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in Kosovo



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au Kosovo

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REGULATION NO. 2002/3

ON PROFIT TAXES 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 Establishment of the Central Fiscal Authority and Other Related Matters and UNMIK Regulation No. 2000/20 of 12 April 2000 on Tax Administration and Procedures,

Taking into account the final authority of the Special Representative of the Secretary-General under paragraph 8.1 (c) of UNMIK Regulation No. 2001/9 of 15 May 2001 on a Constitutional Framework for Provisional Self-Government in Kosovo to set the financial and policy parameters for the Kosovo Consolidated Budget, as well as the fact that the Provisional Institutions of Self-Government have not yet been fully established and are not able to provide advice through the Economic and Fiscal Council on the matters covered by the present regulation,

For the purpose of establishing a profit tax,

Hereby promulgates the following:

CHAPTER I - GENERAL PROVISIONS

Section 1
Definitions

For the purposes of the present regulation:

“Business organization” means:

(a) A general partnership, a limited partnership, a joint stock company, or a limited liability company established under UNMIK Regulation No. 2001/6 of 8 February 2001 on Business Organizations; and

(b) A business organization operating with public or socially owned assets.

“Dividend” means a distribution by a company to a shareholder:

(a) Of cash or stock with respect to the shareholder’s equity interest in the company; and

(b) Of property other than cash or stock, other than as a result of liquidation.

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

“Financial statements” means the general purpose financial statements prepared in accordance with UNMIK Regulation No. 2001/30 of 29 October 2001 on the Establishment of the Kosovo Board on Standards for Financial Reporting and a Regime for Financial Reporting of Business Organizations.

“Foreign source income” means gross income that is not Kosovo source income.

“Gross income” means all income earned or accrued, including, but not limited to, income from production, trade, financial, investment, professional or other economic activities within the tax period, irrespective of the time of its receipt.

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

“Kosovo source income” means gross income that arises in Kosovo, which includes, but is not limited to:

(a) Interest on debt obligations issued by a resident company or by a governmental body of Kosovo;

(b) Dividends from a resident company;

(c) Income from labor and services performed in Kosovo;

(d) Income from the use of movable or immovable property in Kosovo;

(e) Income from the use of intangible property in Kosovo;

(f) Gain from the sale of immovable property located in Kosovo;

(g) Gain from the sale of movable property (other than inventory) where the seller is a resident of Kosovo; and

(h) The premiums for insuring or reinsuring Kosovo risks.

“Non-resident” means a person or group of persons that is not resident in Kosovo.

“Permanent establishment” means any workplace through which a non-resident person does business in Kosovo. This includes, but is not limited to: plants, branch offices, representative offices, factories, workshops and construction sites.

“Person” means a natural person or a legal person.

“Related person” means a person with special relations with the taxable person. Persons shall be deemed to be related if:

- (a) They are officers or directors of one another’s business;
- (b) They are legally recognized partners in business;
- (c) They have an employer-employee relationship;
- (d) A person directly or indirectly owns, controls or holds fifty percent (50%) or more of the shares or voting rights in a company, in which case the person and the company shall be deemed to be related;
- (e) One of them directly or indirectly controls the other;
- (f) Both of them are directly or indirectly controlled by a common third person; or
- (g) They are member of the same family, including a spouse, ancestor or descendant, sister or brother, nephew or niece, spouse of a sister or brother, a sister or brother of a parent, or parents-in-law, brother-in-law or sister-in-law.

“Representation costs” means all costs related to promotion of the business or its products and includes, but is not limited to, costs for publicity, advertising, entertainment and representation.

“Resident” means a person or group of persons that is established in Kosovo or that has its place of effective management in Kosovo.

“Tax Administration” means the administration within the Central Fiscal Authority with the powers set forth in UNMIK Regulation No. 2000/20 and subsidiary instruments.

“Tax period” means the calendar year.

Section 2 Taxpayers

2.1 The following persons shall be taxpayers under the present regulation:

(a) A business organization that is required to prepare financial statements in accordance with UNMIK Regulation No. 2001/30;

(b) A business organization that opts to prepare financial statements in accordance with UNMIK Regulation No. 2001/30;

(c) A permanent establishment of a non-resident person; and

(d) An organization registered with UNMIK as a non-governmental organization under UNMIK Regulation No. 1999/22 of 15 November 1999 on the Registration and Operation of Non-Governmental Organizations in Kosovo.

