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VAT IN THE EUROPEAN COMMUNITY

**VADEMECUM FOR THE ELECTRONIC
REFUND PROCEDURE TO TAXABLE
PERSONS NOT ESTABLISHED IN THE
MEMBER STATE OF REFUND BUT
ESTABLISHED IN ANOTHER MEMBER
STATE (COUNCIL DIRECTIVE 2008/9/EC)**

NOTE

**THIS DOCUMENT COLLATES A RANGE OF
BASIC INFORMATION ON THE
APPLICATION OF THE REFUND
ARRANGEMENTS IN THE MEMBER
STATES WHICH HAS BEEN OBTAINED
FROM THE TAX AUTHORITIES
CONCERNED.**

**THIS DOES NOT REFLECT THE VIEWS OF
THE COMMISSION OF THE EUROPEAN
UNION, NOR DOES IT SIGNIFY APPROVAL
OF THE LEGISLATION.**

PORTUGAL

VADEMECUM FOR THE ELECTRONIC REFUND PROCEDURE TO TAXABLE PERSONS NOT ESTABLISHED IN THE MEMBER STATE OF REFUND BUT ESTABLISHED IN ANOTHER MEMBER STATE

General

1. Where could a non-established taxable person (NETP) find information on your laws and guidelines?

Information about existing tax legislation and administrative instructions is available in Portuguese language on www.portaldasfinancas.gov.pt

2. Eligibility for a refund

To be eligible for a refund the applicant must be a taxable person established in the EU making taxable supplies in his own Member State (the Member State of Establishment). He must have incurred VAT on expenses in a Member State in which he has no establishment (the Member State of Refund), and he must have made no supplies within that Member State other than reverse charge supplies, or certain exempt transport services, during the refund period.

3. What can be refunded

VAT relating to business activities carried out outside the Member State of Refund if those activities would be subject to tax or exempt with a right to deduct in the Member State of Refund if they had been made there, and VAT relating to supplies on which the reverse charge is applicable in the Member State of Refund.

4. What cannot be refunded

VAT incurred which relates directly to activities which are exempt without the right to deduct.

VAT incurred on expenses on which there are restrictions on the right to deduct in the Member State of Refund.

According to the national legislation, in particular article 21 of the Portuguese VAT Code, following expenses are excluded from the right to deduction:

*a) Acquisition/hiring/use/transformation/repair/manufacturing or import of passenger cars, pleasure crafts, helicopters, planes, motorcycles, **except** for goods which sale or exploitation is the object of activity;*

b) Fuel:

- Petrol

*- Partial (50%) – Diesel, LPG, natural gas and biofuels, **except** for:*

- Heavy passenger vehicles;

- Vehicles licensed for public transport, rent-a-car vehicles excluded;

- Diesel; LPG, natural gas or biofuel consuming machines, which are not registered vehicles;

- Tractors exclusively or predominantly used for fieldwork related to agricultural activity;
- Vehicles transporting goods, weighting more than 3 500Kg

c) Business travels made by taxable person and staff, including toll fees.

d) Food, accommodation, beverages and tobacco, **except** in cases the expense is related to conferences, fairs, expositions or congresses, where a deduction of 50% or 25% can be applied, according to the Portuguese VAT Code (Art. 21, paragraph 2, Portuguese VAT Code).

e) Fun and luxury, not considered normal operating expenses.

5. Proportional deduction

Where the taxable person is only able to deduct a proportion of his input tax because he makes taxable and exempt supplies, that person can only have the amount refunded according to the rules on proportional deduction in his Member State.

Procedures in the Member State of Establishment

6. What is the application procedure?

National taxable persons or their legal representatives, accountants or agents when duly authorized by the applicant, submit their request on site www.portaldasfinancas.gov.pt, using a password.

7. Are there any particular requirements for an agent to be able to submit a claim on behalf of the applicant?

The representatives, in particular agents acting for or on behalf of the applicant, should have a valid, properly identifying password to access site www.portaldasfinancas.gov.pt.

