

REGULATION NO. 2001/11

UNMIK/REG/2001/11

31 May 2001

ON VALUE ADDED TAX IN KOSOVO

The Special Representative of the Secretary-General,

Pursuant to the authority given to him under United Nations Security Council resolution 1244 (1999) of 10 June 1999,

Taking into account United Nations Interim Administration Mission in Kosovo (UNMIK) Regulation No. 1999/1 of 25 July 1999, as amended, on the Authority of the Interim Administration in Kosovo, UNMIK Regulation No. 1999/16 of 6 November 1999, as amended, on the Central Fiscal Authority and UNMIK Regulation No. 2000/20 of 12 April 2000 on Tax Administration and Procedures,

Having promulgated UNMIK Regulation No. 2000/3 of 22 January 2000 on Sales Tax in Kosovo and UNMIK Regulation No. 2000/5 of 1 February 2000, as amended, on the Establishment of a Hotel, Food and Beverage Service Tax in Kosovo,

For the purposes of establishing a value added tax in Kosovo and repealing UNMIK Regulation No. 2000/3 and UNMIK Regulation No. 2000/5, as amended,

Hereby promulgates the following:

Chapter I

Definitions

Section 1

Definitions

For the purposes of the present regulation:

1.1 “Bad debt” means a payment due to a taxable person that is included in such person’s receipts, but despite the fact that all legal steps have been taken to collect the debt, remains uncollectable.

1.2 “Capital good” means a good (such as equipment or machinery) used for the production of other goods or services.

1.3 “Consideration” means any payment or act of forbearance in respect of a supply of goods or services, and shall include an amount that is payable, or goods received in a barter transaction.

1.4 “Credit note” means a document issued by a taxable person to a recipient of goods or services after a tax invoice has been issued, for the purposes of an adjustment, where the amount of tax charged on the tax invoice exceeds the actual tax due for that taxable supply.

1.5 “Customs Value” means the total value on which customs duties are calculated or applied in accordance with international practice.

1.6 “Debit note” means a document issued by a taxable person to a recipient of goods or services after a tax invoice has been issued, for the purposes of an adjustment, where the amount of tax charged on the tax invoice is less than the actual tax due for that taxable supply.

1.7 “Economic activity” means an activity entered into for the purpose of earning income.

1.8 “Exclusion” means those imports, intra-FRY inflows or supplies referred to in section 11 that are excluded from the scope of the value added tax and for which, as a consequence, value added tax is not payable by the recipient.

1.9 “Exempt supply” means a supply, referred to in section 12, for which the supplier does not collect value added tax.

1.10 “Export” means a supply exiting Kosovo for another country, including such supply transiting through another part of the Federal Republic of Yugoslavia.

1.11 “Financial services” means one or more of the following activities:

(a) The exchange of currency by exchange of banknotes or coins, by crediting or debiting accounts, or otherwise;

(b) The issuance, payment, collection or transfer of ownership of a credit instrument such as a cheque or letter of credit;

(c) The provision of a credit facility, or renewal or variation of obligations under a credit facility contract;

(d) The issuance, allotment, drawing, acceptance, endorsement, underwriting, renewal, variation or transfer of ownership of a security instrument;

(e) The provision, taking, variation, or release of a guarantee, indemnity, security instrument, or bond in respect of the performance of obligations under a cheque, credit facility contract, equity security, debt security instrument or participatory security instrument or in respect of the activities specified in subsections (b) to (d) above;

(f) The provision, or transfer of ownership, of a life insurance contract or the provision of re-insurance in respect of any such contract;

(g) The payment or collection of any amount of interest, principal, dividend or other amount whatever in respect of any debt security, equity security, participatory security, credit contract, contract of life insurance, superannuation scheme or futures contract; and

(h) Agreeing to do, or arranging, any of the activities specified in subsections (a) to (g) above.

1.12 “Goods” means all property other than money.

1.13 “Import” means a supply entering into Kosovo from another country, either directly or after transiting through another part of the Federal Republic of Yugoslavia.

1.14 “Intra-FRY inflow” means a supply entering into Kosovo from another part of the Federal Republic of Yugoslavia.