2.2 Taxpayers under the present regulation shall not be liable for presumptive tax under UNMIK Regulation No. 2000/29 of 20 May 2000 on the Establishment of a Presumptive Tax.

Section 3 Profit Tax

3.1 From April 1, 2002, a profit tax shall be charged on the taxable profit of taxpayers in accordance with the provisions of the present regulation.

3.2 A profit tax shall be charged on the taxable profit of taxpayers at the rate of twenty percent (20%).

Section 4 Taxable Profit

4.1 Taxable profit shall be determined by adjusting the taxpayer's income and expenses recorded in the financial statements in the manner prescribed by the present regulation, except with respect to taxpayers referred to in section 2.1(d) and section 27 of the present regulation.

4.2 Taxable profit for a resident taxpayer shall be the taxable profit from Kosovo source incomes and foreign source incomes.

4.3 Taxable profit for a non-resident taxpayer shall be only the taxable profit from Kosovo source incomes.

CHAPTER II - INCOMES EXEMPT FROM TAX

Section 5 Exempt Incomes

The following incomes shall be exempt from profit tax:

- (a) Incomes of organizations registered with UNMIK as non-governmental organizations with public benefit status to the extent that the income is used exclusively for their public benefit purposes;
- (b) Income of the Banking and Payments Authority of Kosovo;
- (c) Dividends received by a resident taxpayer from a resident company that paid Kosovo profit tax; and
- (d) Income from a contractor, other than a local contractor, generated from contracts for the supply of goods and services to the United Nations (including UNMIK), the UN Specialized Agencies, and the International Atomic Energy Agency.

CHAPTER III - EXPENDITURES

Section 6 Allowable Expenses

6.1 Subject to the limitations in the present regulation, in determining taxable profit, 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.

6.2 No deduction shall be allowed for any expense unless it is documented in the manner required by an administrative instruction to be issued by the Central Fiscal Authority.

Section 7 Disallowed Expenses

In determining taxable profit, the following expenses are disallowed:

- (a) Cost of acquisition and improvement of land;
- (b) Cost of acquisition, improvement, renewal and reconstruction of assets that are depreciated or amortized under the provisions of the present regulation;
- (c) Fines and penalties;
- (d) Income tax, profit tax and presumptive tax; and

(e) Value added tax for which the taxpayer claims a rebate or credit for input tax under UNMIK Regulation No. 2001/11 of 31 May 2001 on Value Added Tax in Kosovo.

Section 8 Charitable Contributions

Contributions made for humanitarian, health, education, religious, scientific, cultural, environmental protection and sports purposes are allowed as expenses under the present regulation up to a maximum of five percent (5%) of taxable profit computed before the expense is deducted.

Section 9 Representation Costs

Representation costs are allowed as expenses under the present regulation up to a maximum of two percent (2%) of total turnover.

Section 10 Bad Debts

10.1 Bad debts shall be considered an expense under the present regulation if the following three (3) conditions are met:

- (a) The amount that corresponds to the debt has previously been included in income;
- (b) The debts are written off in the taxpayer's books as worthless; and
- (c) There is adequate evidence of substantial unsuccessful attempts made by the taxpayer to collect the debt.

10.2 Bad debts that are deducted as expenses and then collected later shall be included as income at the time of collection.

Section 11 Reserve Funds

11.1 Except as otherwise provided in the present regulation, contributions to reserve funds are not allowable as an expense.

11.2 Banks are entitled to an expense for the creation of a special reserve fund for the bank's doubtful assets, of an amount not to exceed the maximum amount allowable by the Banking and Payments Authority of Kosovo.

11.3 Subsequent to the creation of the special reserve fund, any amount withdrawn from the fund shall be included in income and any amount placed back into the fund, to replenish it to the allowable amount, shall be allowed as a deduction.

Section 12
Payments to Related Persons

12.1 Compensation or emoluments paid to a related person shall be allowed as an expense in an amount equal to the market price.

