8 of administrative instruction No 15/2010

Specific information relevant to requests under sub-paragraph 3.8 of Section 8 of administrative instruction No 15/2010.

In addition to the above general information the ruling request must contain:

- identification of the central location at which the records are to be maintained. See sub-paragraph 6.3.1 of Section 8 of administrative instruction No 15/2010;
- a detailed description of how the information from each individual location will be captured at the central location (if data not captured at the central location electronically, a description of how the data will be transferred from each location to the central location and the method of ensuring that the data transferred is timely and correctly entered into the central system). See sub-paragraph 6.3.2 of Section 8 of administrative instruction No 15/2010;
- the frequency of data transmission, and a complete description of the files to be maintained at the central location, including a description of how the individual location data will be incorporated in the central files. See sub-paragraph 6.3.3 of Section 8 of administrative instruction No 15/2010;
- a description of the records to be retained at the local level, if any. See sub-paragraph 6.3.4 of Section 8 of administrative instruction No 15/2010; and
- a description of how the data from the individual locations will be identified in the central system. See sub-paragraph 6.3.5 of Section 8 of administrative instruction No 15/2010.

C. PROCEDURAL MATTERS

(Administrative Instruction or. 15/2010)

1. Provide the statements required below:

Yes No N/A If the request deals with a completed transaction, has the taxpayer filed the return for the year in which the transaction was completed? See paragraph 2 of Section 8 of administrative instruction No 15/2010.

Yes No Does the request involve an issue that is under examination (control), under appeal, or in litigation or other issue on which individual rulings are not generally issued? See paragraph 4 of Section 8 of administrative instruction No 15/2010.

Yes No Have you (as a taxpayer, a taxpayer representative, a related person, or a predecessor) previously submitted a request on the same or a similar issue for the same person (See sub-paragraph 5.7 of Section 8 of administrative instruction No 15/2010)

If yes, and the request is currently pending, please provide information on its incoming number and date of submission

If yes, and the TAK previously ruled on the request, please provide information on the outgoing number of the ruling and its date of issuance

Yes No N/A Is any return of the person requesting the individual ruling going to be impacted by the ruling? If yes, please provide information on the type of the return and the year concerned, following the example: Corporate income tax return for FY 2010 (See sub-paragraph 5.8 of Section 8 of administrative instruction No 15/2010)

Sincerely yours,

Signature

Date

(Insert the name of the taxpayer or the taxpayer's authorized representative)

DECLARATION:

This declaration must be signed by the taxpayer, not by taxpayer's representative

I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.

Sincerely yours,

Signature

Date

(Insert the name of the taxpayer)

(Administrative Instruction or. 15/2010)

ENCLOSURES

1. Written authorization (Power of Attorney), if the taxpayer's representative is to sign the individual ruling request or is to appear before the TAK in connection with the request.
2. True copies of all applicable contracts, agreements, and other documents that are pertinent to the issues for which the ruling is requested. If any document is in a language not considered to be an official language of Kosovo, it must be accompanied by an official translation in an official language of Kosovo.

Please specify number of pages enclosed _____ See sub-paragraph 5.4 of Section 8 of administrative instruction No 15/2010.

3. True copies of the financial statements¹ for the previous tax period and the current tax period including the month prior to the ruling request, if the individual ruling request relates to a corporate distribution or reorganization. *See sub-paragraph 5.6 of Section 8 of administrative instruction No 15/2010.*

4. For individual rulings related to sub-paragraphs 3.3. to 3.6 of *Section 8 of administrative instruction No 15/2010:*

- true copies of the financial statements¹ for the three calendar years prior to the year for which the change is requested. *See sub-paragraph 6.1.2 of Section 8 of administrative instruction No 15/2010.*
- copies of all tax declarations submitted during the three calendar years prior to the year for which the change is requested. Please specify the years for which tax declarations are enclosed _____, _____, _____. *See sub-paragraph 6.1.3 of Section 8 of administrative instruction No 15/2010.*

5. For individual rulings related to sub-paragraph 3.7 of *Section 8 of administrative instruction No 15/2010:*

- true copies of the financial statements¹ for the three calendar years prior to the year for which the change is requested. *See sub-paragraph 6.2.1 of Section 8 of administrative instruction No 15/2010.*
- copies of all tax declarations submitted during the three calendar years prior to the year for which the change is requested. Please specify the years for which tax declarations are enclosed _____, _____, _____. *See sub-paragraph 6.2.1 of Section 8 of administrative instruction No 15/2010.*
- a complete and detailed inventory. *See sub-paragraph 6.2.2 of Section 8 of administrative instruction No 15/2010.*

6. Other information considered applicable to the request. *See sub-paragraph 5.10 of Section 8 of administrative instruction No 15/2010.*

Please specify what is enclosed to your request in addition to the above information:

7. Evidence for the paid fee. *See sub-paragraph 5.9 and paragraph 10 of Section 8 of administrative instruction No 15/2010.*

¹ Financial statements include those audited by an external auditor (if such audited financial statements are required), balance sheet, profit and loss statement and any associated explanatory notes to the financial statements

LAW NO. 03/L-146 - ON VALUE ADDED TAX

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON VALUE ADDED TAX

CHAPTER I - GENERAL PROVISIONS

Article 1 – Purpose

(Law No. 03/L-146)

This Law establishes the system of Value Added Tax (VAT) in the territory of the Republic of Kosovo.

Article 1 Purpose

(Administrative Instruction 10/2010)

The purpose of this Administrative Instruction is to establish the procedures and requirements for the implementation of the Law No 03/L-146, in the Republic of Kosovo.

Article 2 – Definitions

(Law No. 03/L-146)

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, but have no physical form.

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** - 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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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 2

Persons Required to be Registered and Included in the VAT Registry

(Administrative Instruction 10/2010)

1. A taxable person is any natural or legal person required to be registered for VAT. A person is required to be registered for VAT when such person independently conducts regular or irregular economic activity in the Republic of Kosovo, in conformity with the

Article 4 of the Law, whose total turnover (including turnover of supplies exempt from VAT) for the past 12 months exceeds the 50,000 EUR threshold. The month in which the threshold is exceeded counts for the twelve (12) months period calculation.

2. A taxable person shall have a fiscal number issued by KTA, which shall precede the registration for VAT. The economic activity, referred to in paragraph 1 shall specifically referred to continuous activity performed with the view of making supplies for consideration, irrespective of the purpose and result of this economic activity. TAK may ask the applicant to present evidence of his intent to conduct economic activity.

3. The taxable person required to be registered but who has not yet registered for VAT shall submit the application for registration to the Taxpayers Services Office in the appropriate region, within 15 calendar days after the person is deemed to be a taxable person.

4. The threshold referred to in paragraph 1 of this Article shall not apply to persons not established in Kosovo. Such persons are required to register for VAT in Kosovo if they are making supplies of goods of services which have their place of supply in Kosovo. They shall register before making supplies in Kosovo and appoint a tax representative. The taxable person shall be registered under his own name and the name of the tax representative before making supplies having their place of supply in Kosovo.

5. When the reverse charge procedure applies as referred to in sub-paragraphs 1.2, 1.3 and 1.4 of article 52 of the Law and the recipient therefore is liable for the payment of VAT, the supplier shall not be obliged to register in Kosovo or to appoint a tax representative as referred to in paragraph 4 of this Article.

Article 5 - Certification for import and export

(Law No. 03/L-146)

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 7

The Certificate of Import/Export

(Administrative Instruction 10/2010)

1. Persons wishing to engage in import/export activities shall be required to obtain an import/export certificate before they undertake any activity if they:

- 1.1. import goods in Kosovo, if not already registered for VAT, or
- 1.2. export goods from Kosovo, if not already registered for VAT.

2. All import/export registration forms shall be handed in personally to regional TAK office responsible for taxation of business entities or by an authorized business representatives. The import/export registration forms shall be accompanied by a copy of business registration documents, fiscal number certificate and official identification document with picture (passport, identity card, etc).

3. Upon obtaining the Import/Export Registration Form, the TAK shall ensure that the information provided in the form is accurate and that the taxpayer paid his tax duties. If the TAK finds that the taxpayer is eligible to Import/Export Certificate, it shall print the certificate and issue it to the taxpayer. If the taxpayer is in default in submitting or paying his tax statements, the issuance of Import/Export Certificate shall be withheld until the taxpayer settles his tax duties or has reached an official settlement with respect to the payment of all unpaid taxes.

4. Every Import/Export Certificate shall have a unique serial number.

Article 6 - General provisions in respect of Requirement to be registered and issuance of registration certificate

(Law No. 03/L-146)

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 3 **Exceeding the Threshold (Retrospective View)**

(Administrative Instruction 10/2010)

1. When calculating the threshold, the person shall consider the total amount of all supplies during the previous 12 month period. Supplies shall be deemed any supplies of any goods and services at any rate, including those exempt, with or without right to deduct. A person is considered a taxable person from the moment when the total amount of supplies made during the last 12 months exceeds the threshold of registration threshold set out under the Article 6, paragraph 1 of the Law.

Example:

The taxpayer performed supplies during the following periods:

Period	Year	Turnover	Total turnover l
December	2009	7000	7000
January	2010	10000	17000
February	2010	10000	27000
March	2010	1000	28000
April	2010	5000	33000
May	2010	5000	38000
June	2010	1000	39000
July	2010	1000	40000
August	2010	2000	42000
September	2010	2000	44000
October	2010	3000	47000
November	2010	4000	51000

December	2010	8000	59000
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2. In the aforementioned example, the threshold for registration is exceeded in November 2010 because in November 2010 the turnover exceeds the amount of 50,000 Euro. Any supply made by the taxable person after the threshold is exceeded shall be subject to VAT. In this case, the taxable person is required to apply for VAT registration within 15 days after exceeding the threshold.

3. As of the date on which the Law came into force, the calculation of the threshold shall be based on a 12 month period as referred under the Article 6 paragraph 1 of the Law, not a calendar year as provided by the previous Law on VAT. If a taxable persons turnover, on the date of entry into force of the Law, exceeds 50, 000 (within the last 12 months period), he/she shall be considered a taxable person as of the date of entry into force of the Law.

4. According to paragraph 1 of the Law, if a person during the last 12 months had a turnover of 49,000 EUR while the last supply was valued at 3,000 EUR, the taxable part of the last supply shall only be the part exceeding the total supplies of 50,000 EUR, which in this case is 2,000 EUR.

5. As referred to in Article 6 paragraph 5 of the Law, non-resident persons that carry out an economic activity in Kosovo, are not subject to the regulations and procedures related to the VAT registration threshold, and they shall be regarded as taxable persons from the moment of starting their economic activity in Kosovo and are required to register with a tax representative before making supplies in Kosovo, unless the recipient is liable for the payment of VAT on the supplies in accordance with subparagraphs 1.2, 1.3, 1.4 of article 52 of the Law.

Article 6
Certificate for VAT Registration
(Administrative Instruction 10/2010)

1. A person applying for VAT registration shall personally or through an authorized person of the business submit all VAT registration form at the respective regional office of TAK. VAT registration forms must be accompanied by a copy of business registration documents, Certificate of the Fiscal Number and an official identification photo (passport, identity card, etc.).

2. Upon obtaining the VAT Registration Form, the TAK shall make sure that information provided in the registration form is accurate and that the taxpayer met all his tax obligations. In addition, the TAK shall visit every business location listed by the taxpayer on his registration form to ensure the accuracy of data. TAK shall determine whether to issue the VAT Registration Certificate or not in the course of 10 days upon receiving the VAT Registration Application Form.

3. If the TAK determines that the person is entitled to VAT Certificate, he shall notify the applicant of its decision no later than the next following working day after making the

decision. The person shall be given a chance to visit the services office or be delivered the certificate of VAT.

4. Each VAT certificate shall have a unique serial number in its page. Such serial number, which is the taxpayer's VAT Registration Number shall contain along with the taxpayer's fiscal number, all invoices issued by the taxpayer.

5. If the TAK finds that the taxpayer is not regular in payment of all tax charges or that information contained in the registration form is inaccurate, the TAK shall send a written notice to the taxpayer informing that the VAT certificate cannot be issued. The notice shall also inform the taxpayer of the reasons for rejecting the application for VAT certificate and shall remind the taxpayer of the sanctions applicable for engaging in VAT transactions without the VAT Certificate. The notice shall also provide the taxpayer information on the right to appeal. The TAK shall send the said notice in the course of 2 days after deciding that the VAT Certificate will not be issued.

6. The VAT certificate (or certified copies) shall be placed in all locations of the taxable person where he exercises his activities. The VAT certificate shall be placed conspicuously so as to allow the consumers to read or shall otherwise be liable to sanctions set out under the Law on Tax Administration and Procedures.

Article 7 - Compulsory Registration – Compulsory communication of changes in registration data

(Law No. 03/L-146)

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 5

Registration of Persons for VAT by TAK at Applicant's Request

(Administrative Instruction 10/2010)

1. Any person meeting the criteria of Article 6 of this Law and not registered for VAT shall be compulsory registered by the TAK with retroactive effect as of the date where such registration was required under the Article 7 of the Law and TAK shall issue the Certificate of VAT Registration. If the TAK discovers at later stages that the person subject to tax should have registered at an earlier date, he shall be required to pay VAT for supplies conducted since such earlier date.

Article 8 - Voluntary Registration

(Law No. 03/L-146)

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 4

Voluntary Declaration

(Administrative Instruction 10/2010)

1. Any person that meets the conditions referred to in Article 4 of the Law but is ineligible for registration under Article 6 of the Law shall have the right to register for VAT as a taxable person. He should submit the request to Taxpayers Service in the appropriate regional office, for voluntary registration.
2. The TAK shall register such a person with effect from the date of receiving the request by the Taxpayers Services Office if the person making the request meets the conditions of Article 4 of this Law.
3. The taxpayers who register voluntarily shall be subject to the same rules in respect of change and cessation of activity as taxable persons registered in accordance with the article 6 of the Law.

Example:

If a taxpayer is registered voluntary for VAT, as his turnover is lower than the 50,000 EUR threshold, he is obliged to submit monthly tax returns starting from the period of voluntary registration, i.e. the taxpayer shall declare and pay the VAT for every supply performed after the date of registration.

4. If a taxable person has no supplies or purchases within a given period, the taxpayer shall issue a return with zero value, to show that the taxpayer is active but that there have been no activities for that period
5. **Turnover to be included in the threshold.** When determining whether the threshold limit of 50,000 Euro is exceeded or not, turnover of all the persons activities, carried out in the same place or in different places or whether carried out in the same line of business or

in different lines of business, shall be taken into account. This applies in relation to both physical persons and legal persons.

Article 9 - Cancellation of registration

(Law No. 03/L-146)

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.

Article 8

Deregistration of VAT by the Taxable Person

(Administrative Instruction 10/2010)

1. Every taxable person registered for VAT either compulsory or voluntarily, may ask the TAK to be deregistered from VAT if in the last 12 months the turnover fell below the threshold set out under the paragraph 6 of the Law. The TAK shall make a decision on deregistration from VAT with effect 12 months after the request for deregistration.
2. If in the course of 12 months after submitting the request for deregistration, the supplies of taxable person shall be above the threshold set out under the Article 6, paragraph 1 of the Law, such person shall be notified by TAK that request for deregistration has not been approved by the VAT.
3. If within 12 months following from the day of request for cancellation of registration, supplies of taxable person are below the prescribed threshold in Article 6 paragraph 1 of Law, this taxable person will be notified by the TAK that request for cancellation of registration has been approved.

Article 9

Taxable Person who Ceases his/her Economic Activity

(Administrative Instruction 10/2010)

1. If a taxable person ceases his/her economic activity, is he/she obliged to submit a request for cancellation of registration for VAT, within 15 days after the cessation of the activity. When submitting the request for cancellation of registration, this person is also required to handover the VAT certificate (and all certified copies) to TAK.

2. If the taxable person still possesses goods in stock that are not supplied, or capital assets, where the VAT on those goods or assets or the component parts thereof was wholly or partly deductible, shall according to the Article 11 of the Law, be considered a supply for consideration and the taxable person is required to pay VAT on this supply. The taxable amount shall according to Article 24, subparagraph 7.1 of the Law, be the value of the goods and assets in question at the time where the taxable person cease to carry out the economic activity.

CHAPTER III - TAXABLE TRANSACTIONS

Article 10 - Supply of goods

(Law No. 03/L-146)

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 installment.
 - 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

(Law No. 03/L-146)

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 10 **Application of Business Goods to Non-business Purposes**

(Administrative Instruction 10/2010)

1. Pursuant to article 11, paragraph 3 of the Law business samples and gifts of small value as referred to in Article 11, paragraph 2 shall be defined as follows:

1.1. Business samples as referred to in paragraph 2 of Article 11 shall be considered business samples directly related with the performance of the taxable persons activity, given to customers or potential customers in usual quantities for that purpose, provided they are not placed on sale by these customers or potential customers, or they are in a form which renders their sale impossible. Goods given as business samples must be marked as such and if they cannot be marked as business samples, they must be in a form and package different from the form and package of these goods when intended for sale.

1.2. Gifts of small value shall, within the meaning of paragraph 2 of Article 11 of the Law, be deemed to be goods, given for the purpose of furtherance of the business activity of the taxable person, of an individual market value lower than Euro 10.00 without VAT, which the taxable person occasionally gives to customers or potential customers without a legal obligation to do this.

Article 12 - Application of goods for business needs under certain VAT deduction circumstances

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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 11

Transfer of Business

(Administrative Instruction 10/2010)

1. Supply of goods taking place in the event of a transfer of business.

1.1. According to article 13 no supply of goods takes place and no VAT shall be charged on such transfer, if those goods are disposed as being parts of a totality of assets or part thereof. Goods are legally transferred under the application of civil law provisions and one by one, such as real estate, movable property, assignment of claims and the transfer of intellectual property rights, such as patents and other commercial intellectual property rights. The transfer of a business as a whole is not legally possible according to civil law. The term "transfer of business" is to be understood in an economic sense and in the context of VAT principles. All single supplies directly connected to a business transfer are meant to be supplies of goods taking place in the event of a transfer of business.

1.2. A business transfer is generally based on a contract. A transfer of business based on legal successor ship, such as testament, contract of inheritance, and legal the Law on VAT and article 13 does not apply in these cases.

2. Transferor as taxable person

2.1. The application of Article 13 requires that the transferor is a taxable person who is registered, or is required to be registered for VAT.

2.2. With the start of an economic activity by a personal business enterprise, a legal entity or a partnership these business organizations can apply to be treated as taxable persons according to Article 8 of the Law on VAT, if - confirmed by objective evidence – it is seriously intended to make taxable supplies. A business in the start-up period which is voluntary registered for VAT can be considered as a taxable person thus allowing the application of Article 13 of the Law on VAT.

2.3. The transferor does not immediately lose his status as taxable person with the transfer of his business. His status as taxable person ends with the final winding up or liquidation of the business. Supplies or the application of business assets for purposes other than those of his business, Article 11 of the Law on VAT, are still considered as taxable supplies in continuation of economic activities. The transferor is entitled to a deduction of VAT input tax under the general conditions of Article 36 of the VAT Law, where he receives invoices after the transfer or after the transfer as a contribution to a company.

3. Transferee as taxable person

3.1. The application of Article 13 is confined to business transfers to a transferee as taxable person acting as such. In all other cases VAT taxation is legally required to avoid non-taxed final consumption.

3.2. The transferee needs to be registered for VAT or required to be registered for VAT at the time of the transfer of the business or a part of it, in order for article 13 to apply.

3.3. The transfer of a business for private purposes or more generally for purposes other than those of his transferee's business is not regarded as a transfer of a totality of assets or part thereof. The transfer to a taxable person as such requires that the assets will have to be used in an already existing or in a newly started business of the transferee. This requires that the transferred assets are objectively used in order to facilitate the economic business activity of the transferee.

3.4. The transferee needs to intend to continue a business activity. All transfers under Article 13 are those in which the transferee intends to operate the business or the part of the undertaking transferred and does not simply intend to immediately liquidate the activity concerned and sell the stock, if any. It is not required that the transferee pursue prior to the transfer the same type of economic activity as the transferor. The purchased business can also be integrated into the existing business of the transferee or also be used for different economic activities. No transfers covered by article 13 of the VAT Law are those, where a taxable person purchases the business with the intention to immediately resell it or where a business is bought by a competitor in order to wind it up or to liquidate it.

3.5. Is the transferred totality of assets integrated into an already existing business of the transferee with the transferee's intention to continue using the assets for the intended economic activities and if it finally turns out that the planned activities cannot be implemented successfully no rectification of the application of Article

13 of the VAT Law will be required. The same applies, if the transferee starts his economic activity with the acquired assets and needs to terminate his activity because of circumstances, which arise after the acquisition or because of a lack economic success.

3.6. Are assets which formed part of the transfer of a business later applied for private purposes or more generally for purposes other than those of his business, VAT can only be charged on the application of goods of the business for non-business needs, where the VAT on those goods or the component parts thereof were wholly or partly deductible by the transferor, Article 11 paragraph 1 of the VAT Law.

3.7. The transferor is not entitled in cases of application of the provision of Article 13 of the VAT Law to issue an invoice including VAT. If he does so, he will be liable for the invoiced VAT. The transferee does not have the right to deduct the invoiced VAT in such cases.

3.8. If various services acquired by the transferor in order to effect the transfer of a totality of assets or part thereof have a direct and immediate link with a clearly defined part of his economic activities, so that the costs of those services form part of the overheads of that part of the business, and all the transactions relating to that part are subject to VAT, the transferor may deduct all the VAT charged on his costs of acquiring those services. Even in the case of a transfer of a totality of assets, where the taxable person no longer effects transactions after using those services, their costs must be regarded as part of the economic activity of the business as a whole before the transfer, ECJ C-408/8.

4. Totality of assets

4.1. A transfer of a totality of assets according to Article 13 of the Law on VAT requires that all essential assets of a business or of a separately organized business unit are transferred. Condition is that an organic whole consisting of goods and rights, tangible or intangible elements is transferred enabling the transferee to continue running that business without further extensive financial investments.

4.2. In the event of a transfer of a totality of assets or a separately organized business unit whether for consideration or not, no supplies of single goods is made, if some not essentially required assets are not transferred. The no-supply rule of Article 13 also applies in cases of a transfer of a totality of business assets as a contribution to a company, even if single essentially required assets, such as business premises, are not legally transferred, but rented out or leased to the transferee and if a lasting and continuing operation of that business is ensured. A long term lease or rent out of business premises requires at least a 10 years contract period with an extension option.

4.3. A transfer of a totality of assets can be based on several successive contracts over the assets of a business, if they are concluded in a time context and are factually related to each other and if the transfer of a totality of assets of that business evidently and obviously leads to a termination of the transferors business or the termination of a separately organized business unit.

4.4. Which assets are substantially and essentially required is determined according to the factual situation at the time when the transfer of the ownership

takes place. Even single premises can be essentially required assets. Business premises, stock, machinery and equipment used for production are usually the essentially required assets of a manufacturing business. Exclusive distribution rights, rights of use, the company name, regular customers, business connections and trademarks can be essential assets.

4.5. Where non-property rights, such as use and enjoyment rights of tangible and intangible property and business relations are part of the essential assets of a business, they must be transferred to the purchaser as far as they are required for the continuation of that business.

4.6. Even single assets can be regarded as a totality of assets, if the single asset can be regarded as a business unit. This is the case where a proprietor of premises sells the premises to another taxable person together with the transition and continuation of renting contracts. The premises and the rent contracts are regarded as essential assets.

4.7. A transfer of assets requires that the transferee becomes the legal or the economic owner of the assets. The transfer of the right to dispose of tangible property as owner must be interpreted as meaning the transfer of the right to dispose of tangible property as owner, even if there is no transfer of legal ownership of the property, ECJ C-320/88.

4.8. A transfer of a part of a totality of business assets is regarded as a no-supply of goods, where the transferred part is economically independent. This requires that the part of a business transferred forms for itself a viable economic unit, which was independently able from the other activities of the taxable person to carry out business activities. Whether a part of a business can be regarded as separate independent business unit depends on the general circumstances and facts of the transfer at the time of the transition of the assets. Indicators are such as different locations, organizational separation, own fixed assets, own staff, separate business records and own business clients. Each indicator may be of different significance depending on the type of businesses, e.g. service provider, manufacturer or trader.

4.9. Transferor and transferee are required to inform TAK 30 days ahead of the transfer of the economic activity. Such notice shall be done in the appropriate regional office 30 days before the transfer and shall include:

4.9.1. Information related to transferor and recipient of transfer

4.9.2. Contract specifying the terms of the business transfer

4.9.3. Specification, which shall include description, quantities and values of transferred assets

4.9.4. Location of transferred assets.

4.10. A statement specifying the obligation for correction for any capital goods shall be signed by both parties, i.e. the supplier and receiver and shall be sent to TAK no later than 8 days after the transfer has taken place.

4.11. The buyer is entitled to become acquainted with all outstanding obligations of the transferor so that the buyer is clear about the obligations inherent with the transfer of business. With respect to partial transfer of business, transfer of liabilities and the right to crediting have to be clearly specified by the transferor to recipient.

Article 14 - Supply of services

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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, airplanes 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, licenses, 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 places 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 12

The place of Service Delivery

(Administrative Instruction 10/2010)

1. The place of supply by a taxable person, who has established his business in a country outside of the 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 and who provides:

1.1. a service of short term or long term hiring out of means of transport, or

1.2. a service as mentioned in Article 20 paragraph 3.2.9. 1 to 10 of the Law, to an authority of central and local level and other bodies governed by Law as far as these authorities are not regarded as taxable persons in respect of their activities, shall by derogation from paragraphs 3.1, 2.2.5, 3.2.6 and 3.2.9 of Article 20 of the Law, be the place of the recipient, if the effective use and enjoyment of the services takes place in Kosovo.

2. The place of supply by a taxable person, who has established his business in 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 inside Kosovo and who provides a service of hiring out a train vehicle, a bus or a

road vehicle exclusively for the transport of goods to taxable person outside Kosovo shall be by derogation from Article 20 paragraph 2.2.5 of the Law, the place where the recipient of this service has established his business, or fixed establishment for which the services is provided if the effective use and enjoyment of the service takes place outside Kosovo.

Examples:

Case 1

Municipality A in the capacity of being a public authority hires 10 passenger cars from a car rental in Tirana (Albania) for a period of 12 months and 8 other passenger cars for a period of 28 days. The cars are put at the disposal of Municipality A in Shkoder (Albania). Municipality A is not a taxable person according to the definition provided in subparagraph 1.1 of Article 20.

The place of supply of the 10 cars is according to subparagraph 3.1 of Article 20 of the Law on VAT the place of the supplier (Albania). The place of supply of the 8 cars is according to subparagraph 3.2.6 of Article 20 of Law on VAT in Albania (Shkoder) where the cars are put at the disposal of the customer.

With this sub-legal act the place of supply is changed to the place of the recipient when the effective use and enjoyment mainly takes places in Kosovo.

Case 2

Municipality B in the capacity of being a public authority hire consulting company C from Germany to provide a proposal on which new IT system it will be most advantages for the municipality to purchase. Municipality B is not a taxable person according to the definition provided in subparagraph 1.1 of Article 20 Company C from Germany charges a total of Euros 16,000 for its service. It is considered a consultancy service as referred to in subparagraph 3.2.9.3 of Article 20.

The place of supply of the services provided by Company C is according to subparagraph 3.1 of Article 20 of Law on VAT the place of the supplier (Germany) because the recipient is not a taxable person.

With this sub-legal act is the place of supply changed to the place of the recipient when the effective use and enjoyment of the service takes place in Kosovo.

Case 3

A non-taxable natural person from Mitrovica rents a passenger car in 6 months from a car rental in Skopje. The car is put at his disposal in Pristina.

The place of supply is in accordance with subparagraph 3.1 of Article 20 in Skopje which is the place of supplier.

With this sub-legal act the place of supply is changed to the place of the recipient when the effective use and enjoyment mainly takes places in Kosovo.

Case 4

A truck rental company from Peje is renting out 10 trucks for a period of 3 weeks to a Croatian company that is going to use the trucks for transport between Rijeka and Sarajevo. The trucks are handed over the customer in Peje.

The place of supply for this service is according to subparagraph 2.2.5 of Article in Kosovo (Peje) where the equipment is handed over.

With this sub-legal act is the place of supply changed to the place of the recipient when the effective use and enjoyment of the service mainly takes place outside Kosovo.

Article 21 - Place of importation of goods

(Law No. 03/L-146)

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 subparagraph 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.

Article 13

The Place of Import of Goods

(Administrative Instruction 10/2010)

1. The place of import of goods is the place where goods are located when they enter Kosovo.

2. The goods entering/imported in Kosovo are distinguished by their character or determined on the basis of the following custom regimes:

2.1. **Regular import** – meaning goods entering Kosovo for which customs duties have been paid, and such goods shall be considered goods of local status (i.e. Kosovo goods). Regime of this procedure IN SAD is IM4 – while the Customs Procedure Code is 40 00.

2.2. In addition to the procedure for entering the goods through the regular import, there is also entrance/import of goods through procedure of economic impact (other arrangements), such as:

3. The import of goods through customs warehousing procedure – this means entrance of goods in customs warehouse, in order to gain from delaying/prolonging the custom duties from their entry to the sale of these goods in the country. The customs duties are settled at the time of sale, and if re-exported they shall not be charged for any customs duties. To ensure the payment of custom duties, a bank guarantee shall ensure coverage. The amount of guarantee shall be equal to amount of duties for the goods. The customs regime under this procedure is IM7 – the procedures code 71 00. To effect the import under this procedure there needs to be a prior approval by customs.

4. Temporary import – means the entry of goods with the intention of staying in country for a specific duration and subsequent re-export. The customs regime is IM5 – while the procedure code is 53 00. Goods subject temporary import with partial discount are subject to customs duties of 3% per month for the entire duration of stay in the country. The import or entrance under the Inward Processing procedure implies entrance/import of raw materials or semi products in order to process them further in the country. This entrance is realized under two systems:

4.1. *The drawback system* – during the import, the business entity meets the customs duties and when such raw material is processed and re-exported as a readymade product or semi product, the entity claims the return of money paid at the entrance of such re-exported goods. The rest is considered as loss during processing or retained for sale at local market, and is the funds are not returned. The regime of this import is IM4, procedures code 41 00.

4.2. *Suspension system* – during the import of raw materials or semi products, the importer does not pay the customs duties on the premise that the product will leave the country after a specific period. To ensure payment of customs duties, a bank guarantee is provided against the value of customs duties. The customs regime for this kind of entrance is IM5, procedures code 51 00.

5. Import under procedure of Processing under Customs Control – covers entrance of specific parts of product in order to form the final product. Such cases may appear when the tariff rate for the raw materials is higher than the rate of readymade imported goods. The procedure is used to benefit from incentives.

6. All procedures of economic impact require the authorization of the Kosovo Customs.

CHAPTER V - CHARGEABLE EVENT AND CHARGEABILITY OF VAT

Article 22 - Chargeable event and chargeability of VAT in respect of supply of goods and services

(Law No. 03/L-146)

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 14

Chargeable Event and Chargeability of VAT in Respect of Supply of Goods and Services

(Administrative Instruction 10/2010)

1. According to Article 22, paragraph 1 of the Law, the moment of incurring the obligation to be charged with VAT is the moment of delivery of goods or services. VAT is due depending on which of the three following events occur first:

- 1.1. Supply of goods or services,
- 1.2. Issuance of a invoice in respect of supply of goods or services, or
- 1.3. Receipt of advance payment before the goods or services are supplied.

Article 23 - Chargeable event and chargeability of VAT in respect of importation of goods

(Law No. 03/L-146)

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 apply 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

(Law No. 03/L-146)

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 15

The Amount Taxable for Supply of Goods and Services

(Administrative Instruction 10/2010)

1. The amount taxable in respect of supply of goods and services shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return of the supply.
2. If the supply was made for a consideration in money, its value shall be the amount equal to such consideration, otherwise the open market value shall be applied.
3. The taxable amount for a supply of goods or services shall include:
 - 3.1. taxes, charges and duties excluding VAT;
 - 3.2. incidental, non-recurring expenditure such as commissions, packaging, transport and insurance, charged by the supplier to the customer;
 - 3.3. for the purposes of paragraph 3.2 of this Article, non-recurring expenditures may be covered by a separate agreement.
4. As an exclusion to the above, when returnable packaging costs that are not included in the original taxable amount have not been recovered, such packaging costs shall be included in the taxable amount.
5. Returnable packaging is packaging of the type of container, glass, crates, gas container or liquid gas deposits or similar packaging of this nature. As a rule, returnable packaging is delivered together and simultaneously with the goods they contain. These types of packaging are provided by seller (supplier) to the buyer (customer); they are temporarily kept by the buyer and are later returned to the seller.
6. Packaging provided to the buyer shall be returned to the seller within a reasonable timeframe, depending on the type of activity being exercised.
7. This timeframe shall vary by the nature of product the packaging contains and shall be stated in a contract signed by the parties.
8. In order to exclude VAT on the value of packaging, the following two conditions must be met:
 - 8.1. the amount related to the returnable packing shall not be included in the amount of the invoice issued by the seller.
 - 8.2. a contract shall be signed between the two parties for supply and return of the packaging.
9. The contract shall also state the timeframe for return of packaging from the buyer to the seller. The packaging that the buyer fails to return to the seller shall be deemed sold and shall therefore be subject to VAT for their value.