1.15 “Intra-FRY outflow” means a supply exiting Kosovo for another part of the Federal Republic of Yugoslavia

1.16 “Input tax” means the value added tax paid by a taxable person on the input to the person’s taxable supply, including input that is an import or an intra-FRY inflow.

1.17 “Non-governmental organization” means a non-governmental organization registered under UNMIK Regulation No. 1999/22 of 15 November 1999 on the Registration and Operation of Non-Governmental Organizations in Kosovo.

1.18 “Open market value” means the price at which similar goods of comparable quality and quantity are sold by a supplier to an unrelated person in an arm’s-length transaction.

1.19 “Output tax” means the value added tax charged on a taxable supply made by a taxable person.

1.20 “Person” means any physical or legal person, public or private, including but not limited to personal business enterprises, partnerships and other business organizations, municipal and public authorities.

1.21 “Related person” means any person with special relations to another person that may affect arm’s-length transactions between them.

1.22 “Supply of services” means any supply that is not a supply of goods.

1.23 “Supply of goods” means the transfer of the right to dispose of tangible property as owner.

1.24 “Taxable supply” means a supply of goods or services by a taxable person. A taxable supply includes a zero-rated supply but does not include an exempt supply.

1.25 “Taxable person” means any person who, in furtherance of an economic activity:

(a) Imports, exports, makes intra-FRY inflows, or intra-FRY outflows; or

(b) Not being a person referred to in section 1.25(a), supplies goods or services and has a turnover that exceeds the registration threshold set out in section 3.4 of the present regulation.

1.26 “Tax Administration” means the Tax Administration of the Central Fiscal Authority.

1.27 “Tax authorities” means the Tax Administration and the UNMIK Customs Services.

1.28 “Tax invoice” means a document that is required to be issued by a taxable person pursuant to section 14 in connection with a taxable supply in order to notify the obligation to make payment.

1.29 “Turnover” means gross receipts of a person from all supplies made by such person in Kosovo.

1.30 “Zero-rated supply” means a taxable supply described in section 10 for which the rate of the value added tax charged is zero percent (0%) of the taxable value.

Chapter II **Imposition of Value Added Tax and Registration**

Section 2

Value Added Tax

2.1 From 1 July 2001, a value added tax or VAT, shall be charged, in accordance with the provisions of the present regulation, on the taxable value of imports, intra-FRY inflows and taxable supplies.

2.2 The value added tax shall be chargeable at the rate of fifteen percent (15%) on the taxable value of imports, intra-FRY inflows and other taxable supplies except for zero-rated supplies.

2.3 The value added tax shall be chargeable at the rate of zero percent (0%) on the taxable value of a zero-rated supply as set out in section 10 of the present regulation.

Section 3

Obligation to Register

3.1 A taxable person shall apply to be registered for value added tax purposes with the Tax Administration within 30 days of the entry into force of the present regulation.

3.2 Where a person becomes a taxable person after the entry into force of the present regulation, the person shall apply to be registered for value added tax purposes within 15 days from the date that person becomes a taxable person.

3.3 The turnover for the purposes of determining whether a person is a taxable person as defined in section 1.25(b) shall be calculated based on the total consideration received by the person.

3.4 The registration threshold shall be a turnover of 200,000 DM per calendar year.

3.5 A taxable person who imports, exports or makes intra-FRY inflows or intra-FRY outflows shall apply to be registered for value added tax purposes regardless of the threshold set out in section 3.4.

3.6 The Co-Heads of the Central Fiscal Authority may, as required, issue an administrative instruction specifying the procedure by which any supplier, who is not required to register, may opt to be registered for value added tax purposes.

Section 4

Procedure for Registration

4.1 An application for registration for value added tax purposes shall be made in the format that shall be set out in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority.

4.2 When registering a person for value added tax purposes, the Tax Administration shall issue to the person a registration certificate containing a unique Taxpayer Identification Number. The registration shall take effect on the date stated on the registration certificate.

4.3 The Tax Administration may register any taxable person for value added tax purposes whether or not such person has applied to be registered effective on the date on which such person became liable for registration.