12.2 Interest, rent, and other expenses paid to a related person shall be allowed as an expense in an amount that would be incurred on the open market.

Section 13
Depreciation

13.1 Expenditures on tangible property (other than expenditures for land, works of art, and other property which is 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 section.

13.2 All tangible property of the taxpayer that is subject to depreciation under section 13.1 shall be placed in one of the following categories:

- (a) Category 1: Buildings and other construction structures;
- (b) Category 2: Automobiles and light trucks, computers, peripherals, and other data processing equipment, office furniture and office equipment, instruments, sundries and other accessories; and
- (c) Category 3: Plant and machinery, heavy transport vehicles, earth moving equipment, other heavy vehicles, rolling stock and locomotives used for rail transport, airplanes, ships and all other tangible assets.

13.3 Property in each category shall be treated as follows:

- (a) Category 1 property shall be accounted for in segregated asset accounts;
- (b) Category 2 property shall be placed in one pool and have a consolidated capital account; and
- (c) Category 3 properties shall be placed in one pool and have a consolidated capital account.

13.4 The amount allowed as a depreciation deduction for the tax period shall be determined by applying the following percentages to the capital account for such category at the close of the tax period:

- (a) Category 1: five percent (5%);
- (b) Category 2: twenty percent (20%); and
- (c) Category 3: fifteen percent (15%).

13.5 An asset shall first be taken into account for the purpose of the present section when it is first placed into service.

13.6 The initial addition to the capital account for any asset acquired during the year shall be its cost plus insurance and freight. The initial addition to capital account for any property constructed by the taxpayer shall include the taxes, duties, and interest attributable to such property for the periods before the property is placed into service.

13.7 The initial amount in the capital account for assets held prior to 1 January 2002 shall be the book value of the assets on 1 January 2002.

13.8 Expenditure on an asset belonging to Category 2 or Category 3 that is less than 1000 euro shall be allowed as a current expense.

Section 14 Special Allowance for New Assets

If a taxpayer purchases any asset belonging to Category 3, for the purpose of the taxpayer's economic activity, between 1 January 2002 and 31 December 2006, a special deduction of five percent (5%) 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.

Section 15 Repairs and Improvements

In the case of any segregated asset account and any pooled asset account:

- (a) To the extent that the amounts expended during the tax period to repair, maintain or improve the property do not exceed five percent (5%) of the balance in the account at the beginning of the year, such amounts shall be allowed as a deduction for such year; and
- (b) To the extent that such amounts exceed five percent (5%), such excess shall be treated as improvements and added to the segregated asset or pooled account.

Section 16 Amortization

16.1 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.

16.2 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.

Section 17 Exploration and Development Costs

17.1 All exploration and development costs in respect of a natural deposit of minerals and other natural resources (and interest attributable thereto) shall be added to a capital account and amortized under the present section.

17.2 The amount allowed as an amortization deduction with respect to exploration and development costs referred to in section 17.1 for the tax period shall be determined by multiplying the balance in the capital account by a fraction:

(a) The numerator of which is the units extracted from the natural deposit during the year; and

(b) The denominator of which is the estimated total units to be extracted from the natural deposit over the life of the asset.

17.3 The estimated total units to be extracted referred to in section 17.2(b) shall be determined in a manner to be prescribed by a subsequent administrative instruction to be issued by the Central Fiscal Authority.

CHAPTER IV - CAPITAL GAINS AND LOSSES, BUSINESS LOSSES

Section 18 Capital Gains and Losses

18.1 Capital gain means income that a taxpayer realizes through the sale or other disposition of assets including real estate and securities.

18.2 The amount of capital gain is the positive difference between the sales price of the asset and the cost of the asset as determined under section 18.7.

18.3 Capital loss means a loss that a taxpayer realizes through the sale or other disposition of assets including real estate and securities.

18.4 The amount of capital loss is the negative difference between the sales price of the asset and the cost of the asset as determined under section 18.7.

18.5 The sales price of an asset shall be the sum of any money received plus the fair market value of any property (other than money) received as consideration for the sale.

18.6 If the sales price is less than the market price, then, for purposes of the present section, the sales price shall be the market price.