10. Pursuant to Article 24, paragraph 9 the following proof is required when excluding amounts as referred to Article 24, subparagraph 6.3 from the taxable amount:

10.1. The invoice for the expenditure is issued in the name and on behalf of the customer.

10.2. The taxable person may not deduct VAT charged on the invoice. Any right of deduction can only be carried out by the customer in whose name the invoice is issued.

10.3. The amount of expenditure shall be entered into a suspense account in the taxable persons bookkeeping.

11. The taxable amount of imported goods is determined based on provisions of the customs law, irrespective of whether or not the imported goods are subject to or exempted from customs duties.

12. The taxable value of the imported goods shall also include:

12.1. transport and insurance costs as well as other costs related to the import of goods and their transport up to the first place of destination in the territory of the Republic 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.

12.2. taxes, duties, fees and other charges due outside Kosovo, and those due by reason of importation, excluding the VAT to be levied.

Article 25 - Taxable amount in respect of importation of goods. Converting the value of foreign currency into Euro

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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, centers for medical treatment or diagnosis and other duly recognized 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 recognized 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 organizations recognized 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 organizations recognized 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 subparagraph 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 organizations 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 organizations 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 recognized 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 organizations 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 organized 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 authorized 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 16 **Exemptions for Activities Related to Public Interest**

(Administrative Instruction 10/2010)

1. Hospital and medical care services. Shall refer to services regarding protection, maintenance or restoration, of health. The exemption shall also refer to the accommodation, care and nutrition of patients, and other supplies related closely to exempt supplies.

2. Hospital and medical care services are only exempt when the service is carried out by a person or establishment authorized to carry out health and medical services in Kosovo.

3. When supplied by other than bodies governed by Kosovo Law it is a condition that the prices charged by such supplier are comparable with the prices charged by bodies governed by Kosovo Law. As comparable prices will normally be regarded prices not exceeding the prices charged by bodies governed by Kosovo Law with no more than 30 percent.

4. Where the principally purpose is not aimed at the protection, maintenance or restoration of health of the person concerned, the supply is not exempt, as example cosmetic services.

5. Where the principal purpose of the service is to provide a third party with a necessary element for taking a decision, the supply is not subject to exemption.

6. Welfare and social security services. The tax exemption referred to in Article 27, subparagraph 1.6 of the Law shall refer to services related to welfare and social security

work such as supplies made by nurseries, day care centres, shelters, old people's homes and similar when supplied by competent bodies of Kosovo or by other bodies recognised by the competent Authority of Kosovo.

7. When supplied by other than competent bodies of Kosovo, it is a condition that the prices charged by such supplier are comparable with the prices charged by competent bodies of Kosovo. As comparable prices will normally be regarded prices not exceeding the prices charged by bodies governed by Kosovo Law with no more than 30 percent.

8. The supply of goods and services that is directly connected with the services referred to in paragraph 1 of this Article such as delivery of food, drinks, medicaments and similar shall also be exempt when supplied by the supplier of the exempt service.

9. Educational services. The VAT exemption for educational services shall refer to the following:

9.1. children's or young people's education, school or university education, vocational training or retraining, when supplied by bodies governed by Kosovo Law;

9.2. supply of the services mentioned in paragraph 1 is also exempt when supplied by other organisations recognized by the competent Authority of Kosovo as having similar objects when the price charged are comparable with the prices charged by bodies govern by Kosovo Law. As comparable prices will normally be regarded prices not exceeding the prices charged by bodies governed by Kosovo Law with no more than 30 percent;

9.3. accommodation and nutrition of pupils and students in boarding schools and pupil and student's homes or similar institutions are also exempt from VAT when supplied by the provider of the exempt educational services. Exempt are also other supplies of goods or services closely related to the supply of exempt educational services when supplied by the provider of the exempt educational services.

Article 28 - Exemptions for other activities

(Law No. 03/L-146)

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.

Article 17

Exemptions of Other Activities

(Administrative Instruction 10/2010)

1. Religious organization that receive exempted supplies or make exempted imports, are required to maintain books and records, submission of annual statements in compliance with the Law on Tax Administration and Procedures 2004/48 supplemented with amendments of the Law 03/ L – 071. All the supplies for goods and services made to the Eligible Religions shall be proved that the supply for these Religions has taken place.
2. If goods are imported by an Eligible Religion, this import shall clearly specify that the goods imported by the eligible religion shall be exclusively used for the purposes of the eligible religion as provided by Article 30, paragraph 3 of the Law.
3. The taxable person that makes an exempted supply in accordance with Article 28 paragraph 3, to a religious organization, he/she shall obtain a written confirmation from the religious organization which confirms that such goods or services are ought to be used for exemption purposes in accordance with Article 28 subparagraph 3.1 and 3.4.

CHAPTER IX - EXEMPTIONS ON IMPORTATION AND OTHER SPECIAL EXEMPTIONS IN RESPECT OF IMPORTATION

Article 29 - Exemption on importation

(Law No. 03/L-146)

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 for 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

(Law No. 03/L-146)

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 organizations, charitable and philanthropic organizations intended for free distribution to victims of natural and other disasters and wars, or goods which remain the property of these organizations 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 organizations 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 neighboring 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,

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".

Article 18 **Other Import-Related Exemptions**

(Administrative Instruction 10/2010)

1. Any consignment made of goods of minor value, shipped directly from a place outside Kosovo to a recipient inside Kosovo shall be exempt from paying the import duties.
2. Goods of minor value are goods the overall value of which does not exceed 22 EUR for every consignment.
3. The exemption shall not apply to:
 - 3.1. alcoholic beverages
 - 3.2. perfumes and eau du toilettes
 - 3.3. tobacco and tobacco products
4. According to Article 30, subparagraph 1.7 of the Law, goods sent by a physical person outside of Kosovo to a person living inside Kosovo are exempt from paying the import fees, provided that such goods are of non-commercial nature.
 - 4.1. Non-commercial goods shall mean:
 - 4.1.1. goods exclusively used for personal use of the recipient or his family, which by their nature or quantity exclude any commercial use, and
 - 4.1.2. is shipped to the recipient free of charge.
 - 4.2. the said exemption shall apply to consignments the amount of which shall not exceed 45 EUR, including goods whose quantity is limited:
 - 4.2.1. tobacco products:
 - 50 cigarettes
 - 25 cigars (thin small cigar of maximum 3 gram weight)
 - 10 cigars pure
 - 50 gram smoking tobacco
 - 4.2.2. A proportional selection of these various products
 - 4.2.2.1. Alcohol and alcoholic beverages:
 - 4.2.2.2. Distilled alcoholic beverages and alcohol of 22% content; ethyl alcohol of 80% volume or more, 1 litre or distilled alcoholic beverages and alcohol, as well as aperitif based on wine or alcohol. Tafia, sake or similar alcoholic beverages of alcohol content of 22%; foam wines, liquor wines: 1 litre or proportional mixture of various products and still
 - 4.2.2.3. wine – two litres
 - 4.2.3. Perfume – 50 grams, or eau du toilette: 0.25 liters.
5. When the total value of the consignment does not exceed the value above but is separated in two or more articles, the exemption shall be allowed as if these articles were imported separately, taking into account that the value of one single item cannot be split.

CHAPTER X - EXEMPTIONS ON EXPORTATION

Article 31 - Exemptions on exportation

(Law No. 03/L-146)

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

(Law No. 03/L-146)

1. The following transactions shall be exempted:
 - 1.1. 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,
 - 1.2. 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,
 - 1.3. 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,
 - 1.4. 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,
 - 1.5. The supply of goods for the fuelling and provisioning of aircraft used by airlines operating for consideration chiefly on international routes,
 - 1.6. 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,
2. 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**

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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 19

The Right to Deduct VAT

(Administrative Instruction 10/2010)

1. A taxable person may deduct from his VAT liability the VAT due or paid in respect of purchases of goods or services or import of goods provided he used or will use the purchases or imports for the purpose of taxable transaction or exempt transactions that entitle to deduction.

2. If a taxable person used or will use purchases of goods or services or imported goods for making supplies exempt in accordance with Article 27 and 28 of the Law, the taxable person is not entitled to deduct the input VAT paid or due in respect of such purchases or imports. Where the supplies received by a taxable person, either when making domestic purchases or by importing, which are not intended to carry out an economic activity, pursuant to Article 2 paragraph 1.10 "an economic activity", he/she is not entitled to deduct input VAT paid for such purchases or imports.

3. If a taxable person used or plans to use the acquisition of goods and services or imported goods and services for both transactions which entitle him to deduction and transactions that do not, the VAT for only the first transaction shall be deducted. The proportion of such deductions shall be determined in conformity with the Article 39, paragraph 2 of the Law.

4. In order to deduct VAT in regard of passenger vehicles, the taxpayer shall present the following documentation.

5. The documentation to produce is the following: proof of purchase of vehicle, (invoice, SAD), evidence for all related expenses, travel book (indicating the exact mileage from departure to arrival, purpose of travel), any other relevant document to justify the incurred costs.

6. Pursuant to Article 36 paragraph 5.2 the purchase costs and current expenditures as regards cars used for both private and business purposes, the right to deduct input VAT is only allowed to a maximum of fifty percent (50%) of the VAT paid or due in regard of such costs

7. Pursuant to Article 36 paragraph 5.3 a taxable person can not deduct input VAT on following costs:

- 7.1. costs for entertainment and amusement during business or social contacts
- 7.2. food costs including drinks
- 7.3. accommodation costs.

8. This rule provides exception events when such costs are directly related to business activities and personnel charged with supply of goods and services which includes the employees, agents, and other representatives responsible for the business. The deduction is allowed only when incurred costs, result in a taxable supply of goods or services.

Article 37 - Exercise of the right of deduction

(Law No. 03/L-146)

1. 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 20 **Exercise of the Right to Deduction**

(Administrative Instruction 10/2010)

1. According to Article 37, subparagraph 3.1 of this Law, the taxable person may exercise his right to deduction based on Article 36, paragraph 2.3 of the Law as follows:

1.1. For application of goods that according to Article 11 and 12 of the Law shall be treated as a supply of goods for consideration and for the supply of services that according to Article 15 and 16 of the Law shall be considered as a supply of services for consideration, shall the taxable person issue an internal sales invoice. The internal sales invoice shall include all prescribed applicable elements of an invoice as described in Article 44 of the Law and it shall in relation to bookkeeping, storage etc. be treated as an invoice.

1.2. If the taxable person is applying goods or using a service, that according to Article 12, paragraph 1 or Article 16, paragraph 1 of the Law shall be considered a supply for consideration, for an activity for which the taxable person is entitled to a partial right of deduction, the taxable person is entitled to exercise the partial right of deduction on the basis of the internal sales invoice issued in accordance with paragraph 1 of this Article. The internal sales invoice shall be considered as an invoice as referred to paragraph 2 of Article 37 of the Law

Example:

Company A is engaged in supplying exempt financial services and taxable consultancy services. The partial right of deduction provisional applied in 2011 is 14 percent. In 2011 company A hire 8 construction workers to renovate a part of the domicile building of the company. The building is used for making both taxable and exempt supplies. This is according to Article 16, paragraph 1 of the Law to be considered as a supply of services for consideration because the VAT on such a service would not be wholly deductible if supplied by another taxable person. The renovation starts in February 2011 and is completed in August 2011.

The taxable amount for this supply shall in accordance with Article 24, subparagraph 7.3 be calculated as the open market value. Which according to Article 24, paragraph 2 shall mean the price normally charged for such a supply.

The price normally charged by a construction company for the services carried out by the 8 construction workers are estimated to 18,000 Euro in total.

Company A shall issue an internal sales invoice on which it shall declare output VAT of 18,000 Euro. The VAT amount of 2,880 Euro shall be reported as output tax in the VAT return to be submitted for the tax period of August 2011.

In the tax return for August 2011 is company A at the same time entitled to deduct 14 percent of the output VAT as deductible input VAT. The internal sales invoice shall be considered as an invoice as referred to in Article 37, subparagraph 2.1 of the Law.

Amounts related to the construction work to be reported in the VAT return for August

X2:

Output VAT 16 % of 18,000	2,880 Euro
Input VAT 14 % of 2,880	403 Euro
VAT amount due	2,477 Euro

In the VAT return to be submitted for January 2012 company B will have to adjust the deduction of input VAT in accordance with the final calculation of the partial right of deduction on the basis of the actual turnover amounts for 2011.

2. The right to exercise deductible VAT as per Article 37, paragraph 3.2 and Article 36, paragraph 2.2 of the Law requires the following documentation:

2.1. customs declarations subject to custom duties when the goods are released into the free circulation, such as:

2.2. customs declaration: IM4 – 40 00, is a regular import subject to customs duties based on tariff rates at the time of entry of goods.

2.3. customs declaration: IM4 – 40 71, is the goods for which customs duties are paid in the customs warehouse

2.4. customs declaration: IM4 – 40 51, is the goods for which the customs duties are paid under the internal processing procedure – system of suspension.

2.5. customs declaration: IM4 – 40 53, is the goods for which customs duties are paid under the temporary import provisions

2.6. customs statement: IM6 – 61 21, is the part of goods for which customs duties are paid at the entry of the country, while temporary staying abroad for processing purposes, and subject to duties only for the repaired or processed portion.

3. The right to exercise deductible VAT as per Article 37, paragraph 3.2 and Article 36 paragraph 2.1 of the Law shall be subject to the following documentation:

3.1. tax invoice issued by taxable person registered for VAT, which also contains all the elements required under Article 45 of the Law;

3.2. the debit note issued in accordance with Article 47 of the Law ;

3.3. in addition to the documents set out in the paragraph above, the following documents shall also be produced in order to exercise the right to deduct VAT;

3.4. contract on purchase and sale, if there have been concluded a contract between the parties;

3.5. an evidence in respect to the payment if the payable amount exceeds 500 euros, pursuant to Article 40 of the Law 2004/48 supplemented with the Law 03/L – 071, Article 24 paragraph 3, and Article 11 of the Instruction 16/2009;

3.6. in case of investments, documents required under Article 7, paragraph 11 of the Administrative Instruction 16/2009, date 01/12/2009 on the implementation of the Law No 204/48, “Tax Administration and Procedures”, as amended by Law No. 03/L-071, “on amendment to the Law no. 2004/48 on tax administration and procedures”;

3.7. any other necessary document relevant to the transaction.

4. The right to exercise the deduction of input VAT pursuant to Article 37, paragraph 3.3 and with respect to transactions referred to in Article 31, sub-paragraphs 1.1, 1.2 and 1.4 of the Law is subject to this documentation:

4.1. customs document – on export for return of VAT.

4.2. customs document: EX1 – 10 00, means the regular export, when the local goods are exported abroad.

4.3. customs document: EX2 – 21 00, means a temporary export with the view of repair and processing abroad.

4.4. customs document: EX3 means re-export of goods. There are several types of this kind of customs regime

4.4.1. EX3 – 31 41 – means that a goods sent on processing exited the country. This regime means that the goods and the time of entrance paid customs duties, and on exit under this regime, he is entitled to claim reimbursement by the customs for the portion of goods that was sent abroad (re-exported);

4.4.2. EX3 – 31 51, means re-export of goods under the internal processing procedure – system of suspension;

4.4.3. EX3 – 31 53 – means re-export of goods under the temporary import procedure;

4.4.4. EX3 – 31 71 – means re-export of goods under customs warehouse procedure.

5. Taxable persons shall deduct in the tax period in which the right of deduction arises in accordance with the paragraph 1 of Article 37 of the Law. If for any reason, the taxable person deducts the input VAT later than the period when he/she had the right to deduct it as such, the taxable person shall notify the Manager of Regional Office in relation to the case, by providing documents and proves any other necessary justification explaining the reason why input VAT was not deducted in the period when the right of deduction arose. The approval of Regional Office Manger is not required, but he/she shall keep such evidences provided by the taxable person in the event of subsequent audit conducted towards that taxable person.

6. However, the taxable person is not entitled to deduct input VAT, after the last tax period in the following year and such supply shall be considered a purchase with nondeductible VAT.

Article 38 - The manner to exercise the right to deduct input VAT

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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:

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.

7. TAK may:

7.1. 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.

7.2. 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

(Law No. 03/L-146)

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 21

VAT Refund Claim

(Administrative Instruction 10/2010)

1. Reimbursement of Value Added Tax

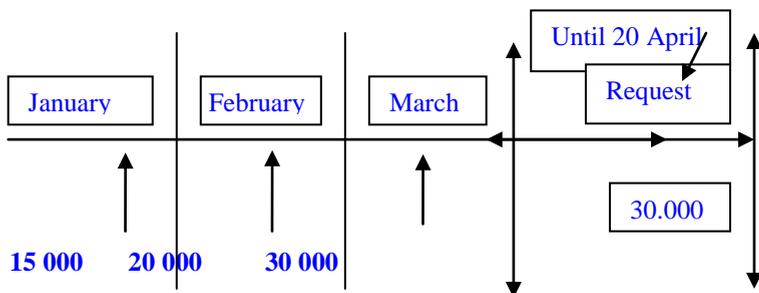
1.1. With respect to Article 40, paragraph 1 of the Law, if the amount of deductible tax at any tax period (e.g. a month) is higher than the amount of the assessed tax due for the same tax period, the taxpayer shall have the right to carry over the VAT credit to the next tax period. Taxpayer shall use this tax credit as payment of tax for the next tax period.

1.2. Based on Article 24 of the Law 2004/48 of the Law on tax administration and procedures, as amended by the Law 03/L-071, and based on Article 40, paragraph 2 of the Law, the taxable person is entitled to request reimbursement.

1.3. According to Article 40, paragraph 2.1 of the Law, the taxable person may request the VAT reimbursement at the end of each calendar quarter if the amount of VAT credit exceeds the amount of 5,000 EUR and provided that such taxable person was in credit situation at the end of each VAT tax period. The person is, furthermore, required to submit all VAT statements and other tax statements for all previous tax period, since the time of commencing its economic activity.

1.4. The outstanding balance of the credit shall make the excess tax credit, remaining at the end of subsequent quarter, which could not be used against the new VAT obligations incurred during such subsequent reporting period (quarter). This outstanding balance at the end of the third month must exceed 5,000 EUR to be eligible for reimbursement.

Example:



Reimbursement is possible to an amount of 30.000 EUR.
For exporters, this condition shall not apply.

1.5. Taxpayer is entitled to seek reimbursement until the 20th following the calendar quarter, which matches the period of VAT declaration, provided that the following requirements have been met:

1.5.1. the amount of deductible tax for any tax period of the quarter is higher than the amount of tax calculated at the same tax period of the quarter;

1.5.2. the amount of VAT credit has exceeded the amount of 5,000 EUR in the last period of the calendar quarter;

1.5.3. taxpayer submitted all VAT declarations and declarations of other taxes for all previous tax periods.

1.6. The request above shall be submitted to Taxpayers Services Office in the appropriate Regional Office, along with the declaration of the previous quarter.

1.6.1. The request for VAT reimbursement shall end in the course of 60 days upon receipt of request for reimbursement submitted to the Taxpayers Service Office of the appropriate Regional TAK Office. After this date, if there are no reasons for delay, an interest shall be calculated since the 61 day as set out under the TAK legislation. If the reasons for delay are justified due to taxpayer's failure to comply with the timeframes set out under the legislation, the TAK shall not calculate any interest for delays.

1.6.2. The person conducting only exempted business activities, as stated under the Law on VAT 03/L-146, Article 27, without the right to deductible VAT is not entitled to seek VAT reimbursement.

1.6.3. Persons who cease their activity but are in credit, e.g. the crediting of the taxpayer is 3,000 EUR for various reasons, the taxpayer is entitled to reimbursement although crediting of the taxpayer is under the foreseen threshold as per paragraph 40.2 of the Law on VAT. In this case, the requirement that the taxpayer should have 5,000 EUR shall not apply.

2. Applications for VAT reimbursements on monthly basis, such as reimbursements for exports: sub-paragraph 2.2 of paragraph 2, Article 40 of the Law on VAT

2.1. Taxpayers whose primary business or businesses is export of goods usually of higher deductible than calculable tax due to the 0% export rate. Requests for exports reimbursements, which in successful VAT compensation exceed the deductible tax, shall be paid after each tax period, provided that the following conditions are met:

2.2.1. export transactions account for at least 25% of total transactions with the right to VAT deductions; and the value of VAT credit exceeds 5,000 EUR at the end of taxation period;

2.2.2. the taxable person shall meet all the applicable customs and VAT provisions;

2.2.3. the taxable person shall submit VAT declarations and other tax declarations for all the other periods;

2.2.4. the taxpayer shall possess sufficient documentation to prove the VAT reimbursement claim.

3. Evidence to be in possession of the taxable person with respect to VAT reimbursement claim:

3.1.all purchase receipts for the past three months before the month of claimed crediting, purchase receipts for the month in which the claimed credit was established as well as receipt of purchases for subsequent months before the month of VAT reimbursement claim;

3.2. All sale receipts for three months before the month in which the claimed credit was established as well as sale receipts for subsequent months before the month of VAT reimbursement claim;

3.3. all customs documentation along with accompanying receipts of purchases for all imports in Kosovo during the three months before the month in which the claimed credit was established;

3.4. reimbursement shall not be issued until taxpayer shall have submitted all required tax declaration. A taxpayer's application failing to submit all declarations shall be deemed invalid. Any request for reimbursement submitted without all the required declarations shall be rejected;

3.5. business declaration regarding the reasons for overpayment or VAT credit balance, such as investments, unusually large purchases, etc;

3.6. any long-term or short-term investment project, investment project, other documents showing investment in a building, base assets, etc.

4. TAK shall not make the reimbursement if the taxable person has no evidence or documents, or if there are indications that the data reported in the VAT declaration reporting the VAT reimbursement and previous VAT declarations are inaccurate. Such indications shall be documented in an official report – minutes of the TAK official or Customs Officer. Such a tax report provides evidence until the taxable person proves otherwise. TAK shall, at a properly justified decision, notify the taxable person on reasons to withhold the reimbursement.

5. Claim/application form for VAT reimbursement in Kosovo

5.1. Regional Tax Office shall reach a decision on compensation based on taxpayer's application. Application shall supplement the monthly tax return, as per Article 54.1 of the Law on VAT, if the application is submitted on 20 of the month subsequent to the claim month as described in the VAT Instruction.

5.2. This VAT reimbursement application is a free form and shall, in the least, contain the following information:

5.2.1.applicant's name (taxpayer)

5.2.2. taxpayer's fiscal number

5.2.3. taxpayer's address, place

5.2.4. bank account number

5.2.5. contact person, name, contact address and his/her telephone number

5.2.6 tax period

5.2.7 type of tax

5.2.8. the amount of reimbursement for the period.

5.3. Description of issues and basis

- 5.3.1. why the applicant's deductible tax exceeds the calculated tax, or
- 5.3.2. if there were any previous errors, as an example
- 5.3.3. calculated tax may have been charged wrongly due to insufficient knowledge on legislation or calculation errors
- 5.3.4. date
- 5.3.5 signature (signature of authorized or responsible person).

Article 41 - Adjustment of deductions

(Law No. 03/L-146)

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 22

Deduction Adjustments

(Administrative Instruction 10/2010)

1. The initial deduction of input tax shall be corrected when the use of the capital goods subsequently changes with the effect that the taxable person is entitled to deduct a lower or a higher amount. The annual correction shall be made only in respect of one-twentieth for immovable property and one-fifth for other kinds of capital goods of the VAT charged on the capital goods. The correction shall be made on basis of the variations in the deduction entitlement in subsequent years in relation to that for the year where the capital goods were acquired. The taxable person is not required to correct the deduction if the difference is less than 20 Euro. The correction for each calendar year shall be made at latest via the tax return for January in the following calendar year.
2. If the capital goods are supplied during the correction period shall the following apply:
 - 2.1. if the supply is taxed, the capital goods shall be considered to be used for fully taxable purpose for the rest of the correction period. If the taxpayer was not entitled to a fully deduction of the input tax the correction can be carried out for the rest of the correction period in the tax period where the capital goods is supplied. The correction can not exceed 16 % of the sales price exclusive VAT;
 - 2.2. if the supply is not taxed, the capital goods shall be considered to be used for not taxable purpose for the rest of the correction period. If the taxpayer was entitled to a fully or partial deduction of the input tax the correction shall be carried out for the rest of the correction period in the tax period where the capital goods is supplied;
 - 2.3. if the supply, according to article 13 of the Law, shall not be considered a supply of goods for consideration, the correction obligation for the capital goods in question is transferred to recipient. A statement, with a specification of the correction obligation for each capital good, signed by both the supplier and the recipient shall be submitted to the TAK at latest 8 days after the transfer of the assets. However, if the statement is not submitted within the 8 days, the correction obligation shall become due immediately for the rest of the correction period and the recipient and the supplier shall be jointly liable. The TAK can decide that a special form shall be used for the statement.
3. If a building or equipment becomes unusable before the expiration of the period for correction of input tax, there reasons for correction of input tax shall cease.
4. If a subsequent investment does not substantially change the lifetime of the use of the building or equipment, then the correction of input tax for that investment shall be made in the period of making the correction of input tax for the capital goods in question.
5. If it is a subsequent investment which substantially changes the lifetime of use or represents a separate unity such as is e.g. annex to an already existing building, a new (separate) period of input tax correction shall be determined for this investment.”

Example 1

Adjustments to deductible VAT for capital assets

Company A is making both supplies liable to VAT and exempt supplies.

After the end of each year A have calculated that its turnover is divided between liable supplies and exempt supplies, as follows:

Year	VAT taxable supplies	Exempt supplies	Total turnover	Right to partial deduction
2009	160	150	310	52
2010	140	150	290	49
2011	170	140	310	55
2012	130	50	180	73
2013	210	680	890	24
2014	300	80	380	79
2015	150	150	300	50
2016	260	300	560	47
2017	150	150	300	50
2018	0	250	250	0
2019	0	50	50	0
2020	0	300	300	0
2021	150	150	300	50
2022	170	140	310	55
2023	130	50	180	73
2024	210	680	890	24
2025	300	80	380	79
2026	150	150	300	50
2027	260	300	560	47
2028	150	150	300	50
2029	0	250	250	0

The partial right of deduction shall in accordance with Article 39, paragraph 4 of the Law be rounded up to a whole number.

Company A purchases a commercial building in September 2010. The purchase is levied with a VAT amount of 250,000 Euro. Company A receives the invoice regarding the purchase of the building in September 2010 and starts to use the building also in September 2010. Company A will use the building for making both VAT liable and exempt supplies.

How much can A deduct in September 2009?

Calculate the amount that can be deducted by Company A and the yearly corrections of deduction of input VAT to be made by the company.

Solution

In September 2010 can company A deduct 130,000 Euro. The reason is that the partial right of deduction to be applied preliminary throughout 2010 is 52 percent which is the partial deduction rate calculated for 2009.

In the tax return to be submitted for January 2010 the company will have to correct this preliminary deduction in accordance with the actual partial deduction rate calculated on the basis of the turnover amounts for 2010 which is calculated to 49 percent. Therefore, the company will have to reduce its input VAT deduction with 7,500 Euro which is the difference between the preliminary right of partial deduction and the actual right of partial deduction for 2010.

Below is listed the corrections to be made for each year.

Year	Possible annual deduction	Previous early year deductions	Right to deduction	Annual adjustment
2010	12,500.00	6125	6125	0
2011	12,500.00	6125	6875	750
2012	12,500.00	6125	9125	3000
2013	12,500.00	6125	3000	-3125
2014	12,500.00	6125	9875	3750
2015	12,500.00	6125	6250	125
2016	12,500.00	6125	5875	-250
2017	12,500.00	6125	6250	125
2018	12,500.00	6125	0	-6125
2019	12,500.00	6125	0	-6125
2020	12,500.00	6125	0	-6125
2021	12,500.00	6125	6250	125
2022	12,500.00	6125	6875	750
2023	12,500.00	6125	9125	3000
2024	12,500.00	6125	3000	-3125
2025	12,500.00	6125	9875	3750
2026	12,500.00	6125	6250	125
2027	12,500.00	6125	5875	-250
2028	12,500.00	6125	6250	125
2029	12,500.00	6125	0	-6125

Each correction shall be made in the tax return to be submitted for January in the following year.

Example 2

Company B is running a pharmacy and a supermarket. Company B is not registered for VAT because its turnover does not exceed the threshold as referred to in Article 6 of Law. In 2010 the company purchase a small truck. The truck is mainly used in connection with the supermarket but is also used in connection with the pharmacy. The price of the truck is

21,000 Euro. The company receive an invoice from the supplier, who is registered for VAT, on which VAT is charged with 3,360 Euro.

In 2010 when the company purchase the truck no VAT is deducted due to the fact that the company is not registered for VAT.

In May 2012 the companies' turnover exceeds the threshold for compulsory registration and the company therefore submit a registration application with the effect that the company becomes a registered taxable person as of the 10th of June 2010.

In 2013 the brother of the owner of the company is moving to Athens. The owner uses the truck to move the brother's belongings to Athens. He is not charging the brother for this service.

After the end of each year taxpayer A have calculated that his turnover is divided, as follows:

Year	Supermarket before registration	Supermarket after registration	Pharmacy	Total turnover	Right to partial deduction
2010	150	0	150	300	0 (no reg.)
2011	170	0	140	310	0 (no reg.)
2012	150	160	240	550	30%
2013		450	400	850	53%
2014		500	600	1100	46%

The partial right of deduction shall be rounded up to a whole number in accordance with Article 39, paragraph 4 of the Law.

Calculate VAT amounts that can be detected by company A in the period 2010-2014.

Solution

As turnover that will entitle him to deduction can only be included turnover generated as of 10th June 2010 where the company becomes a registered taxable person.

The moving of the brothers belongings to Athens shall according to Article 15, paragraph 2 of the Law is treated as a supply for consideration. The taxable amount for this service shall in accordance with Article 24, subparagraph 7.2 of the Law be the full cost of providing the service. For this service company B shall issue an internal sales invoice on which the output VAT is charged. The taxable amount for this service is included in the turnover for the supermarket. The private use of the truck shall not have any impact on the deduction of VAT regarding the truck. Instead shall private use etc. be treated as supplies for consideration in accordance with Article 15 of the Law.

Year	Possible reduction per year	Previous reduction per year	Right of reduction	Annual adjustment
2010	672	0	0	0
2011	672	0	0	0
2012	672	0	201	202

2013	672	0	356	356
2014	672	0	309	309

Company B is entitled to deduct the following amounts as input VAT in the VAT returns for:

January 2013: 202 Euro

January 2014: 356 Euro

January 2015: 309 Euro

Article 42 - Deduction of input VAT on commencement of economic activity as VAT registered taxable person.

(Law No. 03/L-146)

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.

Article 23

Deduction of input VAT on Commencement of Economic activity as VAT Registered Taxable Person

(Administrative Instruction 10/2010)

1. As is foreseen by Article 42 of paragraph 1 of the Law, when a person becomes a taxable person be that by exceeding the threshold foreseen by Article 6 of paragraph 1 of the Law or if he is registered as volunteer pursuant to Article 8 of the Law, this taxable person shall acquire the right that in the first taxable period when he becomes a registered taxable person, to recognize a deduction of input VAT for goods which he has in stock on the day before such registration becomes valid. The conditions to be met to exercise this right are as follows:
 - 1.1. that the goods will be used for making supplies that entitles to deduction;
 - 1.2. the taxable person shall possess available list of inventory specified in amount and date of entry of the inventory on the day before becoming taxable person;
 - 1.3. shall possess invoices as provided under chapter 15 of the Law;
 - 1.4. shall prove evidences on records (entries) in compliance with the tax legislation.

2. As is foreseen by Article 42 paragraph 2 of the Law, a person becoming a taxable person, may have the right to deduct input VAT in the first taxable period when registration has become valid.

3. If the taxable person deducted VAT on goods in stock, and later such inventory are used for making supplies exempt without the right of deduction of input VAT Article 12, paragraph 2 of the Law shall apply, with the effect that output VAT shall be paid by the taxable person., in the tax period when the goods are used for supplies exempt without the right of deduction. An internal sales invoice shall be issued in such case.

4. If a taxable person has a VAT credit at the end of the quarter due to that the taxable person deducted VAT on goods in stock, then this person shall not be entitled to claim the refund, in relation to the credit which is the result of deduction of VAT on goods in stocks when he/she became a taxable person.

CHAPTER XIV - BAD DEBTS

Article 43 - Bad debt for VAT purposes

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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;

1.2.2.1.6. 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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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.

Article 24 **Special Provisions**

(Administrative Instruction 10/2010)

1. According to requirements of Article 51, paragraph 3, every taxable person shall have and maintain documents as prescribed in chapter 15 of the Law. He is also obliged to have and maintain other documents as follows:

1.1. transport document/consignment note – as is prescribed in Article 9 paragraph 1.2 of the Instruction No. 16/2009 for the implementation of Law on Tax Administration and procedures;

1.2. document on receiving deliveries – has to be a document proving the acceptance of the goods by authorised person for that issue. The document, inter alia, should include in detail the description of goods and amounts of the received goods;

1.3. relevant evidences should be offered for registration and detailed notes regarding the work on process about the amount of goods to be displaced commencing from raw material, half product and all the way to the final product;

1.4. movement of goods should be evidenced by relevant documentation in the residence or other premises of a taxpayer if there is more than one place where he exercises his activity of business. The document inter alia has to include in detail the description of type and the amount of the goods that were moved;

1.5. in case of giving goods on consignment then as a relevant document proving that goods were given in consignment shall be the Contract that specifies all conditions of the agreement of consignment and the documentation for the movement of goods, which inter alia has to include in detail description of type and the amount of goods that were moved.