Section 5

Removal from VAT Register

5.1 Subject to section 5.2, a taxable person who closes their business, or no longer engages in economic activity, shall apply to be removed from the register not later than 15 days after the last day on which the person made or contracted to make imports, intra-FRY inflows or taxable supplies.

5.2 A taxable person may apply to be removed from the register if, with respect to the most recent twelve month period, such person's taxable supplies have not exceeded the threshold set forth in section 3.4; provided that no such application for removal can be made during a period of twelve months from the date the registration took effect.

5.3 The Tax Administration may remove from the register any person who is not required to be registered under the present regulation, unless such person is registered in accordance with the procedure referred to in section 3.6 and continues to opt to be registered.

Chapter III

Supply

Section 6

Supply of Goods

6.1 A supply of goods shall include, *inter alia*, the following:

- (a) A supply of electricity, water, gas, heating, refrigeration, or air conditioning;
- (b) A supply of goods made by an agent on behalf of a principal, which shall be treated as a supply by the principal;
- (c) A supply under an agreement for hire purchase or for sales of goods on deferred terms, which provides that the ownership shall pass on payment of the final instalment;
- (d) A supply taken by a taxable person for the person's own use and a supply consumed in the person's business;
- (e) A lease of goods;
- (f) A supply of goods by a taxable person to the person's employees, including gratuitous supplies; and
- (g) The transfer of a business or part of a business, subject to section 6.2.

6.2 The supply by a taxable person of taxable goods as part of the transfer of a business or part of a business to another taxable person shall not be regarded as a taxable supply of goods if the transferee is or becomes registered under the present regulation within thirty (30) days of such transfer.

Section 7

Supply of Services

7.1 A supply of services shall include, *inter alia*, the following:

- (a) A supply of sewerage, garbage and soil collection for a fee by a municipal or public authority; and
- (b) A supply of services made by an agent on behalf of a principal, which shall be treated as a supply by the principal.

7.2 A supply of services shall not include work of any type where an employee renders to his or her employer services in the course of employment for wages.

Section 8

Taxable Value of Supply

8.1 The taxable value of a taxable supply in Kosovo shall be the total consideration payable for that supply.

8.2 The taxable value of an import shall be the customs value of the import plus customs duties, excise taxes or other applicable taxes and charges, excluding the value added tax.

8.3 The taxable value of an intra-FRY inflow shall be the total consideration payable for that supply.

8.4 The taxable value of a supply made to a related person for consideration that is less than the open market value for the supply shall be deemed to be the open market value of the supply. The procedure for establishing the open market value of a taxable supply shall be set out in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority.

8.5 The taxable value of a supply made for one's own use, for leased goods, for goods transferred on barter or for gifts shall be the open market value of the supply.

8.6 Where the amount of value added tax is not itemized separately on the tax invoice, the taxable value shall be the stated amount less the value added tax included in the stated value.

8.7 Where consideration is given for both a taxable supply and a supply that is not a taxable supply, the taxable value shall be the portion of the consideration attributable to the taxable supply.

8.8 The taxable value of a taxable supply that has been reduced by a discount shall be the taxable value of the supply reduced by the discount.

8.9 The taxable value of a taxable supply that has been increased by a premium shall be the taxable value of the supply increased by the premium.

Section 9

Place of Supply

9.1 Except as otherwise provided in the present regulation, a supply of goods takes place at the location in Kosovo where the goods are made available to the purchaser by the supplier.

9.2 Except as otherwise provided in the present regulation, a supply of services, including transportation service, takes place at the place of business of the supplier or, if this cannot be ascertained, then the place where the services are rendered.

9.3 A supply in connection with lands and/or buildings takes place where the property is located.

Chapter IV
Zero-rate, Exclusion, Exempt Supply and Rebate

Section 10

Zero-rated Supply

10.1 The following supplies shall be zero-rated supplies:

- (a) Exports and intra-FRY outflows; and
- (b) Goods and services in connection with the international transportation of goods or passengers.

10.2 The proof required to establish that an export or intra-FRY outflow has occurred shall be set forth in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority.

