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Institucioni i Avokatit të Popullit • Institucija Ombudsmena • Ombudsperson Institution

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Prishtinë, 24 December 2018

Mr. Sakip Imeri, General Director  
Tax Administration of Kosovo  
Str. "Nëna Terezë", former – Gërmia Building  
10000 Prishtinë

**RECOMMENDATION LETTER**

**Complaint No. 784/2018**  
**Imer Abdyli**  
**Versus**  
**Tax Administration of Kosovo**

Dear Mr. Imeri,

The Ombudsperson Institution, on the bases of Article 16, paragraph 1 of the Law No. 05/L-019 on Ombudsperson, on 17 October 2018, admitted a complaint of Mr. Imer Abdyli, owner of the Company Fam Gas LLC, lodged against the Tax Administration of Kosovo (TAK).

According to Mr. Abdyli allegations, TAK did not acknowledge to him the VAT deducted from the SAD Document. Regarding this issue, Mr. Abdyli claims that the company he conducts has reached an agreement (certified by a notary) with Mazrek Commerce NTP Company, where these two companies have agreed that SAD Document no. 14464 of 11 September 2013, and the SAD Document no. 14451, of 16 September 2013, to be recorded as purchase costs at Fam Gas LLC and to credit the VAT, since Fam Gas LLC previously has made a sale and did not credit the VAT on purchases through a customs clearance procedure IM7 at IM4. The complainant claims that TAK, by given actions, violates his rights because it denies to him the agreement certified at notary, by which he has taken over the SAD Document mentioned above.

Related to this issue, on 16 November 2018, the Ombudsperson addressed TAK with the letter, through which he requested information regarding actions undertaken as well as those planned to be undertaken by TAK regarding this issue. At the same time he required information about the legal bases regarding TAK actions.

On 4 December 2018, TAK served a response to the Ombudsperson and informed him that TAK activities regarding this issue are grounded on Article 37, paragraph 2, sub-paragraph 2.1 of the Law No. 03/L-146 on Value Added Tax, which stipulates:

*"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 ."*

The Ombudsperson observes that the issue raised by Mr. Abdyli has to do with the right to property, which is “guaranteed” by the Constitution of Republic of (Article 46, paragraph 1).

Additionally, the Ombudsperson draws attention that, according to the Law no. 04/L-077 on Obligational Relationships, which stipulates: “*Participants in obligational relationships, in accordance with binding provisions, public order and good custom, are free to regulate their relations according to their will.*” (Article 2); as well as is stipulated that: “*A contract shall be deemed concluded when the contracting parties agree upon essential elements of the contract.*” (Article 15).

On the other hand, the Ombudsperson notes that according to the Law no. 03/L-010 on Notary, as notarial function is considered also “*compilation and verification of the contracts*” (Article 29, paragraph 1.6).

The Ombudsperson considers that binding agreement, under which the property right over SAD Document was transferred by Mazrek Comerc NTP to Fam Gas LLC is effective for the fact that this contract was reached in accordance with the provisions of the Law on Obligational Relations as well as with the provisions of the Law on Notary. Therefore the same should be taken into consideration by TAK as well.

Review of this issue by TAK, based solely on the provisions of Article 37 of Law no. 03 / L-146 on Value Added Tax, without taking into account the fact that a property right can be transferred from one subject to another in accordance with the Law on Obligational Relations, violates the property right. This finding becomes even more sustainable due to the fact that from the control procedures it has resulted that in the present case there is no tax and customs evasion.

Therefore, the Ombudsperson:

### **RECOMMENDS** **Tax Administration of Kosovo**

- ***To review Fam Gas LLC Company request and to decide upon the given case in compliance with provisions of the Constitution of Republic of Kosovo, with ECHR, with the Law no. 04/L-077 on Obligational Relations, with the Law no. 03/L-010 on Notary and with the Law no. 03/L-146 on Value Added Tax***

Pursuant to Article 132, paragraph 3 of the Constitution of Republic of Kosovo (“*Every organ, institution or other authority exercising legitimate power of the Republic of Kosovo is bound to respond to the requests of the Ombudsperson and shall submit all requested documentation and information in conformity with the law*”) and Article 28 of the Law No.05/L-019 on Ombudsperson, (“*Authorities to which the Ombudsperson has addressed recommendation, request or proposal for undertaking concrete actions, ... must respond within thirty (30) days. The answer should contain written reasoning regarding actions undertaken about the issue in question*”), You are kindly asked to inform us on steps to be undertaken in the future by You regarding this issue.

Warmly submitted,

Hilmi Jashari  
Ombudsperson