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 subparagraphs 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 services;

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 exercising 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.

Article 25 **Persons Liable for Payment of VAT**

(Administrative Instruction 10/2010)

1. Fixed assets – postponement of VAT

1.1. Pursuant to article 52.3 of the Law, postponement of the deadline of VAT for fixed assets will be allowed for businesses on importation of machinery and equipment that fall under Chapters 84 and 87 of the Harmonisation Nomenclature. Machinery and equipment may be new or second-hand and will be used for production of goods and other services.

1.2. In order to benefit from this postponement, businesses will address Tax Administration by filing an application. The applicant has to attach to the application the copy of business plan, copy of contract with the vendor of machinery or equipment, bank account to cover the VAT part, a factory plan, permit for construction granted by authorised agencies.

1.3. Tax Administration will review requests and will grant postponement of deadlines to the applicants who meet the confidentiality conditions. Approval or refusal done in writing shall be issued to the applicant by Tax Administration and a copy will be delivered to Customs Service prior to the importation. The business shall inform preliminary the Customs Service about the date anticipated and the place through which goods will enter Kosovo. At the time of importation, Customs service shall ask from the owner of goods the approval letter issued by Tax Administration and shall verify it if it corresponds to the approval letter sent to the Customs by Tax Administration. Customs Service shall calculate the postponed amount of VAT for the fixed asset and shall write “Postponed” next to VAT amount in the Customs Statement. Customs Service shall notify Tax Administration for the postponement of the deadline at the time of its arrival.

1.4. Taxable person has six months to compensate the VAT towards the calculated tax. If during a six-month period the taxable person commences with the supply taxable goods and services, then the taxable person shall prepare a tax invoice with the value of the fixed asset on it and the relevant value added tax. Data in the tax invoice shall correspond to the data in the customs statement. Data of the tax invoice shall be registered in both registers, the vending and the purchase register, making VAT zero for the fixed asset and the calculated VAT that was charged

and collected from purchasers shall be paid to the Kosovo Consolidated Budget (after deduction of any potential input of VAT for other purchases).

1.5. If by the end of the six-month period value added tax was not paid, Tax Administration shall ask the Bank to cover the modification of the guarantee. There will be no input tax credit allowed as long as the beneficiary of the postponement of the deadline commences with the supply of taxable goods and services.

Article 26 **Reverse Charge**

(Administrative Instruction 10/2010)

1. Reverse charge - Obligation to pay VAT on goods and services supplied from a taxable person not established in Kosovo and the right to exercise the input VAT under the Article 37 paragraph 3.4 of the Law.

1.1. Article 19 of the Law regulates the place of supply of goods. Article 20 of the Law on VAT regulates the place of supply of services. In the following it is described in detail who is the person liable to pay the VAT and other obligations in relation to supplies of goods and services having their place of supply in Kosovo but supplied by a taxable person not established in Kosovo.

1.2. This Administrative Instruction does not explain when a service shall be considered having its place of supply in Kosovo.

2. When the recipient is registered for VAT in Kosovo

2.1. Person liable to pay

2.1.1 According to Article 52 of the Law on VAT the person liable to pay VAT is the taxable person carrying out a taxable supply. However, when the supply is made by a taxable person not established in Kosovo to a person who is registered for VAT in Kosovo, the person liable to pay the VAT on the supply, is the recipient and not supplier.

2.2. Invoicing

2.2.1. Even though that the supplier is not liable of paying the VAT he is still obliged to issue an invoice in accordance with article 45 of the VAT Law.

2.2.2. The supplier shall state on the invoice that the customer is liable of paying the VAT by making a reference to article 52, paragraph 2 of the VAT Law or any other reference indicating that the supply is subject to the reverse charge procedure. The following text would be considered appropriate: *“Reverse charge, subparagraph 1.2 of Article 52 of the Law on VAT in Kosovo”*.

2.3. Calculation of VAT

2.3.1. The recipient of the supply shall calculate the VAT on the basis of the invoice received from the supplier. However, the recipient shall ensure that the tax base is calculated in accordance with Article 24 of the Law on VAT. Consequently, the recipient shall ensure that the tax base

include everything which constitutes consideration obtained or to be obtained by the supplier, in return of the supply.

2.3.2. The recipients' obligation to pay the VAT is not conditioned by the receipt of the invoice on the supply. Therefore, if the recipient does not receive an invoice for the supply he will still have to report the amount in his VAT return for the relevant tax period and to pay the VAT.

2.4. Liability arising in the tax period

2.4.1. It is described in Article 22 of the Law on VAT when the VAT becomes due.

2.4.2. It follows from this provision that the VAT become due at the moment when one of the following activities is performed, whichever is the earliest:

2.4.3. the performance of the services;

2.4.4. issuing of an invoice payment or part-payment made before an invoice is issued;

2.4.5. The continuous supply of services over a period of time is to be regarded as being completed at least at intervals of one month.

2.5. Inclusion of chargeable VAT in the VAT return

2.5.1. The recipient shall include as output tax the VAT due on the supplies of services from a supplier not established in Kosovo

2.6. Deduction

2.6.1. The recipient are in the same VAT return entitled to deduct the VAT amount reported as output tax in accordance with chapter XIII of the Law on VAT.

2.6.2. If the taxpayer did not receive an invoice from the supplier the condition referred to Article 36, paragraph 1 regarding the deduction being allowed only if the taxpayer poses an invoice for the supply, shall not apply in regard of deduction of output tax calculated on supplies received from a supplier not established in Kosovo.

2.7. VAT registration and tax representative

2.7.1. When the reverse charge procedure applies and the recipient therefore is liable for the payment of VAT, the supplier shall not be obliged to register in Kosovo or to appoint a tax representative.

3. When recipient is not registered for VAT

3.1. When a taxable person not established in Kosovo makes a supply that is deemed having its place of supply in Kosovo, to a recipient who is not registered for VAT in Kosovo, the supplier is obliged to register for VAT in Kosovo, before he makes the supply in Kosovo.

3.2. The supplier not established in Kosovo shall appoint a tax representative. The supplier shall be registered under his own name and the name of the tax representative within five days after the appointment as tax representative and prior to the starting of economic activity in Kosovo.

3.3. The tax representative shall be liable for the payment of VAT on the supplies in Kosovo that the taxable person he is representing make to persons not registered for VAT in Kosovo.

Examples 1

A lawyer from Austria is hired by X Bank in Pristina to represent the bank in a court case, where the bank is indicted for an unlawful sale on an auction of a building that was put up as collateral for a credit, where the installments was not paid on the dates agreed in the credit agreement.

The bank is registered for VAT purposes for the following activities:

1. Management and safekeeping of securities
2. Hiring out of safes
3. Leasing out movable items and immovable property

The Austrian lawyer charge X Bank a total fee of Euros 7,500 for his services.

Describe the VAT treatment of the amount charged by the lawyer for assisting the bank in the court case related to the banks supply of VAT exempt credit transactions.

Solution

Firstly, it is necessary to determine the place of supply of the services supplied by the lawyer. The bank is a taxable person according to the special definition provided for in subparagraph 1.1 of Article 20. The place of supply of the service is therefore in Kosovo according to subparagraph 2.2 of Article 20.

Secondly, it is necessary to determine whether the lawyer is established in Kosovo. Representing a company in a court case does not have the effect that the lawyer shall be considered established in Kosovo.

The person liable to pay the VAT is therefore according to subparagraph 1.2 of Article 52 X Bank. The reason is that the bank is registered for VAT. It makes no difference in this context, that the reason for the bank to be registered for VAT is another kind of supplies than the kind of supplies to which the lawyer's services are connected to.

X Bank can not deduct the VAT amount as input VAT unless the recipient of the credit is established outside Kosovo, cf. subparagraph 3.3 of Article 36.

Examples 2

An architect from Italy is hired by hotel company X in Prizren to draw a new hotel building to be constructed on a specific piece of building land in Prizren. The architect is furthermore hired to supervise the construction of the building. The architect spends 14 weeks in total in Kosovo. He stays in an apartment put at his disposal by the hotel company. The hotel company is not registered for VAT in Kosovo because its turnover has not yet exceeded 50.000 Euros in a 12 months period.

The architect charges the hotel company a total of 12.000 Euros for his services.

Describe the VAT treatment of the amount charged by the architect.

Solution

Firstly, it is necessary to determine whether the service is having its place of supply in Kosovo. It can be assumed that the hotel company shall be regarded as a taxable person

according to the special definition provided for in subparagraph 1.1.2 of Article 20. The place of supply is therefore in Kosovo in accordance with subparagraph 2.1 of Article 20. Furthermore, the place of supply is also Kosovo in accordance with subparagraph 2.2.1 of Article 20 because the services are related to a specific immovable property. It should be noted that services from an architect that are not related to a specific immovable property or a specific piece of land or area, are not covered by subparagraph 2.2.1 of Article 20. The architect can not be considered established in Kosovo because he is working 14 works on a specific assignment from an apartment in Kosovo put at his disposal by the client. Since Hotel Company X is not registered for VAT the architect is in accordance with subparagraph 1.1 of Article 52 liable to pay the VAT. The architect shall in accordance with paragraph 5 of Article 6, register for VAT in Kosovo and shall in accordance with paragraph 5 of Article 52 appoint a tax representative as the person liable for the payment of the VAT.

Examples 3

Company B from Macedonia is advising private person on how to establish a successful business and how to earn at least a million Euros within the first five years as a businessman. Company B charge 5.000 Euros for a “package” comprising of 10 hours meeting with a consultant from the company and a set of a written recommendations provided on the basis of the meetings. It is up to the customer to decide how and when the meetings shall take place and the format and way that the company shall deliver the recommendations.

Describe the VAT treatment of the fee charged by company B

Solution

The recipient can not be regarded as a taxable person according to the definition provided for in subparagraph 1.1 of Article 20 under the assumption that the person has not yet started to make supplies in the capacity of being a taxable person as referred to in Article 4. The described services can not be categorised as electronic services as referred to in Annex II of the Law.

According to subparagraph 3.1 of Article 20 the place of supply shall be the place where the supplier has established his business. Due to the fact that there is no information about the Macedonian company having a fixed establishment or similar in Kosovo from which the supply is made, the place of supply is not in Kosovo. Therefore, Kosovo can not charge the supply with VAT.

CHAPTER XVII - TAX PERIODS AND VAT RETURNS

Article 53 - Tax Periods

(Law No. 03/L-146)

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 27 Tax Period

(Administrative Instruction 10/2010)

1. Pursuant to Article 53, paragraph 1 of the Law, a tax period for VAT shall be a calendar month period which starts on the first day of the month and ends at the last day of the same month.
2. Pursuant to Article 53, paragraph 2.1 of the Law, for the person who becomes a taxable person for the first time in accordance with Article 6 paragraph 1 of the Law and who has registered in accordance with the requirements under Article 7 and 8 of the Law, tax period for VAT shall be the period which starts on the day of registration for VAT (implying the date when the threshold for registration has been exceeded or when it applied for volunteer registration) and shall end at the last day of that month.

3. Pursuant to Article 53, paragraph 2.1 of the Law, the Tax period for VAT shall start on the first day of the month and shall end at the date of the same month when the approval from TAK has been received for registration for VAT, for the taxable person who wants to deregister from VAT in accordance with Article 9 of the Law.

4. Pursuant to Article 53, paragraph 3.1 of the Law, the Tax Period shall start on the day when a procedure of liquidation of bankruptcy has been initiated to the day when a decision has been taken on the completion of the procedure of liquidation or bankruptcy, for the person for whom a procedure of liquidation or bankruptcy has been initiated for different reasons. In these cases, if the taxable person who is in the procedure of liquidation or bankruptcy does not conduct economic activity during this process, this taxable person will be required to submit a statement until the 20th day of the month following the month in which a decision has been taken on completion of the procedure of liquidation or bankruptcy, notwithstanding how long such a procedure takes.

5. Pursuant to Article 53, paragraph 3.2 of the Law, for the person against which a procedure of liquidation or bankruptcy has been initiated and the Liquidator conducts a business activity, the person who is under a procedure of liquidation or bankruptcy shall be required to submit a VAT statement every month until the 20th day of the month following the month of its declaration.

Article 54 - VAT returns, remittance and payments

(Law No. 03/L-146)

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.

Article 28
VAT Return, Submission and Payment

(Administrative Instruction 10/2010)

1. Every taxable person is obliged to submit to TAK the VAT return by the 20th day of the month following the tax period which is declared.
2. If the 20th day is Saturday, Sunday or a public holiday day in the Republic of Kosovo, then the last day for declaration shall be the first working day following the weekend or public holiday.
3. The VAT return shall be submitted in the place and the way which as determined by TAK, physically or electronically.
4. The form of the return and the information to be provided in the return shall be defined by TAK and the taxable person will be offered an instruction detailing specifically all items to be filled in.
5. Every taxable person until the 20th day of the month after the period shall submit a VAT return and if the period is due for payment has to be paid until this day, each delay of payment shall be punishable pursuant to tax legislation of TAK.

CHAPTER XVIII - BOOKKEEPING AND STORAGE OF VAT BOOKS, RECORDS AND RELATED DOCUMENTATION

Article 55 - Requirement to record information, retaining records and providing access

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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 Kosova, without undue delay whenever TAK so request.

Article 57 - Period of storage of books and all VAT records

(Law No. 03/L-146)

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.

Article 29

Keeping and Safeguarding VAT Registers, Notes and other Documentation

(Administrative Instruction 10/2010)

1. Purchase register

1.1. Purchase register is obligatory to be kept by all taxable persons. The register should show in the front page, the identification number and the person's name. All pages should have a serial number. Register is filled in every day if there are transactions. Every transaction is registered in it, supply and the data of invoice presented in the transaction.

1.2. This register records the date of issuance of the invoice, serial number of invoice, data of the import statement (No. of SAD), name of vendor and his identification tax number.

1.3. Purchases are registered in the total value which includes VAT too (if there is any) as broken down in purchases with VAT and in purchases without VAT. Purchases with VAT are recorded as separate in imports and purchases within the country.

1.4. For every purchase with VAT, the person records the taxable value and VAT corresponding to this purchase.

2. Supply register

2.1. Supply register is obligatory to be kept by all taxable persons. The register should show in the front page, the identification number and the taxable person's name. All pages should have a serial number. Register is filled in every day if there are transactions. The client is registered for every transaction and the data of invoice presented in the transaction.

2.2. This register records the date of issuance of the invoice, serial number of invoice, and date and number of customs statement when goods are exported (No. of SAD) name of client and his identification number.

2.3. The total transaction value including VAT (if there is any) is registered in it.

2.4. Sales are recorded separately in the exempted, sales with the right of deduction, exports and taxable sales.

2.5. The taxable value and VAT are registered for each taxable sale.

2.6. The period of keeping of registers and registrations and other original documentations shall be six years, as is foreseen by tax legislation of TAK.

CHAPTER XIX - SPECIAL SCHEMES

Article 58 - Special schemes for travel agents

(Law No. 03/L-146)

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, accomodations, 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 serviles;
- 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 taravel 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 their 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 in title, 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

(Law No. 03/L-146)

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 scheme;

2.2. Agricultural services supplied by flat-rate farmers to taxable persons not covered in Kosovo by the flat-rate scheme;

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 subparagraph 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

(Law No. 03/L-146)

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 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 origins; 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 on 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 when 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

(Law No. 03/L-146)

1. 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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

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

(Law No. 03/L-146)

This law enters 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

Article 30
Entry into Force

(Administrative Instruction 10/2010)

This Administrative Instruction enters into force on the day of its signature by the Minister of Economy and Finances.

Bedri HAMZA
Deputy Minister
Date, 30.07.2010

ANNEX I
LIST OF THE ACTIVITIES REFERRED TO IN THE THIRD PARAGRAPH OF
ARTICLE 4:
(Law No. 03/L-146)

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

(Law No. 03/L-146)

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:**

(Law No. 03/L-146)

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:

(Law No. 03/L-146)

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***

(Law No. 03/L-146)

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;
9. 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
(Law No. 03/L-146)

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
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
Dryers, for agricultural products.	8419 3100

LAW NO. 03/L-161 - ON PERSONAL INCOME TAX

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON PERSONAL INCOME TAX

CHAPTER I - GENERAL PROVISIONS

Article 1 – Purpose

(Law No. 03/L-161)

This Law sets the system of Personal Income Tax in the territory of the Republic of Kosovo.

Section 1

Goal and Scope

(Administrative Instruction No.09/2010)

The goal of this Administrative Instruction is the establishment of procedures and requirements for application of provisions of Law No. 03/L-161, “On Personal Income Tax,” (hereafter referred to as The Law).

Section 1

Goal and Scope

(Administrative Instruction No.13/2010)

The goal of this Administrative Instruction is the establishment of procedures and requirements for implementation of provisions of Law No. 03/L-161, “On Personal Income Tax,” (hereafter referred to as The Law).

Article 2 – Definitions

(Law No. 03/L-161)

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 ⁷
 - 1.37.4 if the actual value of leasing payments, decreased in an adequate decrease rate, exceeds ninety percent (90%) of the open market value for property.

Section 2 **Definitions**

(Administrative Instruction No.09/2010)

1. Paragraph 1.5 of Article 2 of The Law defines an “**Employee**” as a natural person, who performs work for wages under the direction and control of an employer”. A natural person who is not called an employee, but something else, such as ‘director’, ‘official’, ‘parliamentarian’, ‘minister’, ‘clerk’ etc., shall be deemed to be an employee if at least two of the following four conditions are met:

- 1.1 an employee is not at risk for receiving payment,
- 1.2 an employee does not need to invest in working instruments, tools and equipment,
- 1.3 an employee does not determine the place and time of work, and
- 1.4 an employee does not work for more than one employer.

2. Paragraph 1.8 of Article 2 of The Law defines “**Principal Employer**” as “*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*”.

2.1 Each employee, whether working for one or more employers, shall designate a principal employer. Employees, who have previously designated their principal employer and who do not want to change their principal employer, are not required to undertake any additional designation action.

2.2 Employees who start employment shall designate a principal employer within 15 days from the commencement date of employment by filling out and submitting a principal employer designation form (in the format prescribed by the Tax Administration of Kosovo) to the Tax Administration of Kosovo. An employee who changes principal employer shall designate a new principal

employer within 15 days from the change by filling out and submitting a new principal employer designation form to the Tax Administration of Kosovo.

3. Paragraph 1.20 of Article 2 of The Law defines “resident” as “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”.

3.1 In respect of individuals:

3.1.1 The 183 days requirement means the total number of days of being physically present in Kosovo, with or without breaks. If part of a day is spent in Kosovo it shall be counted as a full day spent in Kosovo.

3.1.2 The term "**Principal Residence**" of an individual means the place where the individual's family lives, where the individual's primary life interests are linked and the like. Also in defining the principal residence the amount of time spent and the nature of time spent are to be taken into account.

3.2 In respect of entities:

3.2.1 The requirement of being '**Established**' in Kosovo means that the entity whether being a business organization or a not-for-profit organization or a governmental body etc., is established under the Kosovo law and registered by respective competent authorities in Kosovo.

3.2.2 The term '**Place of Effective Management**' means the place where the majority of the executive directors convene and direct the work on day to day operations. It does not necessarily mean the headquarters of the entity.

Article 3 – Taxpayers

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 2 **Object of Taxation**

(Administrative Instruction No.13/2010)

1. Paragraph 1 of Article 4 of The Law defines the object of taxation for resident individuals. For a resident in Kosovo the object of taxation shall include income arising from Kosovo sources as well as income that arises outside of Kosovo.

Example:

1. A Kosovar lecturer earns income from wages in University of Prishtina and he also earns income from lectures delivered in University of Tetovo, Macedonia. For income earned in Macedonia he will pay taxes in Macedonia and claim foreign tax credit when he files his annual tax declaration in Kosovo.

2. Paragraph 2 of Article 4 of The Law defines the object of taxation for non-resident individuals. For a non-resident individual only the share of taxable income that derives from a Kosovo source shall be the object of taxation.

Example:

An Italian computer expert stays in Kosovo for 100 days and earns income from wages from an employment contract that he has with a Kosovo business organization. His wage is taxable in Kosovo and he can claim foreign tax credit in Italy.

Article 5 - Taxable income

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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) €

Section 3 Tax Rates

(Administrative Instruction No.13/2010)

Article 6 of The Law imposes the tax rates. Tax rates are applied progressively on income brackets.

Example:

In the case of an individual who has an annual taxable income of 6,400 euro, the tax rates apply as follows:

Taxable income	0-960 euro	0%	0 euro
Taxable income	960.01-3,000 euro	4%	81.6 euro
Taxable income	3,000.01-5,400 euro	8%	192 euro
Taxable income	5,400.01-6,400 euro	10%	100 euro

Total: 373.6 euro

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.

Section 3 **Gross Income**

(Administrative Instruction No.09/2010)

1. Paragraph 1 of Article 7 of The Law provides that gross income means all income actually and constructively received from a range of sources. In respect of the following sources, the expression “*actually and constructively received*” shall have the following meaning:

1.1 **Wages.** Usually wages are paid once, twice or even more in a month although the employment services are rendered on a daily basis. Income from wages shall be included in the gross income of the tax period in which the wage is paid by the employer and received by the employee and the wage expense shall be claimed as a deduction by the employer in the same tax period. The same principle applies to the liability for withholding tax on wages – this liability arises only when the wages are actually paid, not when the wage liability is accrued in the books of the taxpayer. Any component of “wages” that is not paid in cash shall also be included in the gross income of the tax period in which that component is received.

Example:

An employer employs a person during the months of April to June 2010. The employer pays the employee's April wages to the employee in May 2010 and the withholding tax on those wages he pays in June 2010 (before the 15 June due date). Due to cash-flow difficulties he delays paying the employee's remaining wages. The May wages are not paid until October 2010 and the withholding tax on those wages is paid in November 2010 (before 15 November). The June wages are not paid until January 2011 but the withholding tax on those wages is not paid until 15 March 2011. The tax consequences are:

1. the employee includes the April and May wages in their 2010 gross income but the June wages are included in their 2011 gross income, when those wages were actually received;
2. the employer gets a tax deduction for the April and May wages and for the withholding tax paid on them in 2010, but the deduction for June wages and withholding tax thereon is not allowed until the 2011 tax year, being when those wages and the tax was paid;
3. the employer is only required to complete monthly wage withholding tax forms in respect of the months when the employee was paid (May 2010, October 2010 and January 2011);
4. no interest or penalties apply in respect of the withholding tax on the April and May wages (even though the May wages were not paid until October and tax not paid until November, the tax liability relates to when the wages were actually paid);
5. interest and late filing / payment penalties will apply in respect of the June wages – as such wages were paid in January 2011, the withholding tax was payable on those wages by 15 February 2011 but was not paid until 15 March 2011. Interest and penalties will however only apply in respect of the period from 15 February to 15 March 2011 (they do not date back to June 2010 when the wages were earned, July 2010 when the employee would normally have been paid or August 2010 when the withholding tax on those wages would normally have been paid).

1.2 **Rents.** Rental income from the lease of immovable or movable property shall generally be reported in the tax period that rental income is received irrespective of the period to which the rental payment relates. However, in accordance with paragraph 2 of Article 11 of The Law, taxpayers who are in the business of leasing immovable or movable property shall account for their lease income on the basis that such income is derived from an economic activity.

Example 1:

Taxpayer A has two residential properties, one of which he lives in and the other which he rents. He/she charges a tenant two years rent in advance. Even though the rental covers more than one year, Taxpayer A is required to include it all in his/her gross income in the tax period in respect of which the rent was received. In terms of deduction of rental expenses, if Taxpayer A chose not to keep records under Article 27 of The Law, he/she could deduct 10% of the total rent received, but if he/she kept records for the purposes of claiming true expenses they would only be able to deduct rental expenses relating to each tax period as they arose.

Example 2:

Taxpayer B has numerous properties and spends his/her work time maintaining these properties. Taxpayer B is running an economic activity of renting and will be required to account for tax on his/her rental income in accordance with Article 32 of The Law – for example, where the taxpayer receives annual rental income of more than 50,000 euro, that taxpayer is required to account for their rental income on an accrual basis.

Note: In both Examples 1 and 2, unlike the tax treatment of wages, the timing of when the landlord receives rental income and includes it in his/her gross income, has no influence on when the person paying the rent can claim a tax deductible expense for the rent paid. Thus with rents paid in advance, there may be situations where the landlord has to include rental

income in their tax declarations at the beginning of the rental period, but the tenant cannot claim the rental expenses until the periods to which they relate.

1.3 **Interest.** Income from interest is to be reported in the tax period such interest is paid or credited to the account of the receiver.

Example:

A person invests funds in a bank term deposit for a six month period. Interest is added to the balance on term deposit every month. At the end of the six month period, the person decides to keep the funds on term deposit for a further six months. Interest credited to the account balance each month will be included in gross income in the month in which it is credited. The tax treatment remains the same whether or not the interest is withdrawn or not each month, and whether or not the funds from the term deposit are withdrawn and reinvested after the end of the first six months or whether the term deposit is simply “rolled over”. Although technically interest could be said to accrue on a daily basis, it will only be included in gross income when an amount is actually paid or credited.

1.4 **Lottery and gambling winnings.** Income from such winnings shall be reported in the tax period in which it is received or credited to the account of the winner.

Example:

A person regularly gambles at a gambling institution. The institution opens an “account” for the person which holds a running balance of gambling winnings and withdrawals. Winnings shall be included in gross income when they have been credited to the account, whether or not the person actually withdraws the funds from that account or not.

Section 4 Other Income

(Administrative Instruction No. 13/2010)

‘Other Income’ referred to in sub-paragraph 2.3 of Article 7 of The Law includes any other income not specifically quoted in Article 7 of The Law and which includes non-cash lottery prizes e.g. cars, debt forgiveness etc., which increase the taxpayer’s net worth. Such income is to be included in the gross income of the tax period in which it is received. In the case of non-cash lottery prizes the taxpayer has to value the goods received based on the open market value of those goods.

Article 8 - Exempt income

(Law No. 03/L-161)

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;
- 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.

Section 4

Exempt Income

(Administrative Instruction No.09/2010)

1. Paragraphs 1.1 to 1.5 of Article 8 of The Law provide exemptions from Personal Income Tax to wages paid or credited to foreign personnel, foreign representatives, foreign officials, etc. The term *'foreign'* is used to define an individual who is not an habitual resident of Kosovo and who is not recorded in the register of citizens required to be kept under Law No. 03/L-034 "On Citizenship of Kosova".

2. Paragraph 1.4 of Article 8 of The Law provides that exemption from personal income tax shall apply to, amongst others, wages received by foreign and locally recruited officials of *"entitled and duly authorized international inter-governmental financial institutions operating in Kosovo"*. This tax exemption applies only in respect of officials of international inter-governmental financial institutions that have an exemptions.

3. For the purposes of paragraphs 1.10 and 1.11 of Article 8 of The Law, the expression *"other than a local person"* means contractors established outside Kosovo who are not required to register with the Ministry of Trade and Industry in Kosovo but who are required to notify TAK in writing that they are working in Kosovo.

3.1 If a non-local contractor performs other activities in Kosovo, other than those in relation with the organizations mentioned in those paragraphs, it should register in Kosovo with the Ministry of Trade and Industry and with TAK (in the latter case either by applying for a fiscal number or by appointing a fiscal representative who will be liable for all Kosovo taxes of the contractor) and income generated from these other activities is inclusive in the gross income of the taxpayer.

3.2 Such non-local contractors, whether they have other activities or not, are also responsible (whether directly or through their fiscal representative) for meeting any applicable withholding tax obligations provided under Chapter IX of The Law.

4. For the purposes of paragraph 1.11 of Article 8 of The Law, the expression “*International Inter-governmental Organizations*” shall mean:

4.1 International Finance Corporation (IFC) and other members of the World Bank Group;

4.2 Inter-American Development Bank (IADB);

4.3 Asian Development Bank (ADB);

4.4 African Development Bank (AfDB);

4.5 Islamic Development Bank (IDB).

5. Paragraph 1.18 of Article 8 of The Law provides that certain training expenses paid by an employer for an employee to attend formal training programs shall be exempt from personal income tax so long as such expenses do not exceed one thousand euros (€1,000) in a tax period. The expenses to which this paragraph relates are the actual costs of the training program itself excluding those costs incurred in order to travel to the training course and excluding those costs incurred for subsistence at the training course (which are covered by paragraph 1.20 of Article 8 of The Law).

6. Paragraph 1.20 of Article 8 of The Law provides that “*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*”. For the purposes of that paragraph, the maximum amounts of subsistence expenses available for exemption from personal income tax shall be:

6.1 In the case of lodging necessary due to the distance of the training program venue from a person's main residence or due to the requirements of training program attendance:

6.1.1 lodging within Kosovo, 50 euro per day,

6.1.2 lodging outside Kosovo, the daily amount of lodging expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the lodging is provided;

6.2. In the case of meals:

6.2.1 training programs inside Kosovo, 15 euro per day for day training programs or 25 euro per day for training programs that require staying overnight.

6.2.2 training programs outside Kosovo, the daily amount of meal expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the meals are provided;

6.3 Where subsistence expenses in any tax period exceed these amounts, the excess shall be considered taxable income of the employee and subject to withholding in accordance with the provisions of The Law.

7. Paragraph 1.21 of Article 8 of The Law requires that the kinds of training expenses that qualify for exemption from personal income tax under Article 8 shall be specified in a sub-legal act. That paragraph relates to training expenses that qualify for exemption under paragraph 1.18 of Article 8 of The Law which provides that exemption applies to “*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*”. Training expenses paid by an employer to attend training programs to attain or update skills that are not needed in the employee's work (e.g. training in a foreign language that is not used in the workplace) will not qualify for exemption. Paragraph 1.21 of Article 8 of The Law further provides that training expenses that qualify for exemption shall also not include amounts equivalent to wages and salaries which are paid to beginners or apprentices.

CHAPTER II - EMPLOYMENT INCOME

Article 9 -Income from wages

(Law No. 03/L-161)

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.

Section 5

Income from Wages

(Administrative Instruction No.09/2010)

1. Paragraph 1.8 of Article 9 of The Law provides that gross income from wages shall include *“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”*. For the purposes of that paragraph, the minimum amount of benefits in things above which such benefits will be regarded as gross income from wages shall be sixty-five (65) euro per month. For example, if an employee receives from an employer in-kind benefits of 90 euro/month, the amount of 25 euro, which exceeds the de minimum amount of 65 euro, shall be included in gross income from wages.

2. Paragraph 2.1 of Article 9 of The Law provides that gross income from wages shall not include *“reimbursement of actual business travel expenses up to the amounts to be specified in a sub-legal act issued by the Minister”*. For the purposes of this paragraph, business travel expenses includes transportation, lodging and meals for business trips but does not include allowances for commuting to and from the place of work. The following conditions must be met to qualify for business travel expenses:

2.1 the business trip must have been authorized in writing by the proper management level;

2.2 the purpose of the business trip must be clearly stated;

2.3 A travel claim must be submitted to the employer in accordance with the employer's travel allowance policy;

2.4 the amount reimbursed for lodging must be within a limit set in the employer's travel allowance policy document. For tax purposes it should not be higher than 50 euro for lodging within Kosovo and for lodging outside Kosovo, it should not be higher than the daily amount of lodging expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the lodging is provided;

2.5 the amount reimbursed for transportation within Kosovo must be the actual cost of public transportation or a reasonable amount per kilometer stated in the employer's travel allowance policy document if the employee uses his/her own vehicle. For tax purposes it should not be higher than 16 cent/kilometer. For trips

outside Kosovo no limitation applies provided that the transport bill/ticket is available for inspection by the Tax Administration of Kosovo;

2.6 the amount reimbursed for meals must be a specified amount per breakfast, lunch or dinner stated in the employer's travel allowance policy document. For tax purposes for trips inside Kosovo it should not be higher than 15 euro per day trip or 25 euro for trips that require staying overnight and for trips outside Kosovo, it should not be higher than the daily amount of meal expenses payable under Section 12 of Ministry of Public Services Administrative Instruction Nr. MSHP 2004/07 that relates to the country where the meals are provided;

2.7 the business travel expenses must be fully recorded in the employer's books of account;

2.8 when reimbursements exceed the monetary limits specified above, the excess shall be considered taxable income of the employee and subject to withholding in accordance with the provisions of The Law.

3. For the purposes of paragraphs 2.5 and 2.6 of Article 9 of The Law, the following reporting requirements must be met:

3.1 the home/work travel must have been authorized in writing by the proper management level;

3.2 a travel claim must be submitted to the employer in accordance with the employer's travel allowance policy;

3.3 the transport bill/ticket must be available for inspection by the Tax Administration of Kosovo;

3.4 the travel expenses must be fully recorded in the employer's books of account.

CHAPTER III - INCOME OTHER THAN EMPLOYMENT INCOME

Article 10 - Income from business activities

(Law No. 03/L-161)

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.

Section 5

Income from the Sale of Goods

(Administrative Instruction No. 13/2010)

1. Paragraph 4 of Article 10 of The Law covers the methods that taxpayers can use to value their inventories of goods. 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 allowed under Kosovo Accounting Standards (e.g. the weighted average cost or specific identification methods), provided that taxpayers shall not change their inventory method during a tax period.

