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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.**

MALTA

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?

Non –established taxable persons can find information in website www.vat.gov.mt. They may refer to Online VAT Refund Guide – VAT Refund (EU 8th Directive) via link <http://vat.gov.mt/en/VAT-Information/VAT-Guides/Documents/VATRefundGuide.pdf> and to the Value Added Tax Act, Chapter 406 of the Laws of Malta and Legal Notice 357/2009 Value Added Tax(Refund of Value Added Tax to taxable persons not established in Malta), Regulations, 2009.

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.

Restrictions apply to tax which is blocked in terms of VAT legislation as stipulated in Item 3 of the Tenth Schedule; Tax which is not to be treated as input tax as per following link:-

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8872>

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?

The VAT Refund application is integrated in the secure portal of the vat.gov.mt website. The users or their representatives need to authenticate themselves with their Maltese Electronic ID account (EID) in order to access this secure portal.

For non-Maltese users (or representatives), who are not in a possession of a Maltese EID account, need to apply with the VAT department such that they are given an account that enables them to log in the secure portal. This form can be downloaded from the vat.gov.mt portal and additional documentation might be required to confirm the identity of the user.

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

There are no particular requirements for persons with Maltese EID account. Delegation may be made through the EID portal.

For those persons who are not in a possession of a Maltese EID account, same procedures as question 6 above apply.

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?

Applicants are able to correct any errors on any submitted VAT refund applications (both quarterly and yearly) by correcting the original application.

Procedures in the Member State of Refund

13. Are copies of invoices required?

The applicant has to submit by electronic means a copy of the invoice or importation document with the refund application where the taxable amount on an invoice or importation document is €1,000 or more or the equivalent in national currency. Where the invoice concerns fuel, the threshold is €250 or the equivalent in national currency.

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?

The users are not allowed to upload attachments of more than 5MB in the web portal and in cases where they need to upload more attachments, they are asked to upload the receipts with the highest value. If the MSREF requires the additional receipts, they will contact the user directly or through the MSEST.

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

An original notarised power of attorney as long as payment is going to be in the agent's account.

16. Can payments be made to agents?

Yes

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

Communication via the MSEST is done in all cases. Furthermore, when additional information is required, communication is made via email.

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

Refund period shall not be more than one calendar year or less than one three calendar months. Refund applications may, however relate to a period of less than three months where the period represents the remaining of a calendar year.

If the refund application relates to a refund period of less than one calendar year but not less than 3 months, the amount of VAT for which a refund is applied for may not be less than €400.

If the refund application relates to a refund period of a calendar year or the remaining of a calendar year, the amount of VAT may not be less than €50.

21. Number of applications accepted per year.

4 quarterly applications and unlimited yearly applications

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

Appeals against decisions to refuse a refund application may be made by the applicant to the Administrative Review Tribunal (established by article 5 of the Administrative Justice Act) in terms of article 44 and the Ninth Schedule to the Act.

Any of the parties to an appeal or a reference to the Tribunal who feels aggrieved by the decision of that Tribunal may, by means of an application to be filed within thirty days from the date on which the decision appealed from is notified to him, appeal against that decision on a question of law only.

23. Incorrect applications

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