Section 11

Exclusions

No value added tax shall be charged on the following:

- (a) Import of a traveller's personal effects as permitted under the applicable customs provisions;
- (b) Import of tourist duty-free goods as permitted under the applicable customs provisions;
- (c) Imports, intra-FRY inflows or supplies funded from the proceeds of grants made to UNMIK or the Administrative Departments of the Joint Interim Administrative Structure by governments, government agencies, governmental or non-governmental organizations in support of humanitarian and reconstruction programs and projects in Kosovo;
- (d) Imports or intra-FRY inflows made by, or supplies made to, diplomatic representatives or liaison offices in accordance with UNMIK Regulation No. 2000/42 of 10 July 2000 on the Establishment and Functioning of Liaison Offices in Kosovo;
- (e) Imports or intra-FRY inflows made by, or supplies made to, the United Nations or any of its organs including UNMIK (as defined in UNMIK Regulation No. 2000/47 of 18 August 2000 on the Status, Privileges and Immunities of KFOR and UNMIK and Their Personnel in Kosovo), the specialized agencies of the United Nations, KFOR, the World Bank and international inter-governmental organizations;
- (f) Imports or intra-FRY inflows of medicines, medical services or medical instruments; and
- (g) A fine or penalty levied by UNMIK authorities.

Section 12

Exempt Supply

The following supplies shall be exempt supplies:

- (a) A supply of medicines, medical services or medical instruments;
- (b) A supply of public education services;
- (c) A supply of financial services;
- (d) A transfer of title or lease of land or residential property;
- (e) A supply made by a person who imports or makes intra-FRY inflows but whose turnover does not exceed the threshold set forth in section 3.4; and
- (f) A supply of permits or licenses for a fee by a municipal or public authority.

Section 13

Rebates

13.1 Where a person referred to in section 13.2 imports any good or makes any intra-FRY inflow, the Central Fiscal Authority shall, subject to section 13.3, pay a rebate to the person equal to the amount of value added tax paid by the person on such import or intra-FRY inflow.

13.2 Persons entitled to a rebate under section 13.1 shall be the following:

(a) Contractors for UNMIK, the specialized agencies of the United Nations, KFOR, the World Bank and international inter-governmental organizations, upon proof that the goods so introduced into Kosovo are used exclusively in connection with the performance of a contract with UNMIK, the specialized agencies of the United Nations, KFOR, the World Bank or international inter-governmental organizations; and

(b) Non-governmental organizations with public benefit status upon proof that the goods so introduced into Kosovo are used exclusively for their public benefit purpose. The rebate shall not be allowed in respect of an introduction into Kosovo of alcohol, alcoholic drinks, soft drinks, cigarettes, cigars, cigarillos and other tobacco products, petroleum products and perfumes or cosmetics.

13.3 The proof required under section 13.2 shall be specified in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority.

13.4 In order to claim the rebate allowed under the present section, an eligible person shall make an application to the Tax Administration in accordance with the procedure to be set out in an administrative instruction issued by the Co-Heads of the Central Fiscal Authority.

Chapter V
Tax Invoice, Time of Liability and Remittance

Section 14

Tax Invoice

14.1 A taxable person who makes a taxable supply shall issue to the person receiving the supply a tax invoice in respect of that supply.

14.2 For a taxable supply in Kosovo, intra-FRY inflows and intra-FRY outflows, the tax invoice shall be the commercial invoice. The information required to be stated on such invoice shall be specified in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority.

14.3 For imports or exports the tax invoice shall consist of the unified customs declaration as required under applicable customs provisions.

Section 15

Adjustments

Where the amount of value added tax charged on the tax invoice is less or greater than the actual value added tax payable for that supply, the supplier shall issue a credit note or a debit note, as applicable.

Section 16

Time of Tax Liability

16.1 For a taxable supply in Kosovo the value added tax liability shall arise under the accrual method of accounting at the earlier of:

- (a) When the invoice is issued;
- (b) When the goods are made available or the services are rendered to the customer;

or

- (c) When the consideration is received.

16.2 For a taxable supply that is continuous, the value added tax liability shall arise each time a tax invoice is issued or, if payment is made earlier, at the time when payment is made.