(Comment: Kosovo Accounting Standards are moving towards being based on IFRS (International Financial Reporting Standards). As the LIFO (last-in-first-out) method is not allowed under IFRS, its use is no longer allowed for income tax purposes in Kosovo).

2. Whichever method is selected for determining the cost of goods sold, 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 from that method after that period of time, shall request an individual ruling from TAK authorizing such change in compliance with the applicable provisions of Law No. 03/L- 222 On Tax Administration and Procedures and Administrative Instructions issued thereunder.

Section 6

Income from Long Term Construction

(Administrative Instruction No.13/2010)

1. Paragraph 6 of Article 10 of The Law provides for a departure from the normal taxable income determination rules in respect of taxpayers engaged in long-term construction contracts and projects. For the purposes of that Article, long-term construction contracts and projects are contracts and projects relating to construction work where construction extends beyond a year of income. Such contracts include those for:

- 1.1. construction of buildings, bridges, dams, pipelines, tunnels and other civil engineering projects,
- 1.2. related activities such as demolition, dredging, heavy earth moving projects,
- 1.3. construction of major plant items including ships and transport vessels, and
- 1.4. similar contracts in associated fields e.g. heating and air conditioning contracts, major electrical wiring or rewiring contracts, major refurbishment of hotels, stores, etc, major construction management contracts, etc.
- 1.5. but do not include contracts for the sale and supply over time of what may ordinarily be regarded as the sale of trading stock e.g. it does not include installation of office furniture in a new building even where the furniture needs to be installed on delivery.

2. For personal income tax purposes, taxpayers engaged in long-term construction contracts and projects are categorized into three broad categories as follows:

- 2.1 “constructors” - those who perform the construction work (either directly or through subcontractors) who are paid by an “investor” who progressively pays for the construction work by way of some combination of advance payments, progress payments and final payments;
- 2.2 “investors” - those who finance the construction contract work and who pay “constructors” for that work;
- 2.3 “constructor/investors” - those who both finance and perform the construction contract work themselves.

3. For personal income tax purposes:

3.1. “Constructors” are required to use the “percentage of completion cost estimate” method (where reported income and expenses are based on the proportion of the construction that is completed based on the proportion that contract expenditures incurred for work performed to date bear to the estimated total contract expenditures);

Example:

The following example illustrates the method of determining the stage of completion of a contract and the duration of the recognition of income and expenses of the contract.

A construction contractor has a fixed price of 250,000 euro to build a bridge. The initial amount of income agreed in the contract is 250,000 euro. Initial assumption of contractor for the costs of the contract is 150,000 euro. Construction of the facility will occur during 2010 and 2011.

The contractor determines the stage of completion of the contract by estimating the part of the costs that have come up for work performed until now, keeping the most recent total cost of the contract. A summary of financial data during the construction period is as follows:

	2010	2011

Initial amount of agreed income of the contract	250,000	250,000
Expenses incurred up to date	90,000	150,000
Contract costs to complete the work	60,000	
Total estimated costs of contract	150,000	150,000
Estimated profit	100,000	100,000
Stage of completion (90,000/150,000)	60%	100%
Amounts of income, expenses and profit recognized in income statement in two years as follows:		
Up to now Recognized in		
	Recognized last year in	current year
	2010	
Income (250,000 x 60%)	150,000	150,000
Expenses (150,000 x 60%)	90,000	90,000
Profit	60,000	60,000
2011		
Income 250,000	150,000	100,000
Costs 150,000	90,000	60,000
Profit 100,000	60,000	40,000

3.2. “Investors” and constructor/investors” are required to use the “income taxed as accrued” method (where income is reported on the basis of payments accrued (where there are receipts and/or an entitlement to receive based on a contract) and expenses are proportionately allowed on a similar basis. In situations where in any

tax year no income has been received and no contracts have been made which would give rise to an entitlement to receive income, then no income shall be reported and no expenses shall be allowed in relation to the longterm construction contract in that tax year;

Example:

A 2-year contract with expected total contract income of 200,000 euro and total project costs of 150,000 euro. Funds received in the first year 100,000 euro Expenses incurred in the first year 50,000 euro. Then the recognition of income for the first year will be as follows:

Income in the first year 100,000 euro (which represents 50% of expected total contract income) Deductible cost in the first year 75,000 euro (being 50% of expected total costs)

Gross Profit 25,000 euro

3.3. Where upon completion of a construction contract by “investors” or “constructor/investors” there are parts of the construction that remain unsold, where the income from such sales (and their associated expenses) have not yet been recognized, the value of such unsold parts shall be recorded as inventory of the investor or constructor/investor and be recorded on their balance sheet until sales take place;

3.4. The “completed contract” method (where no income or expense is reported until the year in which the long-term construction contract is completed) is not allowed to be used;

3.5. The Director-General of TAK may in future issue a public ruling allowing further methods of recording income and expenses under long-term construction contracts in addition to those outlined above;

3.6. Any taxpayer who has commenced a long-term construction contract before the date of entry into force of this Administrative Instruction which is being accounted for on a different method than allowed under this paragraph, shall change their method to that allowed under this paragraph in the tax year in which this Administrative Instruction comes into force and shall make an adjustment to their taxable income in that tax year to reflect the change in method.

4. Many long-term construction contracts and projects involve the charging of upfront “advance” contract payments which may be payable when little or no expenses may have been incurred. In such cases, the taxation of such income shall be determined according to the method the taxpayer is using to account for income from such contracts and projects. If the taxpayer is using the “income taxed as accrued” method (investors and constructor/investors), such “advance” payments will form part of taxable income when received, but if the taxpayer is using the “percentage of completion cost estimate” method (constructors), such “advance” payments will only form part of taxable income on a proportionate basis as construction proceeds.

5. It is important that receipts or percentages of completion are correctly reflected at or near the end of each tax year. A taxpayer using the “income taxed as accrued” method cannot defer assessment of contract income simply by deliberately refraining from or

postponing billing until after the end of a tax year when there was an entitlement under the contract to bill before the end of the tax year.

6. Notwithstanding the above paragraphs, if any long-term construction contract contains a provision for retention payments (where there is provision for the customer to retain a percentage of the contract price until the maintenance period specified in the contract has elapsed), such payments will not form part of taxable income until the contractor either receives them or becomes entitled to receive them from the customer. Where such retention moneys are paid to the contractor before they are actually due on condition that the contractor remedies any defects before the construction work is handed over or accepted by the customer, they shall be treated as taxable income when such moneys are received. Where they are retained in a separate account and not available for disbursement or general use by the contractor until the construction works are completed, the moneys will not be treated as taxable income until the contractor is entitled to withdraw or apply them.

7. Where there are barter transactions as part of a long-term construction contract, such transactions shall be recognized as income or expense at market values in accordance with Article 47 of Law No. 03/L-222 On Tax Administration and Procedures. In those situations where market values cannot be determined or reasonably estimated, the investor or constructor/investor can apply to TAK (with appropriate justifying evidence) for approval to recognize such barter transaction incomes and expenditures at the end of the construction contract.

Section 7

Income from Leasing

(Administrative Instruction No. 13/2010)

1. Paragraph 7 of Article 10 of The Law requires a sub-legal act to be issued on how taxable income from financial and operating leasing shall be determined and reported.

2. A “**Financial Lease**” is defined in paragraph 1.37 of Article 2 of The Law as “a lease that transfers substantially all the risks and rewards incidental to ownership of an item of property”. A finance lease must however meet at least one of the following four conditions:

- 2.1. the term of the lease exceeds seventy-five percent (75%) of the useful life of the leased asset;
- 2.2. there is a transfer of ownership of the leased asset to the lessee at the end of the lease term;
- 2.3. there is an option to purchase the leased asset at an "agreed price" at the end of the lease term; or
- 2.4. 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.

(Comment 1: In relation to the first of these conditions, TAK will generally accept the useful life of a leased asset as being the same useful life that TAK allows for depreciation purposes under The Law. Alternatively, lessors and lessees can make an alternative assessment of an asset's useful life in any particular case based on equipment manufacturer

estimates of the expected useful life of their equipment, subject to variations in maintenance and operating conditions. In either case, for example, if an asset is determined to have a useful life of 5 years, and the term of the lease is more than 45 months (75% of that useful life), the lease will be a financial lease).

(Comment 2: In relation to the last of these conditions, the present value of lease payments is the value of the payments on their payment dates discounted to reflect the time value of money. For example, it recognizes that a payment of 100 euro today is equivalent to a payment of 105 euro in a year's time if there was an annual interest/discount rate of 5%. The present value of 100 euro required to be paid in a year's time assuming a 5% interest/discount rate is 95 euro 23 cents (= 100 euro payment due in a year's time divided by 105 being 100 euro if payment was required now plus 5% interest). For a lease payment due in two year's time, the present value of that payment would be 90 euro 70 cents (= 100 euro payment due in two year's time divided by 110.25 being 100 euro if payment was required now plus 5% interest compounded for two years). Present value calculations need to be made in respect of each lease payment with the sum total of those present values compared with the an amount equal to 90% of the fair market value of the lease asset to determine whether the lease is a financial lease under this condition).

3. Financial leases are technically treated as finance agreements where the lessee purchases the lease asset from the lessor. Such leases are generally treated for both accounting and tax purposes as the progressive sale of the lease asset from the lessor to the lessee with the lessor treated as advancing a loan to the lessee which the lessee uses to purchase the lease asset – for income tax purposes there is:

- 3.1 a progressive sale of the lease asset with the principal component of lease payments being taxable to the lessor,
- 3.2 a purchase of the lease asset at the beginning of the lease (with the lessee entitled to claim depreciation deductions in respect of the lease asset), and
- 3.3 a loan from the lessor to the lessee with the interest component of the lease payments being assessable to the lessor and deductible to the lessee. Withholding tax on the interest component of the lease is not required to be deducted by the lessee where the lessor is a financial institution authorized by the Central Bank of Kosovo.

Example:

Business A leases a new vehicle to Business B under a 4-year financial lease. Under the lease, Business B is required to pay Business A 48 monthly lease payments of 200 euro which includes an interest component of 20 euro. In the first year of the lease, the lessor will be assessed 2,400 euro (being 2,160 principal received and 240 interest received under the lease) and can claim the costs of acquiring the lease asset amortized over the life of the lease. The lessee will be able to claim depreciation on the total cost price of the vehicle from the first year of the lease and will be able to claim the interest component (but not the principal component) as tax deductions. In the later years of the lease, the lessor will continue to receive principal and interest income and the lessee will continue to be able to claim depreciation and interest expenses. At the end of the lease period, any “agreed price” option to purchase payment made by the lessee will be assessable to the lessor, and the

lessee will continue to be able to claim depreciation but there will be no other tax consequences until the lessee sells or otherwise disposes of the vehicle. If however the vehicle is returned to the lessor, this will be treated for tax purposes as a “sale” of the vehicle by the lessee to the lessor with tax consequences depending on the extent to which there is a gain or loss on the “sale” of the vehicle at that time.

4. An “*Operating Lease*” is defined in paragraph 1.36 of Article 2 of The Law as “any lease that is not a financial lease”. Operating leases resemble asset hireage agreements - the lease payments are fully deductible for the lessee and fully taxable for the lessor. Since the lessor is the owner of the asset being leased, the lessor is able to claim a depreciation deduction in accordance with the depreciation provisions of The Law.

Article 11 - Income from rents

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 8

Income from Intangible Property

(Administrative Instruction No.13/2010)

1. For the purposes of Article 12 of The Law, the categories of intangible property that consist of rights only but are incorporeal, are:

- 1.1. patents, inventions, formulae, processes, designs, patterns, trade secrets and know-how;
- 1.2. copyrights including rights relating to literary, musical, or artistic compositions;

- 1.3. trademarks, trade names, or brand names;
- 1.4. franchises, licenses or contracts;
- 1.5. methods, programs, systems, procedures, campaigns, surveys, studies, forecasts, estimates, customer lists, or technical data;
- 1.6. computer software; and
- 1.7. other similar rights.

2. In relation to computer software, licenses (as distinct from sales) of a copyright right in a computer program, leases (as distinct from sales) of copies of computer programs subject to copyright, and supplies of know-how relating to computer programs (as distinct from supplies of services for the development or modification of computer programs) shall be regarded as income from intangible property.

Article 13 - Interest income

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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. 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.

Section 6

Deduction of Expenses

(Administrative Instruction No.09/2010)

Paragraph 3 of Article 15 of The Law provides that no deduction will be allowed for any accrued expenses related to income which is subject to withholding tax unless such expense is paid on or before 31 March of the following year:

Example:

A personal business enterprise that has a turnover of more than 50,000 euro (and thus accounts for income tax on a “real” basis) rents its business premises. At the end of 2010, it owes the landlord 3,000 euro for 3 months rent to 31 December 2010. If the landlord is not in the business of renting, then the landlord can only record rental income when it is received, and the rent payer can only claim the rental expense when the rent is paid – in this case, Article 15 has no application as it only applies in respect of accrued expenses. If however the landlord is in the business of renting and can claim rental income on an accrued basis, then the rent payer can also claim rental expenses on an accrual basis. Provided the accrued rent is paid on or before 31 March 2011, the rental expense deduction claimed in the 2010 tax period in respect of the last 3 months will be allowed. However, if that rent is not paid by 31 March 2011, then the personal business enterprise will not be able to claim the accrued rent in the 2010 tax period. Such rent will only be able to be claimed as an expense in the tax period (2011 or later) when the owed rent is actually paid.

Section 10

Allowed Expenses

(Administrative Instruction No.13/2010)

1. Paragraph 5 of Article 15 of The Law provides that in order for expenses to be allowed as a deduction, all expenses must be fully documented with such documents available for inspection upon request from Tax Administration. The documentation requirements for allowable expenses are outlined in Section 23 of Administrative Instruction No. 15/2010 On Implementation of Law No. 03/L-222 on Tax Administration and Procedures.

2. Paragraph 6 of Article 15 of The Law refers to expenses related to operating and financial leases. Such expenses shall be deductible on the basis outlined in Section 7 of this Administrative Instruction.

Article 16 - Representation Expenses

(Law No. 03/L-161)

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.

Section 11

Representation Expenses

(Administrative Instruction No.13/2010)

1. Article 16 of The Law provides a deduction in respect of representation expenses but limits this to 50% of the amount invoiced for business entertainment. This deduction, and its limitations, applies in respect of business entertainment expenses. Business representation expenses such as those for publicity, advertising and for promotion and

representation of products with no entertainment element, other than an incidental one, will be deductible in full under the general business expenses deductibility provisions.

2. In order for any deduction for representation expenses to be allowed under Article 16 one of the following must apply:

- 2.1. the expenses are incurred mainly in connection with business;
- 2.2. the entertainment is for an existing or prospective client or supplier;
- 2.3. circumstances make it necessary to discuss business along with entertainment, such as a business lunch where the main purpose is business;
- 2.4. employees are entertained to maintain staff goodwill at events such as parties and retirement functions.

3. The deduction for entertainment expenses under Article 16 applies in respect of business entertainment. Private entertainment expenditure is not deductible e.g. restaurant lunches with friends, or where the business or professional aspect is incidental.

4. The deduction for entertainment expenses under Article 16 applies in respect of amounts invoiced. In order for a deduction to be allowed, there must be an invoice covering the entertainment expenses. Taxpayers should be able to substantiate such expense claims by being able to provide, when requested by TAK, the following details:

- 4.1. the date the expenses were incurred;
- 4.2. the names of persons entertained;
- 4.3. the businesses those persons represent;
- 4.4. the positions those persons hold in those businesses; and
- 4.5. the reasons for the entertainment.

5. Representation expenses under Article 16 are 50% deductible up to an amount equal to 2% of the annual gross income. The expression 'annual gross income' in that Article means all income that arose during the tax period from sources within Kosovo and it includes income from business activity, income from the use of movable, immovable or intangible property, income from interest, income from dividends, gain from the sale of securities or immovable property and any other income whether subject to income tax or not.

Article 17 - Bad Debt Expenses

(Law No. 03/L-161)

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.

Section 12 **Bad Debts**

(Administrative Instruction No.13/2010)

1. Sub-paragraph 1.2 of Article 17 of The Law requires bad debts to be '*written off*'. In accounting terms "written off" means an adjustment has been made in the taxpayer's books to reflect the reduction in value of accounts receivable (normally by means of an account, Provision for Bad Debts). The amount included in the provision for bad debt account is based on historical data and once the provisional amount is subtracted from the accounts receivable account gives a better perspective of the income a taxpayer can expect to receive from its accounts receivable. However, for tax purposes, an expense for bad debts cannot be claimed based on the provisional account. An adjustment must be made in the taxpayer's books to reflect the actual bad debt expense based on those specific debts that meet the requirements for being expensed (namely, a debt must be six months old, there must be adequate evidence of substantial unsuccessful efforts to collect the debt, etc). There is no expectation that the taxpayer must forego any future attempts to collect the debt. As provided in paragraph 2 of Article 17 of The Law, any bad debts that are deducted as expenses and then collected later shall be included in income in the tax period in which the collection has been made.

2. In respect of sub-paragraph 1.5 of Article 17 of The Law 'adequate evidence' shall include the following:

2.1 final decision of a competent court certifying that the debt is uncollectible;

- 2.2 where legal action would not be cost effective, written evidence of either a decision to treat a specific debt as bad without taking legal action due to that reason or more generally an internal policy which treats certain types of debts as bad without taking legal action due to that reason, in both cases provided the Tax Administration of Kosovo is satisfied that the threshold applied in determining whether legal action is cost effective or not is reasonable in the circumstances;
- 2.3. where legal action would not be feasible, written evidence of either a decision to treat a specific debt as bad without taking legal action due to that reason or more generally an internal policy which treats certain types of debts as bad without taking legal action due to that reason;
- 2.4. police or other law enforcement agencies certification proving that taxpayer's debtor is not traceable;
- 2.5. civil office certification proving that the taxpayer has died; and
- 2.6. any other official document supporting the creation of a bad debt provision.

Article 18 - Business Travel Expenses

(Law No. 03/L-161)

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.

Section 7

Deduction of Business Travel Expenses

(Administrative Instruction No.09/2010)

Paragraph 2 of Article 18 of The Law refers to limits on the deduction available for business travel expenses. The limits to be applied are the same as those outlined in paragraph 2 of Section 5 of this Administrative Instruction.

Article 19 - Payments to Related Persons

(Law No. 03/L-161)

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.

Section 13

Payments to Related Persons

(Administrative Instruction No.13/2010)

Article 19 of The Law provides that compensation, emoluments, interest, rent and other expenses paid to related persons shall be allowed as a deduction in an amount equal to the lesser of the amount paid and the respective open market value.

Example 1:

The son of the owner of a personal business enterprise is employed by the enterprise as a driver and is paid 2,000 euro/month. Market value for driving services is 400 euro. This is the amount that shall be allowed as a deduction as the driver and the enterprise are related persons.

Example 2:

Personal business enterprises A and B are owned by the same individual and A rents a warehouse to B for 1,000 euro/month. Market value for such a rental service is 1,800 euro. Only 1,000 euro shall be allowed as a deductible expense as A and B are related persons.

Article 20 – Depreciation

(Law No. 03/L-161)

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 viticulture 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.

Section 14 **Depreciation**

(Administrative Instruction No. 13/2010)

1. The expression in paragraph 1 of Article 20 of The Law 'owned by the taxpayer' means that only the owner of the tangible property, who bears the risk of wear, tear or obsolescence of the asset, is entitled to deduct depreciation charges. No depreciation

deduction will be allowed for the lessee of the assets unless it is stipulated in the lease agreement that a financial lease is involved and ownership rights pass over to the lessee from the lessor through periodic payments.

2. Under paragraph 2 of Article 20 of The Law, expenditures on leasehold improvements will be recovered through depreciation deductions using the straight line method based on the life of the leasehold. In the case of open ended leaseholds or when the life of the leasehold is extended frequently, the lessee shall, at the best of his or her judgment, and based on accounting rules and best practices, define the leasehold duration and use that as the denominator for computing the annual depreciation charge of the improvement.

3. Paragraph 4 of Article 20 of The Law provides for depreciation using the straight line method. Given the depreciation rates for each asset category (as categorized in paragraph 3 of Article 20), this means new Category 1 assets (5% depreciation rate) will be depreciated in equal amounts over 20 tax periods, new Category 2 assets (20% depreciation rate) will be depreciated in equal amounts over 5 tax periods, and new Category 3 assets (10% depreciation rate) will be depreciated in equal amounts over 10 tax periods.

Example:

Suppose that Personal Business Enterprise X at the beginning of the tax period 2010 purchases a building of 1,000,000 euro, which belongs to Category 1 of depreciable assets (which allows depreciation of 5% of the value of each asset at the end of the tax period). The straight line method works as follows:

Period	Balance	Additions	Depreciation	Tax Opening	Closing Balance
2010	1,000,000	-	50,000	950,000	
2011	950,000	-	50,000	900,000	
2012	900,000	-	50,000	850,000	
.....				
2029	50,000	-	50,000	0	

4. Paragraph 5 of Article 20 of The Law provides that assets shall first be taken into account for depreciation purposes only when they are placed into service. No depreciation deduction will be allowed if an asset is not placed into service and if it does not serve the purpose of economic activity. A full year's depreciation can be claimed in respect of assets that are placed into service during the first six months of a year, but only a half year's depreciation can be claimed in respect of assets placed into service in the last six months of a year. In both cases, a full year's depreciation can be claimed in subsequent years up to but not including the year in which the asset is sold or otherwise disposed of – in the year of sale or disposal, a gain or loss on sale may be recognized based on a comparison between the sale/disposal price and the book value of the asset at the beginning of the year of sale/disposal.

Example:

Personal Business Enterprise X buys two cars during 2010, each for 5,000 euro, but the first is purchased on 15 April 2010 and the second on 20 September 2010. Depreciation claimable in the 2010 tax period in respect of the first car shall be the full year entitlement

of 1,000 euro (20%), whereas for the second car only a half year depreciation (500 euro) is claimable. Both cars will be entitled to claim a full year's depreciation from 2011 onwards (except that the second car will only get half a year depreciation in its final period of depreciation - the first half of the year 2015).

5. Paragraph 7 of Article 20 of The Law provides that Category 2 and 3 assets (as categorized under paragraph 3 of Article 20) shall be individually depreciated using the straight line method when acquired after the date of entry into force of The Law. For practical reasons, this applies to assets that are acquired on or after 1 January 2010. Paragraph 9 of Article 20 provides that assets in those categories that were acquired before that date and were depreciated under the pooling method, will continue to be depreciated under that method until the value of the pool is zero.

Example:

Suppose that Personal Business Enterprise X at the beginning of tax period 2010 possesses the following assets belonging to Category 2: 10 computers - 1,000 euro each; 2 photocopiers - 4,000 euro each; 2 automobiles - 10,000 euro each. In the first half of the 2010 tax period the business buys another photocopier for 5,000 euro. The beginning Category 2 assets, which have a pooled opening balance of 38,000 euro will be depreciated using the straight line method at the rate of 20% per year until the value of the pool reaches zero. The photocopier purchased in 2010 for 5,000 euro will be individually depreciated using the straight line method at a rate of 20% (1,000 euro) per year.

6. Paragraphs 8 and 10 of Article 20 of The Law provide special rules for new assets with a purchase price of up to 3,000 euro. Assets with a purchase price of 1,000 euro or less can be expensed in full in the tax period in which they were purchased and were put into service. Assets with a purchase price of between 1,000 and 3,000 euro shall be recorded in a new pool (rather than individually depreciated as Category 1, 2 or 3 assets) which shall be depreciated on a straight line basis using a 20% rate. As additional 1,000 to 3,000 euro priced assets are purchased, their purchase price shall be added to the value of the pool. As such assets are sold from the pool, the purchase price of the asset sold shall be reported as ordinary business income in the tax period in which the asset is sold, but the value of the pool will not be reduced as a result of the sale.

Example:

Suppose that Personal Business Enterprise X buys a computer in early 2010 for 2,000 euro and an item of plant and machinery in early 2011 for 2,400 euro. It sells the computer for 1,000 euro in 2012.

Each of these assets meets the criteria to be included in the pool authorized under paragraph 10 of Article 15. The pool account would operate as follows:

Period	Balance	Additions	Reduction	Depreciation	Tax Opening	Closing Balance
2010	2000	-		400		1600
2011	1600	2400	800		3200	
2012	3200	-		640		2560

For the 2012 tax period, 2,000 euro (the purchase price of the computer) will be included in taxable income but no adjustment will be made to the pool account which will continue to apply with 20% depreciation applied to the opening balance of the pool plus any additions each tax period.

Article 21 - Depreciation of Livestock

(Law No. 03/L-161)

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.

Section 15

Depreciation of Livestock

(Administrative Instruction No. 13/2010)

1. Paragraph 3.2 of Article 20 and Article 21 of The Law allow a depreciation deduction in respect of livestock used for production or breeding in an economic activity. This deduction does not apply to:

- 1.1. livestock raised by the taxpayer – in these cases there is no depreciable basis as the cost for raising those livestock will have already been deducted
- 1.2. livestock acquired for resale – in these cases such livestock will be recorded as part of the inventory of the taxpayer and deductions allowed as part of the calculations of the “cost of goods sold” (i.e. deduction is allowed each year for opening inventory plus purchases less closing inventory)
- 1.3. livestock not acquired for resale which has a purchase cost of 1,000 euro or less – such livestock is able to be claimed as a current expense in the year of purchase under paragraph 8 of Article 20 of The Law;
- 1.4. livestock not acquired for resale which has a purchase price of between 1,000 and 3,000 euro which has been purchased on or after 1 January 2010 – depreciation deductions for such livestock are allowable as part of the asset pool provided for under paragraph 10 of Article 20 of The Law;
- 1.5. given the above, the depreciation deduction allowable under paragraph 3.2 of Article 20 and under Article 21 will in practice be limited to selected high-value livestock normally those with a valued pedigree. In such cases, the depreciation deduction allowable, as with other category 2 assets, is 20% of the purchase price per year on a straight-line basis.

Article 22 - Special Deduction for New Assets

(Law No. 03/L-161)

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.

Section 16

Special Allowance for New Assets

(Administrative Instruction No. 13/2010)

Paragraph 1 of Article 22 of The Law provides that 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 purchased new locally or imported for the first time in Kosovo between January 1, 2010 and December 31, 2012, will benefit from a special allowance of 10% in addition to the normal allowable depreciation deductions.

Example:

Suppose that Personal Business Enterprise X has an opening balance of Category 3 for the tax period 2010 of 160,000 euro. During the first half of the year the business imports from Germany a new heavy transport vehicle of 40,000 euro. Depreciation deduction for this tax period will have three components:

1. depreciation of the new vehicle as an individual asset: $40,000 \times 10\% = 4,000$ euro;
2. depreciation of the pool of Category 3 assets on hand at the beginning of the 2010 tax period: $160,000 \times 15\% = 24,000$ euro;
3. special allowance for the new vehicle: $40,000 \times 10\% = 4,000$ euro.

Total depreciation deduction 32,000 euro. The special allowance for the new vehicle is granted only once, in the tax period in which the asset is purchased in or brought into Kosovo.

Article 23 - Repairs and Improvements

(Law No. 03/L-161)

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.

Section 17

Repairs and Improvements

(Administrative Instruction No. 13/2010)

1. Article 23 of The Law deals with repairs and improvements. The term '*Repairs or Improvements*' means work that is done to substantially increase the capacity, life, conditions and productivity of the asset. In the case of a building, roofing, plumbing, plastering and other similar work are considered repairs and improvements, but painting is not. In the case of a truck, changing tires is not an improvement but, replacing the existing engine with a new one, is a repair and improvement.
2. Paragraph 1 of Article 23 of The Law provides that amounts expended for repairs or improvements to an asset shall be capitalized and added to the depreciable cost base 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 1,000 euro. In those situations where the repairs or improvements extend the use of the asset by one year or more, and the amount expended on repairs or improvements is greater than 1,000 euro, the full amount expended is required to be capitalized (1,000 euro of that amount is not allowed to be claimed as an expense). Conversely, in those situations where the repairs or improvements do not extend the useful life of the asset, or extend it for less than a year, the amounts involved may be expensed in full even where the amounts exceed 1,000 euro.
3. Paragraph 2 of Article 23 of The Law provides the rules for calculating depreciation where amounts expended for repairs or improvements to an asset are capitalized.
 - 3.1 For repairs made to Category 1 assets whenever acquired, and for repairs made to Category 2 and Category 3 assets acquired on or after the entry into force

of The Law, the capitalized amounts of repair are added to the remaining book value of the asset.

Example:

Suppose that the opening book value of a taxpayer's building is 100,000 euro. During the 2010 tax year the taxpayer spends 4,000 euro on repairs to the roof which extend the useful life of the building for five more years. Depreciation on the building for the 2010 tax year is calculated as follows:

Opening book value of the building	100,000 euro
Capitalized repairs and improvements	4,000
Closing book value before depreciation	104,000
Depreciation 5%	5,200
Closing book value of the building	98,800

3.2. For repairs made to Category 2 and Category 3 assets acquired before the entry into force of The Law, the capitalized amounts of repair are:

3.2.1. where the amount of the repair is between 1,000 and 3,000 euro, added to the pool referred to in paragraph 10 of Article 20 of The Law as a new qualifying asset;

3.2.2. where the amount of the repair is over 3,000 euro, treated as a new Category 2 or Category 3 asset, as applicable, for which depreciation will be allowed as a deduction in accordance with paragraph 4 of Article 20 of The Law.

Article 24 - Amortization

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 18

Costs for Research and Development

(Administrative Instruction No. 13/2010)

1. Paragraph 1 of Article 25 of The Law provides for the amortization of a natural deposit of minerals and other natural resources. The user of the deposit can claim a deduction for the exploration and development costs. Exploration costs, development costs and related interest must be added to a capital account as they are incurred. At the end of the tax period, the portion of exploration and development costs pertaining to that period shall be determined by multiplying the balance in the capital account by a coefficient of amortization (CA) which is:

$$CA = \frac{\text{Number of units extracted during the year}}{\text{Total estimated units in the deposit}}$$

Example:

Personal Business Enterprise X has taken on a lease on a copper field and the estimated number of units in the natural deposit is 15,000,000. The production for the year is 1,500,000 units. The balance in the capital account at the end of the tax period is € 500,000. To determine the amount of amortization allowed for the tax period, the balance in the account must be multiplied by the CA. In this case, the coefficient is 10%, (1,500,000/15,000,000). The amortization allowed as a deduction, therefore is €50,000.

2. To determine the total estimated number of units in the deposit, the taxpayer must obtain a report from experts and must make it available to Tax Administration for inspection upon request or submitted with the annual tax declaration. The computation of the units of extraction must be done using generally accepted methods. Tax Administration reserves the right to use the services of independent specialists to review the engineering reports and the extraction computation methods.

Article 26 - Tax Losses

(Law No. 03/L-161)

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.

Section 19

Tax Losses

(Administrative Instruction No. 13/2010)

1. Paragraph 5 of Article 26 of The Law provides that tax losses incurred in one tax year shall generally only be able to be carried forward and offset against taxable income in subsequent years of the same business that incurred the loss. That paragraph also provides that carry forward of losses will not be allowed where the business changes its type of business organization (e.g. a business changes from being run as a personal business enterprise to being run under a partnership or an incorporated legal entity) or has an ownership change of more than 50%. In relation to ownership changes, in order for tax losses to be carried forward, throughout the period commencing with the first day of the tax loss year to the last day of the tax year in which the loss is to be offset, the following must have applied:
 - 1.1. for personal business enterprises, the business must have been run by the same person (if that person dies or otherwise passes on ownership of the business to a relative then the ability to carry forward tax losses ceases);
 - 1.2. for partnerships or similar joint arrangements, at least 50% of the partners have to be the same

Example:

A partnership is run by 3 partners (A, B and C), each of whom have equal shares in the partnership. It makes a tax loss of 10,000 euro in 2010. During 2011, C leaves and is replaced by new partner D. The 2010 tax loss is able to be carried forward to 2011 as there is 2/3 common ownership (A and B). During 2012, B leaves and is also replaced by new partner E. The 2010 tax loss is not able to be carried forward to 2012 (as there is now only a 1/3 common ownership, A). Any tax loss incurred in 2011 will however be able to be carried forward as there is a 2/3 common ownership between 2011 and 2012 (A and D).

Article 27 - Rental Expenses

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 20

Deduction for Charitable Contributions

(Administrative Instruction No. 13/2010)

1. In paragraph 1 of Article 28 of The Law, the expression ‘computed before the charitable contribution is deducted’ means that the 5% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income.

Example:

If a personal business enterprise has a gross profit before charitable contributions of 10,000 euro and it has made a donation to a hospital of 400 euro, the 5% allowed limit shall be applied on the 10,000 euro and not on $10,000 - 400 = 9,600$ euro. In this case 400 euro is totally deductible as it is within the allowed limit of $10,000 \times 5\% = 500$ euro.

2. As per paragraph 4 of Article 28 of The Law, taxpayers who claim a deduction in respect of charitable contributions made during the tax period shall furnish, at the time of filing the annual tax declaration and respective financial statements, receipts signed and stamped by the beneficiaries of the charitable contributions, certifying the purpose of those donations, the amounts of those donations and the times when the donations were made. A charitable contribution deduction can only be claimed by those taxpayers who pay tax on a real income basis and thus who are already required to submit an annual tax declaration. Presumptive taxpayers cannot claim for this deduction.

