UNMIK/REG/2000/20
12 April 2000

REGULATION NO. 2000/20

ON TAX ADMINISTRATION AND PROCEDURES

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, as amended, of 25 July 1999 on the Authority of the Interim Administration in Kosovo, and UNMIK Regulation No. 1999/16, as amended, of 6 November 1999, on the Establishment of the Central Fiscal Authority and Other Related Matters,

For the purpose of instituting tax administration and procedures,

Hereby promulgates the following:

Section 1
Tax Procedures

The Co-Heads of the Central Fiscal Authority may issue administrative instructions on tax procedures including, but not limited to, the following:

(a) the duty of taxpayers to keep books and records relating to their tax obligations;

(b) the duty of taxpayers to report the facts necessary for the calculation of their tax liability;

(c) the procedure for submitting tax declarations and amended tax declarations;

(d) the time limits and procedures for payment of taxes; and

(e) taxpayers' rights to representation.

Section 2
Audit and Assessment

The Co-Heads of the Central Fiscal Authority may issue administrative instructions concerning the powers of the Tax Administration to:

(a) inspect and audit books and records of a taxpayer or of any other person who may be able to provide relevant information concerning the taxpayer's tax liability;

(b) make an assessment where the taxpayer has failed to submit a tax declaration as required or where the Tax Administration has determined that the taxpayer has submitted an incorrect tax declaration;

(c) issue a notice of assessment and demand for payment, together with time limits and procedures for payment; and

(d) issue tax credits or refunds.

Section 3
Interest Charges on Late Payments

The Special Representative of the Secretary-General may issue administrative directions concerning interest charges on late payments of tax.

Section 4
Enforced Collection of Tax

4.1 The Special Representative of the Secretary-General may issue administrative directions concerning the following procedures for enforced collection of tax:

(a) levies on accounts receivable, wages and bank accounts;

(b) seizures of property and restrictions on taxpayers' rights of ownership in property;

(c) sale of property at public auctions; and

(d) recovery of amounts from third parties, including banks or other financial institutions.

4.2 The Special Representative of the Secretary-General may also issue administrative directions specifying property that shall be exempt from levies, restrictions and seizures.

Section 5
Tax Violations and Penalties

5.1 For the purposes of the present regulation, a 'tax violation' means an act or failure to act by a taxpayer, or the taxpayer's authorized representative, which is inconsistent with the taxpayer's obligations under the present regulation, or any other regulations relating to tax, administrative directions made thereunder, or administrative instructions issued by the Co-Heads of the Central Fiscal Authority.

5.2 Failure to Submit a Tax Declaration When it is Due. A taxpayer who fails to submit a tax declaration or who submits a tax declaration after the due date for submission of the tax declaration shall be liable to a penalty of five percent (5%) of the tax owed for each month or part of a month that it is late. The maximum penalty payable is twenty-five percent (25%) of the total tax owed.

5.3 Failure to Pay Taxes When They are Due. A taxpayer who fails to pay taxes when they are due shall be liable to a penalty of two percent (2%) of the balance of the tax owed for each month or part of a month that the payment is late, up to a maximum of twelve (12) months.

5.4 Under-Declaration of Tax. If a taxpayer has not declared the full amount of tax payable, the taxpayer shall be liable to a penalty of fifty percent (50%) of the difference between the amount of tax required to be declared and the amount actually declared.

5.5 Willful Evasion of Taxes. Where a taxpayer has willfully concealed the taxpayer's liability, or otherwise engaged in willful misconduct relating to a tax obligation, the taxpayer shall be liable to a penalty of one hundred percent (100%) of the difference between the amount of tax required to be declared and the amount of tax actually declared.

5.6 Assaulting or Threatening a Tax Official. The Tax Administration shall pursue, to the full extent possible, civil and criminal remedies against persons who assault or threaten tax officials in the course of, or in relation to, their official duties.

5.7 Further Tax Violations and Penalties. The Co-Heads of the Central Fiscal Authority may issue administrative instructions imposing penalties for tax violations, where such penalties do not exceed a total of 250DM.

Section 6
Limitation Periods

6.1 A notice of assessment by the Tax Administration must be issued within three (3) years from the date the tax is due to be paid. Where the taxpayer has failed to submit a tax declaration as required, or has submitted a fraudulent tax declaration, a notice of assessment may be issued at any time.