16.3 Where the consideration is received on account before the taxable supply is made, the tax shall be charged at the time the consideration is received. Where two or more payments are made for a taxable supply, the value added tax liability shall arise at the time of each payment.

16.4 For imports, the value added tax liability shall arise at the time prescribed in accordance with the applicable customs provisions, or if there are no relevant customs provisions, at the time of importation.

16.5 For intra-FRY inflows, the value added tax liability shall arise at the time of the entrance into Kosovo of the supply.

16.6 For exports, the value added tax liability shall arise at the time prescribed in accordance with the applicable customs provisions, or if there are no relevant customs provisions, at the time of exportation.

16.7 For intra-FRY outflows, the value added tax liability shall arise at the time of the exit from Kosovo of the supply.

Section 17

Declaration and Remittance

17.1 A taxable person shall submit a tax declaration not later than the last day of the calendar month following the end of each tax period and shall remit the value added tax due for the tax period on or before the date the declaration is due.

17.2 The form of the declaration, the place at which the form shall be submitted and the place and manner of remittance of the value added tax shall be specified in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority.

Section 18

Tax Remittable

18.1 Except where otherwise provided in the present regulation, the total value added tax to be remitted by a taxable person for the tax period is the total output tax as calculated pursuant to section 20 less the total input tax as calculated pursuant to section 21.

18.2 Where an import or intra-FRY inflow of a capital good has been made by a taxable person who starts a new business, then the value added tax to be remitted for such import or inflow shall be deferred and set off against the output tax that the taxable person will remit for a period of up to six months from the date of such import or inflow. The procedure for such deferment shall be set out in an administrative instruction issued by the Co-Heads of the Central Fiscal Authority.

18.3 The deferment shall be made only against a bank guarantee. Where the taxable person fails to set off the whole or a part of the deferred amount within a period of six months from the date of import, or intra-FRY inflow, the taxable person shall remit immediately thereafter the amount not set off. This remittance shall be deemed to be the input tax paid in respect of the capital good referred to in section 18.2.

Section 19

Tax Periods

19.1 For a taxable supply in Kosovo, including an intra-FRY inflow, the tax period shall be each calendar month, except where otherwise provided in the present regulation.

19.2 For imports, the tax shall be payable by the importer in the same manner and at such time as any other import duties prescribed in accordance with the applicable customs provisions.

19.3 When a taxable person is first registered for the value added tax, the tax period shall begin on the date the registration takes effect and ends on the last day of the same calendar month.

19.4 Where a person is removed from the register for value added tax, the relevant tax period begins on the first day of the calendar month in which the removal occurs and ends on the day the person is removed from the register.

19.5 The Co-Heads of the Central Fiscal Authority may, through the issuance of an administrative instruction, vary the tax periods with respect to any category of taxable person.

19.6 The first tax period shall commence on 1 July 2001.

Section 20

Output Tax

The total output tax due for a tax period shall be the sum of:

- (a) Taxable value of zero (0) rated supplies multiplied by zero percent (0%); plus
- (b) Taxable value of taxable supplies other than zero-rated supplies, multiplied by fifteen percent (15%).

Section 21

Input Tax

21.1 Except where otherwise provided in the present regulation, the input tax that may be offset as a credit against the output tax for a tax period shall include:

- (a) The total value added tax paid by a taxable person in respect of inputs, including capital goods, for taxable supplies during the tax period; and
- (b) The total value added tax paid by a taxable person on imports and intra-FRY inflows during the tax period.

21.2 A credit of input tax shall not be allowed for value added tax paid in respect of supplies that are not used for the taxable supplies made by the taxable person.

21.3 A credit of input tax shall not be allowed for value added tax paid in respect of supplies unless the claimant is in possession of the following:

- (a) For imports or exports, authentic customs documents that shall be specified in an administrative instruction to be issued by the Co-Heads of the Central Fiscal Authority;
- (b) For all other transactions, an authentic invoice issued by a taxable person; or

(c) Proof that the debt is a bad debt, pursuant to section 22.