3. Each receipt referred to in the previous paragraph shall contain the following information:

- 3.1. name of the donor
- 3.2. tax identification number (fiscal number) of the donor, or where the donor is an individual not required to have a fiscal number, the individual's personal identification number
- 3.3. address of the donor
- 3.4. name of the recipient
- 3.5. tax identification number (fiscal number) of the recipient
- 3.6. address of the recipient
- 3.7. recipient contact person's name and telephone number
- 3.8. amount of charitable contribution donated
- 3.9. date of donation
- 3.10. a declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the donor.

Article 29 - Educational and Training Expenses

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 21

Unallowable Expenses

(Administrative Instruction No. 13/2010)

1. Paragraph 1 of Article 30 of The Law, deals with unallowable expenses. The following expenses are not allowed as an expense:
 - 1.1. **Cost of Acquisition of Land.** As a principle, land does not lose its value in time and it is not subject to wear. Land is easily convertible into cash. The cost of acquisition of land also includes the cost of improvements such as drainage works, terracing, pipelining and water supply and other similar works which become part of the land and which increase the total value of the land.
 - 1.2. **Fines, Penalties, Costs and Interest Related to Them.** Such expenses occur when taxpayers violate tax or other applicable rules and requirements. They are to be covered by the profit after tax.

1.3. **Income Taxes.** Gross wages, including personal income tax withheld from employees, constitutes an expense; thus, it is deductible. Personal Income Tax is not a deductible item as it is computed after the deduction of all allowed expenses.

1.4. **Input VAT** is not a deductible item if it is rebated or credited from output VAT. In one particular case it is a deductible item and this is when a business income taxpayer, who has opted to account for income and expenses on a “real” basis, has not reached the VAT registration threshold and thus is not entitled to charge VAT on domestic supplies.

1.5. **Personal, Living, or Family Expenses.**

1.6. **Loss from the Sale or Exchange of Property Between Related Persons.** Gains from the sale or exchange of movable or immovable property between related persons will form part of the taxable income of the party making the gain while at the same time the party making the loss will not be able to claim such loss as a deductible expense.

1.7. **Amusement or recreation expenses.** An exception applies where the taxpayer's business is the provision of amusement or recreation.

1.8. **Expenses not documented per requirements.** The expense documentation requirements are outlined in paragraph 1 of Section 10 of this Administrative Instruction.

2. Sub-paragraph 2.1 of Article 30 of The Law provides that pension contributions above the maximum amount allowed by Kosovo pension law are also not allowed to be deducted as an expense against taxable income. The law covering pensions managed by the Kosovo Pensions Savings Trust allows employers to make voluntary pension contributions in respect of their employees up to a maximum amount of 15% of an employee's gross wage. Such contributions are deductible to the employer, but any excess over that maximum amount, is not deductible.

3. Sub-paragraph 2.2 of Article 30 of The Law refers to expenses that are partially for business purposes and partly for personal purposes. Business expenses are generally deductible whereas personal expenses, in accordance with sub-paragraph 1.5 of Article 30, are not. In cases where there is a mixed business/personal component, the expenses will need to be apportioned on a reasonable basis and a deduction claimed only for the business component.

Example:

A person running a personal business enterprise uses part of his personal residence as an “office” for his business. That office is only used for the business and has a floor area of 10 square meters compared with the total personal residence area of 200 square meters. The personal business enterprise can claim 5% of the costs that relate to the personal residence that also relate to the office. Thus 5% of electricity costs (assuming they relate to the total residence) will be deductible but no water costs would be deductible (assuming there is no water usage in the office area).

CHAPTER VI - CAPITAL GAINS AND LOSSES

Article 31 - Incomes from capital gains

(Law No. 03/L-161)

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.

Section 22 **Capital Gain or Loss**

(Administrative Instruction No. 13/2010)

1. Paragraph 4 of Article 31 of The Law requires the use of open market values where sales of capital assets are made between related persons for sales prices that are less than open market value. In such cases, the open market value shall be determined as:

1.1 The estimated monetary amount for a sale of the same asset between a willing buyer and a willing seller in an arm's-length transaction;

1.2 Or, where the above is not available, the amount that would arise from the sale of a similar asset in similar circumstances (e.g. similar quality, similar size or time period and similar conditions of sale);

1.3 Or, where neither of the above apply, a method approved by TAK which provides a sufficiently objective approximation.

The method allowable by TAK under the last of the above options is a cost plus basis, with cost being labor and material costs plus a percentage of overheads and then a reasonable mark up percentage. Taxpayers wishing to use this method need to provide TAK with documentation showing why they could not use the two previous options.

2. For the purposes of paragraph 5 of Article 31 of The Law, where a capital asset has been acquired by a taxpayer under an inheritance, the cost of the capital asset to the taxpayer shall be the open market value of that asset on the date of death of the person to whom the inheritance relates.

Example:

A taxpayer buys a residential property in 2001. The taxpayer dies and the property is inherited by the taxpayer's son in 2008. The taxpayer's son sells the property in 2010. For the purposes of calculating the capital gain/loss, the cost of acquisition of the property that

can be deducted from the sale price in 2010, shall be the open market value of the property on the date of death of the taxpayer.

3. Paragraph 13 of Article 31 of The Law covers sales of capital assets involving installment agreements which span more than one tax period. In such cases, capital gains or losses shall be reported on a straight-line basis over the life of the installment arrangement, starting from the earlier of the date of payment of a deposit or the date such deposit was due and ending with the earlier of the date of payment of the last installment payment or the date such payment was due.

4. In making these straight-line basis calculations:

4.1. where the start date for the installment arrangement falls within the first 6 months of a year, the start date of the installment arrangement shall be regarded as being the first day of that year;

4.2. where the start date of the installment arrangement falls within the second 6 months of a year, the start date shall be regarded as being the first day of that 6 months period;

4.3. where the end date of the installment arrangement falls within the first 6 months of a year, the end date shall be regarded as being the last day of that 6 months period;

4.4. where the end date of the installment arrangement falls within the second 6 months of a year, the end date of the installment arrangement shall be regarded as being the last day of that year;

4.5. any installment payments to the extent the amount of the payment is not certain until a specific event occurs (e.g. where part of the sale/purchase price is contingent on achieving a certain level of sales or another event, where there is a possibility that that achievement or event will not happen) should be ignored – the recognition of the uncertain income for the seller and uncertain cost for the buyer in these circumstances will only arise if and when the contingency is removed and the amount of the payment becomes certain.

Example 1:

If a capital asset has a net value (cost of acquisition plus cost of improvements less depreciation claimed for tax purposes) in the books of 5,000 euro and is sold for 7,000 euro, this results in a capital gain of 2,000 euro. If the sale agreement envisages installment payments being made over the period from 1 April 2010 until 31 March 2012 (a two year period spanning three tax years), then the capital gain will be recognized as follows:

In making straight-line basis calculations, the installment arrangement will be treated as starting on 1 January 2010 and ending on 30 June 2012, a period of 30 months.

The amount of the gain recorded in respect of 2010 will be $2,000 \times 12/30 = 800$ euro

The amount of the gain recorded in respect of 2011 will be $2,000 \times 12/30 = 800$ euro

The amount of the gain recorded in respect of 2012 will be $2,000 \times 6/30 = 400$ euro

Example 2:

If a capital asset has a net value in the books of 9,000 euro and is sold for 6,000 euro, this results in a capital loss of 3,000 euro. If the sale agreement envisages installment payments

being made over the period from 1 October 2010 until 30 September 2012, then the capital loss will be recognized as follows:

In making straight-line basis calculations, the installment arrangement will be treated as starting on 1 July 2010 and ending on 31 December 2012, a period of 30 months.

The amount of the loss recorded in respect of 2010 will be $3,000 \times 6/30 = 600$ euro

The amount of the loss recorded in respect of 2011 will be $3,000 \times 12/30 = 1,200$ euro

The amount of the loss recorded in respect of 2012 will be $3,000 \times 12/30 = 1,200$ euro.

Section 9

Income from Reorganizations

(Administrative Instruction No. 13/2010)

1. Paragraph 3 of Article 26 of Law No. 03/L-162 On Corporate Income Tax provides that distributions to shareholders in respect of their equity interest under a reorganization will not constitute taxable income of the shareholder. In the case of a qualified reorganization of a SOE, distributions to which that paragraph applies shall include shares of the proceeds from the sale of shares of subsidiary corporations of a SOE that is privatized to persons in their capacity as coowners or co-managers of the SOE, but shall not include severance payments made to persons in their capacity as employees or former employees of the SOE (which shall constitute taxable income of those persons for the purposes of this Law).

Article 32 - Cash and Accrual Method of Accounting

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 23

Books and Records

(Administrative Instruction No.13/2010)

1. Taxpayers with annual gross income of 50,000 euro or more and those with annual gross income of less than 50,000 euro who opt to be taxed on a real income basis shall keep books and records in accordance with the requirements of:

1.1 Article 33 of The Law; and

1.2 Paragraph 4 of Section 17 of Administrative Instruction No. 15 /2010 On Implementation of Law No. 03/L-222 On Tax Administration and Procedures.

2. Taxpayers with annual gross income of less than 50,000 euro who have not opted to be taxed on a real income basis shall keep books and records in accordance with the requirements of:

2.1 Article 34 of The Law; and

2.2 Paragraph 2 of Section 17 of Administrative Instruction No. 15 /2010 On Implementation of Law No. 03/L-222 On Tax Administration and Procedures.

3. Taxpayers specified in paragraphs 1 and 2 of this Section are required to issue invoices/receipts for the supply of goods and services made by them.

4. The content of the books and records referred to in paragraphs 1 and 2 of this Section and of the invoices/receipts referred to in paragraph 3 of this Section shall be in accordance with Administrative Instruction No. 15/2010 On Implementation of Law No. 03/L-222 On Tax Administration and Procedures.

5. The following provisions of Law No. 03/L-222 On Tax Administration and Procedures apply in respect of the books and records referred to in this Section:

5.1 Article 13, in relation to translation, retention and storage of records and the periods to which records should relate;

5.2 Article 14, in relation to access to records by TAK and to removal and copying of such records;

5.3 Articles 14 and 15, in relation to the requirement for taxpayers to produce records when requested by TAK;

5.4 Article 19, in relation to records that are lost or destroyed;

5.5 Article 15 and 53, in relation to penalties for not keeping records or for not allowing TAK access to records.

Article 34 - Requirements for Books and Records for Small Businesses

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 24 Transfer Prices

(Administrative Instruction No. 13/2010)

1. Paragraph 4 of Article 36 of The Law provides for differences between “open market value” and “transfer prices” to be included in taxable income. This provision only applies where there are asset transactions or contract obligations between related persons. In broad terms, the intention of this provision is to ensure that prices in relation to transactions or obligations between related persons (transfer prices) reflect arm's length prices (represented by open market value) – if, for example, goods sold and/or overhead costs charged to a Kosovo branch of a taxpayer by its head office based outside Kosovo are regarded as being at the same level that would be charged by a non-related party providing similar goods or services, then there would be no difference between the price charged and the arm's length price and no taxable income would arise. Conversely, if the costs charged by the head office were regarded as exceeding those that would be charged by a nonrelated party providing similar goods or services (thereby reducing the taxable income of the Kosovo branch), the difference would be added back as taxable income of the Kosovo branch.

2. In determining any differences between “open market value” and “transfer prices”, the “transfer price” is, in accordance with paragraph 1 of Article 36 of The Law, the actual price charged or chargeable between the related parties. Determination of the “open market value” is however more complex with the method to be used in its determination being subject to the extent to which information is available about non-related parties providing

similar goods or services. The method to be used in determining “open market value” is outlined in the following paragraphs.

3. In accordance with paragraph 3 of Article 36 of The Law, “open market value” shall, if possible, be determined by the comparable uncontrolled price method. This method can be used where the taxpayer buys or sells the particular good or service, in similar quantities and under similar terms to non-related parties in similar markets (an internal comparable) or a non-related party buys or sells the particular good or service, in similar quantities and under similar terms to another non-related party in similar markets (an external comparable). Transactions may serve as comparables despite the existence of differences between those transactions and related party transactions where the differences can be measured on a reasonable basis and appropriate adjustments can be made to eliminate the effects of those differences. Comparables, or adjusted comparables where differences are eliminated, will be the “open market value”.

Example 1:

A taxpayer sells 1,000 tons of a product for 80 euro per ton to an associated enterprise in its group, and at the same time sells 500 tons of the same product for 100 euro per ton to an independent enterprise. This case requires an evaluation of whether the different volumes should result in an adjustment of the transfer price. The relevant market should be researched by analysing transactions in similar products to determine typical volume discounts.

Example 2:

An illustrative case where adjustments may be required is where the circumstances surrounding controlled and uncontrolled sales are identical, except for the fact that the controlled sales price is a delivered price and the uncontrolled sales are made from the factory excluding the costs of transportation and insurance. The differences in terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price. Therefore, to determine the uncontrolled sales price, adjustment should be made to the price for the difference in delivery terms.

4. Where there is an absence of comparable or adjusted comparable data such that the comparable uncontrolled method cannot be used, “open market value” shall be determined using the resale price method (which is more suited for use by distributors) or the cost plus method (which is more suited for use by manufacturers) as outlined in the following paragraphs.

5. The Resale Price Method is usable where goods or services purchased by a taxpayer from a related party are resold to an unrelated party, particularly where the taxpayer seller adds relatively little value to the goods or services. In such cases, the open market value is calculated by deducting from the resale price an appropriate resale gross margin which allows the seller to recover its operating costs and to earn an arm's-length profit based on the functions performed, assets used, and the risks assumed. This gross margin can be determined by reference to the resale price margin earned by a member of the same group as the taxpayer in comparable uncontrolled transactions (internal comparable) or the resale

price margin earned by a non-related party in comparable uncontrolled transactions (external comparable).

Example 1:

Assume that there are two distributors selling the same product in the same market under the same brand name. Distributor A offers a warranty; Distributor B offers none. Distributor A is including the warranty as part its pricing strategy and so sells its product at a higher price resulting in a higher gross profit margin (if the costs of servicing the warranty are not taken into account) than that of Distributor B, which sells at a lower price. The two margins are not comparable until an adjustment is made to account for that difference.

Example 2:

A business sells a product through independent distributors in five countries in which it has no branches. The distributors simply market the product and do not perform any additional work. In one country, the business has set up a branch. Because this particular market is of strategic importance, the business requires its branch to sell only its product and to perform technical applications for the customers. Even if all other facts and circumstances are similar, if the margins are derived from independent enterprises that do not have exclusive sales arrangements or perform technical applications like those undertaken by the branch, it is necessary to consider whether any adjustments must be made to achieve comparability.

6. The cost plus method is usable where costs are incurred by a taxpayer in the supply of a good or service to a related party. In such cases, the open market value is determined by adding to the costs incurred by the taxpayer (calculated in accordance with accounting principles that are generally accepted for the particular industry) a comparable gross mark-up which is determined by reference to the cost plus mark-up earned by a member of the same group as the taxpayer in comparable uncontrolled transactions (internal comparable) or the cost plus mark-up earned by a non-related party in comparable uncontrolled transactions (external comparable). In either case, the returns used to determine an arm's length mark-up must be those earned by persons performing similar functions and preferably selling similar goods to non-related parties. Where the transactions are not comparable in all ways and the differences have a material effect on price, taxpayers must make adjustments to eliminate the effect of such differences (such as differences in the relative efficiency of the supplier, and any advantage that the activity creates for a group that includes the taxpayer).

Example 1:

A is a domestic manufacturer of timing mechanisms for mass-market clocks. A sells this product to its foreign branch B. A earns a 5 percent gross profit mark up with respect to its manufacturing operation. X, Y, and Z are unrelated domestic manufacturers of timing mechanisms for massmarket watches. X, Y, and Z sell to unrelated foreign purchasers. X, Y, and Z earn gross profit mark ups with respect to their manufacturing operations that range from 3 to 5 percent. A accounts for supervisory, general, and administrative costs as operating expenses, and thus these costs are not reflected in cost of goods sold. The gross profit mark ups of X, Y, and Z, however, reflect supervisory, general, and administrative

costs as part of costs of goods sold. Therefore, the gross profit mark ups of X, Y, and Z must be adjusted to provide accounting consistency.

Example 2:

Business C in country D is a branch of business E, located in country F. In comparison with country F, wages are very low in country D. At the expense and risk of business E, television sets are assembled by business C. All the necessary components, know-how, etc. are provided by business E. The purchase of the assembled product is guaranteed by business E in case the television sets fail to meet a certain quality standard. After the quality check the television sets are brought -- at the expense and risk of business E -- to distribution centers business E has in several countries. The function of business C can be described as a purely contract manufacturing function. The risks business C could bear are eventual differences in the agreed quality and quantity. The basis for applying the cost plus method will be formed by all the costs connected to the assembling activities.

Example 3:

Business A agrees with branch B to carry out contract research for branch B. All risks of a failure of the research are borne by branch B. This branch also owns all the intangibles developed through the research and therefore has also the profit chances resulting from the research. This is a typical setup for applying a cost plus method. All costs for the research, which the related parties have agreed upon, have to be compensated. The additional cost plus may reflect how innovative and complex the research carried out is.

7. Where a taxpayer believes that the above methods cannot be used, and can provide evidence of this, the Tax Administration of Kosovo may allow use of the profit split method. The profit split method may be applied where the operations of two or more related parties are highly integrated making it difficult to evaluate their transactions on an individual basis and/or where the existence of valuable and unique intangibles makes it impossible to establish the proper level of comparability with uncontrolled transactions under another method.

7.1. The first step under this method is to determine the total profit earned by the parties from a controlled transaction. The profit split method allocates the total integrated profits related to a controlled transaction, not the total profits of the group as a whole. The profit to be split is the operating profit before the deduction of interest and taxes.

7.2. The second step is to split the profit between the parties based on the relative value of their contributions to the related party transactions, considering the functions performed, the assets used, and the risks assumed by each related party, in relation to what non-related parties would have received, with the result being the open market value

8. In the event that none of the previous methods can be applied, the Tax Administration of Kosovo may allow use of the transactional net margin method. This method compares the net profit margin of a taxpayer arising from a related party transaction with the net profit margins realized by nonrelated parties from similar transactions and examines the net

profit margin relative to an appropriate base such as costs, sales or assets, taking into account the nature of the business activity, with the result being the open market value.

9. Taxpayers who conduct transactions with related parties must maintain sufficient documentation to justify their choice of open market value determination method and to show that it produces an “arm's length” result.

Article 37 - Avoidance of Double Taxation

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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. 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.

Section 8

Withholding Tax on Wages

(Administrative Instruction No.09/2010)

1. Paragraph 2 of Article 38 of The Law requires that employers who are an employee's principal employer shall withhold amounts of tax for payroll periods in accordance with the rates established in Article 6 of The Law.

1.1 In applying this provision to persons who expect to have a principal employer throughout the tax year, the amount payable for each pay period needs to be grossed up to an annual basis, based on the number of pay periods in the tax year, before applying the annual amounts shown in Article 6 of The Law (after allowing for pension contribution deductions for Kosovo residents).

1.2 The annual tax payable so calculated is then divided by that same number of pay periods to give the amount that should be withheld for the pay period. Persons who do not expect to have a principal employer throughout the tax year (e.g. persons entering the workforce after completing full-time education, persons being dismissed from employment and not finding a replacement position, persons expecting to retire or otherwise cease all employment during the year, etc) may, after 1 January 2011, complete a Special Tax Rate Application form (in a format prescribed by TAK) and apply to TAK for a special tax rate to be applied by their principal employer to as far as possible more accurately match withholding tax deductions with the amount of tax that will be payable by the employee on an annual basis.

Example 1:

A principal employer pays an employee 500 euro per month. As there are 12 pay periods during the year, the employee's annual wage would be 6,000 euro (500 x 12). After allowing a deduction of 5% from the gross for employee pension contributions, the annual taxable wage will be 5,700 euro. Paragraph 1.4 of Article 6 then applies and this provides that annual tax payable on that amount shall be 273 euro 60 cents plus 10 percent of the amount over 5,400 euro ($5,700 - 5,400 = 300 \times 10\% = 30$ euro) giving a total of 303 euro 60 cents. This amount is then divided by the number of pay periods (12) to result in 25 euro 30 cents being required to be withheld from the 500 euro gross amount payable. Together with the pension contributions of 25 euro (5% of 500 euro), the employee will receive a net wage of 449 euro 70 cents (500 euro less 25 euro pension contributions withheld and less 25 euro 30 cents withholding tax on wages).

Example 2:

Same facts as in Example 1 except that it is now the following month and the employer has decided to pay the employer a higher wage of 550 euro for that month. In this case, the annual amount is calculated as 6,600 euro (the fact that the employee received a gross wage of only 500 euro in the previous month is irrelevant) which after 5% employee pension contributions indicates an annual taxable wage of 6,270 euro. Paragraph 1.4 of Article 6 then applies and this provides that annual tax payable would be 273 euro 60 cents plus 10 percent of the amount over 5,400 euro ($6,270 - 5,400 \times 10\% = 87$ euro) giving a total of 360 euro 60 cents. Dividing by the number of pay periods (12) results in 30 euro 5

cents being required to be withheld from the 550 euro gross amount payable. Together with the pension contributions of 27 euro 50 cents (5% of 550 euro), the employee will receive a net wage of 492 euro 45 cents (550 euro less 27 euro 50 cents pension contributions withheld and less 30 euro 5 cents withholding tax on wages). In the third month, if the employer continues to pay the employee 550 euro gross wages, then the employee will continue to receive 492 euro 45 cents net as per Example 2. If however, the employer only pays 500 euro gross wage in the third month, then the employee will receive 449 euro 70 cents net as per Example 1. No adjustment is made for what the employee was actually paid in the first two months.

Example 3:

A principal employer pays an employee 200 euros per fortnight. (The main difference from the previous examples is that the employee is paid every two weeks rather than every month). In this case, calculations will be based on 26 pay periods. Thus the 200 euro amount would be grossed up to an annual equivalent of 5200 euro (200 x 26). After deducting 5% employee pension contributions, the annual taxable wage is 4940 euro. In this case, paragraph 1.3 of Article 6 then applies and this provides that annual tax payable would be 81 euro 60 cents plus 8 percent of the amount over 3,000 euro ($4,940 - 3,000 \times 8\% = 155$ euro 20 cents) giving a total of 236 euro 80 cents. Dividing by the number of pay periods (26) results in 9 euro 10 cents being required to be withheld from the 200 euro gross amount payable. Together with the pension contributions of 10 euro (5% of 200 euro), the employee will receive a net wage of 180 euro 90 cents (200 euro less 10 euro pension contributions withheld and less 9 euro 10 cents withholding tax on wages).

Example 4:

A university student completes their studies at the end of the academic year and commences employment from the beginning of October on a wage of 400 euro a month. Using the withholding tax rate method outlined in this paragraph, the employer would gross up monthly pay to a gross of 4800 euro, deduct 5% employee pension contributions to arrive at an annual taxable wage of 4560 euro, and calculate monthly withholding tax of 10 euro 40 cents ($(4,560 - 3,000 \times 8\%) / 12$). For the last 3 months of the year the employee would receive 1,200 euro and have total tax withheld of 31 euro 20 cents. However, their annual tax liability (assuming no other taxable income) on 1200 euro income is only 9 euro 60 cents ($1,200 - 960 \times 4\%$) so the person would now be able to claim a tax refund of 21 euro 60 cents. Alternatively, the person could (from 1 January 2011) have applied for a special tax rate which TAK would have calculated in this case at 0.8% which would mean tax withheld each month would have been only 3 euro 20 cents ($400 \times 0.8\%$) with the result that tax withheld during the three months of employment would be 9 euro 60 cents matching the annual liability.

2. Paragraphs 1 and 4 of Article 38 of The Law require payments of wages and pensions to be subject to withholding tax. Taxable wages or pensions paid or credited to a person who is exempt from personal income tax under Article 8 of The Law, under any other law of Kosovo or under an international agreement / convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the wages or pension to provide

written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

3. The written evidence required under paragraph 2 of this section shall be:

3.1. in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;

3.2. in any other case, other than in the case of wages and pensions that are exempt from personal income tax under paragraphs 1.1, 1.2, 1.3, 1.4, 1.5 or 1.14 of Article 8 of The Law (where no written evidence is necessary), a copy of a letter from TAK confirming exemption from personal income tax.

4. For the purpose of remitting tax withheld on taxable wages and pensions under this section, withholders shall complete tax withholding and remittance statement forms as prescribed by TAK and shall submit the forms and payments to a bank or financial institution licensed by the Central Bank of Kosovo.

5. Employers who pay wages more frequently than once per month are required to withhold tax from those wages each pay period but are only required to complete one tax withholding and remittance statement form and to pay tax withheld once in respect of each month. Employers who want to remit the tax more frequently than once per month may do so by filling out additional tax withholding and remittance statements but must indicate whether second and subsequent forms in respect of the same month are a correction or an additional remittance for that month.

Article 39 - Withholding Tax on Interest and Royalties

(Law No. 03/L-161)

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.

Section 9

Withholding Tax on Interest and Royalties

(Administrative Instruction No.09/2010)

1. Paragraph 1 of Article 39 of The Law requires that tax be withheld from payments of interest or royalties. Interest or royalties paid or credited to a person who is exempt from personal income tax under Article 8 of The Law, under any other law of Kosovo or under an international agreement / convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the interest and royalties to provide written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:
- 2.1. in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;
 - 2.2. in any other case, a copy of a letter from TAK confirming exemption from personal income tax.

Article 40 - Withholding Tax on Lottery and Game of Chance Winnings

(Law No. 03/L-161)

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.

Section 10

Withholding Tax on Lottery and Game of Chance Winnings

(Administrative Instruction No.09/2010)

[Note: This Section of the Administrative Instruction, as far as it relates to games of chance, will become obsolete when a new Law on Games of Chance and Lottery comes into force, pursuant to paragraph 2 of Article 49 of The Law.]

1. Paragraphs 1 and 2 of Article 40 of The Law require that payments of lottery and game of chance winnings are subject to withholding tax. Lottery, or game of chance, winnings paid or credited to a person who is exempt from personal income tax under Article 8 of The Law, under any other law of Kosovo or under an international agreement or convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the winnings to provide written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;

2.2 in any other case, a copy of a letter from TAK confirming exemption from personal income tax;

2.3 exemption from personal income tax provided in respect of games of chance winnings under paragraph 1.13 of Article 8 of The Law, only comes into effect at the same time that withholding no longer applies to games of chance winnings - this will be when a new Law on Games of Chance and Lottery comes into force, pursuant to paragraph 2 of Article 49 of The Law.

3. For the purpose of remitting tax withheld on lottery, or game of chance, winnings under this section, withholders shall complete a tax withholding and remittance statement form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Article 41 - Withholding on certain payments to non-residents

(Law No. 03/L-161)

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.

Section 11

Withholding Tax on Certain Non-Residents

(Administrative Instruction No.09/2010)

1. Paragraphs 1 and 2 of Article 41 of The Law require the withholding of tax from income attributable to non-resident entertainers and to non-residents who perform services in Kosovo. Where such income is paid or credited to a non-resident person who or entity which is exempt from personal income tax under Article 8 of the Law, under any other law of Kosovo or under an international agreement or convention, such income shall not be subject to withholding tax. In such cases, the onus is on the recipient of the income to provide written evidence to the payer that their income is exempt from personal income tax. Until such evidence is produced, the obligation remains on the payer to withhold tax.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of persons exempt from personal income tax under paragraphs 1.10 or 1.11 of Article 8 of The Law, a copy of their contract;

2.2 in any other case, a copy of a letter from TAK confirming exemption from personal income tax.

3. Income attributable to non-residents which is subject to withholding tax under Article 38 of The Law shall not also be subject to withholding under Article 41 of The Law. In such cases only withholding under Article 38 shall apply.

4. Income attributable to a non-resident entertainer under paragraph 1 of Article 41 of The Law which is paid or credited in any case other than that covered by paragraphs 1 or 3 of this section, shall be subject to withholding unless the gross compensation from his or her personal activities from all payers for such activities will not exceed one thousand (1,000) euro in a tax period. In situations where the payer is not sure whether the gross compensation of the entertainer from his or her personal activities in the tax period will exceed 1,000 euro, the payer is obliged to ask the entertainer about his or her expected gross compensation and only if the entertainer indicates that their gross compensation from personal activities in the taxable period will be 1,000 euro or less should payments or crediting not be subject to withholding.

5. The requirement to withhold tax from income attributable to non-resident entertainers under paragraph 1 of Article 41 of The Law relates to personal activities of the entertainer that are exercised in Kosovo. Payments to non-resident entertainers that are not in relation to their personal activities (e.g. from sales of merchandise) are not subject to withholding. Payments from Kosovo for personal activities exercised outside Kosovo are also not subject to withholding.

Example:

A non-resident entertainer visits Kosovo and earns money from performances in Prishtina and Prizren. The entertainer also earns money from sales of CDs of their music and other

merchandise. Withholding only applies in respect of money paid to in relation to personal activity of the entertainer.

6. The requirement to withhold tax from income attributable to non-resident entertainers under paragraph 1 of Article 41 of The Law relates to income attributable (whether paid in cash or kind, the latter of which would be valued at open market value) to the entertainer whether paid directly or indirectly. Withholding is also required where the entertainer is paid indirectly, for example where payment is made to a corporation or other legal person which is held 100% by the entertainer or which is otherwise beneficially owned by the entertainer rather than directly to the entertainer.

7. The requirement to withhold tax from income paid to non-residents under paragraph 2 of Article 41 of The Law relates to payments for services performed in Kosovo. No withholding is required from payments made to non-residents for goods or from payments made to non-residents for services performed outside Kosovo (e.g. international transport services, computer system support provided remotely from another country). An apportionment will be needed where services are performed both inside and outside Kosovo except in cases where the services performed in one country are merely incidental to the services performed in the other country.

Example:

A Kosovo business enters into a contract for a non-resident supplier to design computer software for the Kosovo business use. All the design work and testing is performed outside Kosovo, However a representative of the supplier is required to visit Kosovo to ensure that the software is properly installed. In such circumstances, the installation visit would be regarded as merely incidental to the main software design work, and as that was performed outside Kosovo, no withholding tax would apply in respect of payments to the non-resident supplier. In contrast, if the supplier subsequently entered into a maintenance contract for the software which envisaged some system testing from outside Kosovo but also some site visits to Kosovo then withholding tax would apply in respect of the maintenance contract costs in respect of that portion of the cost that related to site visit work performed in Kosovo.

8. The requirement to withhold tax from income under paragraphs 1 and 2 of Article 41 of The Law applies only to those who are regarded as non-residents for personal income tax purposes. For natural person entertainers who have their principal residence in Kosovo or who are physically in Kosovo for more than 183 days in any 12-month period, withholding should not apply as the entertainers will be regarded as residents and subject to income tax on their worldwide income. The requirement to withhold tax from income paid to non-residents under paragraph 2 of Article 41 also applies to non-resident natural persons who carry out a business but who have no permanent establishment in Kosovo.

8.1 Paragraph 4 of Article 31 of The Law provides that in both cases “*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*”. The 5%

withholding tax will be their final personal income tax liability in Kosovo and they are not allowed to submit an annual personal income tax declaration to claim back the tax withheld on the basis that they are not liable for personal income tax in Kosovo because they have no permanent establishment there.

9. For the purpose of remitting tax withheld on income of the types referred to in paragraphs 1 and 2 of article 41 of the Law, payers shall complete a tax withholding and remittance statement from as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

10. For the purposes of this section, the term “payer” shall mean any person or entity, whether an organization or individual, which has agreed to pay a non-resident person or entity for entertainment or other services performed in Kosovo.

Section 12

General Provisions Applying to Withholding Taxes

(Administrative Instruction No.09/2010)

1. Chapter IX of The Law provides that withholding taxes shall be remitted to a bank or financial institution licensed by the Central Bank of Kosovo. A bank transfer may be made in lieu of a cash remittance. Such remittances (including money transfer orders for bank transfers) may be submitted to any branch of an authorized bank or financial institution that accepts them. Except in cases where specific tax officials have been designated to collect tax by the TAK Director General under the Law on Tax Administration and Procedures, such remittances shall not be submitted to any office or officer of TAK.

2. The remittances referred to in paragraph 1 of this section shall be accompanied by a statement of tax withholding. The statement of tax withholding shall be:

2.1 for those withholders who wish to and are able to file their tax withholding information to TAK electronically, a tax withholding payment voucher.

2.2 for other withholders, a completed tax withholding and remittance statement form as prescribed by TAK.

3. Chapter IX of The Law provides that annual reconciliation statements, together with copies of tax withholding certificates, are required to be provided to the Tax Administration. Such statements and certificates can be provided to any office of the Tax Administration of Kosovo or to any branch of an authorized bank or financial institution that accepts them.

4. Chapter IX of The Law provides specific dates by which withholding taxes are to be paid, certificates of withholding taxes are to be provided to recipients, and withholders are required to provide annual reconciliation statements to the Tax Administration. In each case, where the specific filing and/or payment date is a Saturday, Sunday or National Holiday, such forms and/or payments shall be submitted at the latest on the first working day following the Saturday, Sunday or National Holiday. Interest and penalties for late

filing or payment will not apply where filing and/or payment occurs on or before that next working day.