18.7 The cost of the asset is the amount that the taxpayer paid for the acquisition of the asset, as increased by the cost of improvements, and as reduced by depreciation and other expenditures either chargeable to the financial statement or allowable under the present regulation.

18.8 The present section does not apply to assets subject to depreciation as pooled assets.

18.9 Capital gains shall be recognized as business incomes and capital losses as business losses.

Section 19 Involuntary Conversions

A capital gain shall not be recognized on the involuntary conversion of property to the extent that the consideration received from the conversion consists of either property of the same character or nature or moneys that are invested in property of the same character or nature within a replacement period of two (2) years.

Section 20 Business Losses

20.1 A business loss is the negative difference between the taxpayer's income and expenses arising from economic activity.

20.2 The amount of the business loss determined under the present section shall be carried forward for up to five (5) successive tax periods and shall be available as a deduction against any income in those years.

20.3 The amount of the carry forward taken into account for any tax period after the year of the business loss shall be the entire amount of the loss, reduced by the aggregate amount previously allowed as a deduction.

20.4 If a taxpayer has a business loss in more than one (1) year, the present section shall be applied to the losses in the order in which they arose.

CHAPTER V - ORGANIZATIONS, REORGANIZATIONS AND LIQUIDATIONS

Section 21

Distribution of Property

21.1 A company that distributes property (other than stock) to a shareholder with respect to the shareholder's interest shall recognize gain or loss as if such property had been sold to such shareholder at its fair market value.

21.2 The value of the property to the shareholder is the fair market value of the property.

21.3 In the case of a distribution of stock dividends that does not change the share of participation of the recipient, the company does not recognize gain or loss and the shareholder does not realize income.

Section 22

Liquidation

22.1 In the case of a liquidation of a company, the company shall take into account gain or loss as if it had sold the property distributed in the liquidation at its fair market value.

22.2 Except as otherwise provided in the present regulation, 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 fair market value of such property.

22.3 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.

Section 23

Reorganization

23.1 Transfers of property pursuant to a written plan for a reorganization of a taxpayer (whether due to bankruptcy, merger, acquisition or otherwise), which is approved by the Tax Administration, shall not be taxed under the present regulation.

23.2 In the case of a reorganization, the book value of the property held by the reorganized taxpayer shall be determined by reference to the book value of such property immediately before the reorganization.

23.3 In the course of a reorganization, a distribution to a shareholder in respect of the shareholder's equity interest shall not constitute income to the shareholder.

23.4 Except as otherwise provided in an administrative instruction to be issued by the Central Fiscal Authority, the acquiring taxpayer shall succeed to and take into account the inventories, loss carry forwards, dividend account and all other items in such a manner that the acquiring taxpayer takes the place of the acquired taxpayer with respect to such items.

CHAPTER VI - TRANSFER PRICES, AVOIDANCE OF DOUBLE TAXATION

Section 24 Transfer Prices

24.1 The price used in conjunction with asset transactions or contract obligations between related persons shall be considered the transfer price.

24.2 The price expected to be received in conjunction with asset transactions or contract obligations between parties that had been dealing at arm's length or greater than arm's length shall be considered the arm's length price.

24.3 The arm's length price shall be determined under the comparable uncontrolled price method and, when this is not possible, the resale price method or the cost-plus method shall be used.

24.4 The difference between the arm's length price and the transfer price shall be included in taxable profit.

Section 25 Avoidance of Double Taxation

25.1 A resident taxpayer who makes profit from business activities outside of Kosovo through a permanent establishment outside of Kosovo, and who pays tax on that profit to any State shall be allowed a tax credit under the present regulation in an amount equal to the amount of tax paid to such State.

25.2 Any tax credit under the present section is limited to the amount of tax that would be paid under the present regulation on the profit made in such State.

25.3 Any applicable bilateral agreement on avoidance of double taxation made by Kosovo with any State shall supersede the provisions of the present section.

CHAPTER VII - WITHHOLDING TAX

Section 26 Withholding Tax on Dividends, Interest and Royalties

26.1 Each taxpayer who pays dividends, interest or royalties to non-resident persons shall withhold tax at the rate of fifteen percent (15%) at the time of payment, and remit the tax withheld to the Tax Administration.