21.4 A credit of input tax shall not be allowed in respect of an exempt supply referred to in section 12.

Section 22

Bad Debt

22.1 Where the whole or part of the payment for a taxable supply has not been received by the supplier and is a bad debt, a tax credit shall be allowed in accordance with the present section.

22.2 A tax credit shall be allowed in any one tax period after the debt has become a bad debt. A debt may become a bad debt not earlier than six months after the close of the tax period in which value added tax on the un-recovered amount was paid.

22.3 The amount of tax credit allowed under the present section shall be the value added tax paid in respect of the supply that is attributable to the un-recovered amount of the bad debt.

22.4 Where credit has been allowed for a bad debt and the whole or part of that debt is later paid, the taxable person shall repay to the Tax Administration the part of such credit attributable to the bad debt recovered.

Section 23

Excess Tax and Refunds

23.1 If the total input tax paid for a tax period exceeds the total output tax for that period, a taxable person shall carry forward the excess tax credit to the next tax period, and to successive tax periods where applicable. Such excess tax credit carried forward may be applied against the output tax liability in the successive tax periods.

23.2 A taxable person may claim a refund of excess tax if:

(a) The taxable person has carried forward an amount of the excess tax credit for a continuous period of six months; and

(b) The amount of the excess tax credit exceeds 10,000 DM.

23.3 For exports and intra-FRY outflows, a refund may be claimed even if an excess tax credit has not been carried forward for a continuous period of six months, provided that all the following conditions are met:

(a) The taxable person's credit of input tax in relation to exports and intra-FRY outflows of goods consistently, for more than six months within a twelve month period, exceeds their output tax liability;

(b) The taxable person complies with all applicable customs and tax provisions; and

(c) Claims for refund are not made more than once per quarter, or where the tax credit is in excess of 10,000 DM, more than once per calendar month.

Chapter VI **Powers And Duties**

Section 24

Tax Authorities

24.1 The Tax Administration shall have the exclusive responsibility to administer the value added tax.

24.2 The UNMIK Customs Service shall, on behalf of the Tax Administration, assess, levy and collect the value added tax on imports and exports, as well as undertake any other function relating to the administration of the value added tax, as may be required.

Section 25

Duty to Inform of Changes

A taxable person shall inform the Tax Administration in writing within 15 days of any change in the person's name, address, economic activities or other information provided to the tax authorities at the time of, or since, the application for registration was made.

Section 26

Duty to Keep Records

A taxable person shall keep such books and records for value added tax purposes as shall be specified in a subsequent administrative direction.

Section 27

Inspection of Records, Assessments, Interest, Enforced Collection

In administering the value added tax, the tax authorities may, *inter alia*, in accordance with the applicable law:

- (a) Require production of relevant documents or other information;
- (b) Issue a notice of assessment;
- (c) Issue a demand for payment;
- (d) Issue a demand for interest;
- (e) Carry out audit of documents and declarations; and

- (f) Enforce collection of tax owed.

Section 28

Violations and Penalties

Any person who commits a tax violation shall be subject to the penalties provided under the applicable law, including those set forth in UNMIK Regulation No. 2000/20.

Section 29

Appeals

29.1 Any person who contends that an official determination made under the present regulation is incorrect may make an appeal in accordance with the procedures set forth in UNMIK Regulation No. 2000/20.

29.2 Any action or decision by the tax authorities in administering the value added tax, including those listed in section 27 above, shall be regarded as an official determination for the purposes of the taxpayer's appeal rights.

Chapter VII
Implementation

Section 30

Implementation

The Special Representative of the Secretary General may issue administrative directions for the implementation of the present regulation

Section 31

Applicable Law

The present regulation shall supersede any provision in the applicable law which is inconsistent with it.

Section 32

Repeal

UNMIK Regulation No. 2000/3 and UNMIK Regulation No. 2000/5, as amended, are repealed with effect from 1 July 2001. The repeal shall not affect any outstanding sales tax or hotel, food or beverage service tax liabilities arising prior to 1 July 2001.

Section 33

Entry into Force

The present regulation shall enter into force on 31 May 2001.

Hans Haekkerup
Special Representative of the Secretary-General