5. Chapter IX of The Law provides various filing and payment requirements for withholders and payers. Where these requirements are not met, TAK will apply interest and administrative penalties under the Law on Tax Administration and Procedures in respect of, as applicable:

- 5.1. failure to withhold, collect or pay over a withholding tax;
- 5.2. failure to provide the recipient of income subject to withholding tax with a tax withholding certificate;
- 5.3. failure to file an annual reconciliation statement with TAK by its due date;
- 5.4. filing an inaccurate or incomplete annual reconciliation statement with TAK.

CHAPTER X - PARTNERSHIPS AND GROUPING OF PERSONS

Article 42 - Partnerships and Grouping of Persons

(Law No. 03/L-161)

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. 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

(Law No. 03/L-161)

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 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 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.

Section 13

Economic Activity Quarterly Advance Payments

(Administrative Instruction No.09/2010)

1. In accordance with paragraph 2.1 of Article 43 of The Law, taxpayers with annual gross income of 50,000 euro or less and those who do not opt to prepare financial statements are required to make quarterly advance payments of personal income tax. Such taxpayers shall submit quarterly advance payment for small individual business forms in the format prescribed by TAK to any authorized bank or financial institution on or before 15 April, 15 July, 15 October and 15 January with respect to the calendar quarters immediately preceding these dates.

2. In accordance with paragraph 2.2 of Article 43 of The Law, taxpayers with annual gross income in excess of 50,000 euro and those who opt to prepare financial statements are required to make quarterly advance payments of personal income tax. Such taxpayers, and insurance companies, shall submit quarterly advance payment for large individual business forms in the format prescribed by TAK to any authorized bank or financial institution on or before 15 April, 15 July, 15 October and 15 January with respect to the calendar quarters immediately preceding these dates.

3. Taxpayers covered by paragraph 2.2 of Article 43 of The Law are required to use the estimate basis in their first year of making quarterly advance payments and the estimates are based on $\frac{1}{4}$ of estimated annual tax liability for the first year. For those who commence economic activity during the first quarter this is not an issue, but for those who commence later in the year, they are only required to pay $\frac{3}{4}$, $\frac{1}{2}$ or only $\frac{1}{4}$ of their first year liability in installments during the first year. For their second year, by making quarterly advance payments on the basis of annual tax liability in respect of their economic activity for their first year, increased by 10%, no interest penalty is payable. Taxpayers whose advance payments are insufficient compared with final tax liability will be only penalized in respect of the last quarter of their first year but based on cumulative installment amounts compared with annual liability, rather than simply considering the last installment in isolation. In such cases, interest penalty will only apply where quarterly advance payments made have been less than 90% of the annual tax liability in respect of their economic activity for their first year. For the second and other subsequent years as the option of paying with no interest penalty is available they will be penalized per each quarterly installment if insufficient payments are made during the year.

Example 1:

An individual taxpayer has started an economic activity in 2010. He has paid in 3 installments (quarters 2, 3 and 4) respectively 100 euro, 200 euro and 620 euro. Annual personal income tax liability for 2010 in respect of that economic activity turns out to be 1,000 euro. In this case, as total installments (920 euro) were more than 90% of annual liability (90% of 1,000 = 900 euro) no interest penalty applies (as per paragraph 3.3 of Article 43 of The Law).

Example 2:

An individual taxpayer has started an economic activity in 2010. He has paid in 2 installments (quarters 3 and 4) respectively 200 euro and 500 euro. Annual personal income tax liability for 2010 in respect of that economic activity turns out to be 1,000 euro. In this case, as total installments (700 euro) were less than 90% of annual liability (90% of 1,000 = 900 euro) interest is payable starting from 15 January 2011 (the due date of the last quarterly installment in respect of the 2010 tax year). Such interest is based on 300 euro, the difference between annual liability (1,000 euro) and cumulative total installments paid (700 euro) and is computed from 15 January 2011 until the due date for submitting the final declaration (31 March 2011). At that point the interest penalty for underpaying an advance payment ends but regular penalties would then apply in respect of any period between that due date until the tax is paid.

4. In cases where early installments were too low and later installments were too high, interest penalties shall apply for earlier installments until later excess payments cover the earlier shortfalls. In cases where early installments were too high and later installments were too low, TAK shall recognize excesses in earlier periods covering shortfalls in later periods and interest penalties might or might not apply depending on the amounts of excesses and shortfalls.

Example:

In 2010 a taxpayer's business made a profit and 1,000 euro personal income tax was payable in respect of that business. For 2011, another profit was made and 2,000 euro personal income tax was payable (in 2012). During 2011 quarterly installments were made of 600 euro, 100 euro, no installment, and 350 euro respectively. Given the 2010 annual liability of 1,000 euro and adding 10%, quarterly installments during 2011 should have been at least 275 euro each. No interest penalty was payable in respect of the first installment (as the 600 euro payment exceeded the 275 euro payable). No interest penalty was payable in respect of the second installment (as the 100 euro payment plus the 325 (600 less 275) euro excess from the first installment exceeded the 275 euro payable). Interest payable on the third installment would be based on 125 euro (being 275 euro payable less the remaining 150 (two payments totaling 700 euro less liability for those two installments of 550 euro) euro excess from the previous quarters) No interest was payable on the fourth installment and the excess of 75 euro (350 paid compared with 275 payable) can be applied to reduce the interest payable on the third installment but only with effect from the date of the payment of the fourth installment.

5. Sub-paragraph 2.2.2 of Article 43 of The Law refers to payments based on past year tax liability. Where a taxpayer has a tax loss for a particular year, then rather than using the past year tax liability basis and applying a 110% calculation, the taxpayer is required to calculate and pay installments based on estimated taxable income for the current year. If the taxpayer estimates that they will also make a loss in the current year, or that any profit will be exceeded by losses carried forward, no installments would be necessary but interest penalty could apply if the taxpayer's estimate turned out to be incorrect.

Example:

In 2010 a taxpayer's business had a loss. In 2011, the taxpayer estimates that the business will make a profit (after allowing for losses carried forward) and annual tax liability will be 1,000 euro. Installments are required to be paid during 2011 based on $\frac{1}{4}$ of the estimated annual tax liability.

6. In cases where there has been a tax audit or other occurrence in a subsequent year that determines a different annual tax liability in respect of an earlier tax year, if the annual tax liability is found to be higher, penalties would apply for under-declaration, for late payment and also interest in respect of the underpaid annual liability. Such penalties and interest for subsequently discovered additional tax liability shall be applied to the annual tax liability only, and no adjustment will be made to past quarterly installment amounts where the result of the tax audit or other occurrence was to increase the tax liability by up to 20%. In cases where there has been an increase in tax liability of more than 20%, then interest penalty will apply to the extent that quarterly installments were below $\frac{1}{4}$ of 110% of the adjusted income tax liability as a result of the tax audit or other occurrence.

7. The annual Personal Income Tax form is a tax declaration but the quarterly advance payment statements are not considered to be tax declarations. In accordance with paragraph 3 of Article 43 of The Law, late filing and late payment penalties shall not apply to late filed quarterly installment forms, but interest shall apply except where the provisions of sub-paragraphs 3.1, 3.2 or 3.3 of that Article apply.

Article 44 - Payment of tax for rents

(Law No. 03/L-161)

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.

Section 14
Rental Income Quarterly Advance Payments
(Administrative Instruction No.09/2010)

Paragraphs 1 and 2 of Article 44 of The Law require taxpayers to make quarterly payments of personal income tax in respect of income from rent. For the purpose of remitting such quarterly payments, payers shall complete a quarterly advance payment form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Article 45 - Payment of tax for intangible property

(Law No. 03/L-161)

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.

Section 15
Intangible Property Income Quarterly Advance Payments
(Administrative Instruction No.09/2010)

Paragraphs 1 and 2 of Article 45 of The Law require taxpayers to make quarterly payments of personal income tax in respect of income from intangible property. For the purpose of remitting such quarterly payments, payers shall complete a quarterly advance payment form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

**Article 46 - Payment of tax for other taxable income,
including capital gains**

(Law No. 03/L-161)

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.

Section 16

Gift Income Quarterly Advance Payments

(Administrative Instruction No.09/2010)

Paragraph 2 of Article 46 of The Law requires taxpayers who receive taxable gifts to make quarterly payments of income tax. In accordance with paragraph 2 of Article 14 of The Law, taxable gifts are monetary or non-monetary gifts (other than those gifts exempted from taxation under paragraphs 3 and 4 of Article 14 of The Law) received by residents which in any tax period have a combined value of greater than 5,000 euro. For the purpose of remitting such quarterly payments, payers shall complete a quarterly advance payment form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Section 17

General Provisions Applying to Quarterly Advance Payments

(Administrative Instruction No.09/2010)

1. Chapter XI of The Law provides that quarterly advance payments shall be remitted to a bank or financial institution licensed by the Central Bank of Kosovo. A bank transfer may be made in lieu of a cash remittance. Such remittances (including money transfer orders for bank transfers) may be submitted to any branch of an authorized bank or financial institution that accepts them. Except in cases where specific tax officials have been designated to collect tax by the TAK Director General under the Law on Tax Administration and Procedures, such remittances shall not be submitted to any office or officer of TAK.

2. The remittances referred to in paragraph 1 of this section shall be accompanied by a quarterly advance payment statement. The quarterly advance payment statement shall be:

2.1. for those payers who wish to and are able to file their quarterly advance payment information to TAK electronically, a quarterly advance payment voucher.

2.2. for other payers, a completed quarterly advance payment statement form as prescribed by TAK.

3. Chapter XI of The Law provides specific dates by which quarterly advance payment forms are required to be furnished and by which quarterly advance payments are required to be paid. In each case, where the specific filing and/or payment date is a Saturday, Sunday or National Holiday, such forms and/or payments shall be submitted at the latest on

the first working day following the Saturday, Sunday or National Holiday. Interest and penalties for late filing or payment will not apply where filing and/or payment occurs on or before that next working day.

Article 47 - Credits against tax

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 25

Tax Declarations and Payments

(Administrative Instruction No.13/2010)

1. In accordance with Article 48 of The Law personal income tax declarations, and where applicable tax payments related to them, shall be submitted to the Tax Administration of Kosovo on or before the 31st day of March of the year following the tax period. Such declarations may be submitted to TAK via an authorized bank or financial institution. The tax declaration shall be considered as an assessment made by taxpayers themselves.

2. Where the filing and payment due date for any tax declarations or information statements is a Saturday, Sunday or National Holiday, such forms may be submitted, without penalty for late filing or late payment (including interest), at the latest on the first working day following the Saturday, Sunday or National Holiday.

Article 49 - Appeals and temporary measures

(Law No. 03/L-161)

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

(Law No. 03/L-161)

1. The Minister shall issue the sub-legal acts required by this Law for the implementation of this Law.

Article 51 - Applicable Law

(Law No. 03/L-161)

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

(Law No. 03/L-161)

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.

Section 18

Entry into Force

(Administrative Instruction No.09/2010)

This Administrative Instruction enters into force on the day of its signature by the Minister of Economy and Finances.

Section 26

Entry into Force

(Administrative Instruction No.13/2010)

This Administrative Instruction shall enter into force on the date of signing by the Minister of Economy and Finance.

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

Assembly of Republic of Kosovo,

Based on Article 65 (1) of the Constitution of the Republic of Kosovo,
Adopts:

LAW ON CORPORATE INCOME TAX

CHAPTER I - GENERAL PROVISIONS

Article 1 - Purpose

(Law No.03/L-162)

This Law establishes the system of Corporate Income Tax in the territory of Republic of Kosovo.

Section 1

Goal and Scope

(Administrative Instruction No.8/2010)

The goal of this Administrative Instruction is the establishment of procedures and requirements for application of provisions of Law No. 03/L-162, “*On Corporate Income Tax,*” (hereafter referred to as The Law).

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. 03/L-162, “*On Corporate Income Tax,*” (hereafter The Law).

Article 2 - Definitions

(Law No.03/L-162)

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.

Section 2 Definitions

(Administrative Instruction No.8/2010)

1. Paragraph 1.3 of Article 2 of the The Law defines “**Dividend**” *“as a distribution made by a company to a shareholder”*. Whether or not a distribution is a dividend shall be based only on the definition given in the Law without regard to whether or not the entity has earned profits during the current or previous tax periods.

2. Paragraph 1.13 of Article 2 of The Law defines “**Resident**” as *“a person or group of persons that is established in Kosovo or that has its place of effective management in Kosovo”*.

2.1 The requirement of being ‘**Established**’ in Kosovo means that the entity whether being a business organization or a not-for-profit organization or a governmental body etc., is established under the Kosovo law and registered by respective competent authorities in Kosovo.

2.2 The term ‘**Place of Effective Management**’ means the place where the majority of the executive directors convene and direct the work on day to day operations. It does not necessarily mean the headquarters of the entity.

Section 3 Income from Intangible Property

(Administrative Instruction No.14/2010)

1. For the purposes of paragraph 1.10 of article 2 of The Law, the categories of intangible property that consist of rights only but are incorporeal, are:

1.1. patents, inventions, formulae, processes, designs, patterns, trade secrets and know-how;

1.2. copyrights including rights relating to literary, musical, or artistic compositions;

1.3. trademarks, trade names, or brand names;

1.4. franchises, licenses or contracts;

1.5. methods, programs, systems, procedures, campaigns, surveys, studies, forecasts,

estimates, customer lists, or technical data;

1.6. computer software; and

1.7. other similar rights.

2. In relation to computer software, licenses (as distinct from sales) of a copyright right in a computer program, leases (as distinct from sales) of copies of computer programs subject to copyright, and supplies of know-how relating to computer programs (as distinct from supplies of services for the development or modification of computer programs) shall be regarded as income from intangible property.

Article 3 - Taxpayers

(Law No.03/L-162)

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

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 3

Taxable Income

(Administrative Instruction No.8/2010)

1. Paragraph 1 of Article 5 of The Law provides that *“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”*. In respect of the following gross income, other than gross income from long-term construction contracts and projects, the expression *‘received or accrued’* shall have the following meaning:

2. *Business Activity*. For businesses that are subject to presumptive taxation, the accounting method will be the cash one, so the income is to be reported in the tax period the money is received. For businesses that are subject to real income taxation the method of accounting will be the accrual one so, income is to be reported in the tax period where goods are supplied and services rendered, invoice is issued or money is received, whichever happens first.

3. *Rents*. Rental income from the lease of immovable or movable property shall be reported in the tax period that rental services are supplied, an invoice is issued or money is received, whichever happens first.

4. *Use of intangible property*. Income from patents, copyrights, trademarks, franchise etc., shall be reported in the tax period in which income from the use of intangible property is received.

5. *Interest* Income from interest is to be reported in the tax period such interest is paid or credited to the account of the receiver.

Example:

A legal person invests funds in a bank term deposit for a six month period. Interest is added to the balance on term deposit every month. At the end of the six month period, the legal person decides to keep the funds on term deposit for a further six months. Interest credited to the account balance each month will be included in gross income in the month in which it is credited. The tax treatment remains the same whether or not the interest is withdrawn or not each month, and whether or not the funds from the term deposit are withdrawn and reinvested after the end of the first six months or whether the term deposit is simply “rolled over”. Although technically interest could be said to accrue on a daily basis, it will only be included in gross income when an amount is actually paid or credited.

6. *Capital Gain*. ‘*Received*’ means that a gain from the sale of immovable property or securities has resulted and payment is received during the tax period. For those who are subject to presumptive taxation, the accounting method will be the cash one so the income is to be reported in the tax period the money is received. For those who are subject to real income taxation the method of accounting will be the accrual one. ‘*Accrued*’ for this category means that income is to be reported in the tax period in which money is received, invoice is issued or immovable property or securities are disposed, whichever happens first.

7. *Lottery and gambling winnings*. Income from such winnings are reported in the tax period in which it is received or credited to the account of the winner.

Section 2

Income from the Sale of Goods

(Administrative Instruction No.14/2010)

1. 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) methodology or such other method allowed under Kosovo Accounting Standards (e.g. the weighted average cost or specific identification methods), provided that taxpayers shall not change their inventory method during a tax period.

(Comment: Kosovo Accounting Standards are moving towards being based on IFRS (International Financial Reporting Standards). As the LIFO (last-in-first-out) method is not allowed under IFRS, its use is no longer allowed for income tax purposes in Kosovo).

2. Whichever method is selected for determining the cost of goods sold, 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 from that method after that period of time, shall request an individual ruling from the Tax Administration of Kosovo (hereafter TAK) authorizing such change in compliance with the applicable provisions of Law No. 03/L-222 On Tax Administration and Procedures and Administrative Instructions issued thereunder.

Section 4

Income from Long Term Construction

(Administrative Instruction No.14/2010)

1. Paragraph 5 of article 5 of The Law provides for a departure from the normal taxable income determination rules in respect of taxpayers engaged in long-term construction contracts and projects. For the purposes of that Article, long-term construction contracts and projects are contracts and projects relating to construction work where construction extends beyond a year of income. Such contracts include those for:

- 1.1. construction of buildings bridges, dams, pipelines, tunnels and other civil engineering projects,
- 1.2. related activities such as demolition, dredging, heavy earth moving projects,
- 1.3. construction of major plant items including ships and transport vessels, and
- 1.4. similar contracts in associated fields e.g. heating and air conditioning contracts, major electrical wiring or rewiring contracts, major refurbishment of hotels, stores, etc, major construction management contracts, etc.
- 1.5. but do not include contracts for the sale and supply over time of what may ordinarily be regarded as the sale of trading stock e.g. it does not include installation of office furniture in a new building even where the furniture needs to be installed on delivery.

2. For corporate income tax purposes, taxpayers engaged in long-term construction contracts and projects are categorized into three broad categories as follows:

2.1. “**constructors**” - those who perform the construction work (either directly or through subcontractors) who are paid by an “investor” who progressively pays for the construction work by way of some combination of advance payments, progress payments and final payments;

2.2. “**investors**” - those who finance the construction contract work and who pay “constructors” for that work;

2.3. “**constructor/investors**” - those who both finance and perform the construction contract work themselves.

3. For corporate income tax purposes:

3.1. “constructors” are required to use the “percentage of completion cost estimate” method (where reported income and expenses are based on the proportion of the construction that is completed based on the proportion that contract expenditures incurred for work performed to date bear to the estimated total contract expenditures);

Example:

The following example illustrates the method of determining the stage of completion of a contract and the duration of the recognition of income and expenses of the contract.

A construction contractor has a fixed price of 250,000 euro to build a bridge. The initial amount of income agreed in the contract is 250,000 euro. Initial assumption of contractor for the costs of the contract is 150,000 euro. Construction of the facility will occur during 2010 and 2011.

The contractor determines the stage of completion of the contract by estimating the part of the costs that have come up for work performed until now, keeping the most recent total cost of the contract. A summary of financial data during the construction period is as follows:

	2010	2011
Initial amount of agreed income of the contract	250,000	250,000
Expenses incurred up to date	90,000	150,000
Contract costs to complete the work	60,000	
Total estimated costs of contract	150,000	150,000
Estimated profit	100,000	100,000
Stage of completion (90,000/150,000)	60%	100%
Amounts of income, expenses and profit recognized in income statement in two years as follows:		
Up to now	Recognized in	Recognized in last year
2010	current year	
Income (250,000 x 60%)	150,000	150,000
Expenses (150,000 x 60%)	90,000	90,000
Profit	60,000	60,000
2011		
Income 250,000	150,000	100,000
Costs 150,000	90,000	60,000

Profit 100,000

60,000 40,000

3.2. “investors” and “constructor/investors” are required to use the “income taxed as accrued” method (where income is reported on the basis of payments accrued (where there are receipts and/or an entitlement to receive based on a contract) and expenses are proportionately allowed on a similar basis. In situations where in any tax year no income has been received and no contracts have been made which would give rise to an entitlement to receive income, then no income shall be reported and no expenses shall be allowed in relation to the long-term construction contract in that tax year;

Example:

A 2-year contract with expected total contract income of 200,000 euro and total project costs of 150,000 euro. Funds received in the first year 100,000 euro Expenses incurred in the first year 50,000 euro. Then the recognition of income for the first year will be as follows:

Income in the first year 100,000 euro (which represents 50% of expected total contract income) Deductible cost in the first year 75,000 euro (being 50% of expected total costs).
Gross Profit 25,000 euro.

3.3. Where upon completion of a construction contract by “investors” or “constructor/investors” there are parts of the construction that remain unsold, where the income from such sales (and their associated expenses) have not yet been recognized, the value of such unsold parts shall be recorded as inventory of the investor or constructor/investor and be recorded on their balance sheet until sales take place;

3.4. The “completed contract” method (where no income or expense is reported until the year in which the long-term construction contract is completed) is not allowed to be used;

3.5. The Director-General of TAK may in future issue a public ruling allowing further methods of recording income and expenses under long-term construction contracts in addition to those outlined above;

3.6. Any taxpayer who has commenced a long-term construction contract before the date of entry into force of this Administrative Instruction which is being accounted for on a different method than allowed under this paragraph, shall change their method to that allowed under this paragraph in the tax year in which this Administrative Instruction comes into force and shall make an adjustment to their taxable income in that tax year to reflect the change in method.

4. Many long-term construction contracts and projects involve the charging of upfront “advance” contract payments which may be payable when little or no expenses may have been incurred. In such cases, the taxation of such income shall be determined according to the method the taxpayer is using to account for income from such contracts and projects. If the taxpayer is using the “income taxed as accrued” method (investors and constructor/investors), such “advance” payments will form part of taxable income when received, but if the taxpayer is using the “percentage of completion cost estimate” method

(constructors), such “advance” payments will only form part of taxable income on a proportionate basis as construction proceeds.

5. It is important that receipts or percentages of completion are correctly reflected at or near the end of each tax year. A taxpayer using the “income taxed as accrued” method cannot defer assessment of contract income simply by deliberately refraining from or postponing billing until after the end of a tax year when there was an entitlement under the contract to bill before the end of the tax year.

6. Notwithstanding the above paragraphs, if any long-term construction contract contains a provision for retention payments (where there is provision for the customer to retain a percentage of the contract price until the maintenance period specified in the contract has elapsed), such payments will not form part of taxable income until the contractor either receives them or becomes entitled to receive them from the customer. Where such retention moneys are paid to the contractor before they are actually due on condition that the contractor remedies any defects before the construction work is handed over or accepted by the customer, they shall be treated as taxable income when such moneys are received, unless they are retained in a separate account and not available for disbursement or general use by the contractor until the construction works are completed in which case the moneys will not be treated as taxable income until the contractor is entitled to withdraw or apply them.

7. Where there are barter transactions as part of a long-term construction contract, such transactions shall be recognized as income or expense at market values in accordance with Article 47 of Law No. 03/L-222 On Tax Administration and Procedures. In those situations where market values cannot be determined or reasonably estimated, the investor or constructor/investor can apply to TAK (with appropriate justifying evidence) for approval to recognize such barter transaction incomes and expenditures at the end of the construction contract.

Section 5

Income from Leasing

(Administrative Instruction No.14/2010)

1. Paragraph 6 of article 5 of The Law requires a sub-legal act to be issued on how taxable income from financial and operating leasing shall be determined and reported.

2. A “*financial lease*” is defined in paragraph 1.27 of Article 2 of The Law as “*a lease that transfers substantially all the risks and rewards incidental to ownership of an item of property*”. A finance lease must however meet at least one of the following four conditions:

- 2.1. the term of the lease exceeds seventy-five percent (75%) of the useful life of the leased asset;
- 2.2. there is a transfer of ownership of the leased asset to the lessee at the end of the lease term;

2.3. there is an option to purchase the leased asset at an "agreed price" at the end of the lease term; or

2.4. 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.

(Comment 1: In relation to the first of these conditions, TAK will generally accept the useful life of a leased asset as being the same useful life that TAK allows for depreciation purposes under The Law. Alternatively, lessors and lessees can make an alternative assessment of an asset's useful life in any particular case based on equipment manufacturer estimates of the expected useful life of their equipment, subject to variations in maintenance and operating conditions. In either case, for example, if an asset is determined to have a useful life of 5 years, and the term of the lease is more than 45 months (75% of that useful life), the lease will be a financial lease).

(Comment 2: In relation to the last of these conditions, the present value of lease payments is the value of the payments on their payment dates discounted to reflect the time value of money. For example, it recognizes that a payment of 100 euro today is equivalent to a payment of 105 euro in a year's time if there was an annual interest/discount rate of 5%. The present value of 100 euro required to be paid in a year's time assuming a 5% interest/discount rate is 95 euro 23 cents (= 100 euro payment due in a year's time divided by 105 being 100 euro if payment was required now plus 5% interest). For a lease payment due in two year's time, the present value of that payment would be 90 euro 70 cents (= 100 euro payment due in two year's time divided by 110.25 being 100 euro if payment was required now plus 5% interest compounded for two years). Present value calculations need to be made in respect of each lease payment with the sum total of those present values compared with the an amount equal to 90% of the fair market value of the lease asset to determine whether the lease is a financial lease under this condition).

3. Financial Leases are technically treated as finance agreements where the lessee purchases the lease asset from the lessor. Such leases are generally treated for both accounting and tax purposes as the progressive sale of the lease asset from the lessor to the lessee with the lessor treated as advancing a loan to the lessee which the lessee uses to purchase the lease asset – for income tax purposes there is:

3.1. a progressive sale of the lease asset with the principal component of lease payments being taxable to the lessor,

3.2. a purchase of the lease asset at the beginning of the lease (with the lessee entitled to claim depreciation deductions in respect of the lease asset), and

3.3. a loan from the lessor to the lessee with the interest component of the lease payments being assessable to the lessor and deductible to the lessee. Withholding tax on the interest component of the lease is not required to be deducted by the lessee where the lessor is a financial institution authorized by the Central Bank of Kosovo.

Example:

Company A leases a new vehicle to Company B under a 4-year financial lease. Under the lease, Company B is required to pay Company A 48 monthly lease payments of 200 euro which includes an interest component of 20 euro. In the first year of the lease, the lessor will be assessed 2,400 euro (being 2,160 principal received and 240 interest received under

the lease) and can claim the costs of acquiring the lease asset amortized over the life of the lease. The lessee will be able to claim depreciation on the total cost price of the vehicle from the first year of the lease and will be able to claim the interest component (but not the principal component) as tax deductions. In the later years of the lease, the lessor will continue to receive principal and interest income and the lessee will continue to be able to claim depreciation and interest expenses. At the end of the lease period, any “agreed price” option to purchase payment made by the lessee will be assessable to the lessor, and the lessee will continue to be able to claim depreciation but there will be no other tax consequences until the lessee sells or otherwise disposes of the vehicle. If however the vehicle is returned to the lessor, this will be treated for tax purposes as a “sale” of the vehicle by the lessee to the lessor with tax consequences depending on the extent to which there is a gain or loss on the “sale” of the vehicle at that time.

4. An “*Operating Lease*” is defined in paragraph 1.26 of Article 2 of The Law as “*any lease that is not a financial lease*”. Operating leases resemble asset hireage agreements - the lease payments are fully deductible for the lessee and fully taxable for the lessor. Since the lessor is the owner of the asset being leased, the lessor is able to claim a depreciation deduction in accordance with the depreciation provisions of The Law.

Article 6 - Tax Rate

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 4

Exempt Income

(Administrative Instruction No.8/2010)

1. Paragraph 1.2 of Article 7 of The Law provides that “income of the Central Bank of Kosovo, and of entitled and duly authorized international governmental financial institutions operating in Kosovo” shall be exempt from corporate income tax. For the purposes of that paragraph international governmental financial institutions shall include:

- 1.1 International Monetary Fund (IMF);
- 1.2 World Bank – International Bank for Reconstruction and Development (IBRD) and International Development Association (IDA);
- 1.3 International Finance Corporation (IFC) and other members of the World Bank Group;
- 1.4 European Commission (EC);
- 1.5 European Bank of Reconstruction and Development (EBRD);
- 1.6 European Investment Bank (EIB);
- 1.7 Inter-American Development Bank (IADB);
- 1.8 Asian Development Bank (ADB);
- 1.9 African Development Bank (AfDB);
- 1.10 International Fund for Agricultural Development (IFAD);
- 1.11 Islamic Development Bank (IDB).

2. For the purposes of paragraphs 1.6 and 1.7 of Article 7 of The Law, the expression “other than a local person” means contractors established outside Kosovo who are not required to register with the Ministry of Trade and Industry in Kosovo but who are required to notify TAK in writing that they are working in Kosovo.

2.1 If a non-local contractor performs other activities in Kosovo, other than those in relation with the organizations mentioned in those paragraphs, it should register in Kosovo with the Ministry of Trade and Industry and with TAK (in the latter case either by applying for a fiscal number or by appointing a fiscal representative who will be liable for all Kosovo taxes of the contractor) and income generated from these other activities is inclusive in the gross income of the taxpayer.

2.2 Such non-local contractors, whether they have other activities or not, are also responsible (whether directly or through their fiscal representative) for meeting any applicable withholding tax obligations provided under Chapter VII of The Law.

3. For the purposes of paragraph 1.7 of Article 7 of The Law, the expression “international inter-governmental organizations” shall include:

- 3.1 International Finance Corporation (IFC) and other members of the World Bank Group;
- 3.2. Inter-American Development Bank (IADB);
- 3.3. Asian Development Bank (ADB);
- 3.4. African Development Bank (AFDB);
- 3.5. Islamic Development Bank (IDB).

CHAPTER III – EXPENDITURE

Article 8 - Disallowed Expenses

(Law No.03/L-162)

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.

Section 6

Disallowed Expenses

(Administrative Instruction No.14/2010)

1. Paragraph 1 of Article 8 of The Law deals with disallowed expenses. The following expenses are disallowed as an expense:

1.1. *Cost of acquisition an improvement of land.* As a principle, land does not lose its value in time and it is not subject to wear. Land is easily converting into cash ‘*Improvement*’ means work that increases the value of the land and it includes drainage works, terracing, pipelining and water supply and the similar works which become part of the land and which increase the to total value of the land.

1.2. *.Cost of acquisition improvement renewal and reconstruction of assets that are capitalized, depreciated or amortized.* Such costs are recovered over time through depreciation and amortization allowances.

1.3. *Fines, penalties, costs and interest related to them.* Such expenses occur when taxpayers violate tax or other applicable rules and requirements. They are to be covered by the profit after tax.

1.4. *Income taxes.* Gross wages including personal income tax withheld from employees constitutes an expense; thus, it is deductible. Corporate Income Tax is not a deductible item as it is computed after the deduction of all allowed expenses.

1.5. *Input VAT* is not a deductible item if it is rebated or credited from output VAT. In one particular case it is a deductible item and this is when a corporate income taxpayer, who has opted to account for income and expenses on a “real” basis, has not reached the VAT registration threshold and thus is not entitled to charge VAT on domestic supplies.

1.6. *Loss from the sale or exchange of property between related persons.* Gains from the sale or exchange of movable or immovable property between related

persons will form part of the taxable income of the party making the gain while at the same time the party making the loss will not be able to claim such loss as a deductible expense.

1.7. *Pension contributions above the maximum amount allowed by Kosovo pension law.* The law covering pensions managed by the Kosovo Pensions Savings Trust allows employers to make voluntary pension contributions in respect of their employees up to a maximum amount of 15% of an employee's gross wage. Such contributions are deductible to the employer, but any excess over that maximum amount, is not deductible.

Article 9 - Allowable Expenses

(Law No.03/L-162)

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.

Section 5

Allowable Expenses

Administrative Instruction No.8/2010

1. Paragraph 5 of Article 9 of The Law provides that no deduction will be allowed for any accrued expenses related to income which is subject to withholding tax unless such expense is paid on or before 31 March of the following year.

Example:

A company business that has a turnover of more than 50,000 euro (and thus accounts for income tax on a “real” basis) rents its business premises. At the end of 2010, it owes the landlord 3,000 euro for 3 months rent to 31 December 2010. The business claims that rental expense on an accrual basis. Provided the accrued rent is paid on or before 31 March 2011, the rental expense deduction claimed in the 2010 tax period in respect of the last 3 months will be allowed. However, if that rent is not paid by 31 March 2011, then the company will not be able to claim the accrued rent in the 2010 tax period. Such rent will only be able to be claimed as an expense in the tax period (2011 or later) when the owed rent is actually paid.

Section 7

Allowed Expenses

(Administrative Instruction No.14/2010)

1. Paragraph 2 of article 9 of The Law provides for the deductibility of education expenses paid by an employer in respect of employees. Sub-paragraph 2.4 of that Article requires that the employee remain in the employment of the employer for a minimum period after the completion of the education for which the expenses were paid by the employer. For the purposes of that subparagraph, the minimum period shall be 24 months.

2. If an employee leaves employment before 24 months after the completion of the education for which his/her employer paid the expenses, then

2.1 if the employee has repaid the employer in full for the education expenses, the employer will be assessed for the repayment in the year in which repayment was made and no change is made to tax deductions claimed in relation to those expenses;

2.2. if the employee has repaid the employer in part for the education expenses, the employer will be assessed for the partial repayment in the year in which repayment was made and the employer's deductible expenses in the year of the employee's departure will be reduced by the balance of the amount of the education expenses previously deducted;

2.3. if the employee has not repaid the employer for the education expenses, the employer's deductible expenses in the year of the employee's departure will be reduced by the amount of the education expenses previously deducted).

3. Paragraph 6 of article 9 of The Law refers to expenses related to operating and financial leases. Such expenses shall be deductible on the basis outlined in Section 5 of this Administrative Instruction.

