

Netherlands

13th Directive (86/560/EEC) VAT refunds

I. RECIPROCITY AGREEMENTS – Article 2(2)

1. Does your country have any reciprocity agreements?

No

2. If yes, what countries are included in the reciprocity agreements?

Not applicable

3. What is the equivalent third country tax to which the reciprocity agreements relate?

Not applicable

4. What goods and services are allowable under the reciprocity agreements?

Not applicable

5. Are there any specific or additional rules applicable in relation to the reciprocity agreements?

Not applicable

6. If your country has no reciprocity agreements, do you still allow refunds?

Yes

II. TAX REPRESENTATIVES – Article 2(3)

7. Does your country require the appointment of a tax representative?

In only one situation is a foreign entrepreneur obliged to appoint a tax representative to declare and pay the VAT due. That is on the basis of article 24d, paragraph 1, of the Dutch VAT Regulation (Uitvoeringsbesluit omzetbelasting 1968) in the case of distance sales, when the entrepreneur is established outside the European Union in a country with which The Netherlands has not 'agreed on a similar legal instrument as referred to in article 21, paragraph 2, section b, of the Sixth VAT Directive' (article 196 of the VAT Directive 2006/112). This tax representative must have a general license. In practice, we take the position that there is no such agreement between The Netherlands and the non-EU country and we leave it up to the entrepreneur (or his consultant) to state that indeed there is such an agreement. This situation does not occur often (an entrepreneur from outside the EU who imports goods into an EU-member state other than The Netherlands and subsequently delivers the goods to private consumers in The Netherlands when the threshold of €100.000 a year is exceeded).

Furthermore, article 24d, paragraph 2, of the VAT Regulation provides for an obligation to appoint a tax representative (general or restricted) as the final step of a practical statutory regulation to,

without charging VAT and without other obligations, trade mineral oils which are located in a place of excisable goods (section a.7 of schedule II to the Dutch VAT law, which provides for transactions that are charged at a zero rate) or bulk goods which are located in a physically guarded bonded warehouse (section a.8 of schedule II). Not until the goods leave the place of excisable goods or the bonded warehouse, is there a taxable transaction. In that case, all the responsibility is placed on the entrepreneur to whom the second last entrepreneur has delivered the goods and who makes the first delivery after the goods have left the place of excisable goods or the bonded warehouse. Because of the importance of this responsibility, the Dutch legislator wants a domestic person to be liable. Therefore, if this key person is a foreign entrepreneur, even if he is established in an EU-member state, he must appoint a tax representative.

Article 12, paragraph 2, of the VAT Regulation provides for an obligation to appoint a (general or restricted) tax representative as a condition to apply the zero rate in the cases of sections a.7.a, a.7.b and a.8.a of schedule II.

8. What conditions are imposed when appointing a tax representative?

If a foreign entrepreneur wants to appoint a general tax representative he first must register with the 'foreign office' of the Dutch tax authorities in Heerlen (see question 11). They provide the foreign entrepreneur with a VAT-identification number and subsequently hand over the competence to the tax unit that is competent for general tax representatives. The tax representative must always be a Dutch entrepreneur. From that moment on the foreign entrepreneur can not submit tax returns or ask for tax refunds; all his transactions as well as his 'input VAT' must be accounted for on the tax return of the general tax representative.

A foreign entrepreneur can also appoint a restricted tax representative who can only account for the importation and the following supply. He does this on his own tax return via one VAT-sub number under which he files the total amounts for all the foreign entrepreneurs for which he acts as a restricted tax representative. Not until there is an on the spot tax audit will it be clear for whom the importation and supply has been made. For this purpose, the restricted tax representative uses his license to shift his liability of import VAT to his tax return (article 23 of the Dutch VAT Act; Wet op de omzetbelasting 1968). A foreign entrepreneur can not use this facility on his own, without a restricted tax representative, except for the importation of some specified goods (Annex A to the VAT Regulation) which conceivably will never be used for human consumption.

This facility of article 23 of the VAT Act is a big advantage to appointing a restricted tax representative by a foreign entrepreneur. It means he does not have to finance the VAT on the importation and he does not have to register with the 'foreign office' in Heerlen. The alternative is that the foreign entrepreneur pays the VAT on the importation himself and claims a refund at the 'foreign office'. Therefore he will have to register with the 'foreign office' as a requestor if, in

short, the through supply is made to a domestic entrepreneur (applying the reversed charge of article 12, paragraph 3, of the VAT Act) or as 'required to submit a tax declaration' if the supply is made to private consumers or to foreign entrepreneurs.

One foreign entrepreneur can appoint several restricted tax representatives. If he wants he can appoint a different one for each import transaction. Besides a general tax representative he can also appoint one or several restricted tax representatives for other import transactions.

III. REFUND ARRANGEMENTS – Article 3(1)

9. What are the time limits that are applied for making a claim?

Within six months after the calendar year in which the VAT has been charged (article 33, paragraph 3, last sentence, of the VAT Act). In accordance with a Resolution of the Secretary of State of 25 March 1991, nr. DB89/735, requests for refunds are considered if they are submitted not later than 31 December of the fifth year after the calendar year in which the VAT has been charged. Such a request, submitted between six months and five years after the calendar year concerned, is legally late. Therefore the entrepreneur's request is declared inadmissible but if the claim is substantively right, the refund will nevertheless be admissible. There is a difference with a request that has been submitted in time if the late request is (partially) denied. Whilst an appeal is possible within six weeks after the refusal that appeal will be rejected because the request was submitted late. There is no possibility to appeal to the court, except on the issue of being late with the request.