26.2 If amounts of tax are not withheld, or are withheld but not transmitted, the taxpayer shall pay to the Tax Administration the tax not withheld, or not transmitted, and the associated interest and penalties for the period of the default.

CHAPTER VIII - SPECIAL PROVISIONS

Section 27

Treatment of Insurance Companies

In the case of any entity whose principal activity is the insurance or reinsurance of life, property, or other risks, the tax imposed by the present regulation shall be an amount equal to seven percent (7%) of the gross premiums accrued during the tax period.

CHAPTER IX - ADMINISTRATIVE PROVISIONS

Section 28

Tax Declarations

28.1 Taxpayers shall submit to the Tax Administration tax declarations in the form to be set forth in an administrative instruction issued by the Central Fiscal Authority on or before 1 April of the year following the tax period.

28.2 Taxpayers shall submit to the Tax Administration the financial statements required by UNMIK Regulation No. 2001/30, together with their tax declarations.

Section 29

Tax Payments and Interest charges for Delayed Payments

29.1 Each taxpayer shall make payments of tax in quarterly instalments on or before 15 April, 15 July, 15 October, and 15 January in respect of the calendar quarter immediately preceding these dates. The amount due for each quarterly instalment shall be one-fourth (1/4) of the total tax liability for the tax period, based on either the estimated amount of taxable profit for the tax period or the assessed taxable profit for the preceding year except that for the tax period 2002, and for a taxpayer's first tax period, the tax liability under this subsection shall be based on the estimated amount of taxable profit.

29.2 Each taxpayer shall perform a final settlement of tax and pay the final amount due on or before 1 April of the year following the tax period. The amount due for the final settlement shall be the difference between the tax determined for the tax period in accordance with the provisions of the present regulation and the total of the amounts paid in the quarterly instalments.

29.3 If the total of the amounts paid in quarterly instalments is greater than the tax subsequently assessed by the Tax Administration, the taxpayer shall be entitled to a refund of the excess tax paid.

29.4 If a taxpayer fails to make payment of the amount due for the quarterly instalments, or for the final settlement, or delays in making such payments, interest on the difference between the amount due and the amount paid shall be charged in accordance with the commercial lending rates in Kosovo as publicly announced from time to time by the Tax Administration. Additionally, the taxpayer may be assessed penalties under section 31 of the present regulation.

29.5 If payments for the quarterly instalments have been made on or before the due dates, and a final settlement has been made as required by section 29.2 of the present regulation, no interest or penalties shall be charged for insufficient payment, if:

(a) The difference between the amount due in each instalment and the amount paid in each instalment is not greater than ten percent (10%) of the amount due; or

(b) After the tax period 2002, and after the taxpayer's first tax period, the amount paid in each instalment is ten percent (10%) higher than one-fourth (1/4) of the tax assessed by the Tax Administration for the preceding tax period.

Section 30 Inspection of Records, Assessments, Enforced Collection

In accordance with UNMIK Regulation No. 2000/20 and subsidiary instruments:

(a) The Tax Administration may require the production of documents or other information relating to income, expenses, depreciable assets and other information relevant to calculating a taxable profit;

(b) The Tax Administration may issue a notice of assessment and demand for payment to persons who fail to submit a declaration or make reasonably estimated quarterly payments or final payment; and

(c) The Tax Administration may use the enforced methods of collecting tax if a taxpayer fails to pay the correct amount of tax owed within the time prescribed.

Section 31 Violations and Penalties

Any person who commits a violation of the present regulation shall be subject to the penalties provided under the applicable law, including those set out in UNMIK Regulation No. 2000/20 and subsidiary instruments.

Section 32 Appeals

Any person directly affected by an official determination under the present regulation may make an appeal of such determination in accordance with UNMIK Regulation No. 2000/20 and subsidiary instruments.

CHAPTER X – FINAL PROVISIONS

Section 33 Applicable Law

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

Section 34 Implementation

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

Section 35 Entry into Force

The present regulation shall enter into force on 20 February 2002.

Michael Steiner
Special Representative of the Secretary-General