4. Paragraph 7 of article 9 of The Law provides that in order for expenses to be allowed as a deduction, all expenses must be fully documented with such documents available for inspection upon request from Tax Administration. The documentation requirements for allowable expenses are outlined in Section 23 of Administrative Instruction No. 15/2010 On Implementation of Law No. 03/L-222 on Tax Administration and Procedures.

Article 10 - Allowable Deductions

(Law No.03/L-162)

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.

Section 8

Allowed Deductions

(Administrative Instruction No.14/2010)

1. In paragraph 1 of article 10 of The Law, the expression '*computed before the charitable contributions are deducted*' means that the 5% allowed limit will be applied on the gross profit before such an expense is deducted from adjusted gross income.

Example:

If a company has a gross profit before charitable contributions of 10,000 euro and it has made a donation to a hospital of 400 euro, the 5% allowed limit shall be applied on the 10,000 euro and not on $10,000 - 400 = 9,600$ euro. In this case 400 euro is totally deductible as it is within the allowed limit of $10,000 \times 5\% = 500$ euro. Charitable contributions made during the tax period shall furnish, at the time of filing the annual tax declaration and respective financial statements, receipts signed and stamped by the beneficiaries of the charitable contributions, certifying the purpose of those donations, the amounts of those donations and the times when the donations were made. A charitable contribution deduction can only be claimed by those taxpayers who pay tax on a real income basis and thus who are already required to submit an annual tax declaration. Presumptive taxpayers cannot claim for this deduction.

3. Each receipt referred to in the previous paragraph shall contain the following information:

- 3.1. name of the donor;
- 3.2. tax identification number (fiscal number) of the donor, or where the donor is an individual not required to have a fiscal number, the individual's personal identification number;
- 3.3. address of the donor;
- 3.4. donor contact person's name and telephone number;
- 3.5. name of the recipient;
- 3.6. tax identification number (fiscal number) of the recipient;
- 3.7. address of the recipient;
- 3.8. recipient contact person's name and telephone number;
- 3.9. amount of charitable contribution donated;
- 3.10. date of donation;
- 3.11. a declaration by the recipient that the data on the receipt is correct and that the recipient has no direct or indirect conflict of interest with the donor.

Article 11 - Representation Costs

(Law No.03/L-162)

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.

Section 9 Representation Expenses

(Administrative Instruction No.14/2010)

1. Article 11 of The Law provides a deduction in respect of representation expenses but limits this to 50% of the amount invoiced for business entertainment. This deduction, and its limitations, applies in respect of business entertainment expenses. Business representation expenses such as those for publicity, advertising and for promotion and representation of products with no entertainment element, other than an incidental one, will be deductible in full under the general business expenses deductibility provisions.

2. In order for any deduction for representation expenses to be allowed under Article 11 one of the following must apply:

- 2.1. the expenses are incurred mainly in connection with business;
- 2.2. the entertainment is for an existing or prospective client or supplier;
- 2.3. circumstances make it necessary to discuss business along with entertainment, such as a business lunch where the main purpose is business;
- 2.4. employees are entertained to maintain staff goodwill at events such as parties and retirement functions.

3. The deduction for entertainment expenses under Article 11 applies in respect of business entertainment. Private entertainment expenditure is not deductible e.g. restaurant lunches with friends, or where the business or professional aspect is incidental.

4. The deduction for entertainment expenses under Article 11 applies in respect of amounts invoiced. In order for a deduction to be allowed, there must be an invoice covering the entertainment expenses. Taxpayers should be able to substantiate such expense claims by being able to provide, when requested by TAK, the following details:

- 4.1. the date the expenses were incurred;
- 4.2. the names of persons entertained;
- 4.3. the businesses those persons represent;
- 4.4. the positions those persons hold in those businesses; and
- 4.5. the reasons for the entertainment.

5. Representation expenses under Article 11 are 50% deductible up to an amount equal to 2% of the annual gross income. The expression 'Annual Gross Income' in that Article means all income that arose during the tax period from sources within Kosovo and it includes income from business activity, income from the use of movable, immovable or intangible property, income from interest, income from dividends, gain from the sale of

securities or immovable property and any other income whether subject to income tax or not.

Article 12 - Bad Debts

(Law No.03/L-162)

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.

Section 10 Bad Debts

Administrative Instruction No.14/2010

1. Sub-paragraph 1.2 of article 12 of The Law requires bad debts to be '*written off*'. In accounting terms "written off" means an adjustment has been made in the taxpayer's books to reflect the reduction in value of accounts receivable (normally by means of an account, Provision for Bad Debts). The amount included in the provision for bad debt account is

based on historical data and once the provisional amount is subtracted from the accounts receivable account gives a better perspective of the income a taxpayer can expect to receive from its accounts receivable. However, for tax purposes, an expense for bad debts cannot be claimed based on the provisional account. An adjustment must be made in the taxpayer's books to reflect the actual bad debt expense based on those specific debts that meet the requirements for being expensed (namely, a debt must be six months old, there must be adequate evidence of substantial unsuccessful efforts to collect the debt, etc). There is no expectation that the taxpayer must forego any future attempts to collect the debt. As provided in paragraph 2 of Article 12 of The Law, any bad debts that are deducted as expenses and then collected later shall be included in income in the tax period in which the collection has been made.

2. In respect of sub-paragraph 1.5 of Article 12 of The Law '*adequate evidence*' can include the following:

- 2.1. final decision of a competent court certifying that the debt is uncollectible;
- 2.2. where legal action would not be cost effective, written evidence of either a decision to treat a specific debt as bad without taking legal action due to that reason or more generally an internal policy which treats certain types of debts as bad without taking legal action due to that reason, in both cases provided the Tax Administration of Kosovo is satisfied that the threshold applied in determining whether legal action is cost effective or not is reasonable in the circumstances;
- 2.3. where legal action would not be feasible, written evidence of either a decision to treat a specific debt as bad without taking legal action due to that reason or more generally an internal policy which treats certain types of debts as bad without taking legal action due to that reason;
- 2.4. official confirmation of enforced collection unsuccessful actions;
- 2.5. police or other law enforcement agencies certification proving that taxpayer's debtor is not traceable;
- 2.6. civil office certification proving that the taxpayer has died; and
- 2.7. any other official document supporting the creation of a bad debt provision.

Article 13 - Reserve Funds

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 11

Payments to Related Persons

Administrative Instruction No.14/2010

Article 14 of The Law provides that compensation, emoluments, interest, rent and other expenses paid to related persons shall be allowed as a deduction in an amount equal to the lesser of the amount paid and the respective open market value.

Example 1:

The son of the owner of a company is employed by the company as a driver and is paid 2,000 euro/month. Market value for driving services is 400 euro. This is the amount that shall be allowed as a deduction as the driver and the company are related persons.

Example 2:

Company A and B are owned by the same individual and A rents a warehouse to B for 1,000 euro/month. Market value for such a rental service is 1,800 euro. Only 1,000 euro shall be allowed as a deductible expense as A and B are related persons.

Article 15 – Depreciation

(Law No.03/L-162)

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.

Section 12 Depreciation

(Administrative Instruction No.14/2010)

1. The expression in paragraph 1 of article 15 of The Law ‘*Owned by the Taxpayer*’ means that only the owner of the tangible property, who bears the risk of wear, tear or obsolescence of the asset, is entitled to deduct depreciation charges. No depreciation deduction will be allowed for the lessee of the assets unless it is stipulated in the lease agreement that a financial lease is involved and ownership rights pass over to the lessee from the lessor through periodic payments.

2. Under paragraph 2 of article 15 of The Law, expenditures on leasehold improvements will be recovered through depreciation deductions using the straight Line Method based on the life of the leasehold. In the case of open ended leaseholds the lessee shall, at the best of his or her judgment, and based on accounting rules and best practices, define the leasehold duration and use that as the denominator for computing the annual depreciation charge of the improvement.

3. Paragraph 4 of article 15 of The Law provides for depreciation using the straight line method. Given the depreciation rates for each asset category (as categorized in paragraph 3 of Article 15), this means new Category 1 assets (5% depreciation rate) will be depreciated in equal amounts over 20 tax periods, new Category 2 assets (20% depreciation rate) will be depreciated in equal amounts over 5 tax periods, and new Category 3 assets (10% depreciation rate) will be depreciated in equal amounts over 10 tax periods.

Example: Suppose that Company X at the beginning of the tax period 2010 purchases a building of 1,000,000 euro, which belongs to Category 1 of depreciable assets (which allows depreciation of 5% of the value of each asset at the end of the tax period) . The straight line method works as follows:

Tax Period	Opening Balance	Additions	Depreciation	Closing Balance
2010	1,000,000	-	50,000	950,000
2011	950,000	-	50,000	900,000
2012	900,000	-	50,000	850,000
2029	50,000	-	50,000	0

4. Paragraph 5 of Article 15 of The Law provides that assets shall first be taken into account for depreciation purposes only when they are placed into service. No depreciation deduction will be allowed if an asset is not placed into service and if it does not serve the purpose of economic activity. A full year's depreciation can be claimed in respect of assets that are placed into service during the first six months of a year, but only a half year's depreciation can be claimed in respect of assets placed into service in the last six months of

a year. In both cases, a full year's depreciation can be claimed in subsequent years up to but not including the year in which the asset is sold or otherwise disposed of – in the year of sale or disposal, a gain or loss on sale may be recognized based on a comparison between the sale/disposal price and the book value of the asset at the beginning of the year of sale/disposal.

Example:

Company X buys two cars during 2010, each for 5,000 euro, but the first is purchased on 15 April 2010 and the second on 20 September 2010. Depreciation claimable in the 2010 tax period in respect of the first car shall be the full year entitlement of 1,000 euro (20%), whereas for the second car only a half year depreciation (500 euro) is claimable. Both cars will be entitled to claim a full year's depreciation from 2011 onwards (except that the second car will only get half a year depreciation in its final period of depreciation - the first half of the year 2015).

5. Paragraph 7 of article 15 of The Law provides that Category 2 and 3 assets (as categorized under paragraph 3 of Article 15) shall be individually depreciated using the straight line method when acquired after the date of entry into force of The Law. For practical reasons, this applies to assets that are acquired on or after 1 January 2010. Paragraph 8 of Article 15 provides that assets in those categories that were acquired before that date and were depreciated under the pooling method, will continue to be depreciated under that method until the value of the pool is zero.

Example:

Suppose that Company X at the beginning of tax period 2010 possesses the following assets belonging to Category 2: 10 computers - 1,000 euro each; 2 photocopiers - 4,000 euro each; 2 automobiles - 10,000 euro each. In the first half of the 2010 tax period the company buys another photocopier for 5,000 euro. The beginning Category 2 assets, which have a pooled opening balance of 38,000 euro will be depreciated using the straight line method at the rate of 20% per year until the value of the pool reaches zero. The photocopier purchased in 2010 for 5,000 euro will be individually depreciated using the straight line method at a rate of 20% (1,000 euro) per year.

6. Paragraphs 9 and 10 of article 15 of The Law provide special rules for new assets with a purchase price of up to 3,000 euro. Assets with a purchase price of 1,000 euro or less can be expensed in full in the tax period in which they were purchased and were put into service. Assets with a purchase price of between 1,000 and 3,000 euro shall be recorded in a new pool (rather than individually depreciated as Category 1, 2 or 3 assets) which shall be depreciated on a straight line basis using a 20% rate. As additional 1,000 to 3,000 euro priced assets are purchased, their purchase price shall be added to the value of the pool. As such assets are sold from the pool, the purchase price of the asset sold shall be reported as ordinary business income in the tax period in which the asset is sold, but the value of the pool will not be reduced as a result of the sale.

Example:

Suppose that Company X buys a computer in early 2010 for 2,000 euro and an item of plant and machinery in early 2011 for 2,400 euro. It sells the computer for 1,000 euro in 2012. Each of these assets meets the criteria to be included in the pool authorized under paragraph 10 of Article 15. The pool account would operate as follows:

Tax Period	Opening Balance	Additions	Reductions	Depreciation	Closing Balance
2010	2,000			400	1,600
2011 1	600	2,400		800	3,200
2012 3	200		640	2,560	

For the 2012 tax period, 2,000 euro (the purchase price of the computer) will be included in taxable income but no adjustment will be made to the pool account which will continue to apply with 20% depreciation applied to the opening balance of the pool plus any additions each tax period.

7. The general rule for determining the correct depreciation for tax purposes is that depreciation of assets must be based on historical cost price. However, taking into consideration the circumstances of the post-war period in Kosovo, the Director-General of the Tax Administration of Kosovo may issue a general ruling for publicly or socially owned enterprises allowing a revalued base if he or she considers an alternative approach should be applied in the circumstances.

Article 16 - Depreciation of Livestock

(Law No.03/L-162)

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.

Section 13

Depreciation of Livestock

(Administrative Instruction No.14/2010)

1. Paragraph 3.2 of article 15 and article 16 of The Law allow a depreciation deduction in respect of livestock used for production or breeding in an economic activity. This deduction does not apply to:

- 1.1. livestock raised by the taxpayer – in these cases there is no depreciable basis as the cost for raising those livestock will have already been deducted
- 1.2. livestock acquired for resale – in these cases such livestock will be recorded as part of the inventory of the taxpayer and deductions allowed as part of the calculations of the “cost of goods sold” (i.e. deduction is allowed each year for opening inventory plus purchases less closing inventory)

1.3. livestock not acquired for resale which has a purchase cost of 1,000 euro or less – such livestock is able to be claimed as a current expense in the year of purchase under paragraph 9 of Article 15 of The Law

1.4. livestock not acquired for resale which has a purchase price of between 1,000 and 3,000 euro which has been purchased on or after 1 January 2010 – depreciation deductions for such livestock are allowable as part of the asset pool provided for under paragraph 10 of Article 15 of The Law

1.5. Given the above, the depreciation deduction allowable under paragraph 3.2 of Article 15 and under Article 16 will in practice be limited to selected high-value livestock normally those with a valued pedigree. In such cases, the depreciation deduction allowable, as with other category 2 assets, is 20% of the purchase price per year on a straight-line basis.

Article 17 - Special Allowance for New Assets

(Law No.03/L-162)

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. 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.

Section 14

Special Allowance for New Assets

(Administrative Instruction No.14/2010)

Paragraph 1 of Article 17 of The Law provides that 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 purchased new locally or imported for the first time in Kosovo between January 1, 2010 and December 31, 2012, will benefit from a special allowance of 10% in addition to the normal allowable depreciation deductions.

Example:

Suppose that Company X has an opening balance of Category 3 for the tax period 2010 of 160,000 euro. During the first half of the year company imports from Germany a new heavy transport vehicle of 40,000 euro. Depreciation deduction for this tax period will have three components:

1. Depreciation of the new vehicle as an individual asset: $40,000 \times 10\% = 4,000$ euro;
2. Depreciation of the pool of Category 3 assets on hand at the beginning of the 2010 tax period:

$160,000 \times 15\% = 24,000$ euro;

3. Special allowance for the new vehicle: $40,000 \times 10\% = 4,000$ euro.

Total depreciation deduction 32,000 euro. The special allowance for the new vehicle is granted only once, in the tax period in which the asset is purchased in or brought into Kosovo.

Article 18 - Repairs and Improvements

(Law No.03/L-162)

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.

. 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.

Section 15

Repairs and Improvements

(Administrative Instruction No.14/2010)

1. Article 18 of The Law deals with repairs and improvements. The term '*repairs or improvements*' means work that is done to substantially increase the capacity, life, conditions and productivity of the asset. In the case of a building, roofing, plumbing, plastering and other similar work are considered repairs and improvements, but painting is not. In the case of a truck, changing tires is not an improvement but, replacing the existing engine with a new one, is a repair and improvement.

2. Paragraph 1 of Article 18 of The Law provides that amounts expended for repairs or improvements to an asset shall be capitalized and added to the depreciable cost base 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 1,000 euro. In those situations where the repairs or improvements extend the use of the asset by one year or more, and the amount expended on repairs or improvements is greater than 1,000 euro, the full amount expended is required to be capitalized (1,000 euro of that amount is not allowed to be claimed as an expense). Conversely, in those situations where the repairs or improvements do not extend the useful life of the asset, or extend it for less than a year, the amounts involved may be expensed in full even where the amounts exceed 1,000 euro.

3. Paragraph 2 of Article 18 of The Law provides the rules for calculating depreciation where amounts expended for repairs or improvements to an asset are capitalized.

3.1. For repairs made to Category 1 assets whenever acquired, and for repairs made to Category 2 and Category 3 assets acquired on or after the entry into force of The Law, the capitalized amounts of repair are added to the remaining book value of the asset.

Example:

Suppose that the opening book value of a taxpayer's building is 100,000 euro. During the 2010 tax year the taxpayer spends 4,000 euro on repairs to the roof which extend the useful life of the building for five more years. Depreciation on the building for the 2010 tax year is calculated as follows:

Opening book value of the building 100,000 euro Capitalized repairs and improvements 4,000 Closing book value before depreciation 104,000 Depreciation 5% 5,200 Closing book value of the building 98,800

3.2. For repairs made to Category 2 and Category 3 assets acquired before the entry into force of The Law, the capitalized amounts of repair are:

3.2.1. where the amount of the repair is between 1,000 and 3,000 euro, added to the pool referred to in paragraph 10 of Article 15 of The Law as a new qualifying asset;

3.2.2. where the amount of the repair is over 3,000 euro, treated as a new Category 2 or Category 3 asset, as applicable, for which depreciation will be allowed as a deduction in accordance with paragraph 4 of Article 15 of The Law.

Article 19 - Amortization

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 16

Exploration and Development Costs

(Administrative Instruction No.14/2010)

1. Paragraph 1 of Article 20 of The Law provides for the amortization of a natural deposit of minerals and other natural resources. The user of the deposit can claim a deduction for the exploration and development costs. Exploration costs, development costs and related interest must be added to a capital account as they are incurred. At the end of the tax period, the portion of exploration and development costs pertaining to that period shall be determined by multiplying the balance in the capital account by a coefficient of amortization (CA) which is:

$$CA = \frac{\text{Number of units extracted during the year}}{\text{Total estimated units in the deposit}}$$

Example:

Company X has taken on a lease on a copper field and the estimated number of units in the natural deposit is 15,000,000. The production for the year is 1,500,000 units. The balance of exploration costs, development costs and related interest in the capital account at the end of the tax period is €500,000. To determine the amount of amortization allowed for the tax period, the balance in the account must be multiplied by the CA. In this case, the coefficient is 10%, (1,500,000/15,000,000). The amortization allowed as a deduction, therefore is €50,000.

2. To determine the total estimated number of units in the deposit, the taxpayer must obtain a report from experts and must make it available to Tax Administration for inspection upon

request or submitted with the annual tax declaration. The computation of the units of extraction must be done using generally accepted methods. Tax Administration reserves the right to use the services of independent specialists to review the engineering reports and the extraction computation methods.

CHAPTER IV - CAPITAL GAINS AND LOSSES, BUSINESS LOSSES

Article 21 - Capital Gains and Losses

(Law No.03/L-162)

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.

Section 17

Capital Gain or Loss

(Administrative Instruction No.14/2010)

1. Paragraph 4 of Article 21 of The Law requires the use of open market values where sales of capital assets are made between related persons for sales prices that are less than open market value. In such cases, the open market value shall be determined as:

1.1. The estimated monetary amount for a sale of the same asset between a willing buyer and a willing seller in an arm's-length transaction

1.2. Or, where the above is not available, the amount that would arise from the sale of a similar asset in similar circumstances (e.g. similar quality, similar size or time period and similar conditions of sale)

1.3. Or, where neither of the above apply, a method approved by TAK which provides a sufficiently objective approximation.

1.4. The method allowable by TAK under the last of the above options is a cost plus basis, with cost being labor and material costs plus a percentage of overheads and then a reasonable mark up percentage. Taxpayers wishing to use this method need to provide TAK with documentation showing why they could not use the two previous options.

2. Paragraph 13 of Article 21 of The Law covers sales of capital assets involving installment agreements which span more than one tax period. In such cases, capital gains or losses shall be reported on a straight-line basis over the life of the installment arrangement, starting from the earlier of the date of payment of a deposit or the date such deposit was due and ending with the earlier of the date of payment of the last installment payment or the date such payment was due.

3. In making these straight-line basis calculations:

- 3.1. where the start date for the installment arrangement falls within the first 6 months of a year, the start date of the installment arrangement shall be regarded as being the first day of that year;
- 3.2. where the start date of the installment arrangement falls within the second 6 months of a year, the start date shall be regarded as being the first day of that 6 months period;
- 3.3. where the end date of the installment arrangement falls within the first 6 months of a year, the end date shall be regarded as being the last day of that 6 months period;
- 3.4. where the end date of the installment arrangement falls within the second 6 months of a year, the end date of the installment arrangement shall be regarded as being the last day of that year;
- 3.5. any installment payments to the extent the amount of the payment is not certain until a specific event occurs (e.g. where part of the sale/purchase price is contingent on achieving a certain level of sales or another event, where there is a possibility that that achievement or event will not happen) should be ignored – the recognition of the uncertain income for the seller and uncertain cost for the buyer in these circumstances will only arise if and when the contingency is removed and the amount of the payment becomes certain.

Example 1:

If a capital asset has a net value (cost of acquisition plus cost of improvements less depreciation claimed for tax purposes) in the books of 5,000 euro and is sold for 7,000 euro, this results in a capital gain of 2,000 euro. If the sale agreement envisages installment payments being made over the period from 1 April 2010 until 31 March 2012 (a two year period spanning three tax years), then the capital gain will be recognized as follows:

In making straight-line basis calculations, the installment arrangement will be treated as starting on 1 January 2010 and ending on 30 June 2012, a period of 30 months

The amount of the gain recorded in respect of 2010 will be $2,000 \times 12/30 = 800$ euro

The amount of the gain recorded in respect of 2011 will be $2,000 \times 12/30 = 800$ euro

The amount of the gain recorded in respect of 2012 will be $2,000 \times 6/30 = 400$ euro.

Example 2:

If a capital asset has a net value in the books of 9,000 euro and is sold for 6,000 euro, this results in a capital loss of 3,000 euro. If the sale agreement envisages installment payments being made over the period from 1 October 2010 until 30 September 2012, then the capital loss will be recognized as follows:

in making straight-line basis calculations, the installment arrangement will be treated as starting on 1 July 2010 and ending on 31 December 2012, a period of 30 months

the amount of the loss recorded in respect of 2010 will be $3,000 \times 6/30 = 600$ euro

the amount of the loss recorded in respect of 2011 will be $3,000 \times 12/30 = 1,200$ euro

the amount of the loss recorded in respect of 2012 will be $3,000 \times 12/30 = 1,200$ euro

Article 22 - Involuntary Conversions

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 18 Tax Losses

(Administrative Instruction No.14/2010)

1. Paragraph 5 of Article 23 of The Law provides that tax losses incurred in one tax year shall generally only be able to be carried forward and offset against taxable income in subsequent years of the same business that incurred the loss. That paragraph also provides that carry forward of losses will not be allowed where the business changes its type of business organization (e.g. a business changes from being run as a personal business enterprise to being run under a partnership or an incorporated legal entity) or has an ownership change of more than 50%.

1.1 relation to changes of business organization, an exception to the general rule that tax losses will no longer be able to be carried forward applies where another taxpayer “acquires” the taxpayer pursuant to a TAK approved “reorganization” under Article 26 of The Law in which case, tax losses incurred by the taxpayer prior to reorganization may be claimed by the acquiring taxpayer in subsequent years.

1.2. In relation to ownership changes, in order for tax losses to be carried forward, throughout the period commencing with the first day of the tax loss year to the last day of the tax year in which the loss is to be offset, the following must have applied:

1.2.1. for partnerships or similar joint arrangements, at least 50% of the partners have to be the same

1.2.2. corporated or similar entities, at least 50% of the shares, at least 50% of the voting rights, at least 50% of the entitlement to dividends and at least 50% of the rights to capital distributions have to be held by the same persons.

Example 1:

A partnership is run by 3 partners (A, B and C), each of whom have equal shares in the partnership. It makes a tax loss of 10,000 euro in 2010. During 2011, C leaves and is replaced by new partner D. The 2010 tax loss is able to be carried forward to 2011 as there is 2/3 common ownership (A and B). During 2012, B leaves and is also replaced by new partner E. The 2010 tax loss is not able to be carried forward to 2012 (as there is now only a 1/3 common ownership, A). Any tax loss incurred in 2011 will however be able to be carried forward as there is a 2/3 common ownership between 2011 and 2012 (A and D)

Example 2:

A company has 1,000 shares (all of which have equal rights) and which are held as follows:

- Shareholder A 400 shares
- Shareholder B 300 shares
- Shareholder C 150 shares
- Shareholder D 150 shares

In a subsequent year, the shareholding has changed to:

- Shareholder A 300 shares
- Shareholder B 0 shares
- Shareholder C 150 shares
- Shareholder D 0 shares
- Shareholder E 550 shares

A tax loss from the first year cannot be carried forward to the subsequent year as between them Shareholders A and C have retained only 450 shares (less than 50% of the total)

CHAPTER V - LIQUIDATION AND REORGANIZATION

Article 24 - Distribution of Property

(Law No.03/L-162)

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

(Law No.03/L-162)

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

(Law No.03/L-162)

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 sub-paragraph.

Section 19 **Reorganization**

(Administrative Instruction No.14/2010)

1. Paragraph 3 of Article 26 of The Law provides that distributions to shareholders in respect of their equity interest under a reorganization will not constitute taxable income of the shareholder. In the case of a qualified reorganization of a SOE, distributions to which that paragraph applies shall include shares of the proceeds from the sale of shares of subsidiary corporations of a SOE that is privatized to persons in their capacity as co-owners or co-managers of the SOE, but shall not include severance payments made to persons in their capacity as employees or former employees of the SOE (which shall constitute taxable income of those persons for the purposes of Law No. 03/L-161 On Personal Income Tax).

2. Paragraph 4 of Article 26 of The Law provides that in the case of reorganizations of a taxpayer that in general acquiring taxpayers shall succeed to and take the place of acquired taxpayers with respect to inventories, loss carry forwards, dividend accounts, and all other such items except where otherwise established in a sub-legal act issued by the Minister of Economy and Finance. The remaining paragraphs of this section cover such exceptions.

3. For the purposes of this Section:

3.1. *'Disqualified reorganization'* means any reorganization that has not been granted approval from the Tax Administration of Kosovo. Such a disqualified reorganization shall be treated as anormal sale of entity or its assets;

3.2. *'NewCo'* means a subsidiary corporation of an enterprise established pursuant to Article 8 of Law No. 03/L-067 On the Privatization Agency of Kosovo;

3.3. *'PAK'* means the Privatization Agency of Kosovo established under Article 1 of Law

No. 03/L-067 On the Privatization Agency of Kosovo;

3.4. *'POE'* means a Publicly-owned Enterprise as defined in Article 3 of Law No. 03/L-067

On the Privatization Agency of Kosovo;

3.5. *'Qualified reorganization'* means a reorganization of a SOE included in the process of privatization according to the rules stipulated by PAK or a reorganization of a POE, pursuant to a written plan of reorganization for business, economic and financial purposes and which does not have as its purpose

avoidance of tax by any parties or shareholders. A qualified reorganization is approved in writing by the Tax Administration of Kosovo;

3.6. 'Reorganization' includes the following:

3.6.1. A change in the form of an entity, or in its name or place of organization;

3.6.2. A recapitalization of an entity;

3.6.3. A combination of two or more entities into one, whether by fusion, absorption, or otherwise;

3.6.4. A division of an entity into two or more entities, whether by split up, split off, spin off or otherwise that (immediately after the division) are under the control of the divided entity, its shareholders or both;

3.6.5. The acquisition of control of an entity in exchange solely for voting interest in the acquiring entity;

3.6.6. The acquisition of substantially all assets of an entity in exchange solely for voting interest in the acquiring entity; and

3.6.7. The transfer of some or all of the assets of a SOE to one or more NewCos pursuant to Article 8 of Law No. 03/L-067 On the Privatization Agency of Kosovo;

3.7. 'SOE' means a Socially-owned Enterprise as defined in Article 3 of Law No. 03/L-067 On the Privatization Agency of Kosovo.

4. In the case of a qualified reorganization of a SOE, where the SOE (or PAK on its behalf) establishes one or more NewCos, the tax position of the SOE is not transferred to the NewCo(s) but remains with the SOE. For the purpose of this paragraph, 'tax position' means any tax due, any tax loss or any tax credit for each of the applicable taxes in Kosovo but without prejudice to the right of the PAK to assign responsibility to the NewCo(s) for settlement of such tax liabilities as may be agreed from time to time between the PAK and the Ministry of Economy and Finance or as may be determined by applicable law.

Example:

A SOE operating a manufacturing business has building and manufacturing plant assets. It has been operating at a loss and has income tax losses to carry forward of 100,000 euro and unpaid VAT of 50,000 euro relating to the last two years. The Privatization Agency of Kosovo decides to privatize this business and a NewCo is established for this purpose. An agreement between the Privatization Agency and MEF provides that unpaid tax debts of the last 12 months of VAT owing (assumed to be 40,000 out of the 50,000 euro VAT owing in this example) will be carried forward from the SOE to the NewCo.

The assets of the SOE will be transferred to the NewCo (at the same book value they previously had in the financial accounts of the SOE) which will also be responsible for meeting the unpaid VAT of 40,000 euro (along with other current trading liabilities) from the SOE. The SOE in this case will remain with no assets and will remain with unpaid VAT due of 10,000 euro and with income tax losses of 100,000 able to be carried forward but likely to be unused.

5. A SOE (or PAK on its behalf) or a POE which is reorganized shall seek written approval from the Tax Administration of Kosovo that the reorganization is a qualified

reorganization. Each SOE or POE applying for a qualified reorganization status shall submit a written request to the Tax Administration explaining the reasons why the reorganization is taking place, outlining the reorganization mechanism and summarizing the assets and liabilities (if any) to be transferred. The Tax Administration before granting the approval reserves the right to audit the books and records of the SOE or POE.

CHAPTER VI - TRANSFER PRICES, AVOIDANCE OF DOUBLE TAXATION

Article 27 - Transfer Prices

(Law No.03/L-162)

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.

Section 20 Transfer Prices

(Administrative Instruction No.14/2010)

1. Paragraph 4 of Article 27 of The Law provides for differences between “open market value” and “transfer prices” to be included in taxable income. This provision only applies where there are asset transactions or contract obligations between related persons. In broad terms, the intention of this provision is to ensure that prices in relation to transactions or obligations between related persons (transfer prices) reflect arm's length prices (represented by open market value) – if, for example, goods sold and/or overhead costs charged to a Kosovo branch of a taxpayer by its head office based outside Kosovo are regarded as being at the same level that would be charged by a non-related party providing similar goods or services, then there would be no difference between the price charged and the arm's length price and no taxable income would arise. Conversely, if the costs charged by the head office were regarded as exceeding those that would be charged by a nonrelated party providing similar goods or services (thereby reducing the taxable income of the Kosovo branch), the difference would be added back as taxable income of the Kosovo branch.
2. In determining any differences between “open market value” and “transfer prices”, the “transfer price” is, in accordance with paragraph 1 of Article 27 of The Law, the actual

price charged or chargeable between the related parties. Determination of the “open market value” is however more complex with the method to be used in its determination being subject to the extent to which information is available about non-related parties providing similar goods or services. The method to be used in determining “open market value” is outlined in the following paragraphs.

3. In accordance with paragraph 3 of Article 27 of The Law, “open market value” shall, if possible, be determined by the comparable Uncontrolled Price Method. This method can be used where the taxpayer buys or sells the particular good or service, in similar quantities and under similar terms to non-related parties in similar markets (an internal comparable) or a non-related party buys or sells the particular good or service, in similar quantities and under similar terms to another non-related party in similar markets (an external comparable). Transactions may serve as comparables despite the existence of differences between those transactions and related party transactions where the differences can be measured on a reasonable basis and appropriate adjustments can be made to eliminate the effects of those differences. Comparables, or adjusted comparables where differences are eliminated, will be the “open market value”.

Example 1:

A taxpayer sells 1,000 tons of a product for 80 euro per ton to an associated enterprise in its corporate group, and at the same time sells 500 tons of the same product for 100 euro per ton to an independent enterprise. This case requires an evaluation of whether the different volumes should result in an adjustment of the transfer price. The relevant market should be researched by analysing transactions in similar products to determine typical volume discounts.

Example 2:

An illustrative case where adjustments may be required is where the circumstances surrounding controlled and uncontrolled sales are identical, except for the fact that the controlled sales price is a delivered price and the uncontrolled sales are made from the factory excluding the costs of transportation and insurance. The differences in terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price. Therefore, to determine the uncontrolled sales price, adjustment should be made to the price for the difference in delivery terms.

4. Where there is an absence of comparable or adjusted comparable data such that the comparable uncontrolled method cannot be used, “open market value” shall be determined using the resale price method (which is more suited for use by distributors) or the cost plus method (which is more suited for use by manufacturers) as outlined in the following paragraphs.

5. The Resale Price method is usable where goods or services purchased by a taxpayer from a related party are resold to an unrelated party, particularly where the taxpayer seller adds relatively little value to the goods or services. In such cases, the open market value is calculated by deducting from the resale price an appropriate resale gross margin which allows the seller to recover its operating costs and to earn an arm's-length profit based on

the functions performed, assets used, and the risks assumed. This gross margin can be determined by reference to the resale price margin earned by a member of the same group as the taxpayer in comparable uncontrolled transactions (internal comparable) or the resale price margin earned by a non-related party in comparable uncontrolled transactions (external comparable).

