

Germany

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

I. Reciprocity agreements - Article 2(2)

1. Does your country have any reciprocity agreements?

No. The existence of reciprocity is determined by the German Finance Ministry following examination of the statutory rules and regulations governing turnover tax in the third States concerned. No bilateral agreements have been concluded between Germany and the third States concerned.

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

Reciprocity has so far been established with the following third States: Andorra, Antigua and Barbuda, Bahamas, Bahrain, British Virgin Islands, Bermudas, Brunei Darussalam, Cayman Islands, Gibraltar, Grenada, Greenland, Guernsey, Hong Kong (People's Republic of China), Iran, Iceland, Israel, Jamaica, Japan, Jersey, Canada, Qatar, Korea (Democratic People's Republic), Korea (Republic), Kuwait, Lebanon, Liberia, Libya, Liechtenstein, Macao, Former Yugoslav Republic of Macedonia, Maldives, Norway, Oman, Solomon Islands, San Marino, Saudi Arabia, Switzerland, St. Vincent, Swaziland, Vatican, United Arab Emirates, United States of America.

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

Turnover tax or similar.

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

There are no specific regulations on this matter.

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

There are no specific regulations on this matter.

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

In the absence of reciprocity, the input-tax reimbursement procedure can be carried out only if the undertaking not established in Community territory:

- has carried out only transactions in respect of which the recipient of the services is liable for tax (Article 13b(2), first and third sentences, of the Turnover Tax Law) or which are subject to a separate transport tax (Articles 16(5) and 18(5) of the Turnover Tax Law),
- has carried out within German territory only intra-Community acquisitions and related transactions pursuant to Article 25b(2) of the Turnover Tax Law, or

- has provided within the Community territory as a taxable person only other services by electronic means to non-traders not established in Community territory and has exercised its right to choose to be registered for tax purposes in only one EU Member State (Article 18(4)(c) and (d) of the Turnover Tax Law).

(Section 241(4), fourth sentence, of the Turnover Tax Guidelines).

II. Tax representatives - Article 2(3)

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

No.

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

See reply to question 7.

III. Refund arrangements – Article 3(1)

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

The application for a refund must be made within six months of the end of the calendar year in which the entitlement arose (Article 18(9), third sentence, of the Turnover Tax Law). This is a peremptory time limit and failure to observe it can lead, under the terms of Article 110 of the German Tax Code, to the granting of restitutio in integrum.

10. What periods are eligible for a refund?

At the request of the trader, the reimbursement period can range from a minimum of three months to a maximum of one calendar year (Article 60, first sentence, of the Turnover Tax Implementing Regulation).

The reimbursement period can be less than three months if it covers the remainder of a calendar year (Article 60, second sentence, of the Turnover Tax Implementing Regulation).

11. Where shall the applications be made?

The applications should be submitted to the Federal Central Tax Office (*Bundeszentralamt für Steuern*) (Article 61(1) of the Turnover Tax Implementing Regulation):

Bundeszentralamt für Steuern, Dienstsitz Schwedt,

Passower Chaussee 3 b, 16303 Schwedt (Oder)

On application by the trader, the Federal Central Tax Office transfers the refund of input tax to another financial authority (*Finanzamt*) if the authority agrees (Article 243(4), second sentence, of the Turnover Tax Guidelines).

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

The refund must be at least €500 (Article 61(2), third sentence, read in conjunction with the first sentence, of the Turnover Tax Implementing Regulation). This does not apply if the refund period is

the calendar year or the final period of the calendar year. For these refund periods the refund must be equal to at least €250 (Article 61(2), third sentence, read in conjunction with the second sentence, of the Turnover Tax Implementing Regulation).

13. How can the applicant obtain an application form?

From the Federal Central Tax Office at : www.bzst.bund.de
www.formulare-bmf.de

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

The application must be made in German.

15. What information is requested on the application form?

A detailed list must be provided of the amounts of input tax to which the refund application refers.

The undertaking itself must calculate the amount of the refund. It must demonstrate by means of a certificate from the competent authorities in the State in which it is established (*Unternehmerbescheinigung*) that it is registered as a trader under a tax number (Article 61(3) of the Turnover Tax Implementing Regulation).

16. Is any information optional?

There is no provision for optional information on the application form for a turnover tax refund.

17. Who is authorised to sign the application form?

The trader's handwritten signature is required (Article 18(9), fifth sentence, of the Turnover Tax Law).

18. What evidence is required to support an application?

The original invoices and import documents must be attached (Article 18(9), fifth sentence, of the Turnover Tax Law).

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

There are no specific rules on this matter.

IV. Eligibility - Article 4(2)

20. Are there any other conditions applicable?

- Input tax is refunded to a trader who is not established in Community territory only if no turnover or similar tax is levied in the country in which he is established or if, in cases where tax is levied, it is refunded to traders established in national territory (Article 18(9), sixth sentence, of the Turnover Tax Law). See also the reply to question 6.
- Irrespective of the trader's place of establishment, an input tax deduction or refund is possible only if the associated output transactions are taxable or if, as exempt transactions, they do not rule out deduction of input tax.

21. Are certain types of expenditure excluded?

- In the case of traders not established in Community territory, amounts of input tax relating to

the purchase of fuel are excluded (Article 18(9), seventh sentence, of the Turnover Tax Law).

- Irrespective of the trader's place of establishment, non-deductible or refundable amounts of input tax relating to expenditure covered by the prohibition of deduction under the terms of Article 4(5), first sentence, points 1-4 and 7, or Article 12, point I, of the Income Tax Law. This does not apply to entertainment expenses insofar as Article 4(5), sentence 1, point 2, of the German Income Tax Law excludes the deduction of reasonable and proven expenditure (Article 15(1)(a) of the Turnover Tax Law).

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?

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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.

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