8. Content of the application:

The application should contain the following information:

- the applicant's name
- the applicant's VAT identification number or tax reference number
- the applicant's full address including country code (the address which is on record in Member State of Establishment)
- e-mail address
- a description of the applicant's business activity for which the goods and services are acquired via NACE v.2 codes
- the refund period covered by the application
- declaration by the applicant that he has supplied no goods and services deemed to have been supplied in Member State of Refund during the refund period, with the exception of

the supply of specific transport services and services ancillary thereto or supplies to which the reverse charge mechanism is applicable in Member State of Refund

- bank account details including IBAN and BIC codes

In addition, the following details of each invoice or importation document

- name and full address of the supplier;
- the VAT identification number or tax reference number of the supplier except in the case of importation
- the prefix of the Member State of Refund (except in the case of importation)
- date and number of the invoice or importation document
- taxable amount and amount of VAT expressed in the currency of Member State of Refund
- the amount of deductible VAT calculated expressed in the currency of Member State of Refund
- where applicable, the deductible proportion expressed as a percentage
- nature of the goods and services acquired according to the codes 1 to 10
- Where requested, further information on the nature of the goods and services acquired according to the sub-codes of 1 to 10.

9. The circumstances under which a Member State of Establishment will not send an application to the Member State of refund.

- If the details in point 8 above are not filled in.
- The applicant is not a taxable person during the refund period.
- The applicant only carries out exempt supplies in the Member State of establishment during the refund period.
- The applicant is covered by the exemption for small businesses.
- The applicant is covered by the flat rate scheme for farmers.

10. Minimum refund limits

- 400 EUR or the equivalent in national currency if the refund period is between 3 months and less than a calendar year
- 50 EUR or the equivalent in national currency if the refund period is of a calendar year, or the remainder of a calendar year.

11. Time limit

The application must be submitted to the Member State of Establishment by 30 September of the calendar year following the refund period. The application is only considered as submitted if the applicant has filled in all the required information.

12. Is an applicant able to correct an error on an application which has been forwarded to a Member State of Refund?

In case of mistake and as long as there is no decision made, a request can be replaced by a different one, cancelling the one sent before and handled as a new request.

It is also possible to cancel the request, that is to totally cancel the request submitted initially and creating the possibility to send a new request with the same invoices.

Procedures in the Member State of Refund

13. Are copies of invoices required?

No, only if requested under an additional information request.

14. The maximum size limit for an attachment has been agreed at 5 mb. What is the applicant to do if they exceed this limit?

No specific procedure is provided for, but the Portuguese Tax Administration advises to use zipped files, in Tiff, Jpeg and Pdf format.

15. As a Member State of refund, do you require additional documentation for claims submitted by an agent?

The submission of a power of attorney may be required.

16. Can payments be made to agents?

Yes, as long as they are authorized by the applicant through a power of attorney.

17. How will the Member State of Refund communicate with the applicant?

The contacts should preferably be made by email (dsr-vatrefund@at.gov.pt).

18. Time limits for the processing of an application

The Member State of refund has four months from the date of receipt of an application to notify the applicant of its decision to approve or refuse the application, or to ask for further additional information. Where additional information is required, it has a further two months from receiving that information. Where it has asked for further information, it shall, in any case, notify the applicant of its decision within 8 months of the receipt of the application.

Where the refund application is approved, payment should be made within 10 working days.

19. Procedure for sending additional information to the Member State of Refund

Member States can ask for additional information from persons other than the applicant. In all cases, the information should be provided to the Member State of Refund within one month of the date on which the request is received by the addressee.

20. The refund period

The refund period corresponds to one calendar year, which can be divided into periods no shorter than three (3) consecutive calendar months.

21. Number of applications accepted per year.

Currently, due to the implemented changes for replacing and correcting Vat refund requests, submitted by non resident taxable persons in the Member State of refund, there is no limit to the number of requests.

22. What is the procedure for appealing against a decision? Are there any time limits for appeals?

According to national legislation the applicant can administratively appeal against the decision to the Director de Serviços de Reembolsos [Director of Refund Services] within 120 days or present a judicial claim for refund of tax within 90 days from the notification of the decision.

23. Incorrect applications

If an amount has been recovered in a fraudulent or incorrect way, Member States may recover those amounts.

In case of incorrect refunds, the Autoridade Tributária e Aduaneira (Tax and Customs Authority) assesses additionally the amount unduly refunded, plus compensatory interests, and starts a proceeding of misdemeanour (penalties) without prejudice of the provisions concerning mutual assistance in the recovering of VAT.

The recovering of this tax can be made by compensation through already submitted and granted refund applications.