6.2 Actions to enforce collection of tax must be made within six (6) years of the date the tax is due to be paid or the date of any assessment by the Tax Administration, whichever is the later. Commencement of a court proceeding for collection of tax shall end the applicable limitation period.

6.3 A claim by a taxpayer for credit or refund of an overpayment of tax shall be submitted to the Tax Administration by the taxpayer within six (6) years from the date the tax was paid.

Section 7
Appeals

7.1 Review by Appeals Division: A taxpayer who contends that a determination of the taxpayer's income or other tax base, an assessment made or penalty imposed by the Tax Administration (hereinafter the "official determination") is incorrect, may request a review of the official determination by the Appeals Division of the Tax Administration (hereinafter "the Appeals Division").

7.2 Procedure for Review: A taxpayer's request for review by the Appeals Division shall be made in writing, supported by such documentary evidence as the taxpayer wishes to present. The request for review shall be made within 60 days of the taxpayer receiving notification of the official determination.

7.3 Time for Notification of Decision: The Appeals Division shall notify the taxpayer in writing of its decision within 60 days of the date of request for review.

7.4 Administrative Instructions: Subject to the provisions of section 7 of the present regulation, the Co-Heads of the Central Fiscal Authority may issue administrative instructions concerning the procedures for request for review to be followed by the taxpayer and the Tax Administration, including the circumstances in which a taxpayer may be granted an extension of time within which to lodge a request for review by the Appeals Division.

7.5 Final Decision of the Tax Administration: For the purposes of the present regulation and any subsidiary instruments made hereunder, including with regard to enforced collection of tax, the decision by the Appeals Division shall be the final decision of the Tax Administration.

7.6 Appeal to Independent Review Board: The Special Representative of the Secretary-General shall establish the Independent Review Board (hereinafter "the Board") by administrative direction. A taxpayer may appeal to the Board for a review of the final decision of the Tax Administration within 60 days of receiving notification of the decision by the Appeals Division. The appeal to the Board shall be made in writing, supported by such documentary evidence as the taxpayer wishes to present.

7.7 Hearing of Appeal: The Board shall conduct a hearing of the appeal within 60 days of the date the appeal was submitted. The appellant taxpayer may give oral and written evidence to the Board during the hearing of the appeal. Where this occurs, the Tax Administration shall also be given the opportunity to present oral and written evidence. The Board shall notify the parties of its decision, together with written reasons for the decision, within 30 days of the date of conclusion of the hearing.

7.8 Review by a Court: A taxpayer or the Tax Administration may apply to a court of competent jurisdiction for the review of a decision made by the Board.

7.9 Burden of Proof: The burden of proving that an official determination made by the Tax Administration is erroneous shall be on the taxpayer.

7.10 No Suspension of Taxpayer's Obligation: A taxpayer's request for review by the Appeals Division, appeal to the Board or application to the court for a review, made pursuant to section 7 of the present regulation, does not suspend the taxpayer's obligation to pay the tax assessed.

7.11 Suspension of Enforced Collection of Tax: Notwithstanding section 7.10 of the present regulation, there shall be no enforced collection of tax until the time within which a taxpayer may request a review by the Appeals Division has expired, or until the Tax Administration has made its final decision pursuant to section 7.5 of the present regulation, whichever is the later.

7.12 Suspension of Sale of Seized Property: Property seized by the Tax Administration pursuant to its powers of enforced collection shall not be sold or otherwise disposed of for a period of at least 60 days following such seizure or while any of the review or appeal procedures provided in section 7 of the present regulation are being undertaken by a taxpayer, whichever is the later.

7.13 Procedure Following Resolution: In the event that a matter is ultimately resolved in favour of the taxpayer, the Tax Administration shall refund any excess tax paid together with interest thereon accrued until the matter was resolved. If a matter is ultimately resolved in favour of the Tax Administration, the taxpayer shall pay outstanding tax, penalties and interest accrued until the matter was resolved.

Section 8
Implementation

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

Section 9
Applicable Law

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

Section 10
Entry into Force

The present regulation shall enter into force on 12 April 2000.

Bernard Kouchner
Special Representative of the Secretary-General