Example 1:

Assume that there are two distributors selling the same product in the same market under the same brand name. Distributor A offers a warranty; Distributor B offers none. Distributor A is including the warranty as part its pricing strategy and so sells its product at a higher price resulting in a higher gross profit margin (if the costs of servicing the warranty are not taken into account) than that of Distributor B, which sells at a lower price. The two margins are not comparable until an adjustment is made to account for that difference.

Example 2:

A company sells a product through independent distributors in five countries in which it has no subsidiaries. The distributors simply market the product and do not perform any additional work. In one country, the company has set up a subsidiary. Because this particular market is of strategic importance, the company requires its subsidiary to sell only its product and to perform technical applications for the customers. Even if all other facts and circumstances are similar, if the margins are derived from independent enterprises that do not have exclusive sales arrangements or perform technical applications like those undertaken by the subsidiary, it is necessary to consider whether any adjustments must be made to achieve comparability.

6. The Cost Plus Method is usable where costs are incurred by a taxpayer in the supply of a good or service to a related party. In such cases, the open market value is determined by adding to the costs incurred by the taxpayer (calculated in accordance with accounting principles that are generally accepted for the particular industry) a comparable gross mark-up which is determined by reference to the cost plus mark-up earned by a member of the same group as the taxpayer in comparable uncontrolled transactions (internal comparable) or the cost plus mark-up earned by a non-related party in comparable uncontrolled transactions (external comparable). In either case, the returns used to determine an arm's length mark-up must be those earned by persons performing similar functions and preferably selling similar goods to non-related parties. Where the transactions are not comparable in all ways and the differences have a material effect on price, taxpayers must make adjustments to eliminate the effect of such differences (such as differences in the relative efficiency of the supplier, and any advantage that the activity creates for a group that includes the taxpayer).

Example 1:

A is a domestic manufacturer of timing mechanisms for mass-market clocks. A sells this product to its foreign subsidiary B. A earns a 5 percent gross profit mark up with respect to its manufacturing operation. X, Y, and Z are unrelated domestic manufacturers of timing mechanisms for massmarket watches. X, Y, and Z sell to unrelated foreign purchasers. X,

Y, and Z earn gross profit mark ups with respect to their manufacturing operations that range from 3 to 5 percent. A accounts for supervisory, general, and administrative costs as operating expenses, and thus these costs are not reflected in cost of goods sold. The gross profit mark ups of X, Y, and Z, however, reflect supervisory, general, and administrative costs as part of costs of goods sold. Therefore, the gross profit mark ups of X, Y, and Z must be adjusted to provide accounting consistency.

Example 2:

Company C in country D is a 100% subsidiary of company E, located in country F. In comparison with country F, wages are very low in country D. At the expense and risk of company E, television sets are assembled by company C. All the necessary components, know-how, etc. are provided by company E. The purchase of the assembled product is guaranteed by company E in case the television sets fail to meet a certain quality standard. After the quality check the television sets are brought -- at the expense and risk of company E -- to distribution centers company E has in several countries. The function of company C can be described as a purely contract manufacturing function. The risks company C could bear are eventual differences in the agreed quality and quantity. The basis for applying the cost plus method will be formed by all the costs connected to the assembling activities.

Example 3:

Company A of a corporate group agrees with company B of the same group to carry out contract research for company B. All risks of a failure of the research are borne by company B. This company also owns all the intangibles developed through the research and therefore has also the profit chances resulting from the research. This is a typical setup for applying a cost plus method. All costs for the research, which the related parties have agreed upon, have to be compensated. The additional cost plus may reflect how innovative and complex the research carried out is.

7. Where a taxpayer believes that the above methods cannot be used, and can provide evidence of this, the Tax Administration of Kosovo may allow use of the profit split method. The profit split method may be applied where the operations of two or more related parties are highly integrated making it difficult to evaluate their transactions on an individual basis and/or where the existence of valuable and unique intangibles makes it impossible to establish the proper level of comparability with uncontrolled transactions under another method.

7.1. The first step under this method is to determine the total profit earned by the parties from a controlled transaction. The profit split method allocates the total integrated profits related to a controlled transaction, not the total profits of the group as a whole. The profit to be split is the operating profit before the deduction of interest and taxes.

7.2. The second step is to split the profit between the parties based on the relative value of their contributions to the related party transactions, considering the functions performed, the assets used, and the risks assumed by each related party, in relation to what non-related parties would have received, with the result being the open market value.

8. In the event that none of the previous methods can be applied, the Tax Administration of Kosovo may allow use of the transactional net margin method. This method compares the net profit margin of a taxpayer arising from a related party transaction with the net profit margins realized by nonrelated parties from similar transactions and examines the net profit margin relative to an appropriate base such as costs, sales or assets, taking into account the nature of the business activity, with the result being the open market value.

9. Taxpayers who conduct transactions with related parties must maintain sufficient documentation to justify their choice of open market value determination method and to show that it produces an “arm's length” result.

Article 28 - Avoidance of Double Taxation

(Law No.03/L-162)

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

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 6

Withholding Tax on Interest and Royalties

(Administrative Instruction No.8/2010)

1. Paragraph 1 of Article 30 of The Law requires taxpayers to withhold tax on payments of interest and royalties. Interest or royalties paid or credited to a person who is exempt from corporate income tax under Article 7 of The Law, under any other law of Kosovo or under an international agreement or convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the interest and royalties to provide written evidence to the payer that their income is exempt from corporate income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of organizations exempt from corporate income tax under paragraph 1.1 of Article 7 of The Law, a copy of the non-governmental organization registration certificate;

2.2 in the case of organizations exempt from Corporate Income Tax under paragraphs 1.7 or 1.8 of Article 7 of The Law, a copy of their contract;

2.3 in the case of international governmental financial institutions that are not specifically mentioned in paragraph 1 of section 4 of this Administrative Instruction, a copy of a letter which authorizes their operations in Kosovo;

2.4 in the case of foreign governmental and diplomatic organizations, a copy of a letter which authorizes their operations in Kosovo;

2.5 in any other case, other than in the case of public authorities (where no written evidence is necessary), a copy of a letter from TAK confirming exemption from corporate income tax.

3. Paragraph 4 of Article 30 of The Law provides that interest on loans provided by financial institutions licensed by CBK to their customers in the ordinary course of business shall not be subject to withholding.

Example:

Kosovo Bank A makes a loan to Kosovo Business B as part of its normal commercial lending business. Since the loan is made in the ordinary course of Kosovo Bank A's business, Kosovo Business B does not have a requirement to withhold tax on the interest component of the loan repayment.

4. The exemption from withholding tax provided under paragraph 3 of this section only applies in respect of interest on loans provided by financial institutions licensed by CBK. It does not apply in respect of interest paid on loans from non-resident financial institutions – in such cases the interest payer is required to withhold tax from their interest payments to the non-resident financial institution.

5. For the purpose of remitting tax withheld on interest and/or royalties under this Section, withholders shall complete a tax withholding and remittance statement form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Section 7

Withholding Tax on Rents

(Administrative Instruction No.8/2010)

1. Paragraph 2 of Article 30 of The Law requires taxpayers to withhold tax on payments of rent. Rent paid or credited to a person who is exempt from Corporate Income Tax under Article 7 of The Law, under any other law of Kosovo or under an international agreement or convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the rent to provide written evidence to the payer that their income is exempt from corporate income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of organizations exempt from corporate income tax under paragraph 1.1 of Article 7 of The Law, a copy of the non-governmental organization registration certificate;

2.2 in the case of organizations exempt from corporate income tax under paragraphs 1.7 or 1.8 of Article 7 of The Law, a copy of their contract;

2.3 in the case of international governmental financial institutions that are not specifically mentioned in paragraph 1 of section 4 of this Administrative Instruction, a copy of a letter which authorizes their operations in Kosovo;

2.4 in the case of foreign governmental and diplomatic organizations, a copy of a letter which authorizes their operations in Kosovo;

2.5 in any other case, other than in the case of public authorities (where no written evidence is necessary), a copy of a letter from TAK confirming exemption from corporate income tax.

3. For the purpose of remitting tax withheld on rents under this Section, withholders shall complete a tax withholding and remittance statement form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

4. The requirement to withhold tax from rents only applies to “taxpayers” who are paying rent. Taxpayers are defined under Article 3 of The Law, but this does not cover foreign or Kosovo governmental institutions, including municipalities. Such organizations are not required to withhold taxes on rental payments they make but are required to notify TAK in writing of who they pay such rental payments to and of the amount of those payments.

Section 8

Withholding Tax on Lottery Winnings and Games of Chance

(Administrative Instruction No.8/2010)

[Note: This Section of the Administrative Instruction, as far as it relates to games of chance, will become obsolete when a new Law on Games of Chance and Lottery comes into force, pursuant to paragraph 1 of Article 38 of The Law.]

1. Paragraph 3 of Article 30 of The Law requires taxpayers to withhold tax on payments of lottery and game of chance winnings. Lottery, or game of chance, winnings paid or credited to a person who is exempt from corporate income tax under Article 7 of The Law, under any other law of Kosovo or under an international agreement or convention, shall not be subject to withholding. In such cases, the onus is on the recipient of the winnings to provide written evidence to the payer that their income is exempt from corporate income tax. Until such evidence is produced, the obligation remains on the payer to withhold.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of organizations exempt from corporate income tax under paragraph 1.1 of Article 7 of The Law, a copy of the non-governmental organization registration certificate;

2.2 in the case of organizations exempt from corporate income tax under paragraphs 1.7 or 1.8 of Article 7 of The Law, a copy of their contract;

2.3 in the case of international governmental financial institutions that are not specifically mentioned in paragraph 1 of section 4 of this Administrative Instruction, a copy of a letter which authorizes their operations in Kosovo;

2.4 in the case of foreign governmental and diplomatic organizations, a copy of a letter which authorizes their operations in Kosovo;

2.5 in any other case, other than in the case of public authorities (where no written evidence is necessary), a copy of a letter from TAK confirming exemption from Corporate Income Tax.

3. For the purpose of remitting tax withheld on lottery, or game of chance, winnings under this Section, withholders shall complete a tax withholding and remittance statement form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

Article 31 - Withholding on certain payments to non-residents

(Law No.03/L-162)

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 aspayors under this article and all other activities required for implementation of this article.

Section 9

Withholding Tax on Certain Non-Residents

(Administrative Instruction No.8/2010)

1. Paragraphs 1 and 2 of Article 31 of The Law require the withholding of tax from income attributable to non-resident entertainers and to non-residents who perform services in Kosovo. Where such income is paid or credited to a non-resident person who or entity which is exempt from corporate income tax under Article 7 of the Law, under any other law of Kosovo or under an international agreement or convention, that income shall not be subject to withholding tax. In such cases, the onus is on the recipient of the income to

provide written evidence to the payer that their income is exempt from Corporate Income Tax. Until such evidence is produced, the obligation remains on the payer to withhold tax.

2. The written evidence required under paragraph 1 of this section shall be:

2.1 in the case of organizations exempt from corporate income tax under paragraph 1.1 of Article 7 of The Law, a copy of the non-governmental organization registration certificate;

2.2 in the case of organizations exempt from corporate income tax under paragraphs 1.7 or 1.8 of Article 7 of The Law, a copy of their contract;

2.3 in the case of international governmental financial institutions that are not specifically mentioned in paragraph 1 of section 4 of this Administrative Instruction, a copy of a letter which authorizes their operations in Kosovo;

2.4 in the case of foreign governmental and diplomatic organizations, a copy of a letter which authorizes their operations in Kosovo;

2.5 in any other case, a copy of a letter from TAK confirming exemption from corporate income tax.

3. The requirement to withhold tax from income paid to non-residents under this section applies in respect of income paid to certain non-residents by any person. Unlike the withholding tax provisions which apply in respect of interest, royalties and rent, where the requirement to withhold is restricted to “taxpayers” under The Law, the obligation to withhold under this section also applies to other persons such as public authorities.

4. The requirement to withhold tax from income attributable to non-resident entertainers under paragraph 1 of Article 31 of The Law relates to personal activities of the entertainer that are exercised in Kosovo. Payments to non-resident entertainers that are not in relation to their personal activities (e.g. from sales of merchandise) are not subject to withholding. Payments from Kosovo for personal activities exercised outside Kosovo are also not subject to withholding.

5. The requirement to withhold tax from income attributable to non-resident entertainers under paragraph 1 of Article 31 of The Law relates to income attributable (whether paid in cash or kind, the latter of which would be valued at open market value) to the entertainer whether paid directly or indirectly. Withholding is also required where the entertainer is paid indirectly, for example where payment is made to a corporation or other legal person which is held 100% by the entertainer or which is otherwise beneficially owned by the entertainer rather than directly to the entertainer.

6. Income attributable to a non-resident entertainer under paragraph 1 of Article 31 of The Law which is paid or credited in any case other than that covered by paragraph 1 of this section, shall be subject to withholding unless the gross compensation paid or credited to a non-resident entertainer in respect of their personal activities from all payers for such activities will not exceed 1,000 euro in a tax period (in accordance with paragraph 1 of Article 41 of Law No. 03/L-161 “On Personal Income Tax”). In situations where the payer is not sure whether the gross compensation of the entertainer from his or her personal activities in the tax period will exceed 1,000 euro, the payer is obliged to ask the

entertainer about his or her expected gross compensation and only if the entertainer indicates that their gross compensation from personal activities in the taxable period will be 1,000 euro or less should payments or crediting not be subject to withholding.

7. The requirement to withhold tax from income paid to non-residents under paragraph 2 of Article 31 of The Law relates to payments for services performed in Kosovo. No withholding is required from payments made to non-residents for goods or from payments made to non-residents for services performed outside Kosovo (e.g. international transport services, computer system support provided remotely from another country). An apportionment will be needed where services are performed both inside and outside Kosovo except in cases where the services performed in one country are merely incidental to the services performed in the other country.

Example:

A Kosovo business enters into a contract for a non-resident supplier to design computer software for the Kosovo business use. All the design work and testing is performed outside Kosovo, However a representative of the supplier is required to visit Kosovo to ensure that the software is properly installed. In such circumstances, the installation visit would be regarded as merely incidental to the main software design work, and as that was performed outside Kosovo, no withholding tax would apply in respect of payments to the non-resident supplier. In contrast, if the supplier subsequently entered into a maintenance contract for the software which envisaged some system testing from outside Kosovo but also some site visits to Kosovo then withholding tax would apply in respect of the maintenance contract costs in respect of that portion of the cost that related to site visit work performed in Kosovo.

8. The requirement to withhold tax under paragraph 2 of Article 31 of The Law applies only to those who are regarded as non-residents for corporate income tax purposes and who have no permanent establishment in Kosovo. Paragraph 4 of Article 31 of The Law provides that in such cases “*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*”. The 5% withholding will be their final corporate income tax liability in Kosovo and they are not allowed to submit an annual corporate income tax declaration to claim back the withholdings on the basis that they are not liable for corporate income tax in Kosovo because they have no permanent establishment there.

9. For the purpose of remitting tax withheld on income of the types referred to in paragraphs 1 and 2 of Article 31 of The Law, payers shall complete a tax withholding and remittance statement form as prescribed by TAK and shall submit the form and payment to a bank or financial institution licensed by the Central Bank of Kosovo.

10. For the purposes of this section, the term “payer” shall mean any person or entity, whether an organization or individual, which has agreed to pay a non-resident person or entity for entertainment or other services performed in Kosovo.

Section 10

General Provisions Applying to Withholding Taxes

(Administrative Instruction No.8/2010)

1. Chapter VII of The Law provides that withholding taxes are to be deducted from various types of payments to “persons”, whether those persons are “taxpayers” under The Law or not. While this Administrative Instruction provides that withholdings shall not apply in respect of persons who are taxpayers that are exempted from corporate income tax, they will apply to persons who are not taxpayers.

Example:

1. A non-resident company with no permanent establishment in Kosovo is not a “taxpayer” for the purposes of Kosovo's corporate income tax law. Interest paid to that company by a Kosovo bank will be subject to withholding tax. Even though the company is not liable to corporate income tax in Kosovo, it cannot submit a corporate income tax declaration to Kosovo to claim back the withholdings as it is not a “taxpayer”.

2. Chapter VII of The Law provides that withholding taxes shall be remitted to a bank or financial institution licensed by the Central Bank of Kosovo. Such remittances may be submitted to any branch of an authorized bank or financial institution that accepts them. Except in cases where specific tax officials have been designated to collect tax by the TAK Director General under the Law on Tax Administration and Procedures, such remittances shall not be submitted to any office or officer of TAK.

3. The remittances referred to in paragraph 2 of this section shall be accompanied by a statement of tax withholding. The statement of tax withholding shall be:

3.1 for those withholders who wish to and are able to file their tax withholding information to TAK electronically, a tax withholding payment voucher

3.2 for other withholders, a completed tax withholding and remittance statement form as prescribed by TAK.

4. Chapter VII of The Law provides that annual reconciliation statements, together with copies of tax withholding certificates, are required to be provided to the Tax Administration. Such statements and certificates can be provided to any office of the Tax Administration of Kosovo or to any branch of an authorized bank or financial institution that accepts them.

5. Chapter VII of The Law provides specific dates by which withholding taxes are to be paid, certificates of withholding taxes are to be provided to recipients, and withholders are required to provide annual reconciliation statements to the Tax Administration. In each case, where the specific filing and/or payment date is a Saturday, Sunday or National Holiday, such forms and/or payments shall be submitted at the latest on the first working day following the Saturday, Sunday or National Holiday. Interest and penalties for late filing or payment will not apply where filing and/or payment occurs on or before that next working day.

6. Chapter VII of The Law provides various filing and payment requirements for withholders and payers. Where these requirements are not met, TAK will apply interest and administrative penalties under the Law on Tax Administration and Procedures in respect of, as applicable:

6.1 failure to withhold, collect or pay over a withholding tax;

6.2 failure to provide the recipient of income subject to withholding tax with a tax withholding certificate;

6.3 failure to file an annual reconciliation statement with TAK by its due date;

6.4 filing an inaccurate or incomplete annual reconciliation statement with TAK.

7. The failure to withhold tax penalty under the Law on Tax Administration and Procedures will apply to the person who was required to withhold tax from the due date that the withholding tax should have been paid to the date that the annual corporate income tax liability of the recipient was paid or otherwise finalized.

CHAPTER VIII - SPECIAL PROVISIONS

Article 32 - Treatment of Insurance Activity

(Law No.03/L-162)

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

(Law No.03/L-162)

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.

Section 21 Commercial Income of NGOs

(Administrative Instruction No.14/2010)

1. Paragraph 1 of Article 33 of The Law deals with commercial income of NGOs. The expression '*commercial or other activity that is not exclusively related to its public purpose*' shall include the following meanings:

1.1. in the case of a church that sells candles and uses the proceeds from the sale for the improvement of the premises to better serve the community, such a commercial activity shall be deemed to be exclusively related to the public benefit purpose.

1.2. in the case of an NGO operating in the promotion of agricultural activities, the sale of seeds and seedlings shall be deemed to be exclusively related to its primary beneficial activity provided that NGO uses the proceeds of the sale within the scope of the public benefit purpose.

1.3. in the case of an NGO operating in the health area which runs a retail kiosk, such commercial activity shall not be deemed as exclusively related to its primary public benefit purpose. In this case the income derived from the retail kiosk shall be subject to corporate income tax, reduced by any deductions directly related to the retail kiosk which are allowed under The Law.

2. Paragraph 2 of Article 33 of The Law gives TAK the right to treat '*excessive profits*' made by NGOs as income subject to corporate income tax. NGOs with public benefit status are supported by donors who receive deductions from their gross income in order to encourage private contributions toward meeting the social needs of society. Under such circumstances, an NGO should be expected to operate on a lesser margin than a private business providing the same or similar service. Indeed, Article 17.2 of Law No. 03/L-134 On Freedom of Association in Non-Governmental Organizations provides that NGOs shall receive public benefit status only if significant benefits are provided free of charge or at less than fair market value to disadvantaged individuals or groups. At the same time, it is recognized that an NGO with public benefit status is entitled to making such a profit as is necessary to sustain itself and possibly provide for growth and expansion of services. To the extent that profits of NGOs exceed those needed for this purpose, they will be considered to be '*excessive profits*'.

3. More specifically, pursuant to paragraph 4 of Article 33 of The Law, the following situations could be treated as giving rise to '*excessive profits*':

3.1. where profits derived from NGO activities related to its public purpose are reduced by payments to NGO managers, officials, employees or members of amounts which are in excess of that that would ordinarily be paid to such persons taking into account their responsibilities and the duties they have performed in relation to those activities;

3.2. in the case of NGOs which provide goods or services, where profits derived from NGO activities related to its public purpose are made by charging prices which are in excess of those that would ordinarily be charged taking into account

the quantity and quality of the goods or services and the terms on which they are provided;

3.3. in the case of NGOs which rent out property, where profits derived from NGO activities related to its public purpose are made by charging rent at rates which are in excess of those that would ordinarily be payable taking into account the standard and location of the property and the term and other conditions of the rental agreement;

3.4. in the case of NGOs which have money to lend, such as micro-finance institutions, where profits derived from NGO activities related to its public purpose are made by charging interest at rates which are in excess of that that would ordinarily be paid taking into account the risk, term and other conditions of the loan.

3.5. In each case, the 'excessive profit' that would be subject to corporate income tax is the amount of the excess profit made above that that would be ordinarily made (rather than the fulamount of the profit).

4. For the purposes of determining the extent to which any '*excessive profits*' have been earned by an NGO under paragraph 2 of this Section, TAK shall be able to obtain information in relation to that NGO from:

4.1. an audit of the NGO (as authorized by paragraph 2 of Article 33 of The Law);

4.2. the annual reports of the NGO that have filed pursuant to Article 18 of Law No. 03/L- 134 On Freedom of Association in Non-Governmental Organizations with the competent body under that law;

4.3. any third party or other source that TAK has information access to under the law.

CHAPTER IX - ADMINISTRATIVE PROVISIONS

Article 34 - Tax Declarations

(Law No.03/L-162)

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.

Section 22 Tax Declarations

(Administrative Instruction No.14/2010)

1. In accordance with paragraph 1 of Article 34 of The Law corporate income tax declarations and financial statements shall be submitted to the Tax Administration of Kosovo on or before the 31st day of March of the year following the tax period. Such declarations/financial statements may be submitted to TAK via an authorized bank or financial institution. The tax declaration shall be considered as an assessment made by taxpayers themselves.
2. Where the filing and payment due date for any tax declarations or information statements is a Saturday, Sunday or National Holiday, such forms may be submitted, without penalty for late filing or late payment (including interest), at the latest on the first working day following the Saturday, Sunday or National Holiday.
3. For income tax purposes, partnerships are required to file annual partnership income and expense declarations (they are not required to file corporate income tax declarations) which show the share of profits or losses of the partnership that are allocated to the partners, but are not required to make any payment of related tax liability. The partners themselves have to account for payment of tax in respect of any income they receive from partnerships. Incorporated partners of partnerships who are required to file corporate income tax

declarations and who receive profit shares from partnerships must include them with other income liable for corporate income tax.

Article 35 - Tax Payments

(Law No.03/L-162)

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 installments;

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 installments 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 installment and the amount paid in each installment 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 installment 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.

Section 11

Quarterly Advance Payments

(Administrative Instruction No.8/2010)

1. In accordance with paragraph 2.1 of Article 35 of The Law, taxpayers with annual gross income of 50,000 euro or less and those who do not opt to prepare financial statements are required to make quarterly advance payments of corporate income tax. Such taxpayers shall submit Quarterly Advance Payment Statements for Small Corporations in the format prescribed by TAK to any authorized bank or financial institution on or before 15 April, 15 July, 15 October and 15 January with respect to the calendar quarters immediately preceding these dates. Alternatively, where taxpayers have filed their Quarterly Advance Payment Statement for Small Corporations to TAK electronically, payment to an authorized bank or financial institution shall be accompanied by a quarterly advance payment voucher.

2. In accordance with paragraph 2.2 of Article 35 of The Law, taxpayers with annual gross income in excess of 50,000 euro and those who opt to prepare financial statements are required to make quarterly advance payments of corporate income tax. Such taxpayers, and insurance companies, shall submit Quarterly Advance Payment Statements for Large Corporations in the format prescribed by TAK to any authorized bank or financial institution on or before 15 April, 15 July, 15 October and 15 January with respect to the calendar quarters immediately preceding these dates. Alternatively, where taxpayers have filed their Quarterly Advance Payment Statement for Large Corporations to TAK electronically, payment to an authorized bank or financial institution shall be accompanied by a quarterly advance payment voucher.

3. Taxpayers covered by paragraph 2.2 of Article 35 of The Law are required to use the estimate basis in their first year of making quarterly advance payments and the estimates are based on $\frac{1}{4}$ of estimated annual tax liability for the first year. For those who commence as taxpayers during the first quarter this is not an issue, but for those who commence later in the year, they are only required to pay $\frac{3}{4}$, $\frac{1}{2}$ or only $\frac{1}{4}$ of their first year liability in installments during the first year. For their second year, by making quarterly advance

payments on the basis of annual tax liability in respect of their economic activity for their first year, increased by 10%, no interest penalty is payable. Taxpayers whose advance payments are insufficient compared with final tax liability will be only penalized in respect of the last quarter of their first year but based on cumulative installment amounts compared with annual liability, rather than simply considering the last installment in isolation. In such cases, interest penalty will only apply where quarterly advance payments made have been less than 90% of the annual tax liability in respect of their economic activity for their first year. For the second and other subsequent years as the option of paying with no interest penalty is available they will be penalized per each quarterly installment if insufficient payments are made during the year.

Example 1:

A corporate taxpayer has started his activity in 2010. He has paid in 3 installments (quarters 2, 3 and 4) respectively 100 euro, 200 euro and 620 euro. Annual corporate income tax liability for 2010 turns out to be 1,000 euro. In this case, as total installments (920 euro) were more than 90% of annual liability (90% of 1,000 = 900 euro) no interest penalty applies (as per paragraph 8.3 of Article 35 of The Law).

Example 2:

A corporate taxpayer has started his activity in 2010. He has paid in 2 installments (quarters 3 and 4) respectively 200 euro and 500 euro. Annual corporate income tax liability for 2010 turns out to be 1,000 euro. In this case, as total installments (700 euro) were less than 90% of annual liability (90% of 1,000 = 900 euro) interest is payable starting from 15 January 2011 (the due date of the last quarterly installment in respect of the 2010 tax year). Such interest is based on 300 euro, the difference between annual liability (1,000 euro) and cumulative total installments paid (700 euro) and is computed from 15 January 2011 until the due date for submitting the final declaration (31 March 2011). At that point the interest penalty for underpaying an advance payment ends but regular penalties would then apply in respect of any period between that due date until the tax is paid.

4. In cases where early installments were too low and later installments were too high, interest penalties shall apply for earlier installments until later excess payments cover the earlier shortfalls. In cases where early installments were too high and later installments were too low, TAK shall recognize excesses in earlier periods covering shortfalls in later periods and interest penalties might or might not apply depending on the amounts of excesses and shortfalls.

Example:

In 2010 a taxpayer's business made a profit and 1,000 euro corporate income tax was payable. For 2011, another profit was made and 2,000 euro corporate income tax was payable (in 2012). During 2011 quarterly installments were made of 600 euro, 100 euro, no installment, and 350 euro respectively. Given the 2010 annual liability of 1,000 euro and adding 10%, quarterly installments during 2011 should have been at least 275 euro each. No interest penalty was payable in respect of the first installment (as the 600 euro payment exceeded the 275 euro payable). No interest penalty was payable in respect of the second

installment (as the 100 euro payment plus the 325 (600 less 275) euro excess from the first installment exceeded the 275 euro payable). Interest payable on the third installment would be based on 125 euro (being 275 euro payable less the remaining 150 (two payments totaling 700 euro less liability for those two installments of 550 euro) euro excess from the previous quarters). No interest was payable on the fourth installment and the excess of 75 euro (350 paid compared with 275 payable) can be applied to reduce the interest payable on the third installment but only with effect from the date of the payment of the fourth installment.

5. Sub-paragraph 2.2.2 of Article 35 of The Law refers to payments based on past year tax liability. Where a taxpayer has a tax loss for a particular year, then rather than using the past year tax liability basis and applying a 110% calculation, the taxpayer is required to calculate and pay installments based on estimated taxable income for the current year. If the taxpayer estimates that they will also make a loss in the current year, or that any profit will be exceeded by losses carried forward, no installments would be necessary but interest penalty could apply if the taxpayer's estimate turned out to be incorrect.

Example:

In 2010 a taxpayer's business had a loss. In 2011, the taxpayer estimates that the business will make a profit (after allowing for losses carried forward) and annual tax liability will be 1,000 euro. Installments are required to be paid during 2011 based on $\frac{1}{4}$ of the estimated annual tax liability.

6. In cases where there has been a tax audit or other occurrence in a subsequent year that determines a different annual tax liability in respect of an earlier tax year, if the annual tax liability is found to be higher, penalties would apply for under-declaration, for late payment and also interest in respect of the underpaid annual liability. Such penalties and interest for subsequently discovered additional tax liability shall be applied to the annual tax liability only, and no adjustment will be made to past quarterly installment amounts where the result of the tax audit or other occurrence was to increase the tax liability by up to 20%. In cases where there has been an increase in tax liability of more than 20%, then interest penalty will apply to the extent that quarterly installments were below $\frac{1}{4}$ of 110% of the adjusted income tax liability as a result of the tax audit or other occurrence.

7. The preceding paragraphs of this Section provide specific dates by which quarterly advance payment forms are required to be furnished and by which quarterly advance payments are required to be paid. In each case, where the specific filing and/or payment date is a Saturday, Sunday or National Holiday, such forms and/or payments shall be submitted at the latest on the first working day following the Saturday, Sunday or National Holiday. Interest and penalties for late filing or payment will not apply where filing and/or payment occurs on or before that next working day.

8. The annual corporate income tax form is a tax declaration but the quarterly advance payment statements are not considered to be tax declarations. In accordance with paragraph 8 of Article 35 of The Law, late filing and late payment penalties shall not apply to late

filed quarterly installment forms, but interest shall apply except where the provisions of sub-paragraphs 8.1, 8.2 or 8.3 of that Article apply.

Article 36 - Requirement for Books and Records

(Law No.03/L-162)

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.

Section 23

Books and Records

(Administrative Instruction No.14/2010)

1. Taxpayers with annual gross income of 50,000 euro or more and those with annual gross income of less than 50,000 euro who opt to be taxed on a real income basis shall keep books and records in accordance with the requirements of:
 - 1.1. Article 36 of The Law; and
 - 1.2. Paragraph 4 of Section 17 of Administrative Instruction No. 15 /2010 On Implementation of Law No. 03/L-222 on Tax Administration and Procedures.

2. Taxpayers with annual gross income of less than 50,000 euro who have not opted to be taxed on a real income basis shall keep books and records in accordance with the requirements of:

2.1. Article 37 of The Law; and

2.2. Paragraph 2 of Section 17 of Administrative Instruction No. 15/2010 On Implementation of Law No. 03/L-222 on Tax Administration and Procedures.

3. Taxpayers specified in paragraphs 1 and 2 of this Section are required to issue invoices/receipts for the supply of goods and services made by them.

4. The content of the books and records referred to in paragraphs 1 and 2 of this Section and of the invoices/receipts referred to in paragraph 3 of this Section shall be in accordance with Administrative Instruction No. 15/2010 On Implementation of Law No. 03/L-222 on Tax Administration and Procedures.

5. The following provisions of Law No. 03/L-222 on Tax Administration and Procedures apply in respect of the books and records referred to in this Section:

5.1. Article 13, in relation to translation, retention and storage of records and the periods to which records should relate;

5.2. Article 14, in relation to access to records by TAK and to removal and copying of such records;

5.3. Articles 14 and 15, in relation to the requirements for taxpayers to produce records when requested by TAK;

5.4. Article 19, in relation to records that are lost or destroyed;

5.5. Articles 15 and 53, in relation to penalties for not keeping records or for not allowing TAK access to records.

Article 37 - Requirements for Books and Records for Small Businesses

(Law No.03/L-162)

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

(Law No.03/L-162)

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 increase 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 threshold 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

(Law No.03/L-162)

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

(Law No.03/L-162)

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

(Law No.03/L-162)

This Law shall abrogate Law on Corporate Income Tax, No. 03/L- 113 of 18 December, 2008

Article 42 - Entry into Force

(Law No.03/L-162)

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.

Section 12

Entry into Force

(Administrative Instruction No.8/2010)

This Administrative Instruction enters into force on the day of its signature by the Minister of Economy and Finances

Section 24

Entry into force

(Administrative Instruction No.14/2010)

The present Administrative Instruction shall enter into force upon signing by the Minister of Economy and Finance.

Law No.03/L- 162

29 December 2009

The President of the Assembly of Republic of Kosova

Jakup Krasniqi

COUNTRY WIDE ORGANIZATION BY TAK



LEGEND

	Prishtina 1
	Prishtina 2
	Mitrovicë
	Ferizaj
	Gjilan
	Pejë
	Prizren
	Gjakovë
	Region border
	Municipalities border