

Romania

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

I. RECIPROCITY AGREEMENTS – Article 2(2)

1. Does your country have any reciprocity agreements?

Romania has no reciprocity agreements.

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?

The Romanian fiscal law allows refunds to taxable persons established outside the European Community, based on the provisions of the 13th Directive, which have been transposed in the VAT legislation in force, respectively the 6th Title of the Fiscal Code, approved by Law no. 571/2003 modified and completed by Law no. 343/ 2006, published in Part I of the Official Gazette of Romania, no. 662 of August 1st 2006 and Methodological Norms for the application of Law no. 571/2003 regarding the Fiscal code, approved by Government Decision no. 44 /2004 modified and completed by Government Decision no. 1861/ 2006, published in Part I of the Official Gazette of Romania, no. 1044 of December 29th 2006.

II. TAX REPRESENTATIVES – Article 2(3)

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

Yes, Romania requires the appointment of a tax representative, in order to meet the refund conditions.

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

The tax representative shall act on behalf and in the name of the taxable person that he represents and shall be held liable severally and jointly together with the taxable person for the obligations and rights of the taxable person concerning the refund application.

The tax representative shall meet the following obligations, on behalf of and in the name of the taxable person:

- shall file to the competent tax authorities an application as per the model set by the Ministry of Public Finance, attaching all original invoices and/or import documents, showing the tax requested to be refunded;
- shall produce documents showing that the represented person is engaged in an economic activity which would deem it to be a taxable person were it established in Romania. By way of derogation, in case the competent tax authorities already possess such proof, it is not mandatory that the taxable person brings new evidence during a period of one year from original the production of proof;
- shall produce a written statement of the represented person, according to the period referred to in the refund application, that such a person did not make supplies of goods or services which took place or were deemed to take place in Romania, except for transport services and their ancillary services, which are exempt from VAT, and supplies of goods or services for which the related tax is exclusively paid by the persons to whose benefit they are performed.

III. REFUND ARRANGEMENTS – Article 3(1)

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

The refund application shall be filed to the competent tax authorities within six months of the end of the calendar year when the tax becomes chargeable.

10. What periods are eligible for a refund?

The claim should cover a period of at least three months, but not more than the full prescribed year.

The claim can cover less than three months if this is all that remains of the prescribed year.

11. Where shall the applications be made?

The applications are to be made at the Fiscal Administration Authority where the tax representative is registered.

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

If the application form refers to a period shorter than a calendar year but not less than three months, the amount for which the application is submitted cannot be less than RON 200.

If the application form refers to a period of a calendar year or the remaining period from a calendar year, the amount for which the application is submitted cannot be less than RON 25.

13. How can the applicant receive an application form?

The application form can be obtained by downloading the electronic format of the application from the Ministry of Public Finances website (www.mfinante.ro).

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

Romanian

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

Claims are made on a special form, which must be submitted with all the information needed to process the claim. This includes correctly completed invoices, bills, vouchers or receipts from the suppliers, customs clearance forms, supporting the amounts claimed and a certificate of status (proof of entitlement) issued by the tax authority from the country of the applicant.

It must be provided the originals of all invoices, bills, vouchers or receipts and import documents with the claim. Copies are not acceptable.

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

No

17. Who is authorised to sign the application form?

The application form must be signed by the tax representative.

18. What evidence is required to support an application?

See answers 8 and 15.

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

The decision regarding the refund application shall be issued within six months from the date when the application, accompanied by the documents necessary for analysing the application, is received by the competent tax bodies. If the refund is rejected in whole or in part, the competent tax bodies shall present the reasons underlying the rejection of the application. The decision may be challenged according to the Romanian legal provisions in force.

IV. ELIGIBILITY– ARTICLE 4(2)

20. Are there any other conditions applicable?

The taxable person claiming VAT refund is not registered nor is he required to register for VAT purposes in Romania, is not established and has no fixed establishment in the Community from where economic activities are carried out, and, during the period mentioned to answer 10, did not perform supplies of goods and services in Romania, except for:

- a) transport services and ancillary transport services, exempt according to the Romanian Fiscal Code, to the extent that their amount is included in the taxable amount of goods imported;
- b) supplies of goods and/or services, in cases where the related tax is paid by persons to whose benefit the goods and/or services are supplied.

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

The refund for tax due or paid by the taxable person shall not be granted for:

- acquisitions of goods whose supply is exempt or which can be exempt according to Romanian Fiscal Code;
- acquisitions of goods or supplies of services which are exempt or which can be VAT exempt according to Romanian Fiscal Code;
- acquisitions of goods or services for whose supply no VAT deduction is granted in Romania.

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?

a) For **EU countries**, refunds shall be repaid in RON in an account indicated by the taxable person either in Romania or in the Member State where he is established; for **non - EU countries**, refunds shall be repaid in RON in an account opened in Romania and indicated by the representative.

b) For **non - EU countries**, in cases of fraudulent applications, the competent tax bodies shall reject any other refund to the taxable person over a period which is not to exceed 10 years as of the submission of the fraudulent application. There are no specified such provisions, in the same conditions, for the **EU countries**. For EU countries, if a refund is obtained fraudulently or by error, the competent tax bodies shall request the taxable person who benefited from the refund to return the amounts refunded erroneously and the related ancillary costs. In cases of failure to refund the amounts, the competent tax bodies shall recover them according to the provisions referring to mutual assistance regarding VAT refunds.

c) In order to meet the refund conditions, **the applicant from non - EU countries must appoint** a representative in Romania for refund purposes. For **EU countries**, the appointment of a tax representative is optional.

d) The places for submission of the application forms are different. Under the 8th Directive the applications are made at the Regional Directorate of Public Finances of Bucharest, whilst under the 13th Directive the applications are made at the Fiscal Administration Authority where the tax representative is registered.

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.

No.