10. What periods are eligible for a refund?

A maximum of one calendar year and a minimum of one quarter, except if it refers to the remaining part of a calendar year, in which case the period can also be one or two months. For example: the first request refers to six months, the second request refers to five months and so the last request will refer to one month. In effect, there will never be more than four requests regarding one calendar year. To some extent, the entrepreneurs can submit the requests to suit their needs.

11. Where shall the applications be made?

Belastingdienst/Limburg/Kantoor Buitenland

Postbus 2865

6401 DJ Heerlen

The Netherlands

This is the so called 'foreign office'.

12. What is the minimum amount of VAT that can be refunded?

The minimum amount is €200 if the entrepreneur does not have to submit the request immediately and can let the amount increase. If that is not possible (a request regarding a calendar year or

regarding the last part of a calendar year) the minimum amount is €25,- (article 33, paragraph 5, of the VAT Act).

13. How can the applicant receive an application form?

An application form can be obtained at the 'foreign office' and at the tax authorities of all the EU-member states, although to an entrepreneur outside the EU that may not be obvious. We also accept 'own makings' provided that all the sections on the front side of the Dutch refund form 'OB nr.68' are included and also the specification aligns with the classification on the inside of form 'OB nr. 68'.

Furthermore, we accept forms that are issued by other Member States. In principle they should all be exactly the same because the Eighth Directive prescribes a uniform model (article 3, section a) and to our knowledge all Member States use the same forms for requests regarding the Eighth and Thirteenth Directive. Some countries, though, have added one or more sections.

14. What languages may be used for completion of the form?

Usually we accept only French, German or English but if we can understand the contents we will not refuse the application on formal grounds. Only if we can't understand an important section will we return the form and/or ask for more information.

15. What information is requested on the application form? Please could you provide a copy of the form or a website link?

See above. We use the uniform model, Annex A to the Eighth Directive (the Dutch 'OB nr. 68').

Preceding every first request for refund a registration procedure is obligatory, in which we ask questions in order to make a file of basic customer data. For instance, we ask the date of birth of a person and the date of establishment of a legal entity. This is essential in order to be included in the national data system and because it must be proven that there is a business. This can be done in any way but we always ask for an affidavit from their national tax authorities. However, business activity can also be proven by correspondence, invoices, advertisements, websites and the like. Furthermore we ask for data that has been proven to be of use when dealing with tax returns and requests. Recording the data in the first phase leads to a smoother completion of the request later on. Finally, we also want to evaluate at the outset if a new entrepreneur has to have the status of a "requestor" or that of someone liable to file a tax return. All of this is part of a standardized process in which 15.000 new applications must be handled annually within a target period of four weeks.

Enclosed you will find the application form in Dutch, English and German.

16. Is any information optional? If yes, what information?

No.

17. Who is authorised to sign the application form?

The entrepreneur or someone who is authorized by him, in which case we demand a written authorization.

18. What evidence is required to support an application?

The original invoices or the customs documents on which the requested VAT is being charged. In dealing with the request we can ask for copies of the invoices regarding the supplies of goods and services, made by the foreign entrepreneur in The Netherlands (and for which there is a reverse charge by the buyer).

19. What time-limits does your country apply to making a refund?

The average period is three months. We commit ourselves to the period of six months as mentioned in the Eighth Directive (article 6, paragraph 4).

IV. ELIGIBILITY– ARTICLE 4(2)

20. Are there any other conditions applicable?

We treat foreign entrepreneurs in the same way. There is no reference to a broader exemption where a limited right of deduction in the country where the entrepreneur is established; it is of no relevance if that country has any VAT system and if so, if it is similar to ours.

21. Are certain types of expenditure excluded and if so which?

We apply the limitations that exist in the Dutch Regulation for the exclusion of the right of deduction (Besluit uitsluiting aftrek omzetbelasting 1968) and in article 15, paragraph 5, of the VAT Act (hotels, cafés, restaurants). Furthermore we apply a correction of 16% of the VAT on the rent or lease of passenger cars. This is in compliance with our legal limitations of deduction which apply to all entrepreneurs, in accordance with article 4, paragraph 1, of the Thirteenth Directive which refers to the rules of article 17 of the Sixth Directive (article 169 of VAT Directive 2006/112) as applied in the refunding Member State.

V. MAJOR DIFFERENCES BETWEEN REFUNDS UNDER THE 13TH AND THE 8TH (79/1072/EEC) DIRECTIVE

22. What are the main procedural differences between applying for a VAT refund based on the 8th Directive and a refund based on the 13th Directive?

No differences, apart from the affidavit regarding the liability to taxation in the Member State of establishment, which only applies to requests based on the Eighth Directive.

23. Do certain types of expenditure give rise to refund under the 8th Directive but not under the 13th Directive? If yes, please specify the types of expenditure.

In accordance with article 2 of the Thirteenth Directive, we don't give refunds to foreign banks and insurance companies that are established outside the EU. They claim the refunds on the basis of

article 169, section c, of the VAT Directive 2006/112 but we are of the opinion that this right of deduction is not meant for banks and insurance companies that are established outside the EU.